

In the Central Administrative Tribunal
Principal Bench, New Delhi

Regn. Nos.: 1.0A-589/90
2.0A- 51/91

Date: 24.12.1991.

1. Shri Shyam Lal Applicant
✓ 2. Shri Shyam Lal Applicant

Versus

1. Director General, Council of Scientific & Industrial Research & Others Respondents

2. Director General, Council of Scientific & Industrial Research & Another Respondents

For the Applicant in 1&2 Shri Inderjit Sharma, Counsel

For the Respondents in 1 & 2 Shri A.K. Sikri, Counsel

CORAM: Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Mr. B.N. Dhoundiyal, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the judgement? Yes
2. To be referred to the Reporter or not? Yes

(Judgement of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice-Chairman)

The applicant, who has worked as an Assistant, National Physical Laboratory, New Delhi (N.P.L.) under the Council of Scientific and Industrial Research (C.S.I.R.), filed OA-589/90 challenging the impugned orders dated 27.12.1988 and 8.5.1989 passed by the respondents. The Director, N.P.L. had imposed the penalty of removal from service on the applicant by the impugned order dated 2

27.12.1988. On 8.5.1989, the Director General, C.S.I.R. considered the appeal preferred by the applicant and reduced the penalty to compulsory retirement with proportionate pensionary benefits.

2. The applicant preferred a review petition to the President, C.S.I.R., who further scaled the penalty to reduction by two stages in the time-scale of pay for two years with the direction that during the currency of the penalty period, he will not earn increments and the penalty will also have the effect of postponing his future increments. The period from the date of removal to the date of reinstatement will be treated as dies non. The period of suspension will be treated as 'non-duty'. The pay and allowances for the period of suspension will be restricted to the amount of subsistence allowance already drawn by him. The order dated November, 1990 passed by the President, C.S.I.R., has been challenged in OA-51/91.

3. We have gone through the records of the case carefully and have heard the learned counsel for both the parties. Disciplinary proceedings were initiated against the applicant in December, 1987 and the President, C.S.I.R. passed his order in revision in November, 1990. The matter has dragged on for nearly three years. The Articles of Charge framed against him were the following:-

"ARTICLE OF CHARGE I"

That Shri Shyam Lal (under suspension) working as Assistant during the period from 13.1.59 till date committed misconduct in as much as he failed

to take action for getting the amount of earnest money received in the form of cheques/demand drafts/pay orders/deposit at call receipt etc. credited to the accounts of the laboratory as required under the instructions and thereby failed to maintain devotion to duty and thus contravened the provisions of Rule 3(1)(ii) of the CCS (Conduct) Rules, 1964 as made applicable to the employees of the CSIR.

ARTICLE OF CHARGE II

That the said Shri Shyam Lal (under suspension) while working in the aforesaid office and during the aforesaid period committed misconduct in as much as he was keeping in his drawer blank letter heads of a number of firms of the contractors apparently for dishonest purposes and thereby failed to maintain absolute integrity and thus contravened the provisions of Rule 3(1)(i) of the CCS (Conduct) Rules, 1964 as made applicable to the employees of the CSIR.

ARTICLE OF CHARGE III

Shri Shyam Lal, Assistant (under suspension) while working in the aforesaid office and during the aforesaid period committed misconduct in as much as he kept with himself a cheque for Rs.1432.39 dated 1.7.1985 received from M/s J.K. Cement Works, Kanpur towards the refund of balance amount for supply of cement to NIL instead of getting it credited to the funds of the laboratory as required, and thereby failed to maintain devotion to duty and thus contravened the provisions of Rule 3(1)(ii) of C.C.S.(Conduct) Rules, 1964 as made applicable to the employees of the CSIR.

ARTICLE OF CHARGE IV

That Shri Shyam Lal (under suspension) while working in the aforesaid office and during the aforesaid period committed misconduct in as much as he was keeping in his drawer one blank letter head of M/s Om Prakash, Govt. Contractor carrying the word 'quotation' written in hand on top and the signature purporting to be that of Shri Om Parkash on the right hand bottom corner with blank space in between the two apparently for dishonest purposes and thereby failed to maintain devotion to duty and absolute integrity and thus contravened the provisions of Rule 3(1)(i) and (ii) of the CCS (Conduct) Rules, 1964 as made applicable to the employees of the Council."

4. The order passed by the Disciplinary Authority on 27.12.1988 and the order passed by the appellate authority

on 8.5.1989 have, in law, merged with the order in revision dated November, 1990. Therefore, it is unnecessary to consider in detail the orders dated 27.12.1988 and 8.5.1989. The basic thrust of the argument of the learned counsel for the applicant is that the President, C.S.I.R. has found in his order dated November, 1990 several infirmities in the conduct of the enquiry and on that ground alone, the enquiry as a whole is vitiated and the impugned order of punishment dated November, 1990 is liable to be quashed and the applicant should be given all consequential benefits. The learned counsel for the respondents, while admitting that several infirmities had taken place in the conduct of the enquiry, submitted that the ends of justice would be met by remitting the matter to the disciplinary authority to hold the enquiry afresh after complying with the principles of natural justice and in accordance with the provisions of the C.C.S.(CCA) Rules, 1965, within a time-frame to be fixed in our order.

5. We have given our anxious consideration to the above contentions. Admittedly, the enquiry conducted in the instant case was ex parte. Even in an ex parte proceeding, the various provisions of the statutory rules (CCS (CCA) Rules, 1965) prescribing procedural requirements have to be complied with. An ex parte proceeding shall not, ipso facto, mean that the charged employee is guilty. Nor

does it give discretion to the inquiry officer to hold enquiry as he likes and in violation of the procedure rules. This was not complied with in the instant case.

6. It is clear from the third preambular paragraph of the impugned order dated 27.12.1988 passed by the disciplinary authority that a copy of the Enquiry Report was supplied to the applicant along with the order of punishment:-

"And whereas the Inquiry Officer on the basis of the evidence adduced during the Inquiry, has come to the conclusion that the article of charge framed against Shri Shyam Lal, Assistant (under suspension) has been proved (copy enclosed)."

7. In Premnath K. Sharma Vs. Union of India, 1988 (6) A.T.C. 904, a Full Bench of this Tribunal has held that a copy of the report of inquiry should be supplied to the charged officer and his observations, if any, obtained thereon, and he should be given a personal hearing by the disciplinary authority before a final decision is taken. This view is further supported by the decision of the Supreme Court in Union of India and Others Vs. Mohd. Ramzan Khan, 1990 (2) SCALE 1094.

8. It is clear that in the instant case, that a copy of the Enquiry Report was sent to the applicant only along with the order imposing the penalty of removal from service on

the applicant by order dated 27.12.1988 and not earlier.

Non-furnishing of the same to him before imposing the penalty amounted to violation of rules of natural justice.

9. We, therefore, set aside the impugned orders dated 22.12.1988, 8.5.1989 and November, 1990 passed in the instant case. The applicant would be entitled to all consequential benefits, including full pay and allowances from the date of removal from service to-date. We make it clear that the applicant would also be entitled to full pay and allowances during the period of his suspension and the said period shall be treated as duty for all purposes.

The respondents shall comply with the above directions within a period of three months from the date of communication of this order. There will be no order as to costs.

Let a copy of this order be placed in both the case files.

(B.N. Dhoundiyal)
Administrative Member

(P.K. Kartha)
Vice-Chairman(Judl.)