

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.1359/2020



Order Reserved on: 12.07.2021
Order Pronounced on: 27.07.2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi Member (A)**

Prabhat Kumar Gupta,
Retired Chief Scientist Group IV(6)
At CSIR-NPL, Aged about 63 years,
S/o late Bhagwati Prasad Gupta,
Re/o 170, Pragati Apartment,
Punjabi Bagh Club Road,
Paschim vihar, New Delhi-110063

- Applicant

(By Advocate: Ms. Arundhati Katju, Senior Counsel assisted by Ms. Bhabna Das)

Versus

1. Council of Scientific and Industrial Research (CSIR)
Ministry of Science and Technology,
Anusandhan Bhawan,
2 Rafi Marg, New Delhi-110001
Through its Director General,
E-mail: dg@csir.res.in
2. National Physical Laboratory,
(a unit of Council of Scientific and Industrial Research)
Dr. KS Krishna Menon Marg, New Delhi-110012
Through its Director, E-mail: dnpl@nplindia.org
3. Dr. Sushree Swarupa Tripathi,
Principal Scientist, Group IV(4)
At CSIR-NPL, Aged about 46 years,
W/o late Sunil Dutta Sharma,
R/o Flat No.TRSA-76,
NPL Colony, New Rajinder Nagar,
New Delhi-110060

- Respondents

(By Advocates: Mr. Jayansh, Mr. Unnikrishnan, Mr. Ajinkya Tiwari,
Ms. Vibhooti Malhotra and Mr. Anil Singal)



ORDER

Justice L. Narasimha Reddy:

The applicant joined the service of National Physical Laboratory, the 2nd respondent herein, as Junior Research Fellow in the year 1977. He earned promotions at various stages and ultimately, retired as Chief Scientist of the organization on 31.01.2017. After retirement, he was issued a charge memo dated 03.08.2000 under Rule 9 of CCS(Pension) rules, 1972 (hereinafter referred to as the "Pension Rules"). The articles of charge were mostly about the alleged acts of sexual harassment by him, against one Dr. Sushree Swarupa Tripathi, the 3rd respondent herein. This OA is filed, challenging the memo of charge dated 03.08.2020. The applicant furnished the details of positions held by him from time to time and the various steps taken as regards the service of the 3rd respondent.

2. The applicant contends that the 3rd respondent submitted a complaint against Dr. Shankar Gopala Aggarwal, and the latter, in turn, filed OA No. 977/2018 before this Tribunal. It is stated that the OA was allowed, and the order passed by the Tribunal has become final.

3. The applicant states that after his retirement, the 3rd respondent addressed letters, referring to certain acts, which are said to have taken place between 2008 and 2015, and without even verifying the



truth or otherwise thereof or legality of any proposed action, the impugned charge memo was issued.

4. He further submits that the charge memo was issued, contrary to the Rule 9 of the CCS(Pension) Rules, in as much as, the sanction of the President was not obtained for issuance thereof, and that the acts attributed to him are referable to a period exceeding four years from the date of charge memo. He contends that sanction for the charge memo was accorded by the Vice President of the 2nd respondent, and that the same is not permissible under law. He placed reliance upon various judgments of the Hon'ble Supreme Court as regards the permissibility of initiation of disciplinary proceedings at a belated stage and on the basis of the sanction accorded by the authority, not vested with the power.

5. The respondents filed a detailed counter affidavit. According to them, the complaint against the applicant was received after his retirement and on consideration thereof, the charge memo was issued. They contend that the truth or otherwise of the allegations made against the applicant can be gone into only in the impending inquiry.

6. As regards the legality of the sanction accorded by the Vice President, the respondents contend that the President of the 1st respondent has delegated his power to the Vice President, and accordingly, no illegality can be said to have been committed. The



respondents further state that though reference in the letter addressed by the 3rd respondent is to certain instances that took place between 2008 and 2017, the time needs to be reckoned from the date of compliant. Various other contentions urged by the applicant are denied.

7. We heard the arguments of Ms. Arundhati Katju, learned senior counsel, assisted by Ms. Bhabna Das, learned counsel for the applicant and Mr. Jayash Kumar with Ms. Vibhooti Malhotra, learned counsel for respondents 1 and 2 and Mr. Anil Singal, learned counsel for respondent no.3.

8. The applicant was in the service of 2nd respondent for about 40 years. Over the period, he has held various coveted positions and participated in several national and international events. He retired from service on 31.01.2017 as the Chief Scientist. Three years after his retirement, he was served with a charge memo dated 03.08.2020. It contains five articles of charge, which read as under:-

“ARTICLE I

That Shri Prabhat Kumar Gupta (herein after referred to as Shri P.K. Gupta) while functioning as Chief Scientist and heading the Chemical Metrology Section (later renamed as Analytical Chemistry) in CSIR – National Physical Laboratory (herein referred to as CSIR-NPL) during the period from December 2007 onwards committed misconduct in as much as he used inappropriate and derogatory remarks against Dr. (Ms.)S. Swarupa Tripathy, who joined CSIR-NPL on 24/01/2007 as Junior Scientist (Now Principal Scientist) and working under him regarding her work which was unwelcome to her in her



workplace. These events had a negative impact on her and created hostile work environment for her.

By his aforesaid acts, the said Shri PK Gupta, Chief Scientist (Retd.) indulged in sexual harassment of Dr. (Ms.) S. Swarupa Tripathy at work place, as defined in Rule 3-C(2)(a)(v) read with Rule 3-C(2)(b)(iv) &(v) and thereby contravened provisions of Rule 3-C(1),3(1)(iii)(vi) and (xviii) of CCS(Conduct) Rules, 1964 as made applicable to Council employees.

Article II

That Shri PK Gupta while functioning as Chief Scientist and heading the Chemical Metrology Section (later renamed as Analytical Chemistry) in CSIR –NPL during the period from December 2007 onwards committed misconduct in as much as he on different occasions tried to physically come close to Dr. (Ms.)S. Swarupa Tripathy, who joined CSIR-NPL on 24/01/2007 as Junior Scientist (Now Principal Scientist) and working under him, forced her to accept chocolate from him inspite of her denial, passed sexual suggestive remarks with an implied promise of preferential treatment in employment, patted her on her shoulder and threatened her in an official group meeting to oust her, which were unwelcome, intimidating and insulting to her in her workplace.

By his aforesaid acts, the said Shri PK Gupta, Chief Scientist (Retd.) used his position of power and indulged in physical advances and passed disturbing remarks towards Dr.(Ms.) S. Swarupa Tripathy and sexually harassed her thereby creating an intimidating environment for her at her work place, as defined in Rule 3-C(2)(a)(i) & (v) read with Rule 3-C(2)(b)(i)(ii) (iv) & (v) and thereby contravened provisions of Rule 3-C(1),3(1)(iii)(vi) and (xviii) of CCS(Conduct) Rules, 1964 as made applicable to Council employees.

Article III

That Shri PK Gupta while functioning as Chief Scientist and heading the Chemical Metrology Section (later renamed as Analytical Chemistry) in CSIR –NPL during the period from December 2007 onwards committed misconduct in as much as he got up from his chair and advances towards Dr. (Ms.)S. Swarupa Tripathy, who joined CSIR-NPL on 24/01/2007 as Junior Scientist (Now Principal Scientist) and working under



him, in the garb of feeding her Goosday biscuits and tried to physically advance towards her which she resisted and came out of the room. This event was intimidating and unwelcome to her and had a negative impact upon her in her workplace.

By his aforesaid acts, Shri PK Gupta, Chief Scientist (Retd.) indulged in acts of sexual harassment of Dr.(Ms.) S. Swarupa Tripathy at her work place, as defined in Rule 3-C(2)(a)(i) & (v) read with Rule 3-C(2)(b)(iv) & (v) and thereby contravened provisions of Rule 3-C(1),3(1)(iii)(vi) and (xviii) of CCS(Conduct) Rules, 1964 as made applicable to Council employees.

Article IV

That Shri PK Gupta while functioning as Chief Scientist and heading the Chemical Metrology Section (later renamed as Analytical Chemistry) in CSIR –NPL during the period from December 2007 onwards committed misconduct in as much as engaged in personal talk which was not connected to work with Dr. (Ms.)S. Swarupa Tripathy, who joined CSIR-NPL on 24/01/2007 as Junior Scientist (Now Principal Scientist) and working under him, thereby disturbing and embarrassing her. He patted on her shoulder on certain occasions in the garb of giving her assurances regarding her career progression. He also criticized her about her enquiries on the installation of ICP-OES in room 148 by rudely talking to her and tried to exclude and humiliate her in her workplace inspite of her desire to be part of the said official work.

By his aforesaid acts, Shri PK Gupta, Chief Scientist (Retd.) indulged in acts of sexual harassment of Dr.(Ms.) S. Swarupa Tripathy and created a hostile environment for her at her work place, as defined in Rule 3-C(2)(a)(i) & (v) read with Rule 3-C(2)(b)(ii)(iii)(iv) & (v) and thereby contravened provisions of Rule 3-C(1),3(1)(iii)(vi) and (xviii) of CCS(Conduct) Rules, 1964 as made applicable to Council employees.

Article V

That Shri PK Gupta while functioning as Chief Scientist and heading the Chemical Metrology Section (later renamed as Analytical Chemistry) in CSIR –NPL during the period from December 2007 onwards committed misconduct in as much as he continued to directly interfere in the work of Dr. (Ms.)S. Swarupa Tripathy, who joined CSIR-NPL on 24/01/2007 as



Junior Scientist (Now Principal Scientist) even after it had been officially decided that she would directly report to Dr. Nahar Singh, the then Sr. Scientist for all her Administrative and Scientific issues/work.

By his aforesaid acts, Shri PK Gupta, Chief Scientist (Retd.) indulged in acts of sexual harassment of Dr.(Ms.) S. Swarupa Tripathy by continuing to intimidate at her workplace by his unwelcome interference, as defined in Rule 3-C(2)(a)(v) read with Rule 3-C(2)(b)(iv) & (v) and thereby contravened provisions of Rule 3-C(1),3(1)(iii)(vi) and (xviii) of CCS(Conduct) Rules, 1964 as made applicable to Council employees.”

All are in respect of the allegations made by the 3rd respondent.

9. The charge memo was issued under Rule 9 of the CCS (Pension) Rules. Obviously, with a view to ensure that the retired public servants are not subjected to indiscriminate disciplinary proceedings, the rule making authority has provided certain safeguards. As regards the initiation of disciplinary proceedings against retired public servants, Rule 9(2)(b) of the CCS(Pension) Rules reads as under:-

9(2)(b)	The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, -	
	(i)	shall not be instituted save with the sanction of the President,
	(ii)	shall not be in respect of any event which took place more than four years before such institution, and
	(iii)	shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.



10. Sub clauses (i) and (ii) become important in this behalf. The first requirement is that the sanction must be accorded by the President, for institution of proceedings. The second is that the proceedings shall not be in respect of any event, which took place more than four years before such institution. Therefore, it needs to be examined whether the plea advanced by the applicant can be accepted.

11. In the case of civil servants, sanction is to be accorded by the President of India. In respect of the 2nd respondent organization, the President happens to be the Hon'ble Prime Minister of India. The record discloses that the President of the 2nd respondent has delegated the power in favour of the Vice President. In the normal course, the sanction accorded by the Vice President for initiation of proceedings against the retired employee can, probably be treated as valid. In the instant case, however, it is evident that for the post held by the applicant, the Vice President is conferred with the power of the Disciplinary Authority (DA) only in respect of minor penalty proceedings, under the relevant Rules. As regards the major penalty proceedings, the DA is only the President. Once the power of Vice President is limited, to be one of DA, for minor penalty proceedings, he cannot be act as an authority to accord sanction for major penalty proceedings, that too, after retirement of the officers.



12. If one examines the scheme under Rule 9 of the Pension Rules, it becomes clear that the rule making authority has divested the DA of the employee in the ordinary course of his power to initiate proceedings after retirement. It is only with the sanction of the President, who is far superior to the DA under the relevant service rules, that the disciplinary proceedings, post retirement, can take place. By no stretch of imagination, the rules can be interpreted in such a way that it permits the authority, who is competent only to impose minor penalties, to accord sanction for initiation of post retirement disciplinary proceedings for major penalty. Such a course would defeat the very objective underlying the rule.

13. An argument is advanced by the respondents to the effect that the Vice President can act as the DA for major penalty proceedings also, by virtue of delegation of power by President or by analogy of Rule 16 of the CCS (CCA) Rules, where the authority who can issue a minor penalty charge memo, is competent to impose the major penalty also.

14. Two aspects need to be analyzed here. The first is that the delegation made by the President in favour of the Vice President cannot take away the distinction maintained between the ordinary disciplinary proceedings qua post-retirement proceedings on the one hand, and major penalty qua minor proceedings; on the other hand. The second is that it is only when a minor penalty charge memo is



issued under Rule 16 of the CCS(CCA) Rules, that a situation may arise where the authority who can issue such charge memo, can impose major penalty also, in case a serious charge is proved in the course of proceedings. In the instant case, the charge memo was issued straightway under Rule 9 of the Pension Rules and not the one under Rule 16 of the CCS(CCA) Rules. By their very nature the proceedings under Rule 9 of the pension Rules partake the character of major penalty proceedings (see sub clause iii of Rule 9 (2)(b)). Therefore, the sanction accorded by the Vice President, for initiation of post retirement disciplinary proceedings under Rule 9 of the Pension Rules against the applicant, cannot be sustained in law, in view of the fact that he is prescribed as the competent authority only for imposition of minor penalties under the CCS(CCA) Rules.

15. Subtle distinction was drawn by this Tribunal between the power of the President under Rule 9(2)(b) on the one hand, and the power to impose punishment under ordinary disciplinary rules, on the other hand in **M.K. Nair v. President, ICAR & Ors**, (OA No.421 of 1999). This Tribunal has held as under: -

“12. Granting that the employees of the ICAR are not Central Government servants in the real sense and that the President of India cannot be called upon to exercise his powers or rights in relation to the service matters of the ICAR employees, we still consider that an extraordinary event of exercising the right of the President of India by the President of the ICAR cannot be approved of without there being a specific provision in the Rules governing the ICAR to that effect. The Presidential powers and privileges



mentioned in the CCS(CCA) Rules cannot be equated with the reserved right of the President referred to in Rule 9 of the CCS(Pension) Rules. Such right therefore, cannot be assumed to have been delegated as per Rule 1 in Section-II of the Delegation of Powers in ICAR except under an express provision in that regard. In other words, a routine adoption of the generality of the Central Government Service and Financial Rules and other rules in the case of employees of the ICAR would not be sufficient for that purpose.

13. Another point that we have noticed is that reduction or withholding of pension by the President of India under Rule 9 of the CCS(Pension) Rules is not a punishment. It is not a penalty. The right to continue to draw pension would depend upon good conduct of the Government pensioner and it is in this context that the President retains the exclusive right to deal with reduction/withholding of pension. There is no sufficient legal support for the proposition that in the instant case, 5% cut in pension has been considered for any failure to maintain good conduct. In a situation where disciplinary proceedings initiated against a Government servant is continued after his retirement and the Government servant was found guilty of contumacious, conduct, the President exercises his exclusive right only after the elaborate procedural requirements regarding consultation with the UPSC, detailed report to the President etc. are fulfilled. These requirements should have been adequately taken care of within the frame work of the ICAR society. The fact in the instant case, however, is that 5% cut in pension is inflicted on the applicant as a penalty. This is not consistent with the provisions of Rule 9 of the CCS(Pension) Rules and there are no matching provisions in the ICAR Rules.

14. The powers vested in the President are different from the right which the President exclusively reserves himself in the matter of withholding a pension or gratuity or both either in full or part or withdrawing a pension in full or part as mentioned in Rule 9(1) of the CCS(Pension) Rules. It is not a power that is vested in the President that is to be exercised in case of withholding or reduction of pension. It is an exclusive right retained by the President and without a specific reservation of an exclusive right to the President of the ICAR, a pensioner's right cannot be infringed upon.”



16. Therefore, the very initiation of the proceedings against the applicant does not accord with Rule 9 of the Pension Rules.

17. Assuming but not admitting that the sanction accorded by the Vice President is otherwise valid, it needs to be seen as to whether there is any infraction of sub clause (ii) of clause (2)(b) of Rule 9 of the Pension Rule. It clearly prohibits the initiation of proceedings in respect of an event, which took place more than four years before initiation of proceedings. The circumstances, under which the proceedings against the applicant came to be initiated, are mentioned in the statement of imputation. For every article of charge, the basis is mentioned as the letter dated 30.04.2019 submitted by the 3rd respondent at the time of preliminary fact finding and letters dated 09.02.2017 and 02.03.2017. Under Article 1, the following is mentioned:-

“Dr,(Ms.) S. Swarupa Tripathy in her letter dated 30/04/2019 submitted at the time of preliminary fact finding and letters dated 09/02/2017 and 02/03/2017 has alleged that Shri PK Gupta exhibited rough behaviour towards her and constantly tried to demoralize her. She has cited following incidents:

- 1) In October 2008, in connection with procurement of instrument HR-ICMPS Shri PK Gupta told her that “*Chor ki Dadhhi Mein Tinka*”.
- 2) In January 2009, when Dr.(Ms.) S Swarupa Tripathy applied for CSIR, Young Scientist Award



Shri PK Gupta told her that “*Ye Saram Ki Baat Hain, Tukya Apply Karegi??*”

- 3) When one of abstract of Shri PK Gupta was accepted by IMEKO-2011 at Paris, Shri PK Gupta told her that “*Tu Kya Jaegi Tu To NPL Ko Badnam Kardegi?*”

Thus, Shri PK Gupta by speaking to Dr.(Ms) S. Swarupa Tripathy in the above manner used inappropriate and derogatory remarks regarding her work which was unwelcome to her in her workplace. These events had a negative impact on her and created hostile work environment for her.

By his aforesaid acts Shri PK Gupta, Chief Scientist (Retd.) indulged in sexual harassment of Dr.(Ms.) S. Swarupa Tripathy at her work place, as defined in Rule 3-C(2)(a)(v) read with Rule 3-C(2)(b)(iv)&(v) and thereby contravened provisions of Rule 3-C(1), 3(1)(iii), (vi) and (xviii) of CCS(Conduct) Rules, 1964 as made applicable to Council employees.”

18. Similarly, under Article II, the following is mentioned:-

“Dr.(Ms.) S. Swarupa Tripathy in her letter dated 30/04/2019 submitted at the time of preliminary fact finding and letters dated 09/02/2017 and 02/03/2017 has complained that while working under Shri PK Gupta from January 2011 onwards:

- 1) From January, 2011 onwards Shri PK Gupta humiliated her always even in the meetings and harassment was severe effect after the demise of her husband in March 2011.
- 2) She states that Shri PK Gupta used to offer her chocolates after his foreign tour, saying “*main tere liyehi laya huin*”. Dr.(Ms.) Tripathy has elaborated the incident in detail in her statement dated 27/05/2019:- “*Dr. PK Gupta offered me chocolates after her returned from a foreign trip. I went to meet him in his room for some work and that time he offered me chocolate. Though I denied he got up from his chair and come quite close to me, insisted me to accept the chocolate (brick) and handed it over to me. I was alone in his room when he gave*



the chocolate. I went out of his room and while entering in my room itself I gave away his chocolate to one of my colleagues, I asked other colleagues if they have been given the chocolates by Dr. Gupta, everyone denied, I was very unhappy with this gesture of Dr. Gupta and did not accept the chocolate.”

- 3) On another occasion, while discussing the quality manual documents, Dr.(Ms.) S. Swarupa Tripathy has stated that Shri PK Gupta purposefully left his seat and came to the chair beside her and sat very close to her. This advance from Shri PK Gupta made Dr.(Ms.) S. Swarupa Tripathy very uncomfortable and she immediately left the place.
- 4) On 21.06.2011, in one of her group meetings she was scolded by Shri PK Gupta in the presence of Dr. Shankar G. Aggarwal saying that “*Tujhe ProblemKya Hein, Who Jo Bolta Hein Tujhe Sun Na Hi Padega*”, “*Tu Kyun nehin sunti*”, “*Tujhe mein yahan se nikal dunga*”, “*you take transfer*”.
- 5) Dr.(Ms.) S. Swarupa Tripathy has complaint that Shri PK Gupta always tried to take her into confidence by saying “*Tu to meri dayen haath hein*”. Dr. (Ms.) S. Swarupa Tripathy narrates in her statement dated 27/05/2019 that “*After my husband's demise, Dr. Gupta wanted me to share my sorrows with him and cry. He often used to pat my shoulders for no reasons. One day while patting my shoulder he told me “AREE TU CHINTA MAT KAR MEIN TUJHE KAHAN SE KAHAN TAK PAHUNCHA DUNGA*”. I replied to him that “*YAH MERE KOI MAA PAPA NAHIN THEEY MEIN JAB AAYITHI*, I believe in my self. I have come on my own. She has further stated that Shri PK Gupta continued to pat her on her shoulder in someway or the other till June 2015.”

The incidents, that are said to have taken place in the year 2011, are mentioned.

19. Under Article III, the following is stated:



“Dr.(Ms.) S. Swarupa Tripathy in her letter dated 30/04/2019 submitted at the time of preliminary fact finding and letters dated 09/02/2017 and 02/03/2017 has complained that:

In June 2012 When Dr.(Ms.) S. Swarupa Tripathy congratulated Shri PK Gupta for becoming grandfather, he immediately came out from his seat and proceeded towards her and tried to feed her Good Day biscuits kept on the table and said to her “*methai to khatam ho gayahein le tujhe biscuit khilate hein*”. Dr.(Ms.)Tripathi has elaborated this incident in her statement dated 27/05/2019:-“*When Gupta became grandfather he offered sweets to all his colleagues in the office. I was not in the office that day. When I joined the office and went to meet him in his room for some work, I congratulated him and in response while mentioning that I don't have sweets to offer you today, he got up from his chair, came very close to me. Dr. Gupta hand-fed me a biscuit, I resisted and came out of the room. I was alone in Dr. Gupta's room when this incident occurred.*” She responded to this action by strictly telling Shri PK Gupta to make distance from her and that she is not going to tolerate these henceforth.

Thus, Shri PK Gupta while working as Chief Scientist, CSIR-NPL got up his chair and advanced towards her in the garb of feeding her Good day biscuits tried to physically advance towards her which she resisted and came out of the room. This event was intimidating and unwelcome to her and had a negative impact upon her in her workplace.”

Reference is made to alleged incident of 2012:

20 Under Article-IV, the following is mentioned:-

Dr.(Ms.) S. Swarupa Tripathy in her letter dated 30/04/2019 submitted at the time of preliminary fact finding and letters dated 09/02/2017 and 02/03/2017 has complained that:

1. From December 2014, after the departure of Prof. Ramesh Chandra Budhani, the then Director, CSIR-NPL, Shri PK Gupta further started humiliating her.



Dr.(Ms.) S. Swarupa Tripathy complained that Shri PK Gupta patted on her shoulder and gave assurance that “*tujhe kahan se kaha tak pahuncha dunga*”, threatened her from time to time that he would oust her and stopped assigning work to her.

2. Dr.(Ms.) S. Swarupa Tripathi complained that Shri PK Gupta made enquiries like “*Bata bata teri ghar keisi chalrahi hein, tu to kabhi kuchh batata nehin, bata tujhe kitna tankha milti hein, ush mein tera ghar chal jata hein?*”. Dr. Tripathy felt embarrassed by these remarks and replied that she had a very good family and was getting support from them.
3. Dr.(MS) S. Swarupa Tripathy has narrated an incident that happened on 03.06.2015. “*On 03.06.2015 at about 3 pm, I received a call in my office room (no.148) land phone (my internal no.8349) from Mr. Prabhat K. Gupta (internal no.8232) enquiring about the balance placed in room no.148 to handover to Dr. Daya Soni as the next day the service engineer was supposed to come for installation of the ICP-OES instrument. In reply to him I told as the balance was being used every day for eluent preparation to run Ion Chromatography system so, other balances kept in room no.160 could be shifted for ICP-OES installation purpose. After that immediately, I asked about the installation of ICP-OES as I was not aware of that to which he instantly replied “Tujhse koi matlab nehin” and disconnected the phone. Then I proceeded to him to his chamber with an intention to show him the balance which could have been shifted. That time Prabhat Sir and Dr. Daya were entering to the balance room (i.e. room no.160). I reached and helped them to sort out the balance problem. Then I asked Prabhat Sir about the schedule of the service engineer for which his reply was “Tere jan ne ki koi jarurat nehin”, and started moving out of the room, then I told immediately “Sir, I have to carry out the work so, I should be aware of each and every part of the ICP-OES”. Then Dr. Daya left the room and while myself and Sir were about to come out of the room he moved very close to me and harshly told “Tera koi lena dena nahin hein, Mein to tujhe Dhakka marke nikalunga yahan se”.*



Reference is made to certain allegations of 2014 and 2015.

21. Under Article V, the following is made:-

“Dr.(Ms.) S. Swarupa Tripathy in her letter dated 30/04/2019 submitted at the time of preliminary fact finding and letters dated 09/02/2017 and 02/03/2017 has complained about perpetual harassment she faced at the hands of Shri PK Gupta till August 2016.

As per the events narrated her in July, 2015, a committee consisting of Dr. AM Biradar, Chief Scientist and Dr. VN Ojha, Chief Scientist was constituted by Director, NPL on her representation. The Committee inter-alia gave recommendations that *Dr. Tripathy would route all her official work and related papers, requests indents etc. through Dr. Nahar Singh. Dr. Nahar Singh would be linking with Mr. PK Gupta, HOD directly for administrative and scientific issues for Dr. Swarupa, HOD and that PK Gupta will not interact directly with Dr. Tripathy from now onwards. It was officially decided that she would directly report to Dr. Nahar Singh, the then Sr. Scientist for all her Administrative and Scientific issues.*

From 24.02.2016 onwards Shri PK Gupta started torturing her by interfering in many ways such as asking the status of the work through emails in which she was involved, entrusting the work to his coterie and get those done by them. He also interfered in her Earned Leave application through OneCSIR portal. On 04.08.2016 she complained to Director, NPL that Shri PK Gupta is still interfering in her matter and she is unable to get a good work atmosphere.”

Reference is made to incident that took place in July, 2015



22. In the list of documents, only two letters, dated 03.04.2019 and 25.05.2019 submitted by the 3rd respondent are mentioned. In the list of witnesses, 18 persons are named.

23. Even if one takes into account, the contents of articles of charge, it becomes relevant that the basic reference was to the incidents that are said to have taken place between 2008 and 2015, and the compliant was made in the year 2019, i.e. two years after retirement of the applicant about the incidents which are said to have taken place between 2008 to 2015.

24. Here itself, it needs to be mentioned that a complaint made by the 3rd respondent against a serving officer by name Dr. Shankar Gopala Aggarwal, resulted in disciplinary proceedings, and they in turn were set aside by this Tribunal vide its order dated 13.11.2018. The 3rd respondent did not choose to make any such complaint against the applicant. She has chosen to rake up the issue only after his retirement.

25. In **Brajendra Singh Yambem vs. Union of India**,(2016)9 SCC 20, the Hon'ble Supreme Court held that where law requires an act to be done in a particular manner, it shall be done in that manner. Para 38 of the judgment reads as under:-

“38. It is a well established principle of law that if the manner of doing a particular act is prescribed under any statute then the act must be done in that manner or not at all. The aforesaid legal position has been laid down by this Court in the case



of *Babu Verghese v. Bar Council of Kerala*, the relevant paragraphs of which are extracted hereunder:

“31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in *Taylor v. Taylor* which was followed by Lord Roche in *Nazir Ahmad v. Kind Emperor* who stated as under:

“[W]here a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.”

32. This rule has since been approved by this Court in *Rao Shiv Bahadur Singh v. State of U.P.* and again in *Deep Chand v. State of Rajasthan*. These cases were considered by a three-Judge Bench of this Court in *State of U.P. v. Singhara Singh* and the rule laid down in *Nazir Ahmad* case was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law.”

The aforesaid important aspect of the case should have been considered by the Division Bench of the High Court instead of mechanically accepting the argument advanced on behalf of the respondents that the case of the appellant squarely falls under Rule 9(2)(b)(i) read with Rule 9 (2)(b)(ii) of CCS (Pension) Rules, 1972. Therefore, the findings recorded by the Division Bench in the impugned judgment are erroneous in law and are liable to be set aside.”

26. On finding that the initiation of disciplinary proceedings after a gap of 10 years before the date of charge memo, was held to be illegal and violative of Rule 9(2)(b)(ii). The same view was expressed in several other judgements.

27. There are several instances where the Hon’ble High Courts or Hon’ble Supreme Court held that the disciplinary proceedings against a serving employee also cannot be initiated in respect of the



allegations, which are stale or old. When the rule making authority has stipulated the period of four years for initiation of post retirement proceedings under Rule 9(2)(b)(ii), there is no way that any proceeding can be initiated on the allegations pertaining to the events which are said to have taken place more than four years ago, and in many cases, more than a decade ago.

28. We, therefore, allow the OA and set aside the charge memo dated 03.08.2020. The applicant shall be paid the withheld retirement benefits within 2 months from the date of receipt of this Judgment. There shall be no order as to costs.

(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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