

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**Original Application No.81/2013
with
Misc. Application No.276/2013**

Jodhpur this the 03rd day of January, 2014

CORAM

**Hon'ble Mr. Justice Kailash Chandra Joshi, Member (J),
Hon'ble Ms. Meenakshi Hooja, Member (A)**

Dr. Aminu Deen S/o Shri Buklaki Khan, aged about 54 years, R/o 4-E-152, Jai Narain Vyas Colony, Bikaner, last employed on the post of Principal Scientist in Central Sheep and Wool Research Institute, Malpura, Avikanagar-304501, District Tonk (Raj.).

.....Applicant

Applicant present in person.

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.
3. Mr. Rajeshwar Dayal, SO, Division of Personnel, ICAR, Krishi Bhawan, New Delhi.
4. Mr. J.Ravi, Director, Division of Personnel, ICAR, Krishi Bhawan, New Delhi.
5. Mr. Rajeev Mangotra, Deputy Secretary, Division of Personnel, ICAR, Krishi Bhawan, New Delhi.
6. Shri Satnam Singh, National Research Centre on Camel, Bikaner.
7. Shri Mahender Kumar Rao, National Research Centre on Camel, Bikaner.
8. Director, NRC on Camel, Bikaner.

.....Respondents

Mr. A.K. Chhangani, Advocate, counsel for respondents.

21

ORDER (Oral)

Per Justice K.C. Joshi, Member (J)

By this OA, the applicant has challenged the chargesheet dated 27.11.2008 (Ann.A/1) and has prayed for the following reliefs:

- i. That the Charge Sheet Memorandum 3 (38)/2008-Vigilance (D) dated 27.11.2008 of ICAR may please be quashed and entire proceeding based on this charge sheet and Order issued by ICAR may please be quashed.
- ii. That applicant may please be re-instated on his original post with all benefits released as per rules.
- iii. That the costs of this application may be awarded and a heavy penalty be imposed on the respondents for their malicious act.
- iv. Appropriate action may please be taken against Dr. K.M.L. Pathak, Shri Satnam Singh, Shri Mahinder Kumar Rao, Mr. J.Ravi, Mr. Rajeev Mangotra, for false proceedings against the applicant.

2. Brief facts of the case, as stated by the applicant, are that the Chargesheet dated 27.11.2008 against the applicant was not issued either by the disciplinary authority or by any competent authority after seeking approval of the disciplinary authority, but it is a fake document fabricated by Shri Rajeshwar Dayal (respondent No.3), Mr J.Ravi (respondent No.4), and Mr. Rajeev Mangotra (respondent No.5) presumably for illegal gratification from Dr. K.M.L. Pathak (respondent No.2). whose selection as Director of NRC on Camel, Bikaner in the year 2006 was challenged by the applicant through OA No.105/2007. It is alleged that respondent No.3 and 4 fabricated a draft chargesheet (Ann.A/2) against the applicant and submitted it to the Vigilance Section of ICAR and respondent No.5 modified the fabricated charge sheet for a non-existing incidence and issued it without seeking approval of the Disciplinary Authority. The applicant has further stated that the witnesses cited in the chargesheet are accused criminals and there is no independent witness listed in the chargesheet and the documents listed

therein are fabricated. The applicant has further stated that the chargesheet was challenged by the applicant through OA No.189/2010 and he also filed a representation before the Chairman, Principal Bench, New Delhi. The Hon'ble Chairman directed to use remedies available under law, therefore, the applicant has filed the present OA and has prayed for the relief as extracted in para-1 above.

3. Respondent Nos. 1 to 5 by filing reply denied the right of the applicant. The respondents have taken preliminary objection and submitted that the applicant had earlier filed OA No.189/2010 before this Tribunal on the same issues which have been raised in the present OA and the same was rejected by this Tribunal vide its judgment dated 24.5.2012. Since adjudication on the same issue had already been made, therefore, the principles of res-judicata are attracted. It has been further stated that vide Ann.A/1 the President, ICAR proposed to hold an inquiry against the applicant and the applicant has been given opportunity to present his case before the inquiry officer, therefore, Ann.A/1 cannot be said to be illegal and fake as alleged by the applicant. It has also been stated that the applicant has sent this OA from Qatar and perusal of verification does not show whether the applicant has verified the facts either at Jodhpur or Bikaner. The respondents have further stated that the applicant has made irresponsible, reckless, unfounded and untrue allegation and he has no right to abuse the process of the court. The respondents have also stated that the applicant has no right to describe that the witnesses cited in the chargesheet are accused/criminals. Therefore, prayed that the OA may be dismissed.

4. The applicant by filing rejoinder has reiterated the submissions made in the OA.

5. Heard the applicant as well as counsel for the respondents. The applicant, present in person, contended that the charge sheet, which was subject matter of OA No.189/2010 was issued by the Deputy Secretary, Shri Rajeev Mangotra, and it has not been mentioned in the charge sheet that it was issued by the order and in the name of the President, ICAR, therefore, the charge sheet itself was void in the eye of law. He further contended that the proceedings carried out in pursuance to the charge sheet are also void and illegal and therefore, the order of penalty passed by the competent authority is also illegal and the same be quashed. He also contended that the charge sheet dated 27.11.2008 can be termed as fake or forged one because it does not bear the signature of the competent authority i.e. the President of the ICAR, and Shri Rajeev Mangotra was a very junior officer.

5. Per contra, counsel for the respondents contended that the charge sheet, which has been challenged in the present OA, was also the subject matter of OA No.189/2010 which was decided by this Tribunal on 24.05.2012. Now, the applicant has further challenged the same charge sheet and also unnecessarily dragged and arrayed the respondent No.9, the Administrative Member, who decided the OA No.189/2010 and the Chairman of the Central Administrative Tribunal as respondent No.10 and the Hon'ble Tribunal has justly deleted them from the list of respondents, as no relief is claimed against them. Therefore, the present application is barred by the law of res-judicata, since the same charge sheet cannot be of subject matter of another OA.

6. The applicant further contended that the law of res judicata is not applicable in the case of fraud because in the judgment passed in OA No.189/2010, the original charge sheet was not brought on record and the

judgment was obtained by fraud, and it was due to suppression of the facts, the said OA was dismissed. He stated that a Writ Petition has also been filed against the same. In support of his argument, the applicant has relied upon the judgment of the Hon'ble Apex Court in S.P. Chengalvaraya Naidu vs. Jagannath, reported in 1994 AIR 853 equivalent to 1994 SCC (1) page 1. The applicant further contended that under Secretary issued the charge sheet on his own behalf without there being any approval from the Chairman of the ICAR. The applicant further relied upon the judgment of the Central Administrative Tribunal, Principal Bench passed in OA No.800/2008, Shri B.V.Gopinath vs. Union of India and ors. the judgment of the Hon'ble High Court of Delhi passed in W.P.(C) 10452/2009 (Union of India v. B.V. Gopinath) and in W.P.(C) No.7895/2009 (Union of India & Ors. vs. Ram Karan Sharma), and the judgment passed by the Hon'ble Apex Court in Civil Appeal No.7761/2013 arising out of SLP (C) No.6348/2011 (Union of India & Ors. vs. B.V. Gopinath) and contended that in all these cases it has been held that the law of res-judicata is not applicable in the case of fraud and the charge sheet issued by Shri Rajeev Mangotra is non est in the eyes of law because it has not been issued by the competent authority and when it does not bear the fact that it has been issued by the order and in the name of the President, the charge sheet is fake and it is void in the eye of law.

7. We have considered the rival contention of both the parties and also perused the judgments relied upon. In the judgments cited by the applicant, it has been held by the Central Administrative Tribunal, Principal Bench, New Delhi, by the Hon'ble High Court of Delhi and the Hon'ble Apex Court that where the charge sheet has not been issued by the competent authority or without approval of the competent authority, it is void and non est. But in the present case, we are of the view that when once the charge sheet was

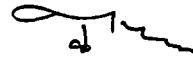
judiciously examined by this Tribunal and against which a Writ Petition is pending before the Hon'ble High Court, this Tribunal cannot review the judgment by deciding a separate OA filed by the same applicant challenging the same charge sheet, particularly, in view of the fact that against the same judgment, a Writ Petition is pending before the Hon'ble High Court. The fact of suppression of the documents or the other issues shall also be decided by the Hon'ble High Court in the light of the memo of the appeal filed by the applicant and the grounds taken by the applicant in the Writ Petition.

8. Accordingly, in view of the discussion made hereinabove, we dismiss the OA. The Misc. Application No.276/2013 filed by the applicant is rendered infructuous in view of the above order passed in this OA No.81/2013 and accordingly, the same is also dismissed. No order as to costs.



(Meenakshi Hooja)
Administrative Member

R/rss



(Justice K.C. Joshi)
Judicial Member