

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

(14)

Original Application No.6/2004

New Delhi, this the 17th day of January, 2005

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.Singh, Member (A)**

Shri G.R.Deshbandhu
R/o 339, Aravali Apartments
Kalkaji
New Delhi - 110 011. ... Applicant

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

Versus

1. The President
Indian Council of Agricultural Research
Krishi Bhawan
New Delhi.
2. Director General
Indian Council of Agricultural Research
Krishi Bhawan
New Delhi.
3. The Secretary
Indian Council of Agricultural Research
Krishi Bhawan
New Delhi.
4. The Director (Vigilance)
Indian Council of Agricultural Research
Krishi Bhawan
New Delhi. ... Respondents

(By Advocate: Satish Kumar for M/s Sikri & Co.)

O R D E R

By Mr. Justice V.S.Aggarwal:

Applicant (G.R.Deshbandhu), by virtue of the present application, seeks quashing of the order of 1.9.2003 besides Memorandum of Chargesheet dated 27.11.2002 as malafide.

2. Some of the relevant facts are that the applicant had been served with the following statement of the imputation of misconduct:

Ag

"IMPUTATION I"

In view of the special difficulties of the ICAR Research complex for North Eastern Region in getting necessary personnel for their work, a decision was taken by Secretary, ICAR on F.No.21-15/2002-IA-II to allow the complex to fill up the post of Medical Officer on deputation basis from the State Government of Meghalaya/Assam. This was done by the Secretary, ICAR after ascertaining from the Director that his efforts at the local level to get a suitable candidate have not yielded any result.

The relevant file on which the above mentioned decision was taken was marked by DS (A) to Shri G.R.Deshbandhu, US (NRM) for further necessary action on 4th June, 2002. When the Secretary, ICAR checked up on 17th June, 2002 from Shri Deshbandhu as to whether the decision of the Council to fill up the post of Medical Officer on deputation basis has been conveyed to the Director, ICAR Research Complex, Barapani, it was observed that Shri Deshbandhu, instead of carrying out the order has been raising further queries.

Shri Deshbandhu was called by Secretary, ICAR in her room on 17th June, 2002 and was asked as to why he has not issued the orders so far. In reply Shri Deshbandhu told Secretary, ICAR that he was collecting some information required - by DS (A). Secretary, ICAR called DS(A) to corroborate the statement of Shri Deshbandhu. It was seen by Secretary, ICAR from the file that no information was called for by DS(A). Instead, the file was marked by DS(A) to Shri Deshbandhu, US (NRM) for issuing orders. Even then Shri Deshbandhu said that he would not issue orders. At this stage DDG(NRM) was also requested by the Secretary, ICAR to be present.

On DDG (NRM)'s questioning him Shri Deshbandhu reiterated that there was nothing on file to show that the efforts of Director, ICAR Research Complex, Barapani have not succeeded. Shri Deshbandhu was asked by Secretary, ICAR to read her note, which begins with the statement that "It has been confirmed by the Director, ICAR Research Complex, Barapani that the post of Medical Officer has not yet been filled and further that despite their continuous efforts they are facing difficulties in finding a suitable candidate...". Shri Deshbandhu was not able to defend the position

As Ag

taken by him in this case and was found to be telling blatant lies and twisting the facts to cover up his obvious inaction. The statement of Shri Deshbandhu that he would not issue orders is an act of complete insubordination and willful disobedience of the official orders of the senior officers.

By his above act, Shri G.R.Deshbandhu exhibited conduct unbecoming of an employee of ICAR and thus violated Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

IMPUTATION II

In the departmental proceedings against Dr. P.N.Bhat, former Director, IVRI initiated vide No.4-9/93-Vig. Dated 22.12.93, Shri G.R.Deshbandhu, Under Secretary, who was appointed as the Presenting Officer vide No.4-9/93-Vig. Dated 17.5.95 did not perform his duties with the required amount of devotion as a result of which some of the charges leveled against Dr. Bhat could not be held as proved. The CVC vide its OM No.5V-AGR-11 dated 29.9.97 has observed: "**the commission also noted the failure of the PO to produce the relevant documents in the case which is also a cause of concern.**"

By his above act of omission, Shri G.R.Deshbandhu exhibited conduct unbecoming of an employee of ICAR and thus violated Rule 3(1) (iii) of CCS (Conduct) Rules, 1964."

3. The President of the Indian Council of Agricultural Research vide the impugned order considered the submissions of the applicant and the facts & circumstances of his case ~~and~~ ^{and} imposed a penalty of censure on him. By virtue of the present application, the applicant seeks to assail the said order.

4. The learned counsel for the applicant had made the following submissions:

- a) Pertaining to Imputation No.I, the applicant was simply performing his duty and did not come under the pressure to issue an illegal order. As regards imputation No.II, he urged that there was no

M. Ray

dereliction of duty on his part as he had written to the Department to give the relevant documents, which were not given and, therefore, the awarding of penalty of censure cannot be sustained.

b) It was urged that the applicant was Under Secretary in Indian Council of Agricultural Research. As the penalty had been awarded by the appellate authority, namely, the President of the ICAR, the right of appeal had been deprived to the applicant.

5. The respondents, on the contrary, have stated that on the facts, a correct decision had been taken. Even the Central Vigilance Commission, on 29.9.1997, had observed "the failure of the Presenting Officer to produce the relevant documents in the case". It was not disputed that the penalty awarded was by the appellate authority. But respondents' contention was that the appellate authority could consider the review, etc., if filed.

6. In the present case before us, it becomes unnecessary for us to go into the first submission because the application, in our considered opinion, is liable to succeed on the second submission.

7. In the case of SURJIT GHOSH v. CHAIRMAN & MANAGING DIRECTOR, UNITED COMMERCIAL BANK AND OTHERS, (1995) 2 SCC 474, the Supreme Court considered the similar controversy and held:

"6. It is true that when an authority higher than the disciplinary authority itself imposes the punishment, the order of punishment suffers from no illegality when no appeal is provided to such authority. However, when an appeal is provided to the higher authority concerned against the order of the disciplinary authority or of a lower authority and the higher authority passes an order of punishment, the employee concerned is deprived

M. A. G.

of the remedy of appeal which is a substantive right given to him by the Rules/Regulations. An employee cannot be deprived of his substantive right. What is further, when there is a provision of appeal against the order of the disciplinary authority and when the appellate or the higher authority against whose order there is no appeal, exercises the powers of the disciplinary authority in a given case, it results in discrimination against the employee concerned. This is particularly so when there are no guidelines in the Rules/Regulations as to when the higher authority or the appellate authority should exercise the powers of the disciplinary authority. The higher or appellate authority may choose to exercise the power of the disciplinary authority in some cases while not doing so in other cases. In such cases, the right of the employee depends upon the choice of the higher/appellate authority which patently results in discrimination between an employee and employee. Surely, such a situation cannot savour of legality. Hence we are of the view that the contention advanced on behalf of the respondent-Bank that when an appellate authority chooses to exercise the power of disciplinary authority, it should be held that there is no right of appeal provided under the Regulations cannot be accepted."

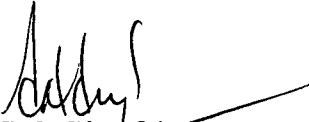
8. Even, more recently in the case of ELECTRONICS CORPORATION OF INDIA v. G. MURALIDHAR, 2002 SCC (L&S) 718, the decision rendered by the Supreme Court in the case of Sh. Surjeet Ghosh, referred to above, was again reiterated. It was held:

"2. Necessarily, therefore, a valuable right of appeal having been denied to the respondent-delinquent, in view of the judgment of this Court in *Surjit Ghosh* case [(1995) 2 SCC 474] the order of punishment gets vitiated and the respondent employee is entitled to a direction for reinstatement and back wages, though the back wages could be limited depending upon the facts and circumstances of the case. In the case in hand, a sum of Rs.50,000 has already been paid to the respondent by virtue of the interim order of this Court dated 23-2-1996 following the direction in the case of *Surjit Ghosh* [supra]."

As Ag

9. Identical is the position herein. These facts clearly show that the authorities fell into grave error when the appellate authority itself imposed the penalty. In this process, the applicant was denied the effective right to prefer an appeal. This case will not fall into the just exception that no authority was available nor any such plea has been offered. Therefore, the impugned order cannot be sustained.

10. For these reasons, we allow the present application and quash the impugned order. It is directed that, if deemed appropriate, disciplinary proceedings may be re-initiated pertaining to which we are not expressing any opinion.



(S.A. Singh)
Member (A)



(V.S. Aggarwal)
Chairman

/NSN/