CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

ORIGINAL APPLICATION No. 189/2010

Date of Order :24.05.2012

(Reserved on 09.02.2012)

HON'BLE MR. SUDHIR KUMAR, MEMBER (A)
HON'BLE MR. V. AJAY KUMAR, MEMBER (J)

Dr. Aminu Deen
Son of Shri Bulaki Khan,
Resident of 4-E-152, J N Vyas Colony,
Bikaner. -Applicant

(By Advocate: Mr. R.S. Saluja)

Versus

1. Indian Council of Agriculture Research
Through its Secretary, Krishi Bhawan,
New Delhi.

2. Dr. K M L Pathak, Dy. Director General,
Animal Science, ICAR, Krishi Bhawan,
New Delhi. -Respondents

(By Advocate: Mr. V.S. Gujar, for R-1
Mr. B. Khan, for R-2)

O R D E R

Mr. Sudhir Kumar, Member (A):

The applicant of this case is a Senior Scientist under the Indian Council of Agriculture Research (ICAR) who was promoted as a Principal Scientist in the year 2006. In the same year, a Notification was issued by the Agriculture Scientists Recruitment Board (ASRB, in short) inviting applications for filling up the post of Director, National Research Centre on Camel (NRCC, in short) at Bikaner. The private respondent, Respondent No.2 Dr. K.M.L. Pathak, had applied for the post along with 15 other persons. Thereafter, the applicant herein became aggrieved when the private respondent (Respondent No.2) was selected for the post, and he

filed an OA No. 105/2007 before this Jodhpur Bench of this Tribunal itself, challenging the private respondent's selection, stating that he did not possess the prescribed essential qualification. That OA came to be decided on 06.03.2009, with directions to the Governing body of ICAR to examine the matter. The applicant herein has stated that when the aforesaid case was going on, the private respondent (Respondent No.2) tried his level best to harass and harm the applicant herein. The contention of the applicant is that one official (not made a party in this OA) was in-charge of supervising the activity of cutting of trees in the campus of the NRCC, Bikaner, on 23.08.2008 and 25.08.2008. The applicant has alleged that the activity of cutting of trees was an illegal act, and that he tried to prevent that activity on 26.08.2008, which led to an altercation, leading to issuance of the impugned Annexure A-1 Memorandum and Articles of Charges dated 27.11.2008. The applicant has further stated that he had, in turn, filed a complaint with the Police against the private respondent (Respondent No.2) and two other officials of the NRCC at the concerned Police Station, in respect of offences under sections 382, 323 and 341 IPC, since his camera used in taking photographs of the unauthorized and illegal cutting of trees had been snatched away. The applicant's contention is that that complaint of his led to an FIR being filed by the police before the competent Court on 15.03.2010 and that the criminal case was still going on.

2. The contention of the applicant is that in response to the impugned Memorandum and Article of Charges Annexure A-1 dated 27.11.2008 mentioned above, he submitted his detailed

statement of defence on 08.12.2008 through Annexure A-6 (pages 44 to 69 of the OA). However, the Disciplinary Authority was not convinced with his reply, and a disciplinary enquiry was instituted against him. The evidence gathered during the disciplinary enquiry and the evidence of defence witnesses has been produced by the applicant as Annexures A-7, A-8 and A-9 (Pages 72 to 107 of the OA) including the examination of witnesses and their cross-examination etc. The Inquiry Officer thereafter submitted his report dated 16.10.2009 (pages 121 to 176 of the OA), which was duly forwarded to the applicant herein for his comments through Annexure A-10 (pages 118 to 120 of the OA). In this Annexure A-10 dated 18.02.2010, the Inquiry Officer's findings, were cited as follows:-

> "The Inquiry Officer has submitted his report dated 16.10.2009 and has given following findings:
>
> (a) Partially proved to the extent that Charged Officer scuffled in aggression with Shri Mahender Kumar Rao and Shri Satnam Singh.
>
> (b) It is proved beyond doubt that Charged Officer misbehaved with Dr. K.M.L.Pathak, Director, NRCC on 26.08.2008.
>
> "3. The Inquiry Report has been examined with reference to the records. It is observed that the Enquiry has been held as per procedure prescribed. The Disciplinary Authority viz. President, ICAR has given the following observations on the findings of the Enquiry Officer, as he (IO) has not appreciated the charge in totality.
>
> (a) Disciplinary Authority has tentatively decided to disagree with the findings of Enquiry Officer mentioned at Para 1 (a) above for the following reason:
>
> "In his findings, Enquiry Officer has concluded that no major manhandling / assault has occurred on 26.08.2008 but Dr. Aminu Deen abused and scuffled with Shri Satnam Singh, T-3 and Shri

Mahender Kumar Rao, T-5. On perusal of the inquiry report, it has been observed that Inquiry Officer has differentiated between major manhandling/ assault and scuffle. By making this differentiation between major manhandling, assault and scuffle, Inquiry Officer has held the article of charge as partially proved. While concluding his findings and holding the article of charge as partially proved, Inquiry Officer has held that this is case of scuffle in aggression and not that of major manhandling / assault citing the following reasons:

"There is no medico-legal report and proof of any injury/ wound.

"Director, NRCC, Bikaner in his complaint dated 26.08.2008, (i.e. the date of incident) addressed to Superintendent of Police, Bikaner did not mention the incident of physical fight.

"As a matter of fact, in the charge sheet, there is no such mention of any injuries and the incident of manhandling described in the imputation of misconduct (Annexure-II of the Charge Sheet contains the following acts/actions of manhandling done by Dr. Aminu Deen.

Slapping

Pushing

"Manhandling including scuffle. There is no such difference between manhandling and scuffle. Since the Enquiry Officer has held that scuffle has taken place, the charge of manhandling stands as proved. Therefore, Inquiry Officer has committed error by holding the charge as 'partially proved' by differentiating between scuffle and mishandling /assault. As a matter of fact, in the charge sheet only the word manhandling has been used and no such prefix major or minor have been used.

(b) Disciplinary Authority has tentatively decided to agree with the findings of Inquiry Officer mentioned at Para 2 (b) above.

"4. In view of the appreciation of evidence given above the charge that Dr. Aminu Deen acted in a manner unbecoming of Council's employee and violated provisions of Rule 3(1) (iii) of CCS (Conduct) Rules, 1964 as he abused and manhandled Shri Satnam Singh, T-3 and Shri Mahender Kumar Rao, T-5 in the office premises of N.R.C.C.Bikaner at about 4.45 pm on 26.08.2008

and also misbehaved with Dr. K.M.L. Pathak, the Director, N.R.C.C. stands proved.

"5. A copy of the Inquiry Report is hereby enclosed. Dr. Aminu Deen, Principal Scientist is hereby given an opportunity to make submissions on the findings of the Inquiry Officer and the reasons of disagreement of Disciplinary Authority with the findings of the Inquiry Officer as stated in Para 3 and the tentative view of the Disciplinary Authority indicated in Para 4 above within a period of 15 days of the receipt of this Memo failing which it would be presumed that he has nothing to say in the matter and further action, as per rules, will be taken in this case".

3. Since the Disciplinary Authority had disagreed with the findings of the Inquiry Officer, the applicant herein submitted his detailed reply to the Note of Disagreement through Annexure A-11 dated 06.03.2010 (pages 177 to 191 of the OA) addressed to the Director General, ICAR, New Delhi. However, [redacted] the Disciplinary Authority was not convinced with the reply, and the major penalty of compulsory retirement was imposed upon the applicant through Annexure A-2 dated 22.06.2010 (pages 28 to 35 of the OA). The applicant herein has submitted that the order of award of penalty has been passed by the Disciplinary Authority in a mechanical manner by overturning the defence of the applicant with predetermined objective, and the points raised in his representation have not been considered in proper spirit and intent. It is also submitted that the Disciplinary Authority has not given any heed to the multiple contradictions pointed out by him in his representation. The applicant is further aggrieved that he was placed under suspension on 09.09.2008, which lasted upto 31.08.2009, and no order of regularization of this period of his suspension has been passed so far, and that he has been victimized for his honesty, and performing his duty to bring home

the corruption and wrong doings and not on account of any fault. He was further aggrieved that in spite of this incident, and a criminal charge being pending in the Court of ACJM at Bikaner against private respondent (Respondent No.2), the latter has been further given promotion as Dy. Director General, ICAR.

4. In the result, the applicant had taken the ground of appeal that the charge sheet had been issued to the applicant on the basis of the findings of the preliminary enquiry conducted by the officers junior to him, and that the preliminary enquiry report was neither proved, nor relied upon as evidence in the inquiry, and thus, the very basis of charge sheet is non-existent and, therefore, the charge sheet Annexure A-1 itself cannot be sustained, in the eyes of law, and deserves to be quashed and set aside, as being violative of Articles 14, 21 and 311 of the Constitution of India. He, therefore, submitted that such an unproved document could not have been relied upon in the enquiry, as laid down by the Hon'ble Apex Court in Union of India Vs. S B Ramesh 1998 (2) SLJ 67 (SC).

5. The applicant has further assailed the procedure of the enquiry and has stated that he was denied a reasonable opportunity to defend his case, and, therefore, the enquiry has to be held to have been vitiated on this count alone, and penalty order against him cannot be sustained. He further took the ground that all the actions of the respondents have been tainted with bias and unfairness, and that for no fault of his he has been implicated falsely in a case of no evidence. He further stated that the Enquiry Officer has held the applicant guilty on a charge different than that which was included in the charge sheet, and,

therefore, had no basis. He further submitted that even thereafter the Disciplinary Authority had partly disagreed with the same, and ~~had~~ had held scuffling as included in manhandling, though there was no independent evidence to support any of the charges levelled against him. He had, therefore, submitted that the Disciplinary Authority has imposed the penalty without proper application of mind, and the impugned penalty order cannot be sustained in the eyes of law and deserves to be quashed, being violative of Articles 14, 21 and 311 of the Constitution of India. He further submitted that the penalty imposed on him is disproportionate to the alleged misconduct against him, and the impugned order cannot be sustained and deserves to be quashed. In the result, the applicant had prayed for the impugned Annexures A-1 and A-2 to be quashed and set aside and the respondents to be directed to allow all consequential benefits to the applicant as if the impugned orders were never in-existence. He had prayed for the relevant records of the case file of the disciplinary proceedings to be produced before the Tribunal, or any other directions or orders to be passed in his favour, which may be deemed just and proper under the facts and circumstances of the case, in the interest of justice, apart from costs being awarded and a heavy penalty to be imposed on the Respondent No.2 for his malicious act. Interim relief had also been prayed for by the applicant, but the same was not granted and the matter was straightaway taken up for final hearing.

6. In their reply written statement filed on 03.11.2010, the respondent authorities filed a reply on behalf of the official respondents with an affidavit under the verification of one Shri

S.K. Singh, Law Officer, ICAR Hqrs. Krishi Bhawan, New Delhi. Thereafter, the private Respondent (Respondent No.2) also filed another affidavit on 03.11.2010 through the same Standing Government counsel who had appeared for the official respondents also. Thereafter, a separate Vakalatnama was filed by another Advocate appearing on behalf of Respondent No.2, with the submission and request for being permitted his adopting the reply affidavit filed on behalf of Respondent No. 2 earlier.

7. The applicant filed a detailed rejoinder on 10.02.2011 to the reply filed by the official respondent, Respondent No.1, and another rejoinder to the reply filed by the private respondent (Respondent No.2) on the same date. Thereafter on 28.04.2011, an additional reply was filed on behalf of Respondent No.1 once again through the affidavit verified by the same Shri S.K. Singh, Law Officer, ICAR Hqrs., Krishi Bhawan, New Delhi. The applicant thereafter chose to file a second rejoinder on 08.12.2011 in the form of an additional affidavit in order to further clarify the submissions already made in the OA and the rejoinders.

8. In their reply written statement dated 03.11.2010, the official respondents had made a submission that after considering the records of the enquiry, the facts and circumstances of the case and the submissions of the Charged Officer in response to the Enquiry report, the Disciplinary Authority had observed that the applicant herein had indulged himself in an act of gross indiscipline by misbehaving with the Director of the Institute and abusing and manhandling two office colleagues, and that the charge against him was so very serious that the gravity of the

charge demanded severe punishment, because of which the Disciplinary Authority had imposed the penalty of "Compulsory retirement". The allegation of the applicant that proper procedure was not followed by the Disciplinary Authority was stoutly denied. It was submitted in the reply written statement that the Hon'ble Apex Court had in the case of Union of India v. Parma Nanda, (1989) 2 SCC 177, held that if the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the competent authority, since Statute confers the power to impose penalty on a delinquent officer on the competent authority.

9. It was submitted that the episode of landscaping and cutting of unwanted trees in the campus of the NRCC had been exaggerated out of proportion by the applicant, while the Private respondent (Respondent No.2) was exercising his legitimate powers in this regard, as the Director of the Institute. It was submitted that the applicant had himself indulged in unlawful acts in threatening two employees who were involved in the work of landscaping and cutting of Eucalyptus trees in the Campus, which trees had been ordered to be removed by the private respondent (Respondent No.2), as it is water excavator and soil destroyer, and the litter of these trees decreases soil fertility, and adversely affects soil micro-flora, and the roots move sparse than deep and hence it results in depletion of soil surface water without replenishment of water and nutrients, and hence it is not suitable for the arid and semi-arid region like Rajasthan. It was further submitted that since these trees were also posing a serious threat to the High

Tension electricity line, which could have resulted into untoward incident at any time, therefore, there was no illegality in felling these trees and that the applicant has tried to make a mountain out of a molehill.

10. It was further submitted that in spite of the complaint filed by the applicant, on which an FIR which was registered before the Hon'ble Court of ACJM, Bikaner, no criminal case is pending against private respondent (Respondent No.2), and the matter is sub-judice in respect of only the other two employees who had been named by the applicant as having snatched his camera. It was further submitted that since the Preliminary Enquiry was not a formal disciplinary Enquiry, and was not against the applicant, that enquiry was not required to be conducted by the officers senior in rank to the applicant, and that it was rightly not produced as a piece of evidence in the departmental enquiry against the applicant, since the findings of the Preliminary Enquiry were only for the purpose of being appreciated by the Disciplinary Authority, and it was the decision of the Disciplinary Authority alone thereafter to initiate disciplinary proceedings against the applicant under Rule 14 of CCS (CCA) Rules, 1965.

11. Enclosing a copy of the fact-finding Preliminary Enquiry report, the official respondent (Respondent No.1) had pointed out that the decision of the Disciplinary Authority was arrived at after perusing the fact finding enquiry report by the Disciplinary Authority, and an eminent Director of a reputed Institute was appointed as the Enquiry Officer, and ample opportunity was afforded to the applicant, and all the witnesses were examined and

cross-examined, including the defence witnesses.. It was further submitted that even though in the Daily Order Sheet dated 19.06.2009, the applicant had asked for three persons to be allowed as Defence Witnesses, however since two of them wrote to the Enquiry Officer that they were ignorant of the incident, and do not know anything about the same, and they should be exempted from the appearance, their plea was allowed and there was nothing illegal in the Enquiry Officer not having insisted upon those unconcerned persons to be brought as Defence Witnesses, only at the instance of the present applicant/delinquent official.

12. It was further reiterated that the departmental enquiry was conducted strictly in accordance with the rules and procedure prescribed, and ample and adequate opportunity was provided to the applicant to put up his defence, and all the procedures prescribed under the CCS (CCA) Rules, 1965, were followed. It was further submitted that whenever the applicant refused to examine or cross-examine the witnesses, he did so on his own volition, and that the applicant has failed to point out even an iota of illegality in action taken against him, and that the findings arrived at during the course of Enquiry are based on factual foundation and abundant evidence available on record, and are perfectly legal, valid, and in consonance with the service law jurisprudence. It was submitted that both the Enquiry Officer and the Disciplinary Authority had considered the view points of the Charged Officer and the Presenting Officer, and have also taken their replies and written briefs into consideration that were made available on record.

13. It was submitted that it is settled law that a Tribunal or Court will not sit in appeal over the findings of the Enquiry Officer, nor the Tribunal or Court is required to examine the nature of the evidence which was led, as if it was a criminal trial. In this context, the respondents cited the case of State of U.P. v. Man Mohan Nath Sinha, (2009) 8 SCC 310. It was submitted that the applicant has tried to portray a totally false picture of the process of enquiry conducted against him, culminating in the decision of the Disciplinary Authority, the President of ICAR i.e. the Union Agriculture Minister.

14. On the point of selection and appointment of private respondent (Respondent No.2) as Director NRCC, Bikaner, it was submitted that the decision was made by the ASRB, which is an expert body, and his selection was done in most fair, just and unbiased manner, as he is a Scientist of repute. It was, therefore, submitted that the grounds as taken by the applicant do not have any legs to stand upon, and that nothing wrong, illegal or irregular has been done by the respondents in having conducted the disciplinary enquiry against the delinquent Government official, the present applicant. On the point that the Tribunal or a Court may not like to interfere in exercise of discretion in imposition of punishment by the Disciplinary Authority or Appellate Authority, and ordinarily the Court or a Tribunal may not substitute its opinion on reappraisal of facts, the respondents cited the case of UT of Dadra & Nagar Haveli v. Gulabhia M. Lad, (2010) 5 SCC 775, in which the Hon'ble Apex Court had laid down the law that the scope of judicial review is limited to the deficiency in decision making process, and not the decision itself. In the result, the

respondents had prayed that the OA deserves to be rejected, and cost should be awarded in favour of the answering respondents.

15. In his separate affidavit, the private respondent (Respondent No.2) had submitted that the burden of establishing malafide lies very heavily on the person who alleges such malafides, and the pleadings of the delinquent official, the applicant in this OA, are thoroughly vague and without any factual foundation. With reference to malafides alleged, it was submitted that any inference of malafides has to be based on factual matrix, and such factual matrix cannot remain in the realm of insinuation, surmise or conjecture, as the applicant herein has tried to do. All the other averments of the applicant against him were stoutly denied by the private respondent, and it was submitted that he had never acted against the applicant with malafide intention, but had only performed his duty as the Director, NRCC. With these submissions, it was prayed that the OA may be dismissed, and unsupported allegations of malafide against him may not be sustained by this Tribunal.

16. In his rejoinder dated 10.02.2011, the applicant more or less reiterated his submissions already made in detail in the OA, and tried to explain the facts of the case of the incident, which had taken place on 26.08.2008, which is already the subject matter of a criminal case, and we need not go through about that in detail. He had further alleged procedural mistakes on the part of the Enquiry Officer, and that the appreciation of evidence adduced during the course of the enquiry by the Inquiry Officer was faulty, and that there are lot of contradictions in the report of the Enquiry

Officer, because of which inconsistent conclusions have been drawn. He, therefore, prayed for the OA to be allowed. As Schedule-I to the rejoinder, he had produced documents as Annexures A-12 to A-36, from pages 337 to 467, much of which contained additional facts, which need not be mentioned here.

17. The applicant had also filed another rejoinder in reply to the written statement of Respondent No.2, and had stated that the affidavit filed by the private respondent is not in-conformity with the CAT Rules of Practice, 1993, and cannot be considered as Para-wise reply to the OA filed by him. He had further submitted that a bare perusal of the sequence of events as described by him as compared to the reply of the second respondent would show the factum of malafide on the part of the second respondent, who had tried to harass and harm him, so as to be able to ~~average~~ avenge the applicant questioning his illegal appointment. He, therefore, again reiterated that the affidavit of the private respondent (Respondent No.2) deserves to be rejected and prayed for the OA to be allowed.

18. The official respondents chose to file an additional reply on behalf of Respondent No.1 in view of the rejoinder submitted by the applicant raising new points, by placing on record documents Annexures A-12 to A-36, which had not been filed by him along with the Original Application. It was further submitted that in the case of B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749, the Hon'ble Apex Court has laid down the law that the power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the Court. It

was further laid down that the Court/Tribunal in its power of judicial review does not act as Appellate Authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Hon'ble Apex Court had further emphasized that the Disciplinary Authority is the sole judge of facts, and where appeal is presented, the Appellate Authority has coextensive power to re-appreciate the evidence, or the nature of punishment. In a disciplinary enquiry, the strict proof of legal evidence and findings on that evidence are not relevant, and the adequacy or reliability of the evidence adduced during the disciplinary enquiry cannot be permitted to be canvassed before the Court/Tribunal. It was reiterated that a writ of certiorari could be issued only if the conclusion reached by the Disciplinary Authority, upon consideration of the facts before it, is perverse, or suffers from patent error on the face of the record, and is based on no evidence at all, as laid down earlier in the case of Union of India & Ors. v. H.C. Goyal, AIR 1964 SC 364.

19. It was further submitted that though in the order/judgment dated 06.03.2009, on the applicant's earlier OA No. 105/2007, this Tribunal had directed the Governing Body of the ICAR to consider and pass a speaking order within three months of the receipt of the order. But since the Governing Body, of the ICAR Society is chaired only by the Director General of ICAR, and is not the highest body, and in fact the President, ICAR and Hon'ble Union Minister is the highest administrative/executive authority, he only was the appropriate authority, and in this case also the President of the ICAR alone has considered the case of the applicant herein. It was further stated that in the previous case filed by the applicant, concerning the

appointment of Director of NRCC, after following the required procedure, model qualifications were prescribed for the post of Director, it being a Research Management Position (RMP), and its requirements were sent to the ASRB, and that the speaking order dated 14.05.2009 had been passed in consultation with the ASRB, and with the approval of the Union Agriculture Minister and the President of ICAR Society, who is the highest authority of the ICAR Society. It was further submitted that the applicant had failed to challenge or assail that order of the President of the ICAR Society, while he is assailing in this case the quantum of penalty imposed upon him by the same President of ICAR.

20. It was further submitted that the Departmental proceedings against the applicant have been conducted strictly as per the rules of procedure prescribed in this regard, and the applicant has unnecessarily brought certain irrelevant Annexures on record through his rejoinder, for introducing new pleadings and facts, for the purpose of forcing this Tribunal to undertake an exercise of re-appreciation of evidence against him, and re-hearing on the issues, which are otherwise strictly within the domain of the Disciplinary Authority (and the Appellate Authority) alone, who have already assessed and appreciated the evidence, and had arrived at a finding thereupon.

21. It was further submitted that if the applicant was aware that some additional evidence could have been produced during the departmental enquiry, it was the duty of the applicant as the delinquent official to bring it before the Enquiry Officer during the course of his defence, which he had failed to do, and he cannot

now be allowed to produce that evidence before this Tribunal. It was, therefore, submitted that the issues as raised by the applicant through his rejoinder are beyond the scope of judicial review, as laid down in the cases of B.C. Chaturvedi (supra), Union of India v. G. Gunayuthan, 1997 (7) SCC 463, Bank of India v. Degala Suryanarayana 1999 (5) SCC 762, and High Court of Judicature at Bombay v. Shashi Kant S Patil 2001 (1) SCC 416. It was submitted that the applicant is calling upon this Tribunal to enter into the task of re-appreciation of evidence, to arrive at a different view other than that of the Enquiry Officer, or the Disciplinary Authority, which is beyond the scope of judicial review, and is not sustainable in the eyes of law.

22. The applicant thereafter filed another affidavit dated 08.12.2011, to further clarify the submissions already made by him in the OA and his two rejoinders. Through this, he has brought on record another Annexure A-37, being the evidence of private respondent, Respondent No.2, during his examination in Chief during the departmental enquiry. He tried to submit that this document is sufficient to show that the Respondent No. 2 had borne ill will and malafide attitude towards the applicant. It was further submitted by him that Respondent No.2 had taken different stands in regard to the same incident while filing the complaint with the Police, and the complaint to the Deputy Director General, and while giving his evidence under Section 161 Cr.PC, and before the fact finding committee, and during the course of the departmental enquiry, a comparative chart of which was produced by him as Annexure A-40. The applicant had then once again prayed for the OA to be allowed.

23. Heard in detail. Both sides were represented through senior counsels. Shri R.S. Saluja appearing for the applicant explained in detail the facts of the case, and the contents of the OA, the two rejoinders, and the one additional reply filed by the applicant on 08.12.2011. In essence, he repeated the various contentions of the applicant as already detailed above, and made three legal points to assail the process or procedure adopted by the respondents in conducting the departmental enquiry. Firstly, he contended that the Preliminary Enquiry report was relied upon by the respondents for arriving at their conclusions in the Departmental Enquiry, though no copy of the same was given to the applicant. Secondly, it was submitted that the applicant was not permitted to cross-examine the authors of the Preliminary Enquiry report during the presentation of his defence before the Enquiry Officer. Thirdly, he assailed that the applicant's reply to the Note of Disagreement by the Disciplinary Authority served through Annexure A-10 dated 18.02.2010 was not covered in the final order passed by the Disciplinary Authority through Annexure A-2 dated 22.06.2010. The learned counsel for the applicant argued the case vehemently and relied upon the following judgments:-

i) AIR 1972 SC 330; M/s Bareilly Electricity Supply Co. Ltd. vs. The Workmen and Others.

ii) 1998 (2) SLJ 67; Ministry of Finance & Anr. V. S.B. Ramesh

iii) AIR 1999 SC 2407 Bank of India and Another v. Degala Suryanarayana

iv) AIR 1970 SC 1263 State of U.P. & Ors v. Ram Naresh Lal

v) AIR 2001 SC 24 Kumaon Mandal Vikas Nigam Ltd. v. Girija Shankar Pant and Others

vi) 2006 SCC (L&S) 840 Narinder Mohan Arya v. United India Insurance Co. Ltd.& Others

vii) 1998 SCC (L&S) 1783 Punjab National Bank and Others v.Kunj Bihari Mishra

viii) 1999 SCC (L&S) 804 Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Ors.

ix) 2006 SCC (L&S) 1121 G.M. Tank v. State of Gujarat & Ors.

x) AIR 2010 SC 1105 Ms. G. ValliKumari Vs. Andhra Education Society & Ors.

24. The focus of the arguments of the learned senior counsel for the applicant was that the applicant was a whistle blower in the organization, and when he protested against the appointment of the private respondent (Respondent No.2) as the Director of the Institute where he was working, through an OA, alleging that a person not properly qualified could not be appointed Head of a Research Institution like NRCC, the private respondent (Respondent No.2) became inimical towards the applicant, and that the entire disciplinary proceedings were engineered in order to see him out of the Organization. The learned senior counsel for the applicant also emphasized that proper opportunity of defending himself had not been accorded to the applicant during the course of the disciplinary enquiry, and the Preliminary Enquiry report prepared by his juniors had been unduly relied upon by the Enquiry Officer during the enquiry, and by the Disciplinary Authority while ordering the punishment of his dismissal from service.

25. The learned senior counsel for the applicant also submitted that when the charge framed was not broken into two separate portions, Para-2 (a) and 2 (b), in the Memorandum and Article of Charge itself, neither the Enquiry Officer nor the Disciplinary Authority could have taken it upon themselves to have broken up the charge into two separate portions/sub-paragraphs 2(a) and 2 (b), and then arrived at findings separately on the two. The learned counsel for the applicant also submitted that when the Enquiry Officer had held that no incident had taken place on 26.08.2008, or that the guilt of the applicant in respect of the alleged incident had not been proved, the Disciplinary Authority had indulged in unnecessary nit picking and semantics in trying to justify that the incident, about which the Enquiry Officer had concluded that no major manhandling/assault had occurred on 26.08.2008, but that applicant had only abused and scuffled with two of the employees of the Institute, since there is no difference between man–handling and scuffle, and the imputation of misconduct Annexure A-2 of the Charge Sheet had stated that the applicant had indulged in acts and actions of manhandling like slapping and pushing, the charge of manhandling stands proved, and that thus the Enquiry Officer had committed an error by holding the charge as partially proved by differentiating between ~~with~~ major manhandling/assault.

26. He further submitted that in the Dissent Note, the Disciplinary Authority had also noted that the Charge Sheet had used only the word manhandling, and no such prefix major or minor has been used, and this combined with the fact that there was no legal report or proof of any injury, and the absence of the

mention of any incident of physical fight in the complaint addressed by the Director, NRCC, to the SP Bikaner, could not have persuaded the Disciplinary Authority to try to distinguish the issue in the manner which had been done in the Dissent Note Annexure A-10 dated 18.02.2010. The learned counsel for the applicant, therefore, submitted that from the Note of Disagreement itself, it is apparent that the Disciplinary Authority had made up its mind to impose penalty upon the applicant even before communicating the Note of Dissent with the findings of the Enquiry Officer, and even before considering the reply of the applicant.

27. On the other hand, the learned senior counsel for the respondents submitted that the Hon'ble Apex Court has held in a number of cases about the standard of level of conduct expected from the persons in higher positions. He submitted that a Principal Scientist Officer of the National Level Research Institute is expected to be much more dignified in his conduct, than the conduct of the applicant has been in the instant case. It was submitted that no procedural irregularities had been committed by the respondents, and that a lacuna in the findings arrived at by the Enquiry Officer was observed, inasmuch as when the incident of slapping by the applicant was proved, and it was established that a scuffle took place, manhandling of the persons was necessarily to be taken as a part of the scuffle, as the word 'scuffle' is used only when two persons are involved in a physical manhandling, of either by both, or by one person of the other. The learned counsel for the respondents justified the actions of the Disciplinary Authority in holding that the high level of the conduct expected

from a Principal Scientist of a National Level of Research Institute was not explained by the applicant in his conduct through out, and that the authorities concerned have not taken any action in a vindictive manner, and have gone along only on the basis of the evidence adduced during the course of the disciplinary enquiry.

28. We have tried to carefully weigh the substance in the pleadings and arguments of both sides. We are also conscious of the fact that the scope of judicial review is quite limited, inasmuch as the Hon'ble Apex Court has laid down the law very clearly in this regard that Courts or Tribunals cannot re-appreciate the evidence adduced during the departmental enquiry, which appreciation of evidence is the job of the Enquiry Officer, the Disciplinary Authority, the Appellate Authority, and the Review/Revisional Authority, where prescribed for. The Hon'ble Apex Court has also held that the Courts or Tribunals are not supposed to re-appreciate the evidence, as if acting as an Appellate Authority, and cannot arrive at conclusions of their own on an independent basis, upon the evidence adduced during the disciplinary enquiry, because that exercise of re-appreciation of evidence lies outside the scope of judicial review. The Hon'ble Apex Court has also held that the Courts or Tribunals ought to be concerned more with the principles of natural justice having been followed, proper opportunity of hearing having been given to the delinquent Government official, the correct and proper procedure for conduct of disciplinary enquiry to have been followed, and to ensure that the findings of the Disciplinary Authority or the Appellate Authority or the Review/Revisional Authority where such review/revision lies, are arrived at independently, on their own

appreciation of the evidence adduced, and are not arrived at the behest of any outside Institution like the Central Vigilance Commission, or the CBI etc, who have no role to play in the conduct of the Disciplinary Enquiry under CCS (CCA) Rules, 1965..

29. The applicant is a very well read and educated person, and in-fact in another one of his cases, he himself argued the case, and won the case before the Tribunal. It is not as if the applicant was unaware of the effect, or the outcome, or the result of his actions. From his pleadings in this and the other OAs, the applicant also appears to be a pro-active person, who sees himself in the role of a whistle blower.

30. However, in this case the applicant has not been able to prove either any particular reasonable doubt, or on the basis of preponderance of probabilities, that the private respondent (Respondent No.2) necessarily had been inimical towards him, even though the applicant had failed in his effort to dislodge him from the post of Director of the Institute, by alleging in the earlier OA filed by him that the private respondent (Respondent No.2) was not qualified to be selected for such Directorship of a National Level Research Institute. It is trite law that malafide has to be not only alleged, but proved beyond any reasonable element of doubt. The applicant has not brought on record any other incident, ~~or any other incident~~, or any other action on the part of the private respondent (Respondent No.2), between the date of his joining, and the date of the incident dated 26.08.2008, which led to the present disciplinary proceedings, through which he could show that the

private respondent (Respondent No.2) had a pre-meditated intention to harm him, which could have gone on to prove his malafides against the applicant.

31. Also, in any case, here the private respondent (Respondent No.2) has had no role to play, except that of being a witness in the conduct of the disciplinary enquiry proceedings against the applicant. The enquiry was conducted by another Director of a National Level Research Institute, who is a National/International authority in his own field. The applicant has also not alleged any discrepancy in the conduct of the disciplinary enquiry conducted against him by the Enquiry officer. Therefore, up to the date of submission of the report of the Enquiry Officer, the applicant cannot be said to have a case to agitate before this Tribunal.

32. In effect, the grievance of the applicant is that the Chairman of the ICAR and Hon'ble Union Minister of Agriculture, was persuaded to disagree with the findings arrived at by the Enquiry Officer by the circumstances and the presentation of the case before him when his Note of Disagreement was communicated to the applicant through Annexure A-10 dated 18.2.2010.

33. We have not been able to find out or discern any illegality, or impropriety, or imperfection in the Note of Disagreement as communicated to the applicant through Annexure A-10. It is seen that the Note of Disagreement had given the logic for the disagreement, and had indicated the intention of the Disciplinary Authority, and disclosed application of mind to disagree with the findings arrived at by the Enquiry Officer, though not in very great

detail. To our mind Annexure A-10 Note of Disagreement cannot also be faulted on the basis of procedure as prescribed under law.

34. The learned senior counsel for the applicant had taken much objection to the breaking up of the charge Memorandum Annexure A-2, into two parts Paragraphs 2 (a) and 2 (b) unnecessarily for the purpose of the findings arrived at by the Enquiry Officer, and the Note of Disagreement communicated by the Disciplinary Authority. We do not find that this can be termed as an illegality or impropriety, inasmuch as if a charge was framed through a long sentence, it could be broken up into two separate portions of allegations joined together in a single sentence. Therefore, neither the Enquiry officer nor the Disciplinary Authority were wrong in treating those two portions of a single sentence as Charge 2 (a) and 2 (b), as has been done in the instant case. Therefore, the objections of the learned counsel for the applicant in this regard are rejected.

35. Nowhere has the applicant been able to prove that no incident whatsoever took place in the evening of 26.08.2008. In fact, he himself had lodged a complaint with the Police, which led to an FIR being filed by the Police before the learned Judicial Magistrate regarding his mobile having been lost/stolen during the scuffle/altercation/manhandling, which incident occurred in the evening of 26.08.2008. Since the private respondent (Respondent No.2) was apparently not present on the spot throughout when the incident took place, the police ultimately dropped him from the charge sheet filed by them before the learned Judicial Magistrate, but this is proof enough that something in the nature of an

untoward incident did take place, which had led to two counter complaints being filed with the Police, leading to two counter FIRs being registered by the Police, one filed by the applicant, and another from the side of the Director of the Institute , private respondent (Respondent No.2), narrating the story as elicited from the employees of the Institute involved in the incident.

36. The applicant has not been able to effectively deny that he did involve or indulge in pushing/slapping of junior employees of the Institute, who were involved in cutting of the Eucalyptus trees on the instructions of the private respondent (Respondent No.2). This obviously was not a part of the duties of a Principal Scientist of a National level Research Institute. Trying to collect evidence of alleged wrong doing on the part of the other employees, in order to frame them, and the Director of the Institute, by taking photographs through his mobile camera etc., are not actions which could have furthered the cause of research for which the applicant had been engaged by Union of India, and was being paid salary as a Principal Scientist. Even if a wrong had been committed in cutting trees unnecessarily, in the name of landscaping, or for any other reasons whatsoever, on the instructions of the Director of the Institute, spying on it obviously did not concern the duties of the applicant herein, which was to conduct research on Camels at the NRCC.

37. Even in the face of the numerous case laws cited by the learned senior counsel for the applicant, and the arguments so vehemently put forward by the learned senior counsel on behalf of the applicant, we find that the conduct of the applicant himself has

perhaps not been above board at all points of time, as the nation would expect from a Principal Scientist of a National level Research Centre, who was being paid very high salary only for conducting research on Camels, and not for spying upon the activities of much junior staff, whether such activities were authorized or unauthorized.

38. The applicant has been provided full opportunity of being heard, and presenting his case, by both the Enquiry Officer, as well as by the Disciplinary Authority. The Disciplinary Authority in this case being the Hon'ble Union Minister of Agriculture and Chairman, ICAR himself, the applicant does not have recourse of a provision for an appeal or revision thereafter at his level of seniority in the scientific hierarchy of the nation.

39. In these circumstances, when the Disciplinary Authority has found that applicant herein had erred on the wrong side of the conduct expected from him as a Principal Scientist of a National level Research Institute, and looking into the nature of charges proved against the applicant, and the evidence gathered during the disciplinary enquiry, if the Disciplinary Authority, i.e., the Chairman, ICAR and Hon'ble Union Minister, had arrived at a conclusion that the applicant herein did not deserve to continue as a Principal Scientist at a National Level Research Institute, we do not find anything shocking to our conscience in such a conclusion having been arrived at.

40. The Hon'ble Apex Court has held that the Courts or Tribunals should not interfere in disciplinary matters, and that the quantum of punishment imposed can be interfered with only if it

shocks the conscience of the Court. But, in this case, we are not shocked by the quantum of punishment, but are rather shocked that a person who had everything other than research on Camels on his mind, could rise upto the level of a Principal Scientist in a National level Research Institute, and be a burden on the exchequer and tax payers' money for many long years!!!

41. In the result, we do not find any merit in the OA whatsoever, and the OA is, therefore, rejected, but since the applicant has already been compulsorily retired from service, there shall be no order as to costs.

(V. AJAY KUMAR)
MEMBER (J)

(SUDHIR KUMAR)
MEMBER (A)

cc.

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