

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
THIS THE 2<sup>nd</sup> DAY OF JUNE, 2006  
Original Application No. 144 of 2006

**CORAM:**

**HON.MR.JUSTICE KHEM KARAN,V.C.**  
**HON.MR.A.K.SINGH, MEMBER(A)**

Dr.R.S.Srivastava, Son of R.A.L Srivastava,  
a/a 40 years, r/o 63/2,HIG, AVC Jhusi,  
Allahabad.

.. Applicant.

(By Adv: Shri V.Sinha)

Versus

Union of India through President  
Indian Council of Agricultural Research  
Krishi Bhawan, New Delhi.

.. Respondent

(By Adv: Shri N.P. Singh)

**ORDER**

Justice Khem Karan, V.C.

The applicant an employee of Indian Council of Agricultural Research (for short ICAR) was served with a charge sheet dated 30.6.03 (Annexure 1), saying that he committed misconduct by visiting Humboldt University Berlin in Germany from 1.8.2000 to 19.8.2000, without prior permission of the Competent Authority. This period was treated as 'dies on' (neither to be counted towards duty nor break in service), vide order dated 30.9.03 (Annexure VI), which the applicant challenged before this Tribunal by way of filing OA No.327/04. By order dated 31.3.04 (Annexure VII) this tribunal disposed of the OA. Operative portion thereof reads as under:-

“ In the facts and circumstances, we provide two weeks time to the applicant to file a detailed representation before respondent No.1 along with the copy of this order.

The respondent No.1 is directed to decide the representation of the applicant within three months from the date such representation is received by a reasoned and speaking order. We also provide that the operation of the impugned order dated 30.9.2003 (Annexure-1) and 30.1.2004(Annexure II) shall remain stayed till the representation is finally decided by respondent No.1”.



As the authorities could do nothing to his satisfaction, rather appointed Enquiry officer vide order dated 4.8.04 and the Enquiry Officer issued notice dated 6.10.04 intimating him about date, time and place of hearing in inquiry, the applicant filed OA No.1333/04 challenging the memo of charge sheet dated 30.6.03, order dated 4.8.04 and notice dated 6.10.04. By order dated 13.12.2004 (Annexure XXI(g)) this Tribunal dismissed the said OA and aggrieved of this dismissal the applicant filed a writ petition No.19054 of 2005 before Hon'ble High court at Allahabad. The Hon'ble High Court finally disposed of that writ petition by its order dated 17.3.2005 (Annexure XXII). Its para 2,3 & 4 being relevant are reproduced as under:-

“ A charge memo has been issued by the respondents against the petitioner. A disciplinary enquiry is pending against him. The petitioner claims that he has made representations on 23.8.2004 and 4.1.2005/11.2.2005 (Annexure 18(a) and Annexure 18(b) before respondent no.1. Further he has made representation for change of the enquiry officer on 20.12.2004/11.2.2005. (Annexure 18(d) to the writ petition. The representations are pending before respondent no.1. He prays for that till his representations are decided by the respondents, the enquiry proceedings shall remain in abeyance.

The petition is finally disposed of with the direction to Respondent no.1 to decide the aforesaid representations of the petitioner in accordance with law by a speaking and reasoned order within two months from the date a certified copy of this order is produced before him. A copy of this order passed on the aforesaid representations by the respondent no.1 shall be communicated by the respondent no.1 to the petitioner within a week of the passing of the order by speed post.

Till the disposal of the aforesaid mentioned representations of the petitioner by the respondent no.1 disciplinary enquiry against the Petitioner shall remain in abeyance.”

This OA 144/06 has been filed for quashing the memo of charge sheet dated 30.6.2003 (Annexure 1) and for quashing order dated 28.11.2005 (Annexure XI-c and A-11(b), order dated 30.1.2006 (A-11(d) and order dated 19.1.06 )Annexure III).

Before we proceed further, let us have a look at these subsequent orders dated 28.11.05, 30.1.06 and 19.1.06.

Order dated 28.11.05 (A-11(a) ) is nothing but a communication to the applicant, informing him that in compliance of orders dated 31.3.04 of this Tribunal his representation in the context of order dated 30.9.03 was considered



and it was decided to keep that order in abeyance, till final decision in the pending inquiry. Thus there was a little respite to the applicant, and there appear no apparent reason to challenge it here. By order dated 28.11.05 (Annexure A-11(b)), the Inquiry officer was changed and thus long standing demand of the applicant, was met. So again there was no reason for being aggrieved of it. Order dated 30.1.06 (A-11 (c)) is a communication to the applicant that his representation dated 19.12.05 and all other earlier representations were considered and the decision communicated. Order dated 19.1.06 (Annexure A-III) is a letter of inquiry officer, intimating the applicant about date, time and place of inquiry. If the inquiry is to proceed such intimation has to be given.

Shri N.P. Singh, the learned counsel for the respondent has vehemently argued that this second OA, for assailing the memo of charge sheet dated 30.6.03 is barred by resjudicata and in any case by constructive resjudicata. According to him once this Tribunal dismissed the earlier OA No.1333/04 against the said memo, the applicant cannot be permitted to bring another OA for the same purpose. The learned counsel for the applicant has tried to meet it by saying that the directions of the High court given in writ petition No.19054 of 2005 have not been complied, to assail that charge sheet. The learned counsel has taken us through the order dated 17.3.05 of Hon'ble High court and also through copies of representations referred to in that order and through the averments made in OA and in supplementary affidavit.

We have a great doubt whether after dismissal of earlier OA No.1333/04 against memo, dated 30.6.03, this second O.A. can be maintained. The grounds which could have been taken but were not expressly taken, for assailing the memo of charge sheet, cannot be permitted to be raised now. Permitting such a course would mean that the issue which has already been decided can be raised again and again on one or the other grounds. If that course is permitted, there will be no end to the litigation. From that point of view there is force in the submission of Shri N.P. Singh that OA for quashing the charge sheet is barred by constructive resjudicata or principles of resjudicata. Non compliance



of the directions of the High court may be agitated somewhere else in some other proceedings but that can hardly be a good ground for filing this OA.

Although the respondents have stated in so many words that they have complied with the directions of the Hon'ble High court but even if they have not done so satisfactorily, this Tribunal will not be justified in entertaining OA in that regard. A perusal of representation dated 23.8.04 (A-21-c) would reveal that the applicant had tried to convince the authority concerned that the proceedings were uncalled for and in any case there were good grounds for changing the Inquiry officer. We have already referred that the Enquiry officer has been changed by order dated 30.1.06. By representation dated 4.1.05/13.2.05 referred to in the order of the Hon'ble High court, the applicant requested for recalling the inquiry proceedings, complying the directions dated 31.3.04 of this Tribunal ( in OA No.327/04) and also for change of Enquiry officer. We have already referred to the order dated 28.11.05 by which the directions dated 31.3.04 of this Tribunal were complied, with by putting order dated 30.9.03 in abeyance till the finalisation of disciplinary proceedings. The Enquiry officer has also been changed vide order dated 30.1.06. The representation dated 20.12.04/11.2.05 (A-21(f)) was primarily for the change of Enquiry officer. That has been done vide order dated 30.1.06.

If these subsequent orders dated 28.11.05, 30.1.06 are more or less, in the nature of giving some respite to the applicant and if order dated 19.1.06 is simply an information about date, time place of inquiry, then the question arises, as to why the applicant has prayed for quashing the same. We think since second O.A. for quashing memo of charge sheet dated 30.6.03 was clearly within the teeth of res judicata or constructive res judicata, so the relief for quashing these subsequent orders was made. We have seen above, the applicant has no good reason to challenge those subsequent orders. We refrain from touching the merit or demerit of charge.

Thus this O.A/being devoid of merits, is dismissed with costs.

  
MEMBER(A)

  
VICE CHAIRMAN

Dated: 2<sup>nd</sup> June, 2006

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