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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH, CIRCUIT AT PORT BLAIR

O.A.NO./98 A&N OF 2014

LIBRA

IN THE MATTER OF:

An application under section 19 of the Central  
Administrative Tribunal Act, 1985.

-And-

IN THE MATTER OF:

Dr.A.K.Bardhan S/o Late Shri R.N.Bardhan, aged about  
58 years, Senior Veterinary Officer, Department of Animal  
Husbandry and Veterinary Services, Port Blair, R/o Prem  
Nagar, P.O. Haddo, Port Blair, Tehsil, South Andaman  
District. ....Applicant

-Versus-

1. Union of India through the Secretary, Ministry of Home  
Affairs, North Block, New Delhi-110001.
2. The Lieutenant Governor, Andaman & Nicobar Islands,  
Raj Niwas, Port Blair-744101.
3. The Chief - Secretary, Andaman & Nicobar  
Administration, Secretariat Building, Port Blair.
4. The Chief Vigilance Officer, A&N Administration, Port  
Blair.

.....Respondents.

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**CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH  
(CIRCUIT AT PORT BLAIR)**

O.A.No. 351/198/2014

Date of Order: 11.01.21

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member



Dr. A.K.Bardhan ---Applicant  
Versus

A & N Administration ----Respondents

For the Applicants: Mr. R.Singh, Counsel  
For the Respondents: Mr. K.Rao, Counsel

**ORDER**

Per: Ms. Bidisha Banerjee, Member (I):

The applicant, who is working as Sr. Veterinary Officer (Epid) in the Department of Animal Husbandry and Veterinary Services, A & N Administration has preferred this O.A. to seek the following reliefs:

*"(A) An order be passed quashing the impugned order No. 3372 dated 25/26.09.2014 (Annexure 9) passed by the disciplinary authority.*


*(B) An order be passed quashing the impugned order being F.No. U-14033/3/2013-ANL dated 25.08.2014 (Annexure 10) passed by the appellate authority; disciplinary authority.*

*(C) Any such order.....*

*(D) Cost and incidental to this application."*

2. We have heard Ld. Counsel for the parties and perused the records.

3. The main thrust of argument of Ld. Counsel for the applicant would be as under:



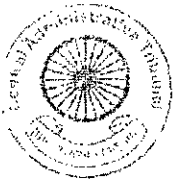
(i) That the applicant was chargesheeted along with four others, viz. Dr. N.Sadasivam, the then Director Health Services, Dr. Wazid Ali Shah, Senior Pathologist, Dr. B.B.Saha, the then Superintendent, and Sri K.Rajaram, Medical Record Technician. A common proceeding was conducted. Inquiry Officer submitted his report holding the charges as not proved. The Disciplinary Authority disagreed with the Inquiry Officer's report, without having issued a disagreement note and having sought for a representation from the applicant, recommended imposition of minor penalty and sent his recommendation to the CVC for advice. The CVC agreed with the recommendation of Disciplinary Authority and based on the advice a minor penalty was imposed.

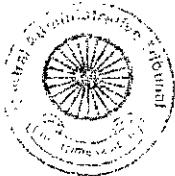
(ii) The applicant preferred an O.A. challenging the punishment, which was disposed of as premature as he had not preferred any appeal. He submitted his appeal. The Appellate Authority dismissed the appeal based on the advice of the Commission. The order passed by the Disciplinary Authority along with advice of

UPSC was communicated to the applicant but without the note of disagreement and, subsequently, punishment was imposed.

(iii) The respondent authorities have discriminated between the applicant and the similarly charged persons by meting out different punishments in a common proceeding. For example, in case of Dr. Wazid Ali Shah charges were dropped, Dr. B.B.Saha and Dr. N.Sadssivan were let off with a "Govt. Displeasure" as they had retired, Mr. K.Rajaram was imposed a "Censure" while the applicant was meted out a minor punishment.

(iv) Ld. Counsel for the applicant would place the decision of Hon'ble Apex Court in the case of **Rajendra Yadav Vs. State of M.P.** reported in **Civil Appeal No. 1334/2013** dated 13.02.2013 where law propounded is that "parity among co-delinquents has also to be maintained when punishment is being imposed" and *"punishment should not be disproportionate while comparing involvement of co-delinquents who are parties to same transaction or incident"*. While holding *"the action of the Disciplinary Authority impermissible in imposing harsher punishment to the applicant than the co-delinquent, the applicant was reinstated with all consequential benefits"*.






4. To the contrary, Ld. Counsel for the respondents would defend the action of the respondent authorities and submit that proceedings were initiated on the basis of a complaint lodged by A & N Health Doctors Association in the matter of appointment of one Ms. Rahat Ahmed as Laboratory Assistant. The CBI had conducted an inquiry and submitted its report to the Ministry of Health and Family Welfare, which in turn forwarded the same to the Administration for initiation of the proceeding. The report of CBI revealed that the said candidate was appointed in an irregular manner by resorting to manipulation and falsification of record. A major penalty proceeding was thus initiated under Rule 14 of the CCS (CCA) Rules against the five officers including the applicant. The charges framed against Dr. A.K.Bardhan, the present applicant, was as under:

*"That the said Dr. A.K.Bardhan while posted and functioning as Senior Veterinary Officer (Epid) in the department of Animal Husbandry and Veterinary Services, Port Blair during April 2006 acted as Member (representative of DAH & VS) of Group "C" Selection Committee meeting of which was held on 19/04/2006 recommending the name of Miss Rahat Ahmed for appointment against the post of Laboratory Assistant in the Health Department of the Administration.*

*The appointment of Miss Rahat Ahmed against the post of Laboratory Assistant was made in a highly irregular manner by resorting to manipulation and falsification of records in connivance with Dr. A.K.Bardhan, Senior Veterinary Officer (Epid) in the Department of animal Husbandry and Veterinary Services, Port Blair."*



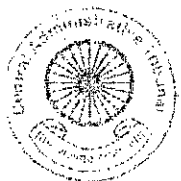
The Disciplinary Authority having found that the conclusion of the Inquiry Officer that prosecution has failed to establish the charges framed against the COs, was not based on full appreciation and document on record, desired that all the officers were liable for imposition of atleast a minor penalty. Since the officers were chargesheeted after obtaining first state of advise from the CVC, inquiry report along with the views of the Disciplinary Authority was referred to the CVC for a second stage advice, which advised imposition of suitable minor penalty on all except Dr. B.B.Saha, the then M.S. of G.B.Pant Hospital with an advise to issue "Govt. Displeasure" to him. Ministry of Home Affairs conveyed the order for dropping the charges leveled against Dr. Wazid Ali Shah whereas Dr. N.Sadasivan was given a "Govt. Displeasure" since he had retired and penalty of "Censure" was imposed upon Sri K.Rajaram while in the case of the present applicant, SVO, a minor penalty of withholding of one increment for two years was imposed.

5. It is admitted by both the sides that the applicant has superannuated from service.

6. At hearing, although, Ld. Counsel for the respondents would assertively contend that disagreement note of the Disciplinary Authority

was supplied to the applicant seeking his representation but failed to bring out any document in support of his contention.

7. On the contrary, Ld. Counsel for the applicant would point to the order dated 16.07.2012 issued by the CVO/Chief Secretary, A & N Administration, which records the following:



*"WHEREAS, in the light of the depositions and material on record, the undersigned had disagreed the conclusion drawn by the Inquiry Officer, as the documents and evidences adduced during the enquiry sows beyond any reasonable doubt that the appointment of the said candidate was made in an illegal/dubious manner by resorting to falsification and manipulation of records by the charged offices; and,*

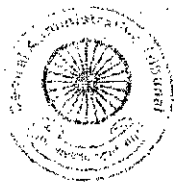
*WHEREAS, Dr. A.K.Bardhan and other officers involved in the case were charge sheeted after obtaining the first stage advice of the CVC, the enquiry report was referred to CVC for its second stage advice, which in turn, conveyed its advice for imposition of suitable minor penalty on him.*

*ANND WHEREAS, the undersigned will take suitable decision on the advice of CVC. Dr. A.K.Bardhan is given an opportunity to make representation or submission, if he desires so, in writing to the undersigned within 15 days of receipt of this Memorandum.*

*A copy of inquiry report and CVC's advice is hereby forwarded to Dr. A.K.Bardhan, Sr. Veterinary Officer (Epid)."*

Nowhere from the said order it could be deciphered that the applicant was served with a disagreement note prior to seeking CVC's advice. The said extract amply demonstrates that only the Inquiry Report and CVC's advice was forwarded to the present applicant, and not the disagreement note.

8. We further note that the respondents have failed to justify meting out different treatment/degrees of punishment to the officials facing a common proceeding, as against the punishment imposed to the applicant, albeit a minor one.



9. Having heard Ld. Counsel for the applicant and having perused the records and having considered the implications of the decision cited by the Ld. Counsel for the applicant, we feel it appropriate to quash the penalty order as issued to the applicant due to the reasons stated supra with liberty to the respondents to act in accordance with law.

10. The O.A. is accordingly disposed of. No costs.

(Dr. N. Chatterjee )  
Administrative Member

( B. Banerjee )  
Judicial Member

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