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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.706 of 2012

Cuttack this the 22nd of June, 2015

Dillip Kumar Kar...Applicant

-VERSUS-

Union of India & Ors.....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *Yes*
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not? *yes*

R.C. Misra

(R.C.MISRA)
MEMBER(A)

A.K. Patnaik

(A.K.PATNAIK)
MEMBER(J)

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CORAM

HON'BLE SHRI A.K.P.PATNAIK, MEMBER(J)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Dilip Kumar Kar
Aged about 50 years,
S/o-Govind Chandra Kar
Ex-Asst. Administrative Officer
National Research Centre For Ground Nut
Presently residing at Plot No.2188
Sabarsahi lane Near Sabarsahi Sub Post Office
Kalpana Square
Bhubaneswar-6

.....Applicant

By the Advocate(s) M/s.J.Sengupta
D.Ku.Panda
G.Sinha
A.Mishra
P.P.Behera

-VERSUS-

1. Union of India represented through
The Secretary
Indian Council of Agricultural Research Krishi Bhawan
New Delhi-110001
2. Director National Research Centre For Ground Nut
Post Box No.5, Ivanagar
Junagarh-363001
3. Director National Research Centre On Equines
Sirsa Road Hisar
Haryana

.....Respondents

By the Advocate(s)-Mr.S.B.Jena

ORDER

R.C.MISRA, MEMBER)(A)

In this Original Application under Section 19 of the
A.T.Act, 1985, applicant has approached this Tribunal for



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quashing the order of dismissal dated 15.06.07 passed by respondent no.2, as well as the order dated 15.11.10 passed by ~~and~~ respondent no.1 wherein his appeal against the order of dismissal has been rejected and consequently, it has been prayed for direction to be issued to respondents to reinstate the applicant in service with grant of service and financial benefits, retrospectively.

2. Brief history of the matter is that applicant, while working as Assistant Administrative Officer(in short AAO), National Research Centre On Equines, Hisar, was issued with a Memorandum of Charge dated 13.01.2005(A/1) by respondent no.3 under Rule 14 of CCS(CCA)Rules, 1965, as extended to ICAR under seven Articles of Charge, which are as under.

Article of Charge 1:

Sh. Dilip Kar while functioning as DDO at NRCE Hisar, did not issue the TR against the cash of Rs.50,955/-received from Dr. S.N. Tandon, I/c EPC, Bikaner through Dr. R.C. Sharma, Sr. Scientist at Bikaner on 1.5.04 and misappropriated the Council's funds in connivance with the Cashier Sh. Pratap Singh. This amount has not been deposited/accounted for in the institute's account even till date.

By the above act, Sh. Dilip Kar (the then DDO) has failed to maintain absolute integrity, faith and devotion to duty and thereby he contravened the provision of Rule 3(1) (i) (ii) of CCS (Conduct) Rules, 1964 as extended to the ICAR employees.

Article of Charge 2:

That while functioning in the aforesaid office, the said Sh. Dilip Kar did not deposit an amount of Rs.5120/-in the Institute's account which had been received by him on 31.7.04

P. Kar

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in the capacity of the then DDO from I/c EPC, Bikaner on account of miscellaneous receipts and misappropriated the same money.

By the above act, Sh. Dilip Kar did not act honestly and sincerely thereby he contravened the provision of Rule 3(1) (i) (ii) of CCS (Conduct) Rules-1964 as extended to the ICAR employees.

Article of Charge 3:

That during the aforesaid period and while functioning in the aforesaid office, the said Sh. Dilip Kar, the then DDO did not submit his own LPC on record and concealed the same to avoid recoveries of advances mentioned in the LPC and thus utilized his authority for his personal benefit.

By the above act, Sh. Dilip Kar did not act honestly and concealed the facts in his personal interest and thereby he contravened the provision of Rule 3(1) (i) (ii) of CCS (Conduct) Rules, 1964 as extended of the ICAR employees.

Article of Charge 4:

The said Sh. Dilip Kar while functioning as AAO purchased seven voltage stabilizers worth Rs.21,560/- on his verbal order given to a local firm without following codal formalities and prior financial and administrative approval of the competent authority. He accepted these non-consumable costly articles at his own.

By the above act, Sh. Dilip Kar ^{failed to maintain absolute} integrity and put the Centre in embarrassing situation and thereby he contravened the provision of Rule 3(1) (i) (ii) of CCS (Conduct) Rules, 1964 as extended to the ICAR employees.

Article of Charge 5:

Sh. Dilip Kar took away an amount of Rs.32,241/- from the chest through Cashier Sh. Partap Singh without any prior sanction or authority. He gave simple hand receipts

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against that amount and misused the Govt. money for his personal purpose.

By the above act, Sh. Dilip Kar misused his authority of DDO, violated the financial rule and misappropriated the Govt. and thereby he contravened the provision of Rule 3(1) (i) (ii) of CCS (Conduct) Rules, 1964 as extended to the ICAR employees.

Article of Charge 6:

Sh. Dilip kar while working as DDO, with the help of the cashier Sh. Partap Singh, realized an amount of Rs.1,89,510/- during the months of July, 03 to November, 04 on account of miscellaneous revenue receipts and unutilized money of contingent advances. The said amount was not deposited in the bank within the time limit prescribed for the same and thereby misappropriated the money in connivance with the Cashier Sh. Partap Singh by taking away the same from the chest through hand receipts.

As per instructions for maintenance of subsidiary cash book contained in Audit Manual Para No.39(ii), no portion of daily receipts should remain un-deposited at the close of the next working day.

By the above act, Sh. Dilip Kar has failed to ensure his integrity and devotion to duty as assigned to him by Council and thereby he contravened the provision of Rule 3(1) (i) (ii) of CCS (Conduct) Rules, 1964 as extended to the ICAR employees.

Article of Charge 7:

Sh. Dilip Kar while functioning as AAO issued letters to very senior Govt. officers outside the Institute/ICAR directly at his own level without the knowledge and prior approval of Director.

By the above act, Sh. Dilip Kar overpowered his authority and did not follow the prescribed protocol and office decorum, thereby he created serious misunderstanding

[Signature]

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between the Director of the Institute and senior officers of ICAR/retired senior Govt. officer and thus contravened the provision of Rule 3(1) (i) (ii) of CCS (Conduct) Rules, 1964 as extended to the ICAR employees.

3. It was directed in the said Memorandum that the applicant should submit within 10 days of receipt of the aforesaid Memorandum a written statement of his defence and also to state whether he desired to be heard in person. It is pertinent to note here that an FIR had also been lodged in the Police Station forming the subject matter of the Memorandum of Charge, as quoted above. However, applicant, submitted his reply (A/2) dated 27.01.2005 to respondent no.3 by bringing to his notice that the subject matter of charges being similar to the substance of FIR lodged against him with the Police Station, the disciplinary proceedings should await till the conclusion of the criminal case, the reason being that disclosure of defence in the departmental inquiry would be utilized against him in the criminal case. In the said representation, applicant also had prayed for supply of certified copies of the documents relied upon by the Department to prove the charges against him. In response to this, applicant received a communication dated 5.3.2005(A/3) that there was no bar for continuing the departmental inquiry simultaneously with the criminal proceedings. However, applicant was not supplied with the documents asked for by him. Incidentally it may be mentioned that the Police authorities in the first instance, did not like to



institute any criminal proceedings against the applicant. Finding this, respondent no.3 vide a letter dated 9th March, 2005, requested the Chief Secretary, Government of Haryana to ask the Police to make thorough inquiry into the case and arrest the applicant. In the meantime, applicant was transferred from Hisar to Junagarh under the control of the respondent no.2 vide order dated 21.3.2005. While the matter stood as such, the Police authorities submitted a report dated 19.4.2005 to respondent no.3 intimating that the applicant had not misappropriated the money and that the applicant could be held responsible for keeping the money in the iron chest without depositing the same in the Bank for which the Institute had incurred a loss by not earning any interest on the said amount. In the end, it was reported by the Police that there was no criminal case made out against the applicant. Thereafter, respondent no.2 appointed IO and PO vide order dated 28.12.2006 to enquire into the matter. As the enquiry officer was one, who had made an enquiry on the advice of the respondent no.3, the applicant apprehending that he may not get any fair opportunity, made a representation to respondent no.2 to change the enquiry officer, but to no effect. In any case, the enquiry officer fixed the date of hearing. On receipt of this communication, applicant further made a representation to respondent no.2 reiterating his prayer for change of the enquiry officer. Since it did not yield any fruitful result,



applicant made a prayer in this regard to respondent no.1 vide his representation dated 8.2.2007. This representation of the applicant regarding the change of enquiry officer was turned down vide communication dated 14.03.2007(A/7) and on the direction made in that communication, applicant attended the enquiry on 19.3.2007, when he could observe that the attitude of the enquiry officer was not free from bias inasmuch as the enquiry officer supported the action of the presenting officer in not supplying all the documents as prayed for by him in his letter dated 19.3.2007. However, as the enquiry officer had conducted the preliminary investigation into some allegations and submitted his report based on which the charge no.2 had been framed, the applicant again made a representation dated 21.3.2007(A/8) to respondent no.1 further requesting him to change the enquiry officer which was too turned down vide letter dated 5.4.2007(A/9). Thereafter, as the enquiries were held on 9.4.2007 and 11.4.2007 and the enquiry was closed on 11.4.2007 without the documents sought by the applicant being supplied, he submitted another representation dated 16.4.2007 to respondent no.1 to direct the enquiry officer to supply him the required documents and thereafter to start a de novo enquiry. However, on the closure of the enquiry, the PO submitted his brief, copy of which was supplied to the applicant by the IO vide letter dated 23/24.04.2007(A/10) asking him to submit his brief within a period of 15 days. In the

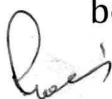


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said brief of the PO many of documents relied upon were not supplied to the applicant. Being handicapped, applicant submitted his written brief on 14.05.2007(A/11). Applicant was also supplied with copy of the report of the IO to which he also submitted his reply. Thereafter, vide order dated 15.06.2007(A/12), respondent no.2 imposed punishment of dismissal from service on the applicant. Being aggrieved, applicant approached CAT, Ahmedabad Bench in O.A.No.291 of 2007 which was dismissed vide order dated 24.4.2009 as the applicant before approaching the Tribunal had not exhausted the departmental remedies. After the above order of the Tribunal, applicant submitted an appeal dated 10.7.2009(A/13) to respondent no.1. Since, the appellate authority did not dispose of the appeal, applicant again moved the Ahmedabad Bench of the Tribunal in O.A.No.152 of 2010 and the said O.A. was disposed of with direction to the appellate authority to dispose of the appeal within a stipulated time frame. In compliance to the orders of the Tribunal, the appellate authority rejected the appeal vide order dated 15.11.2010(A/14). Under the above circumstances, applicant has approached this Tribunal seeking relief as referred to earlier.

4. In support of his case, applicant, inter alia, has laid his claims on the following grounds.

- i) The cardinal principles of natural justice being the documents relied upon by the



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Department to establish the charge must be supplied, the prayer made by the applicant in this respect was rejected citing the CVC's guidelines.

- ii) Appointment of IO and PO by respondent no.2 was not justified as by that time applicant had been transferred from Hisar to Junagarh and therefore, the incident having taken place at Hisar, respondent no.2 cannot act as the disciplinary authority.
- iii) Despite repeated requests for change of IO, the same was turned down on the ground that the applicant wanted to delay the proceedings.
- iv) Punishment imposed is not commensurate with the gravity of the charged proved. Apart from the above, the IO & PO failed to appreciate the observations made by the Police authorities that there was no material to show that the money was ever taken away by the applicant from the Iron Chest, but there was some material to show that the same was deposited with the Bank though late.
- v) Respondent no.1 had taken into account the past conduct of the applicant to decide the nature of penalty to be imposed.

5. Respondents have filed an exhaustive counter-reply remonstrating the relief sought by the applicant in the O.A. The main thrust of the counter-reply is that during the hearing on 19.03.2007, applicant demanded to examine some files and subsidiary cash book in original for the relevant period and those were shown to him for examination in presence of the Inquiry Officer. Also the applicant demanded photocopies of some documents, which were provided to him under intimation to the Inquiry Officer on 19/20.03.2007. Since, full opportunity



was provided to the applicant to examine the records demanded by him, the proceedings were in order.

6. As regards appointment of Inquiry Officer as well as the Presenting Officer by the respondent no.2 i.e. the Director, NRC for Groundnut, Junagarh, it has been submitted by the respondents that the same is in accordance with Rule 14(12) and 5(C) of CCS (CCA) Rules, 1965. The Director, NRC for Groundnut, Junagadh being the appointing and disciplinary authority in respect of the applicant was empowered to appoint the Inquiry Officer as well as the Presenting Officer.

7. It has been submitted by the respondents that the request of the applicant regarding the change of Inquiry Officer was duly considered by the Secretary, ICAR, New Delhi and Appellate Authority, but the said request was found devoid of any merit as communicated vide the ICAR Memorandum dated 5th/9th April, 2007. Since the applicant was provided full liberty to examine the documents/files during the course of inquiry, his complaint and grievance in this regard ^{are} is not tenable.

8. According to respondents, the decision taken by the disciplinary authority and punishment imposed is commensurate with the gravity of the charges established. It has been submitted that the report given by the Inquiry Officer and the observations made by the Police authorities are two separate things. Under no circumstances can the observation of the Police authorities supersede the report for the Inquiry



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Officer. Moreover, the Superintendent of Police, Hisar vide letter dated 19.04.2005 had suggested that disciplinary action could be initiated against the concerned employee since the amount in question was not deposited in the bank within the stipulated time.

9. It has been submitted that the Secretary, ICAR, New Delhi and Appellate Authority has disposed of the appeal having regard to all the points raised by the applicant as well as the relevant records concerning initiation of the disciplinary proceedings till it's culmination with the imposition of punishment of dismissal from service by the Director and Disciplinary Authority, NRC for Groundnut, Junagarh. The contention of the applicant that respondent no.1 had taken into account the past conduct to decide the penalty imposed on the applicant is without any basis.

10. With the above submissions, respondents have prayed for dismissal of the O.A. being devoid of merit.

11. Applicant has filed a rejoinder to the counter the contents of which read almost the same as averred in the O.A.

12. We have heard the learned counsel for the sides and perused the pleadings of the parties. We have also gone through the written notes of submission filed by both the sides.

13. The sequence of events is that while working as Assistant Administrative Officer(in short AAO), National Research Centre On Equines, Hisar, applicant was issued with a Memorandum of



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Charge dated 13.01.2005(A/1) under Rule 14 of CCS(CCA)Rules, 1965, under seven Articles of Charge as mentioned above wherein he was directed to submit his written statement of defence. In response to this, applicant replied vide A/2 dated 29.01.2005, the contents of which are as under.

"This is with reference to Memo No.4-58/PF/200/1075 DATED 14.01.2005 issued by your good-self proposing to hold an inquiry against the applicant under the Rule of the Central Civil Services(Classification, Control and Appeal) Rules, 1965 for submission of defence within 10 days of the aforesaid memorandum.

- a) In this respect it is respectfully submitted that with regard to the statement of Article of Charge as mentioned in the enclosed annexures with the aforesaid memorandum, the same very charges are the subject matter of FIR No.661828 under Section 409, 420, 467, 468, 471 & 477/4 IPC.
- b) That the subject matter of the aforesaid memorandum is paramateria with the aforesaid FIR, i.e., if the applicant discloses his defence in reply to the referred memorandum that would prejudice the defence to be taken by the applicant in the proceedings before the Criminal Court in the aforesaid FIR and as such initiation of departmental enquiry would not be justified till the conclusion of criminal case more particularly when the facts and the incidence in both the proceedings are common.
- c) It is a settled proposition of law as held by the Hon'ble Supreme Court of India in 1999 Vol.II RSJ - case 918 in case of Capt.M.Paul Anothony vs. Bharat Gold Mines Ltd. & Ors. that where the criminal action and the disciplinary

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proceedings are grounded upon the same set of facts then in that case the domestic enquiry should be stayed till the final outcome of the criminal case.

In the present case also the criminal proceedings and the disciplinary proceedings are based upon same facts on evidence and as such the applicant craves the indulgence of your good-self for staying the initiation of departmental proceedings till the conclusion of criminal case in FIR No.661828 in the interest of justice, equity and fair play for which the applicant shall be highly obliged and further the applicant requests to provide him the certified copies of the record which have been referred in the statement of Articles of Charge along with the relevant record.

The applicant is totally innocent and the charges filed against the applicant is not correct and the applicant reserves his right to disclose his defence subject to the outcome of the criminal case in the aforesaid FIR. It is also relevant to mention here that the applicant has also challenged his transfer from NRCWD Bhubaneswar (Orissa) to NRCE, HISSAR in the ground that Asst. Admn. Officer can't be transferred by the ICAR council HQ. The said matter is already pending before the Hon'ble Central Administrative Tribunal, Cuttack Bench, Orissa in O.A.No235/2003 fixed for 27.1.2015 wherein you are a proforma party and in case the transfer of the applicant is quashed by the Hon'ble CAT, Cuttack Bench, Orissa then in that case the Memorandum under reference would lose its significance.

The above facts are submitted for favour of your kind information".



14. In this connection, we would, at first like to note here that all the indictments under seven articles of charge pertain to the period while the applicant was working Assistant Administrative Officer at Hisar. Therefore, the submissions made by the respondents that applicant's transfer from Bhubaneswar to Hisar has nothing to do with the Memorandum of Charge(A/1) is wholesome and therefore, holds good.

15. The next vital point is that the Police authorities submitted a report dated 19.4.2005 to respondent no.3 intimating that the applicant had not misappropriated the money and that the applicant could be held responsible for keeping the money in the iron chest without depositing the same in the Bank for which the Institute had incurred a loss by not earning any interest on the said amount.

16. From the above, it is clear that there was no criminal case instituted and/or pending before any Court of Law against the applicant as on 19.4.2005 grounded upon the same set of charges forming the subject matter of Memorandum dated 13.01.2005. In the above background, we would like to examine as to whether the respondents were justified in rejecting the plea of the applicant for supply of copies of documents at the stage of submission of defence statement to the Memorandum of Charge 13.01.2005. In this connection, Rule-14(3) of CCS(CCA) Rules 15, 1965 reads as under.

(3) Where it is proposed to hold an inquiry against a Government servant under this rule



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and Rule 15, the Disciplinary Authority shall draw up or cause to be drawn up -

- (i) the substance of the imputations of misconduct or misbehavior into definite and distinct articles of charge;
- (ii) a statement of the imputations of misconduct or misbehavior in support of each article of charge, which shall contain-
 - (a) a statement of all relevant facts including any admission or confession made by the Government servant;
 - (b) a list of documents by which, and a list of witness by whom, the articles of charge are proposed to be sustained.

Further Clause-4 of Rule-14 reads as under:

"The Disciplinary Authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehavior and a list of documents and witnesses by which article or charges is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and state whether he desires to be heard in person".

Clause-11 reads as under:


"The Inquiring Authority shall, if the Government servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government servant may, for the purpose of preparing his defence -



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- (i) inspect within five days of the order or within such further time not exceeding five days as the Inquiring Authority may allow, the documents specified in the list referred to in sub-rule(3);"

17. On a harmonious construction of the above provisions of the statute, it is not expressly or impliedly apparent that at the stage of putting up defence to the Memorandum of Charge, a delinquent employee ought to have been supplied with copies of the listed documents by which articles of charges are proposed to be sustained. It is only a primary stage where the delinquent is required to either admit or deny the articles of charges leveled against him. For instance, if certain article of charge is admitted by the delinquent, in such eventuality, supply of copy of the listed document is redundant. Conversely, if certain article of charge is denied, then on appointment of the IO & PO to inquire into the charges, the applicant will have the right to inspect the required document under Rule-14(11)(i) as quoted above. Apart from the above, if a delinquent makes a request for supply of copies of documents other than listed documents, he can do so by indicating the relevance of those documents to be discovered or produced by the Government.

18. It is also not the case of the applicant that he had made a request for production of some other documents not listed under sub-rule(3) of Rule-14. Therefore, we do not find any illegality to have been committed by the respondents in not supplying him copies of the listed documents with a view to



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making his written statement of defence to the Memorandum of Charge. Consequently, there was nothing wrong in the matter of appointment of IO and PO vide order dated 28.12.2006 to enquire into the charges leveled against the applicant.

19. While the matter stood thus, applicant submitted representation after representation for change of enquiry officer, which however, was turned down by Respondent No.1 as per communication dated 14.03.2007(A/7), inter alia, holding as under.

- i) The charge sheet was issued to Shri Dilip Kar in January, 2005. He did not submit his reply to the charge sheet despite being reminded by the ...(illegible).
- ii) Once the Disciplinary Authority, i.e., Director, NRCG ordered to hold oral inquiry against him and the IO fixed the date of hearing (as on 20.02.2007), the CO requested (vide letter dated 05.02.2007) for change of IO and place of inquiry.
- iii) His request was examined by the Director, NRCG. It was observed that the incidents mentioned in the charge sheet and documentary & oral evidences relate to NRCE, Hissar. Further, the allegation of bias leveled against the IO was not established. Accordingly, his request was rejected vide letter dated 31.01.2007 and he was asked to attend the inquiry.
- iv) Despite this, the CO did not attend the hearing held on 20.2.2007 though he was informed by the IO (vide letter dated 17.01.2007) well in advance.
- v) Meanwhile, Shri Dilip Kar started making representation for withholding the inquiry. He started making allegations against...(illegible) .. and initiated action to

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complete the inquiry. The grounds cited by him for withholding the inquiry ~~does~~ not have any merit. Shri Kar is adopting dilatory tactics by not participating in the inquiry.

Keeping in view the above, the appeal of Shri Dilip Kar is rejected. He is informed that if he further adopts dilatory tactics and creates obstructions in the inquiry, the inquiry will proceed ex parte and decision will be taken on the basis of materials and evidence available”.

20. Though the applicant attended enquiry on 19.3.2007, yet he made a further appeal dated 21.03.2007(A/8) to the Secretary, ICAR reiterating his prayer for change of the enquiry officer, besides, supplying him some relevant documents. Respondent no.1 disposed of the said appeal vide Memorandum dated 5/9. 04.2007(A/9), the relevant part of which reads as under.

“Shri Dilip Kar has submitted (vide letter dated 21.03.2007) an appeal to the Secretary, ICAR against the appointment of Dr.R.K.Sethi, Pr.Scientist, CIRB, Hisar and Inquiry Officer. In his appeal, the charged Officer has alleged bias on the part of the Inquiry Officer. The Charged Officer has requested for change of Inquiry Officer on account of following grounds:

- i) The Inquiry Officer is partially related to the Article of Charge No.2 as he ~~did~~ had acted as Chairman of the committee while removing the charged Officer from the charge of DDO at NRCE, Hisar.
- ii) The Inquiry Officer remained silent to the bald statement of PO about availability of documents. It shows bias of the Inquiry Officer.
- iii) The Inquiry Officer did not provide him copies of defence documents and the

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Charged Officer was pressurized by the Inquiry Officer not to ask for more documents.

2. All the issues raised by Shri Dilip Kar in his representation have been considered and the following facts of the case emerged.

- i) The Director, NRCE, Hisar had vide order dated 14.12.2004 withdrawn various functions from Shri Dilip Kar, AAO, NRCE. Shri Kar denied vide note dated 01.12.2004 to hand over the charge of DDO to Dr.S.K.Khurana. The Director constituted a Committee (vide order dated 14.12.2004) under the Chairmanship of Dr.R.K.Sethi, Pr. Scientist, CIRB, Hisar to take over the charge of DDO from Shri Dilip Kar and hand it over to Dr.S.K.Khurana.
- ii) The charge framed (Article of charge No.2) against Shri Kar relates to non-deposit of Rs.5120/- (received by Shri Kar, DDO, NRCE on 1.07.2004) in the Accounts of the center. Therefore, Dr.R.K.Sethi is in no way connected with the charge framed against Shri Kar.
- iii) The prosecution has neither referred about the Committee under the Chairmanship of Dr.Sethi in the Article of Charge framed against Shri Kar nor relied upon the documents (dated 14.12.2004) put forward by the Charged Officer in the charge sheet against him. The Inquiry Officer has thus not expressed his opinion on the guilt of the Charged Officer at any stage. Keeping in view the above, the allegation of bias against the Inquiry Officer is unfounded.
- iv) During the Preliminary Hearing, the Charged Officer requested (vide letter dated 19.0.2007) to the Inquiry Officer to provide his copies of listed and defence documents. Most of the listed documents were provided to the charged Officer by the Presenting Officer. Thereafter, the Charged Officer requested (vide letter dated 20.0.2007) some more additional documents. These were also provided to him. The Charged Officer himself

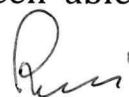
had confirmed during the inquiry about receipt of these documents.

- v) As such the inspection of documents by the Charged Officer is being done in accordance with the provisions of Rule 14 of CCS(CCA) Rules, 1965. The contention of the Charged Officer that documents were denied to him by the Inquiry Officer and he was pressurized by the Inquiry Officer not to ask for more documents is not corroborated from the records. Therefore, the allegation is not supported by any evidence or facts which corroborate the existence of bias or there is real likelihood of bias against Shri Dilip Kar.
- vi) Dr.R.K.Sethi was appointed as Inquiry Officer by Director, NRCG. He has neither conducted the preliminary inquiry against Shri Kar nor involved at any stage. Being an independent person(he is posted with CIRB, Hisar) there is no likelihood of his bias against Shri Kar.

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After his request for withholding the inquiry was rejected by the appellate Authority, he has now come up with a request to change the Inquiry Officer on the ground of alleged bias. From the above position, it is obvious that Shri Dilip Kar is perpetually coming up with new excuse to delay the proceedings. His request is devoid of any merit and hence rejected. He is again directed to cooperate with the inquiry proceedings as such dilatory tactics would compel the authorities to proceed ex parte".

21. Perusal of Memoranda dated 14.03.2007(A/7) and dated 5/9.04.2007(A/9) makes it explicitly clear that Respondent No.1 has duly applied his mind to each and every aspect of the grievance of the applicant regarding withholding the inquiry as well as change of I.O. On the contrary, applicant, as it appears, except making a bald statement regarding the change of IO on the ground of bias, has also not been able to establish this



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proposition by citing some material in that behalf. We are convinced that by rejecting the request of the applicant for change of IO, Respondent No.1 has not acted unfairly in contravention of any rule. This apart, applicant having not called in question nor challenged the legality or validity of Memorandum dated 5/9.4.2007(A/9), the same warrants no intervention.

22. It reveals from the record that applicant was supplied with a copy of written brief of PO vide A/10 dated 23/24.04.2007 requiring him to submit counter brief within a stipulated time frame and the applicant did reply to this vide A/11 dated 14.5.2007. It is also revealed from the order of the Disciplinary Authority dated 15.6.2007(A/12) that the departmental inquiry was conducted as per the prescribed procedures. Regarding the specific point of the communication of IO's report to the applicant, the following portion quoted from the order is of significance.

"Whereas the undersigned being the Disciplinary Authority tentatively agreed with the findings of the I.O. Accordingly, a copy of the inquiry report along with DA's tentative view was forwarded vide Memo F.No.5(283)/P/Estt./04/Part-II/472 dated 23.5.2007 to Shri Dilip Kar for making his submissions of any".

Whereas the Charged Officer in his reply dated 31.05.2007 did not make his submissions on the Inquiry Officer's report, but raised issue to change of Disciplinary Authority and appointment of ad hoc Disciplinary Authority to finalize his case. ..."

23. After the punishment of dismissal from service was imposed vide order dated 15.6.2007(A12), applicant remained

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silent without preferring any appeal. Subsequently, he moved the CAT, Ahmedabad Bench in O.A.No.291 of 2007 which was dismissed vide order dated 24.4.2009 on the ground that the applicant had approached the Tribunal without availing of the departmental remedies. Thereafter, applicant preferred an appeal dated 10.07.2009 (A/13) which having not been considered and disposed of, applicant again moved the CAT, Ahmedabad Bench in O.A.No.152 of 2010 and the said O.A. was disposed of with direction to the appellate authority, i.e., Res.No.1 to dispose of the appeal within a period of three months. Complying with the above orders of the Tribunal, appellate authority considered the appeal and rejected the same vide order dated 15.11.2010(A/14).


24. It is significant to note that after the order of punishment dated 15.6.2007 was passed by the disciplinary authority, applicant remained silent without preferring any appeal within the period prescribed for the purpose. Thereafter applicant filed O.A.No.291 of 2007 before the CAT, Ahmedabad Bench which was dismissed vide order dated 24.4.2009, as he had approached the Tribunal without availing of the departmental remedies. There is nothing on record to show that CAT, Ahmedabad Bench while dismissing the said O.A. had granted liberty to the applicant to prefer an appeal after the prescribed period of limitation. However, his appeal dated 10.07.2009 having not been disposed of, applicant again moved the CAT,

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Ahmedabad Bench in O.A. No. 152 of 2010 and the Tribunal having directed the authorities, the appellate authority disposed of the appeal vide order dated 15.11.2010. Whether the appeal was filed by the applicant within the period of limitation is not fully clear. However, we will not delve into this issue, because, we have the order of the appellate authority dated 15.11.2010 which is under challenge in this O.A.

25. One vital point the applicant has urged is that while working under Respondent No.3, disciplinary proceeding was initiated against him. Between and betwixt this proceedings, he was transferred to Junagadh under Respondent No.2, who appointed IO & PO to enquire into the charges. Therefore, applicant has questioned the legality of appointment of Respondent No.2 as the disciplinary authority. Applicant was transferred to the National Research Center for Groundnut Ivenagar Road, Junagadh, Gujarat while the departmental proceedings were on. So he came under the control of Respondent No.2 who then in exercise of his power as disciplinary authority appointed the IO and the PO. Merely because the incident involving the applicant happened when he was in the Institute at Hissar (NRCE), the competency of the present Disciplinary Authority, Respondent No.2 cannot be precluded. Therefore, the point raised by applicant is not sustainable.



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26. One of the recurrent themes in the facts of the case is the representation made by the applicant with a prayer to change the Inquiry Officer. This is on a presumptive ground that the IO would be biased against him. But the authorities have rejected the representation with convincing ground. The applicant has not given any material facts in support of his prayer. In fact, a charged officer cannot dictate terms to the Disciplinary Authority with regard to the appointment of IO. If he makes a prayer for change of IO, that should be with convincing grounds, which the authorities may consider. The facts of the case lead us to a conclusion that the representations were made by the applicant presumably with a purpose to stall or delay the departmental proceedings.

27. The applicant has urged that the appellate authority while disposing of his appeal petition did not take into account his specific submissions. On the other hand, he considered the past conduct of the applicant, and based upon such consideration confirmed the order of punishment. However, a perusal of the order of the appellate authority reveals to us that all points of submission made in the appeal petition were considered in detail by the Respondent No.1, i.e., the appellate authority. The appellate authority dealt with the past bad conduct of the applicant, while dealing with his contention in the appeal petition that he has an unblemished career. Therefore, it will be highly incorrect to say that appellate

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authority without confining himself to the issues in question, traversed back to the past record of service. In fact, he has only dealt with a point raised in the appeal petition itself, with regard to applicant's claim of unblemished past record, and in reply thereto has mentioned his past conduct as available in the service records pertaining to the applicant.

28. A disciplinary proceeding is in the nature of a quasi judicial proceeding. When such a proceeding is challenged in the Tribunal, the Tribunal is not supposed to re-evaluate the evidence based upon which the Disciplinary Authority has drawn his/her conclusion. The Tribunal's ^{Jurisdiction} ~~justification~~ is to reappraise the procedures that were followed with a view to verifying whether the statutory rules and procedures were followed and whether the principles of natural justice were adhered to. The Hon'ble Apex Court with regard to how Courts & Tribunals will dispose of matters of disciplinary proceedings has laid down the following principles as enunciated in the matter of *B.C.Chaturvedi vs.UOI & Ors. AIR 1996 SC 484, 1995 SCC(6) 749, C.A.No.3604 of 1988.*


"The Court/Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere whether the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence".

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It is crystal clear from the facts of the present case that the applicant has failed to bring up or establish any violation of rules, procedure and/or of the principles of natural justice, that would warrant interference by this Tribunal.

29. One more issue needs to be discussed in this order, and that relates to the plea of the applicant that the order of dismissal as a measure of punishment is not commensurate with the gravity of charges. The charges framed against the applicant mostly related to allegations of financial irregularity. Since all the charges were proved in the report of the I.O., the disciplinary authority imposed the punishment of dismissal, and the appellate authority after due consideration of the points raised in the appeal petition, upheld this order. The Tribunal has very little scope to interfere in the quantum of punishment. In this regard it is to be noted that a Constitution Bench of the Hon'ble Apex Court in ***State of Orissa & Ors. vs. Bidyabhusan Mohapatra (AIR 1963 SC 779)*** held that having regard to the gravity of the established misconduct, the punishing authority had the power and jurisdiction to impose punishment. The penalty was not open to review by the High Court order under Article 226 of the Constitution.

30. The Hon'ble Apex Court has also decided the law with regard to quantum of punishment in a disciplinary proceeding and the doctrine of proportionality in the case of ***Jai Bhagwan***



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vs. Commission^{or} of Police & Ors. C.A.Nos.5162-63 of 2013

reported in 2013(3) SLJ Page-56. The relevant position is quoted below.

"What is the appropriate quantum of punishment to be awarded to a delinquent is a matter that primarily rests in the discretion of the disciplinary authority. An authority sitting in appeal over any such order of punishment is by all means entitled to examine the issue regarding the quantum of punishment inasmuch as it is entitled to examine whether the charges have been satisfactorily proved. But when only such order is challenged before a Service Tribunal or the High Court, the exercise of discretion by the Competent Authority in determining and awarding punishment is generally respected except where the same is found to be so outrageously disproportionate to the gravity of the misconduct that the Court considers it to be arbitrary in that it is wholly unreasonable. The Superior Court and the Tribunal invoke the doctrine of proportionality which has been gradually accepted as one of the facts of judicial review. A punishment that is so excessive or disproportionate to the offence as to shock the conscience of the Court is seen as unacceptable even when the Courts are slow and generally reluctant to interfere with the quantum of punishment".

31. We have to test the order of punishment in this case on the touchstone of the law laid down by the Hon'ble Apex Court about the scope of judicial review of disciplinary proceedings. In the present case, there is no shocking excessiveness in the order of punishment as seen against the gravity of charges that have been proved against the applicant. We, therefore, hold the



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view that the quantum of punishment in this case need not be interfered with.

32. Based upon the above analysis, we have arrived at the conclusion that this O.A. is devoid of merit and is, therefore, dismissed, without any order as to costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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