

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

O.A. No.1549/2020

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 with 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 - Respondents

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





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 two years of retirement, he was issued a charge memo dated 30.05.2019 under Rule 9 of CCS(Pension) rules, 1972 (hereinafter referred to as the "Pension Rules"). It was alleged that while working as Scientist-in-Charge/Head of the Department, Analytical Chemistry Division, the applicant recommended/issued Certificate of Analysis BND 33,100,01 having the certified value: 99.93 ± 0.20 mg/kg for presence of Arsenic, whereas the Arsenic Samples got analyzed/tested through his subordinates, gave widely scattered results, but the applicant failed to correlate widely scattered data. The omission on the part of the applicant is said to have led to adverse impact on human life as well as risk to environment due to the fact that arsenic has been declared as carcinogen by the World Health Organization. The applicant filed this OA, challenging the charge memo dated 30.05.2019.

2. The applicant contends that the sanction accorded by the Vice President for initiation of disciplinary proceedings is contrary to law and violative of Article 9(2)(b)(ii). He further contends that the so-



called inquiry into the incident, which is said to have taken place somewhere in the year 2012, is barred by the time limit, stipulated under Rule 9(2)(b)(ii) of the Pension Rules.

3. The applicant contends that the charge memo was issued, contrary to the Rule 9 of the CCS(Pension) Rules, as much as the sanction of the President was not obtained for issuance thereof, and that the acts attributed to him are relatable to a period exceeding four years, from the date of charge memo. He contends that sanction of 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.

4. The respondents filed a detailed counter affidavit. It is stated that the Vice President is very much competent to accord sanction. It is further stated that the truth or otherwise of the allegation contained in charge memo can be decided only in the inquiry.

5. As regards the legality of the sanction accorded by the Vice President, the respondents contend that the President of the 1st respondent has delegated its power to the Vice President, and accordingly, no illegality can be said to have been committed. They further contend that the tests mentioned in the charge occurred



between 2012 and 2017 and accordingly, the charge memo was issued in time. Various other contentions urged by the applicant are also denied.

6. 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.

7. 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. Two years after his retirement, he was served with a charge memo dated 30.05.2019 in time. It contains only one article of charge, which reads as under:-

“ARTICLE I

“Sh. P.K. Gupta, Chief Scientist (Retd.) in the year 2012 and onwards till his superannuation in January, 2017, as the ten Scientist-in-Charge /Head of the Department, Analytical Chemistry Division (SASD), recommended/issued Certificate of Analysis BND 33,100,01 having the Certified Value 99.93 ± 0.20 mg/kg for presence of Arsenic whereas Sh. Gupta was in the knowledge of the fact that the Arsenic Samples got analyzed/tested through his subordinates, gave widely scattered data through different techniques and ensure removal of inconsistencies in result before recommending/certifying above values.

The failures on the part of Sh. Gupta lead to issue of inconsistent testing certificates from time to time also sale of inconsistent CRM to the customer, i.e. the certificate



for BND & Sample no.BND 33.100.01 Bottle # 115T-164, the item CRM, Arsenic 100 ppm-BND 33.100.01 to M/s ATMY ANALYTICAL LABS PVT. LTD, 1-38M DLF Industrial Area, Phase-1 Faridabad-121003, Haryana India at total cost of Rs.5358/- (including taxes) [as per CFGT record case No.15060241 dated 02 June 2015] that involved serious environmental and ecological fall out, Sh. PK Gupta thereby compromised with the safety and well-being of the human life and which was also in violation of implemented its Quality system as per ISO Guide 34: 2009, ISO Guide 35: 2006, ISO Guide 31, 2000, ISO/IEC 17025:2005.

The above act of omission and commission by Sh. Gupta led to perceived adverse impact on human life as well as risk to environment due to the fact that arsenic has been declared a carcinogen by the World Health Organization. Therefore, Sh. Gupta had failed in his assigned responsibility as well as breached the faith of people who consider the certifications issued by the National Labs in high esteem and thus grossly failed in his responsibility of proper supervision and functioning of Analytical Chemistry division.

Further Sh. Gupta by his above mentioned acts also adversely impacted the R&D credibility of the CSIR-NPL which compromised the mandate and responsibility assigned to the CSIR-NPL on behalf of the country for maintaining the National Standards of Measurements as per Government of India Gazette No.589 "The Standards of Weights and Measures Rules (1988)" (CSR 1076(E) dated 16.11.1988] in exercise of the powers conferred by section 83 of the Standards of Weights and Measures Act, 1976, traceability of measurement through Bilateral/International key comparisons and the Quality System as per ISO Guide 34: 2009, ISO Guide 35:2006, ISO Guide 31: 2001, ISO/IEC 17025:2005.

The actions/inactions of Sh. PK Gupta thus were in violation to the statutory provisions as well as the CSIR instructions on rendering technical services as per CSIR Guidelines for Technology Transfer and Utilization of knowledgebase dated 1st June, 2005.

By his aforesaid acts of omission and commission, Sh. P.K. Gupta without removing/ensuring removal of inconsistencies which appeared in the test reports issued/recommended issue of inconsistent BND



33.100.01 and also sale of inconsistent CRM to M/s ATMY ANALYTICAL LABS PVT. LTD. I-38M DLF Industrial Area, Phase-I, Faridabad-121003, Haryana India on 02 June 2015 has thereby exhibited lack of absolute integrity and devotion to duty and acted in a manner unbecoming of a Council Servant contravening the Rule 3(1)(i)(ii)(iii)(iv)(vi)(vii)(ix)(xviii)(xxi) and 3(2)(1) of CCS(Conduct) Rules as applicable to the Council Employees.”

8. 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.

9. 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.

10. 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 in his capacity 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 of the 2nd respondent 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 Disciplinray 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.

11. If one examines the provisions 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, he 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.

12. 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.

13. 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.

14. 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.”

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

16. 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.

17. Even if one takes into account the contents of article of charge, it becomes clear that the respondents were uncertain about the timing of the alleged incidents. It is stated that tests were conducted between 2012 and 2014. The allegation is that the applicant did not ensure the inconsistencies in the results are removed before recommending or certifying the values. The particulars of the certificates that gave rise to the formation of opinion by the respondents are furnished as under:-

S.no.	Details of Document(s)
1.	CSIR-NPL Centre for Calibration & Testing (CPCT) – Calibration/Testing Request (CTR) Form, Notional Case No.N120B0590 Sub Division
2.	CSIR-NPL test report N12080590/SASD7.01.04/T-132 dated 10.09.2012
3.	CSIR-NPL Centre for Calibration & Testing (CPCT) – Calibration/Testing Request (CTR) Form, Notional Case No.N120B0590 Sub Division No.SD 70104 dated 3/8/12
4.	CSIR-NPL test report N12080591/SASD7.01.04/T-136 dated 10.09.2012
5.	CSIR-NPL Centre for Calibration & Testing (CPCT) – Calibration/Testing Request (CTR) Form, Notional Case No.N12100954 Sub Division No.SD 70104 dated 29/10/12



6.	CSIR-NPL test report N12100954/SASD7.01.04/T-171 dated 14.08.2013
7.	CSIR-NPL Centre for Calibration & Testing (CPCT) – Calibration/Testing Request (CTR) Form, Notional Case No.N12100888 Sub Division No.SD 70104 dated 12/10/12
8.	CSIR-NPL test report N12100888/SASD7.01.04/T-164 dated 27.01.2014
9.	CSIR-NPL Certificate of Analysis BND 33.100.01 dated 31.03.2014 having Certified Value 99.93 ± 0.20 mg/kg.

Even if the last of the certificate is to be taken into account, it is dated 31.03.2014, whereas the charge memo was issued on 30.09.2019. It is beyond 4 1/2 years from the date of charge memo. The importance of stipulation of four years in Rule 9(2)(b)(ii) hardly needs emphasis.

18. 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.”

19. 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.

20. 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.

21. We, therefore, allow the OA and set aside the charge memo dated 03.08.2020. There shall be no order as to costs.

(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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