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**Central Administrative Tribunal
Principal Bench**

OA No. 2829/2004

New Delhi, this the ^{12th} day of March, 2007

**Hon'ble Mr. Mukesh Kumar Gupta, Member (J)
Hon'ble Mr. V.K. Agnihotri, Member (A)**

Sh. R.C. Singh,
S/o late Sh. B.R. Singh,
Aged about 50 years,
R/o 10/136, 'G' Point, Gole Dakhana,
New Delhi,
Working as Sr. Mali in President's Garden,
Rashtrapati Bhawan,
New Delhi.

...Applicant

(By Advocate: Sh. S.S. Tiwary)

Versus

1. Union of India, through
Secretary to the President,
Rashtrapati Bhawan,
New Delhi.
 2. Director (A & E),
President's Secretariat,
Rashtrapati Bhawan,
New Delhi.
 3. Under Secretary (Estt),
President's Secretariat,
Rashtrapati Bhawan,
New Delhi.
-Respondents.

(By Advocate: Sh. V.S.R. Krishna)

O R D E R

By Mr. V.K. Agnihotri, Member (A):

In this OA the applicant has sought quashing and setting aside of
the orders of the Disciplinary Authority dated 23.05.2003 and of the
Appellate Authority dated 25.11.2003 (Annexure A Colly.) whereby a



penalty of withholding of one increment of pay for a period of two years, without cumulative effect, has been imposed upon him, with consequential benefits.

2. The brief facts of the case are that applicant joined President's Establishment as a Mali on 13.09.1974. He was subsequently promoted as Senior Mali in July 1998. On 18.02.2003, a Charge Memo was issued to him under Rule 16 of the CCS (CCA) Rules, 1965 (CCA Rules, for short) for refusing to carry out the work assigned to him by his seniors and for instigating other Malis to do likewise as well as for remaining absent unauthorisedly from duty, and thereby violating Rule 3 of the CCS (Conduct) Rules, 1964. The applicant submitted his reply to the Charge Memo, vide letter dated 03.03.2003. The Disciplinary Authority passed the impugned order dated 23.05.2003, imposing the penalty aforementioned. Thereupon the applicant filed an appeal dated 09.09.2003, which was rejected by the Appellate Authority, vide order dated 25.11.2003. Hence the OA.

3. The applicant has stated that CCA Rules are not applicable to him as is clear from Rule 3, and hence any action taken under CCA Rules is without any authority. The respondents cannot take any disciplinary action under a rule, which is not applicable to the employees of President's Gardens, as they have been specifically exempted by statute/rule.

4. The applicant has also stated that in his representation dated 03.03.2003, he had relied upon the appreciation letters of his senior officers, letters of Choudhries, who have stated that they have no complaint against him. But one Mr. Tomar, a Sectional Officer, has been



nursing a personal grudge against him. This is clear from Office Order dated 07.03.2001, which was issued pursuant to the complaint of Sh. R.S. Tomar against applicant. On earlier occasions too, Sh. Tomar had harassed the applicant, which is clear from the letter dated 30.07.2002 signed by the Mughal Garden staff of the President's Gardents. Even the alleged complaint, based upon which the respondents have taken action against him, is a bogus complaint, as is clear from the letters dated 20.02.2003 and 24.02.2003 written by two complainants, wherein they have stated that they were forced to give a false complaint by Sh. Tomar, against the applicant, and that the same be treated as withdrawn.

5. The applicant has further submitted that after the penalty was imposed, vide impugned order dated 23.05.2003, he made a detailed representation dated 09.09.2003 to respondent No.2, wherein he brought to his notice the fact that on earlier occasions too Sh. Tomar had tried to harm and harass him. He also pointed out that his name does not figure in the attendance register of any Choudhary, which clearly shows that the complaints are bogus and fabricated. As the representation was sent through the proper channel, the applicant requested his forwarding authority to give him a personal hearing before any order is passed, so that he can explain the case in detail. However, he was not given any personal hearing and the respondents passed the impugned order dated 25.11.2003 without any basis as well as against rules.

6. The respondents, in their preliminary objections, have stated that the present application is barred by limitation since the impugned Appellate order was passed on 25.11.2003 and in the present application notices were issued by this Tribunal on 29.11.2004, which is beyond the

A handwritten signature in black ink, appearing to read "S. K. Choudhary".

period of limitation, prescribed in the Central Administrative Tribunal Act, 1985. The applicant has not filed any application for condoning the delay and, therefore, the application is liable to be dismissed on the sole ground of limitation alone.

7. The respondents have further stated that the only ground on which the whole application is based pertains to the allegation that the applicant is not governed by CCA Rules and, therefore, the impugned actions could not be taken under the said Rules. It has been submitted that there is no truth in the said allegation since Sr. Malis under President's Establishment are governed by CCA Rules, which have been duly applied in all such cases. A perusal of the Charge Memo issued to the applicant would show that the said Memo has been issued under the provisions of CCA Rules itself and that in his reply to the Charge Memo the applicant has not raised this objection. The applicant, therefore, cannot raise such an objection at this stage, after having subscribed to its jurisdiction and the orders passed thereunder. Moreover, it is settled law that CCA Rules are provisions incorporating the principles of natural justice and stipulate the procedure to be observed in departmental inquiry. The departmental enquiry in the present case having been held in accordance with rules and regulations and keeping in view the principles of natural justice cannot, therefore, be faulted.

8. The respondents have again submitted that the Charge Memo was issued in terms of rules applicable to the applicant and his reply dated 03.03.2003 was duly considered by the Disciplinary Authority. In his reply dated 03.03.2003 the applicant nowhere mentioned non-applicability of CCA Rules to him. Further, the applicant having availed of the appeal



provisions under CCA Rules and the Appellate Authority having considered the appeal under the same provisions, he cannot now say that the provisions of CCA Rules are not applicable to him.

9. The respondents have also stated that CCA Rules are equally applicable to all the staff of the President's Secretariat, including the work-charged staff of President's Gardens. Moreover, the Government of India had issued a notification dated 28.07.1986 in terms of which the work-charged personnel of the Central Public Works Department (CPWD, for short) is no more excluded from the operation of CCA Rules.

10. In his rejoinder, the applicant, apart from reiterating and elaborating on the averments made by him in the main application, has stated that in case the respondents have no authority to take action as per CCA Rules then they have to resort to Industrial Disputes Act wherein an enquiry is mandatory unlike Rule 16 wherein no enquiry is required. Hence, the applicant has been put to a disadvantageous position by the respondents, which itself is in violation of principles of natural justice.

11. When the matter came up for hearing on 11.01.2007, it was noted that the main issue of the application is the applicability of CCA Rules to the Garden Establishment of the President's Secretariat. The respondents were, therefore, directed to file an affidavit categorically stating the nature of employment of the applicant and how the persons, particularly in the category of Mali, Sr. Mali etc., are employed in the President's Establishment to determine the question whether the applicant is governed by the provisions of CCA Rules. The respondents accordingly filed an affidavit dated 21.02.2007 wherein it has been averred that the applicant was initially appointed as Mali in President's Garden. His

appointment letter was issued by the competent authority in the President's Secretariat in terms of Recruitment Rules of the post. Further, in accordance with promotion rules of the President's Secretariat, the applicant was promoted as Sr. Mali w.e.f. 01.07.1998.

12. The respondents have stated that the Malis in the President's Garden Establishment are appointed through the process of direct recruitment from open market. After selection as Mali in the President's Garden, the appointment orders are issued by the competent authority in the President's Establishment. The post of Sr. Mali is 100% promotional post from the grade of Mali and is filled in on the basis of seniority-cum-fitness. CCA Rules are applicable to regular Malis, like the applicant, as in the case of other employees of President's Secretariat. Hence, the allegation of the applicant that CCA Rules are not applicable to the applicant is wrong. It has been submitted that the applicant is a regular employee of President's Gardens and is in receipt of all the facilities that are given to regular Government servants.

13. It has been further submitted that work-charged employees of President's Gardens with regard to their scale of pay, overtime allowances etc. are governed by orders issued by CPWD from time to time. Accordinalv. the orders issued on 20th May, 2002, vide CPWD OM No. 22/9/2002-EC.X also point to the fact that Malis and Sr. Malis of President's Garden are governed by CCA Rules (Annexure R-3).

14. During the oral arguments, Shri S.S. Tiwari, learned counsel for the applicant, relied on two notifications dated 25.05.1959 and 28.07.1986 appended below Rule 3 of CCA Rules whereby it has been prescribed that initially work-charged personnel of the CPWD was excluded from the



operation of CCA Rules, but in the latter notification, this exclusion has been withdrawn. However, on the other hand, the President's Garden Establishment and the Estate Office, which were earlier excluded, continue to be excluded under the new dispensation of notification dated 28.07.1986. In this context, Sh. V.S.R. Krishna, the learned counsel for the respondents, stated that the so-called exclusion of the President's Garden Establishment from the application of CCA Rules was shown under the heading of the Ministry of Works and Housing earlier and the Ministry of Urban Development now. However, there are two sets of Malis working in the President's Garden Establishment, namely, those employed by the Ministry of Urban Development and those employed by the President's Secretariat. The applicant has been employed by the President's Secretariat and is not on deputation from the Ministry of Urban Development.

15. The learned counsel for the applicant invited attention to the order of this Tribunal in **Shri Ram Asre v. Union of India & Ors.**, 1998 (3) AISLJ 50, wherein the respondents herein had contended that CCA Rules did not apply to work-charged employees like the Mali. The learned counsel further stated that there is reference in the said judgment of the Supreme Court to the order passed by this Tribunal (**Shri Asi Mohammad v. Union of India & Ors.** in OA No. 2705/1992, decided on 30.08.1993, relied upon by the learned counsel for the respondents), according to which the said decision of this Tribunal was set aside by the Hon'ble Supreme Court.

16. The learned counsel for the applicant further cited the decision of the Hon'ble Supreme Court in the case of **Syed T.A. Naqshabandi &**





Ors. v. State of Jammu & Kashmir & Ors., 2003 (9) SCC 592; **Nelson Motis v. Union of India & Anr.**, 1992 (4) SCC 711; and **Union of India v. S.B. Mishra**, 1995 (5) SCC 657 to argue that on a plain reading of the facts as aforementioned, CCA Rules were not applicable to the applicant.

17. The learned counsel for the applicant further argued that even though the applicant's superior officer had strongly recommended that personal hearing should be afforded to the applicant during the course of the enquiry, no such hearing was given. In this context, he cited the judgment of the Hon'ble Madhya Pradesh High Court in **Subhas Chandra v. Union of India & Ors.**, 2006 (3) ATJ 381 wherein it was held that even in case of minor penalty, the Disciplinary Authority should apply its mind to all the facts and circumstances after receiving the representation and to form a definite opinion as to whether an enquiry is necessary or not.

18. The learned counsel for the respondents stated that, as per the affidavit filed by the respondents, the applicant was an employee of the President's Secretariat in terms of the Recruitment Rules framed for the purpose. He was not an employee of the Ministry of Urban Development in terms of the exceptions prescribed vide notification dated 28.07.1986 (supra). Thus, even in terms of the golden rule of interpretation of statutes, as spelt out by the Hon'ble Supreme Court in the case of **Nelson Motis v. Union of India & Anr.** (supra), there is no ambiguity in this regard. Even in the case of **Shri Asi Mohammad v. Union of India & Ors.** (supra), the Hon'ble Supreme Court had not ruled that CCA Rules were not applicable to the applicant therein. As a matter of fact, the matter was remanded back to the respondents for further examination of the case under CCA Rules. The learned counsel reiterated the averments



made in the counter that having not taken the stand of non-applicability of CCA Rules to him before the Disciplinary Authority and the Appellate Authority, the applicant was estopped from raising that issue before this tribunal. Again, CCA Rules are in the nature of compendium comprising principles of natural justice and hence their application in the case of the applicant was only to ensure a fair treatment. He further stated that since CPWD had a Horticulture Division, the President's Secretariat normally adopts the rules and regulations applicable to that Division in respect of the Garden Establishment of the President's Secretariat.

19. We have heard the averments of the learned counsel for the parties and perused the material on record as well as the orders and judgment supplied by the counsel.

20. As regards the issue of limitation raised by the respondents in their preliminary objections, we do not find any merit in their argument since for computing the period of limitation what is material is the date of filing the application, which, in the present case, is 24.11.2004, and not the date of issue of notices by the Tribunal.

21. The first issue before us is the applicability of CCA Rules to the applicant. A careful reading of the Government of India decisions under Rule 3 of CCA Rules points to the fact that the President's Garden Establishment being talked of therein is part of the Ministry of Urban Development. In the present case, from the documents supplied by the respondents in their affidavit dated 21.02.2007 it is clear that the applicant belongs to President's Secretariat. As a matter of fact, Annexure R-1 mentions the name of **Asi Mohammad** too, whose case has been cited by both the parties. In that case too, the applicant had *inter alia* assailed the



order of punishment on the ground that there were no rules or administrative instructions regarding disciplinary proceedings in respect of the worked-charged employees of the President's Garden Establishment, and, therefore, enquiry conducted in terms of CCA Rules was not in order. The following observations and ruling of this Tribunal in the said case of **Shri Asi Mohammad v. Union of India & Ors.** (supra) throws considerable light on this issue:-

"3. We have heard the learned counsel for the parties at length and perused the records. The learned counsel for the applicant assailed the order of punishment on the ground that there are no rules or administrative instructions regarding the disciplinary proceedings in respect of the work charged employed of the President's Gardens Establishment. Under the provisions of CCS (CCA) Rules, 1965 by virtue of Rule 3 of Sub-rule (2), notification was issued by the President on 25th May, 1959 and 27th July, 1986 stating that the aforesaid rules are wholly excluded from its application to such employees. In view of this fact, it is argued that there are no rules under which the enquiry could have proceeded against the applicant and in the absence of the specific rules on the subject, the whole proceedings of enquiry are vitiated. The learned counsel has supported his argument by the authorities of Smt. Pramila Ghai Vs. Union of India, 1983, Vol.2, SLR 619 and Rajeshwar Singh Vs. Union of India 1990 (1) SLR 24. Article 311 of the Constitution of India lays down that no person who is a member of the civil service of the Union or holds a civil post under the Union, shall be dismissed or removed by an authority subordinate to that by which he was appointed. Further, no such person shall be dismissed or removed or reduced in rank except after enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. If there are no statutory rules or administrative instructions on the subject, then well-known principles of natural justice have to be followed, as observed by the Hon'ble Supreme Court in the case of S.N. Mukherji Vs. Union of India, reported in 1991, Supreme Court Cases (L&S) 242. Thus, it is evident that where departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice and the conclusion arrived at is wholly arbitrary,

capricious and no reasonable person could have ever arrived at that conclusion, then the procedure adopted in the enquiry or decision taken by the disciplinary authority, are vitiated. In the light of the above, the contention of the learned counsel for the respondents is that the applicant has been informed well in advance on his representation dated 14.4.1988 by a memo dated 19.4.1988 that he is being tried by rules for a work charged employee. The disciplinary rules regarding the work-charged employee state that the entire procedure laid down in the CCS (CCA) Rules, 1965 should be followed while initiating the disciplinary proceedings against the accused employee on the work-charged establishment without quoting any reference to these rules as the CCS (CCA) Rules do not apply to the work-charged staff. Para. 20.03 lays down the procedure for taking disciplinary action against members of the work-charged staff suspected of offences is prescribed in the CPWD Manual, Vol.3, a copy of the same is annexed by the respondents to the counter as Annexure R-13. This contention of the learned counsel for the applicant reinforced by the above authorities, have no weight because the applicant, before the enquiry commenced, was specifically informed that the principles of natural justice shall be duly complied with on the lines indicated in the CCS (CCA) Rules, 1965. In fact, what is to be seen is whether the principles of natural justice, i.e., giving the fullest opportunity to the applicant to put up his case, have been followed or not. A perusal of the proceeding of the enquiry goes to show that at every stage the applicant has made certain well-drafted representations and also numbered them and those representations have been decided and orders passed by the Enquiry Officer and in some cases by the disciplinary authority. It goes to show that at every stage of the pending enquiry proceedings, the applicant has been duly heard and his grievance in any respect whatsoever was met by giving a reasoned order. We have also seen the file of the departmental proceedings and are satisfied that in the absence of any specific rules on the subject of holding the departmental enquiry, there has been no violation of the well laid principles of audi alter partem. If the contention of the learned counsel for the applicant is accepted as such, then any person belonging to the class to which he belongs, i.e., an employee of President's Gardens Establishment, can never be proceeded against for any indiscipline or misconduct which may arise in the course of his employment. The notification issued by the President, excluding the C.C.S. (CCA) Rules on application to the work-charged employees of the President's Garden



Establishment, cannot be a permanent bar in holding departmental proceedings against the delinquent employee. That notification does not amount to excluding such employees being departmentally tried. The main purpose to exclude the work-charged employees, appears to be that they are not on the permanent establishment as temporary or permanent Government employees and their emoluments are paid on the basis of work charged. Thus, in the absence of any specific rules or administrative instructions, it cannot be said that the applicant has in any way been prejudiced in the departmental enquiry." (Emphasis supplied)

22. The learned counsel for the applicant has stated that the order of this Tribunal in the case of **Shri Asi Mohammad v. Union of India & Ors.** (supra) was set aside by the Hon'ble Supreme Court. The learned counsel for the respondents, in his reply, has stated that the ground for setting aside the order of this Tribunal was not non-applicability of CCA Rules to the applicant. This fact is confirmed by the following concluding paragraphs of the judgment of the Hon'ble Supreme Court in the case of **Shri Asi Mohammad v. Union of India & Anr.** [SLP (C) No. 15538/93, decided on 02.11.1995] as follows:-

"We are, therefore, of the opinion that the order was passed on 19th September, 1992 in violation of the principle of natural justice by denying to the appellant the opportunity to represent against the report of the Inquiry Officer.

In the result, we allow this appeal, set aside the impugned order of 19th September, 1992 as well as the impugned order of the Central Administrative Tribunal, give the appellant an opportunity to send his representation to the report of the Inquiry Officer within two weeks from today regardless of the representation/Appeal referred to in his letter of 7th September, 1992 and the Disciplinary Authority may consider his representation on merits and thereafter pass an appropriate order giving brief reasons in support thereof. The appeal will stand disposed of accordingly with no order as to costs."



23. The learned counsel for the applicant has stated that the applicant is governed by Industrial Disputes Act. However, he has not provided any concrete evidence to establish that the Garden Establishment of the President's Secretariat, appointed under the Recruitment Rules of the President's Secretariat, are governed by Industrial Disputes Act.

24. In our view, therefore, a plain reading of the various documents produced before us clearly establishes that the applicant is covered by CCA Rules. Further, as stated in the order of this Tribunal in the case of **Shri Asi Mohammad v. Union of India & Ors.** (supra) as well as by the learned counsel for the respondents, CCA Rules embody the basic principles of natural justice and taking action against the applicant in terms of those rules cannot be said to be violative of any fundamental rights of the applicant. Moreover, as pointed out by the learned counsel for the respondents, having not at all agitated this matter relating to non-applicability of CCA Rules to him, either before the Disciplinary Authority or the Appellate Authority, the applicant is estopped from now making it the main plank of his arguments against the orders of the respondents.

25. As regards the averment of the applicant that he was not afforded a hearing in the course of the enquiry, a perusal of Rule 16 of CCA Rules shows that decision to hold a regular enquiry in terms of sub-rule (3) to (23) of Rule 14 has been left to the discretion of the Disciplinary Authority and is, therefore, not automatic. Again this issue was not raised by the applicant before the Appellate Authority.

26. Taking the totality of facts and circumstances into consideration, we find that there is no irregularity holding disciplinary proceedings against

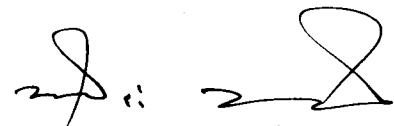


the applicant under CCA Rules. There is substantial compliance of procedure prescribed under CCA Rules. The applicant has been given reasonable opportunity to defend himself. Disciplinary Authority as well as Appellate Authority have passed reasoned orders. Under the circumstances, we do not find it necessary to interfere with the orders of the respondents.

27. In the result, the OA is devoid of merit and is, therefore, accordingly dismissed. There will be no order as to costs.



(V.K. Agnihotri)
Member (A)



(Mukesh Kumar Gupta)
Member (J)

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