CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 546/09

Dated this the 07th Day of June , 2011.

CORAM

HON'BLE Mr.Justice P.R, Raman, Judicial Member
HON'BLE Mrs.K. Noorjehan, Administrative Member

A.Janardhana Naik, Upper Division Clerk
(Now under compulsory retirement)
CPCRI, Post Kudlu, Kasargode - 671124
R/o Koruvail House, Near SDP Temple
Post Kudlu, Kasargode. ..Applicant

By Advocate S. Radhakrishnan.

Vs

1 Indian Council of Agricultural Research
represented by its Secretary, ICAR
Krishi Bhavan, New Delhi.

2 The Director, Central Plantation Crops Research
Institute (ICAR), Kasargode - 671124.

..Respondents

By Advocates M/s. Varghese Jacob

The Application having been heard on 23.5.2011, the Tribunal delivered the following:

ORDER

HON'BLE Mrs. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant is aggrieved by Annexure A-11 order dated 10.12.2008 issued by the 2nd respondent imposing penalty of

compulsory retirement from service and Annexure A13 order dated 4.5.2009 issued by the appellate authority dismissing the appeal and confirming the penalty of compulsory retirement imposed on the applicant.

2 The brief facts of the case are as follows. According to the applicant, while working as Upper Division Clerk as also honorary Secretary, CPCRI Employees Co-operative Society during the period from Dec. 2004 to May 2007 he was servecd with a show cause notice dated 17.8.2007 (Annx.A1) alleging to have diverted a sum of Rs.6,28,558/- from CPCRI to CPCRI Employees Cooperative Society. On receiving the show cause notice the applicant explained his position by Annx.A2. Not satisfied with the reply filed by the applicant charge memo was served to initiate inquiry under Rule 14 of the CCS(CCA) Rules 1965. The applicant submitted his written statement denying the charges levelled against him. The Inquiry officer submitted the inquiry report dated 3.7.2008 to the disciplinary authority. Inquiry Officer (I.O for short) concluded in the inquiry report that on the basis of oral as well as documentary evidence presented during the inquiry it is undoubtedly proved that the applicant is guilty of the two charges framed against him. The applicant was served with the inquiry report and the applicant submitted a detailed representation. He contended that in the light of the finding of the inquiry authority that there is misappropriation of CPCRI funds and the charged officer wanot personally benefited by the alleged misdeeds, it cannot be concluded that the charges levelled against him are proved and that the facts proved were not sufficient to constitute the guilt against the applicant. Thereafter the 2nd respondent issued Memorandum Annx.A7 stating that he had decided to disagree with the findings of the inquiry

officer that the prosecution has failed to establish how the charged officer was personally benefited by the misdeeds committed by him. Similarly, none of the prosecution witnesses could prove as to why the charged officer was interested in diverting ICAR funds to CPCRI Employees Cooperative Society. These aspects may have to be investigated separately. The disciplinary authority by Annx.A11, imposed penalty of compulsory retirement from service on the applicant. The appeal filed by the applicant was dismissed confirming the penalty of compulsory retirement. Hence this O.A.

3 Respondents filed reply statement justifying the action of the respondents in imposing the penalty of compulsory retirement. According to them, the charges against the applicant were serious, that he manipulated the Institute accounts with his expertise in accounting principles and procedures and misappropriated huge money through CPCRI Emp.Cooperative Society. Initially an excess payment of 69,256/- to the Society was noticed and the same remitted by cheque by the applicant in the capacity of Hony.Secretary. On further verification it is revealed that he had manipulated in similar way on earlier occasions. It is further stated that while looking after the duty in the Finance & Accounts Section the applicant made corrections in the computer code sheet and an inflated figure entered in the computer code sheet without change in the net pay with an intention to take away the money from the office. This was continued from Dec.2004 to May 2007. The verification report submitted by the AFAO shows that refund made by the applicant to the respondent Institute was Rs.699286.00. Apart from a departmental inquiry an FIR was lodged on 28.2.2008 under Crime No.197 of 2008 at Kasaragod Police Station which was under trial before the Judicial First Class

Magistrate Court. The I.O submitted his report holding the charges levelled against the applicant as proved. After considering the inquiry report and the submissions made by the applicant on the Inquiry report the disciplinary authority rightly imposed the penalty of compulsory retirement under Rule 11 of CCS(CCA) Rules on the applicant. It is stated that the applicant was given full opportunity of hearing and to prove the fact but the applicant failed to prove the same. Therefore, he cannot blame the respondents and thus, the applicant has no case. The appeal preferred by the applicant was rejected by the appellate authority after careful consideration. Regarding the observation of the Inquiry Officer supra it is stated that it is only a suggestion to the higher authorities. The Inquiry Officer in his report stated that the applicant had himself refunded the amount with penal interest leaving thereby no iota of doubt that he himself alone indulged in manipulation of the accounts. They submitted that the punishment was imposed in accordance with the rules.

4 We have heard learned counsel on either side at length and perused the records produced before us.

5 The questions that come up for consideration is whether the action of the respondents to impose the punishment is legally sustainable in the facts and circumstances of the case.

6 What emerges from the above is that disciplinary proceedings were initiated against the applicant under Rule 14 of CCS (CCA) Rules, 1965 vide charge memo dated 1.12.1995. The main charge as contained in the two articles of charge in Annexure A-9 charge memo relates to misappropriation and diversion of Rs.628558 from CPCRI to CPCRI Employees Co-operative Society. The modus operandi was to alter the entries in the input

sheets of monthly pay bills, to increase the dues to the CPCRI Co-operative Society and to the corresponding extent decrease the dues to the CPCRI under the heads of license fee, interest on HRA, cost of milk, etc. leaving the closing balance untouched. The amounts received as receipts for CPCRI from outstations under different heads such as HRA, Festival Advance, Advance of pay, interest on HRA, MCA and other recoveries were misclassified, as revenue for CPCRI Co-operative Society under the society code (65.01.18). Hence, the charges levelled against him was misappropriation of Rs. 628558/-, through manipulation of accounts in CPCRI figures and accounting for the same, by mis-classifying he same under CPCRI Co-Operative Society accounts under Society Code (65.01.08). He utilized his assignment as UDC Finance and Accounting CPCRI and his position as Hon. Secretary, CPCRI to do such manipulation and misappropriation in the accounts of CPCRI from December 2004 to May 2007. On denial of the charges, an enquiry was conducted and the charges are proved. The Disciplinary Authority disagreed with the suggestion/ finding of the IO that "the prosecution has failed to establish how the charged officer was personally benefited by the misdeeds committed by him. Similarly, none of the prosecution witnesses could prove as to why the charged officer was interested in diverting ICAR funds to CPCRI Employees Cooperative Society. These aspects may have to be investigated separately."

7 The applicant has, therefore, relied upon this suggestion of the I.O as his ground to show that the respondents failed to bring out any evidence or motive for the reason on his part for diversion of

funds to CPCRI Co-operative Society or the fact that he was personally benefited by such diversion, during the course of enquiry. He stated that the IO failed to give any weightage for his statement that rectifications made in the input sheets were due to human error. He also took up the ground as to how the amount diverted to the CPCRI Co-operative Society was lost in accounting in the Society even though it was credited to the society. Moreover, the society has re-transferred the alleged diverted amount back to CPCRI. In view of the foregoing the punishment of compulsory retirement imposed on him by the disciplinary authority, which was confirmed in appeal is patently illegal and unjust.

We find that to support the charges levelled against the applicant the respondents appended 94 receipt vouchers in input sheets during the period from 30.12.2004 to 29.05.2007. There were other documents like remittance registers (broad sheet) for the period from 2001 to 2008, HRA, Festival advance, Cycle/Computer/Fan/ Motorcar/Scooter advance registers etc. The applicant engaged a defence assistant and he was given copies of the listed documents at Sl. Nos. 1 to 74, 77 to 114, 123, 129 and 133. In addition, he requested for copies of annual accounts of CPCRI from 2004 to 2007, audit reports of CPCRI and the Co-operative Society from 2004-2007 and copies of his ACR from 2004 to 2007. These were supplied to him. Thirteen prosecution witnesses were cross examined by the charged official and defence assistant. On the basis of the documentary evidence, in input sheets and statements of prosecution witnesses, it was proved that the charged official used to come at 9 a.m much earlier than all other staff and altered the figures in the accounts of both CPCRI and the society. Therefore, based on

the documentary evidence, the IO, held both the charges as proved. We find that the applicant was afforded a fair opportunity, during the enquiry to prove his innocence. He came up with a vague plea of human error in doing figure work. Alterations, reducing receipts in CPCRI and inflating figures in CPCRI Society account during the period of almost three years which led to CPCRI losing more than 6 lakhs cannot be ascribed to random human error. Therefore, there is no gain saying the fact that, there was manipulation of accounts over a long period of time. It is not for this Tribunal to make a roving enquiry to find out how the charged officer utilized this amount which was siphoned off from the CPCRI. If there was no personal benefit, there is no earthly reason at all for him to have undertaken this painstaking task of correcting figures in two sets of accounts over a period of almost three years. Therefore, we do not find anything illegal in the finding of the IO or the punishment imposed on the applicant vide Annexures A-11 and A-13.

8 Generally High Court/Tribubnal while exercising the powers of judicial review cannot normally substitute its own conclusion and the High Court/Tribunal does not act as appellate authority on the order of punishment passed by the disciplinary authority. But if the punishment imposed by the disciplinary authority or appellate authority has been passed without observance of the principles of natural justice and when it is observed that reasonable opportunity of hearing is denied or punishment imposed is totally disproportionate to the proved misconduct, the interference is called for.

9 In catena of judgments, the legal position has been discussed by the Hon'ble Supreme Court from time to time.

10 In B.C.Chaturvedi Vs. UOI & Ors, 1995(6) SSC 749 the Apex Court held that the High Court or Tri8bunal while exercising the power of judicial review cannot normally substantiate its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority appears to be disproportionate to the gravity of charge for High Court or Tribunal, it would be appropriately moulded to resolve by directing the disciplinary authority or appellate authority to reconsider the penalty imposed or to shorten the litigation, it may itself impose appropriate punishment with cogent rasons in support thereof.

A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct.

11 In Indian Oil Corpn. Vs. Ashok Kumar Arora, 1997(3) SCC 72, Hon'ble Supreme Court held that High Court in such cases of departmental enquiry and findings recorded therein does not exercise the powers of appellate Court/Authority. The jurisdiction of high Court in such cases is very limited.

12 In Kuldeep Singh Vs. Commissioner of Police & Ors, 1999(1) SLR 283, Hon'ble Supreme Court held that normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry, b ut if the finding of guilt is based on no evidence it would be perverse finding and would be amenable to judicial scrutiny. The findings recorded in domestic enquiry can be characterised as perverse if it is shown that such a finding is not supported by any evidence or record or is not based on any evidence on record or no reasonable person could have come to such findings on the basis of that evidence.

13 In Syed Rahimuddin Vs. DG, CSIR & Ors, 2001(3) ATJ SC 252, Hon'ble Supreme Court held that the finding of facts arrived at in disciplinary enquiry the interference by the Court is permissible only when there is no material for the said finding or conclusion or on material available no reasonable man can reach to such conclusion.

14 In the instant case, after perusal of the documents, it is abundantly clear that the Inquiry Officer held the applicant guilty of the charges levelled against him and the punishment of compulsory retirement was imposed upon him by the disciplinary authority. The appeal preferred by the applicant was rejected by the appellate authority after careful consideration.

15 In view of the above legal position and facts and circumstances of the case, we are of the opinion that the applicant has no case and this O.A devoid of any merit is liable to be dismissed. We, therefore, dismiss this O.A with no order as to costs.

K.NOORJEHAN
ADMINISTRATIVE MEMBER

JUSTICE P.R.RAMAN
JUDICIAL MEMBER

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