

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-38.

Dated: 15 FEB 1994

APPLICATION NO(s) 707 of 1993.

APPLICANTS: K.G.S.Bhat

RESPONDENTS: Director General, CSIR,
New Delhi and Other.

TO.

1. Sri.K.Gopal Hegde, Advocate,
No.64, Eleventh Cross,
First Stage, Indiranagar,
Bangalore-560 038.
2. The Director, Central Food Technological
Research Institute, Mysore-570013.
3. Sri.M.Vasudeva Rao, Central Govt. Stng. Counsel,
High Court Bldg, Bangalore-1.

SUBJECT:- Forwarding of copies of the Orders passed by
the Central Administrative Tribunal, Bangalore.

-xxx-

Please find enclosed herewith a copy of the
ORDER/STAY ORDER/INTERIM ORDER/, Passed by this Tribunal
in the above mentioned application(s) on 21-01-1994.

gm*

O/C
Issued on 15-02-94

for *S. Shanmugam*
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

ORIGINAL APPLICATION No.707/93.

FRIDAY THIS THE 21ST DAY OF JANUARY, 1994.

SHRI JUSTICE P.K. SHYAMSUNDAR .. VICE CHAIRMAN

SHRI V. RAMAKRISHNAN ... MEMBER (A)

Sri K.G.S. Bhat,
Civil Engineer
Working as Executive Engineer,
Central Food Technological
Research Institute,
Mysore - 570 013. ... Applicant

(By Advocate Shri K. Gopal Hegde)

Vs.

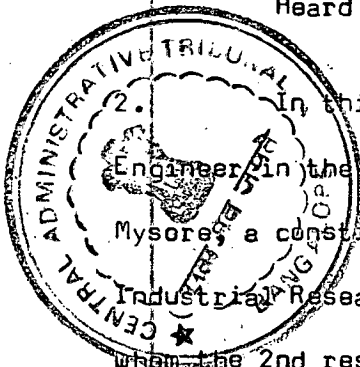
1. Council of Scientific and
Industrial Research,
represented by its
Director General,
Rafi Marg, New Delhi - 110 001.
2. Dr. S.R. Bhowmik,
Director,
Central Food Technological
Research Institute,
Mysore - 570 013. ... Respondents

(By Advocate Shri M. Vasudeva Rao)
Central Govt. Standing Counsel.

ORDER

Shri Justice P.K. Shyamsundar, Vice Chairman.

Heard both sides. Admit.



2. In this application, a Civil Engineer working as Executive Engineer in the Central Food Technological Research Institute, Mysore, a constituent of Respondent No.1, Council of Scientific and Industrial Research, New Delhi, headed by the Director General under whom the 2nd respondent in this application, Dr. S.R. Bhowmik, Director C.F.T.R.I., Mysore, is a superior authority. The

applicant was inducted as an Engineer in the services of the C.F.T.R.I. in the year 1961. He appears to have not had a clean tenure, as we find, he had occasion to approach this Tribunal on ^{connected} more than one occasion/with problems in regard to his career, i.e., in the matter of promotion, etc., etc., with which we are not presently concerned.

3. But, in 1972, Respondent No.1, embarked upon a disciplinary enquiry against him in connection with the discharge of his duties as Site Engineer in charge of construction of 96 quarters for the officials of the C.F.T.R.I., Mysore. Therein as many as eight charges were framed against him as could be seen at Annexure-A5.

4. It is not however necessary to detail and advert to them in extenso, but, suffice for our purpose to note that all the charges centered round the granting of some secured advance to a contractor, a firm by name Vijaya Builders, who were given the contract for constructing the 96 quarters in the premises of the C.F.T.R.I., Mysore. The charges, of-course, accuse him **variously** of allowing the contractor to get away with the supply of inferior material and recommending payment of generous advances, etc., etc. After framing these charges, the Disciplinary Authority proposed to hold a joint enquiry against the applicant along with one S. Jayaraman, the Superintending Engineer, who, it transpired was the immediate superior of the applicant on the Engineering side. The order directing the holding of a joint enquiry produced at Annexure-A3 reads:

"COUNCIL OF SCIENTIFIC AND INDUSTRIAL RESEARCH
RAFI MARG,
No.8(59)/91-Vig New Delhi-1, the 2nd Dec. 1992

ORDER

WHEREAS the following officials are jointly concerned in a disciplinary case:-

(1) Shri S. Jayaraman, Superintending Engineer, CSIR Complex, New Delhi.

(2) Shri K.G.S. Bhatt, Executive Engineer, Central Food Technological Research Institute, Mysore.

NOW, THEREFORE, in exercise of the powers conferred by Sub-rule (1) and (2) of Rule 18 of the CCS (CCA) Rules, 1965, as made applicable to the employees of CSIR, the Director General, Scientific and Industrial Research hereby directs:-

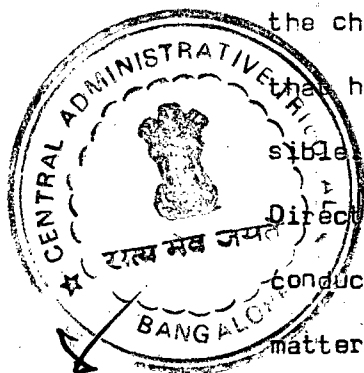
- (i) that the disciplinary action against all the said Council employees shall be taken in a common proceedings;
- (ii) that DG, CSIR shall function as the Disciplinary Authority for the purpose of the common proceedings and shall be competent to impose any of the penalties under Rule 11 *ibid*;
- (iii) that the proceedings prescribed under Rule 14 and 15 shall be followed in the said proceedings.

BY ORDER AND IN THE NAME
OF DIRECTOR GENERAL, CSIR,

Sd/-

(S.K. Verma)
Sr. Deputy Secretary (Vig)"

5. What we are asked to do herein is to quash the aforesaid Annexure-A3 and to direct stoppage of further proceedings against him, impliedly the applicant wanted us to quash the charges framed against him as also to arrest the progressive march of the enquiry. He had already filed a defence statement in which he had denied all the charges, apart from purporting his innocence claiming *inter alia* that he had been falsely strung up for acts which he was not responsible. He had also maintained that the 2nd respondent Dr. Bhowmik, Director of the Institute at Mysore was somewhat irked by his conduct in approaching this Tribunal questioning his orders in the matter of his promotion in which endeavour it is said he had succeeded to some extent before this Tribunal. As a result, Dr. Bhowmik, it



is claimed was determined of getting ^{him} rid by shifting him elsewhere and when that plan did not succeed, he pursued and influenced the top man at the centre, the respondent no.1 and had this Disciplinary Enquiry plastered on him. It is pointed out that the enquiry proposed to be held is only to harass and victimise the applicant with a view to deny a further promotion to which he is immediately entitled and being needlessly activated deliberately with a view to deny him the further promotion with consequential higher retiral benefits, etc., etc.

6. After having filed such a written statement with the employer, he came to this Tribunal with a lengthy application in which he very plainly alleged that the whole exercise as of Disciplinary Enquiry was the brain child of Respondent No.2, Dr. Bhowmik who was unable to countenance the steps taken by the applicant to assail Bhowmik's orders in the matter of promotion, etc., etc., before the Tribunal and went on to maintain that on the last occasion when he was transferred, he refused to accept the transfer to a station outside Mysore at the behest of Bhowmik. As a result of all this, some kind of a rift between and Bhowmik had a-risen and that ultimately took the shape of a Disciplinary Enquiry to enquire into misconduct in the discharge of his duties but also to deprive him of further chances of promotion.

7. The prolix statement in the objection statement filed before the Disciplinary Authority spreads over a number of paragraphs goes through the whole ground setting out the context in which he is said to have fallen a prey to the controlling officer of the Institute for no fault of his. The entire action is alleged malafide besides being a resurrection of the dead from the grave since it takes the action back to a transaction that has admittedly taken place in the

year 1985 or near about that period so much so if all these years whatever he had done at that time was not found to be objectionable. The effort now made at activising an old folly was merely fruitless toil at public cost creating no more than an order for the **officer** . It is then urged that hardtime faced by the senior colleague Jayaraman, the Superintending Engineer, it was pointed out, that if Jayaraman was responsible for the induction of the builder upon grant of the contract, all that he, the applicant, had done was to carry out the terms of the contract and nothing more. Therefore, it was urged that in the matter of omission or commission, if there were lapses the same should be held on the person who was really responsible. In this case, it is urged that almost two disparate elements were being put together on the same state. In such a situation, it would be most inapt to nurse two such incongruents and make them one and the same dock at the same time.

8. We did not admit this matter in the initial stage having found that the applicant had come to the Tribunal even at the threshold of the enquiry alleging malafides apart from raising the related question of competence of the Disciplinary Authority in undertaking the enquiry although that authority was itself not the authority who had appointed the applicant in the first instance. This being a predominant lacuna urged for consideration, we notified the respondents before admission and the learned standing counsel who had entered appearance and on instructions, he filed a statement which was with the lengthy and long winding application. Every allegation was traversed and denied although sometimes a little cryptically. It was pointed out the action **was only** to hold an enquiry, because the motivation in that behalf was **report** of a Facts Finding Committee constituted to go into the travails and troubles in the execution of the contract work pertaining to furnishing of civic amenities to the employees of the Mysore CFTRI



organisation. The building and the maintenance quarters appears to have created problem with the contractor having entered an award of proceedings before the Civil Court at Mysore. Subsequently, an arbitrator has been appointed to go into the misunderstandings between both the sides.

9. In that context, a Facts Finding Committee had also been appointed. It submitted a report in regard to the dispute with the contractor. The committee actually took its birth after the Chief Technical Examiner conducted the inspection of the works in progress in 1988 and thereafter asked the C.S.I.R. to take an appropriate decision. The relevant portion of the objection statement filed by the respondents in that behalf is at para 49. It reads:

"49. Regarding (p): The CCS(CCA) Rules do not provide that the disciplinary authority has to give reasons to the charged officer for any delay, if any, in initiating disciplinary proceedings. However, it is submitted that the work for construction of 96 scientists' apartments was awarded to the contractor M/s. Vijaya Builders in 1985 and the time for completion of work was 2 years. In 1987 the contractor asked for extension of the time and while his request was still under consideration the contractor abandoned the work and filed a civil case in the Court of Law. Since there was a clause for arbitration in the agreement, at the directions of the Court the issue was referred to an arbitrator and Shri M. Ramaiah was appointed. But, before he could initiate the proceedings he left for Abroad and ultimately retired from service. Hence, another arbitrator was appointed who ultimately gave the award in 1991. As the award was not acceptable to the Respondents an application was moved in the Court of Law seeking setting aside of the award of the arbitrator and the case is still pending. As the CSIR comes under the purview of Civil Vigilance Commission, Govt. of India, the Chief Technical Examiner conducted inspection of work in 1988 and asked CSIR to carry out certain investigations on some of its findings. The payment of Secured Advance was also subsequently adversely commented upon by the Audit. Based on the report of the Chief Technical Examiner and Audit, it was ultimately decided to probe the matter through a Fact Finding Committee which was constituted by DCSIR in 1991. The Committee came to Mysore from Delhi and after inspection of the records and taking statements of the concerned officers viz. the applicant and the other charged officer (Shri S. Jayaraman, S.E., CSIR) gave its report to DCSIR for further necessary action. Based on the findings of the committee and taking into account the report of the

CTE and the Audit para, the disciplinary authority reached the conclusion that there was a prima-facie case of commissions and omissions against the officers-concerned and therefore, on the advice of CVC, appointed the commissioner for departmental inquiry as an inquiring authority to inquire into the charges in 1992. There is, therefore, no delay on the part of the disciplinary authority in initiating the disciplinary proceedings".

As can be seen from the above, after all this spade work was done in the year 1988, the matter ended with the report of the Chief Vigilance Commissioner, a copy of which was shown to us. Therefore, it becomes apparent that action had to be taken with regard to the misdemeanour said to have been committed by the applicant K.G. Bhat and his superior Jayaraman, the Superintending Engineer. The initial scrutiny and screening work which started in 1988, that was ended in 1992, led to the floating of the Disciplinary Enquiry which the applicant chooses to challenge in this proceeding.

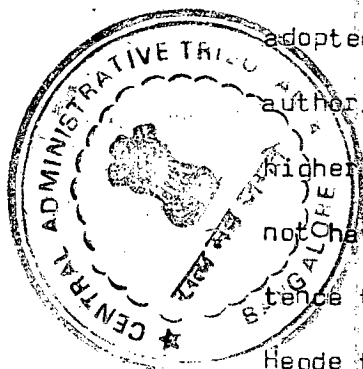
10. We heard Shri Gopal Hegde, learned senior counsel in support of the application for quite some time. As a matter of fact, we heard him for the good part of two days in succession and on the third day, Shri Hegde suggested that his client be given an opportunity to make a further representation to the Disciplinary Authority touching only one aspect, viz., the legality and tenability of holding a joint enquiry involving both the applicant and his Superintending Engineer, Jayaraman. Counsel maintained that the joint enquiry against both of them would seriously prejudice his client and when asked why in the earlier defence statement filed before the Disciplinary Authority, he had not dealt this aspect of the matter, counsel pointed out that his client had no information of any notice of the department's intention to hold a joint enquiry and he also pointed out that he did not have access to those proceedings nor did he have a copy of the charges framed against Jayaraman. Admittedly, Jayaraman, has also had series of charges framed against him. The charges against Jayaraman have been produced before us and they indicate active steps have been taken to implicate Jayaraman and the applicant as well.



11. It seems to us that if it is really the collective trial of two persons by a common forum is the retrograde step **considered**. It would then be more proper and appropriate for the authority to hold a separate enquiry, **subject ofcourse to the establishment** of the prejudice that are likely to be caused to the applicant. We had now seen instructions at Sl.No.1 below Rule 18 of the Swamy's Compilation of CCS(CCA) Rules, Twentieth Edition, vide Govt. of India, Ministry of Home Affairs letter No.6/98/63-AVD, dated 13.6.1963. Shri Hegde suggested that on being **served** with a copy of the charges framed against Jayaraman and his client is given some time to file a further representation to the Disciplinary Authority with the enquiry itself being grounded till the Disciplinary Authority takes a fresh look in the matter of holding a joint enquiry in the light of the representation made by the applicant, he would be happy not to pursue this matter **further** for the present. He made it however clear that he would not be pressing the objections raised herein regarding the legality and competence of the Director General of C.S.I.R., New Delhi, the 1st respondent, to hold the Disciplinary Enquiry, on the ground of the former not being the appointing authority.

12. We may briefly touch upon the controversy comprising of the above contention. It is common ground, the appointment of the applicant as an Engineer in the establishment of the C.F.T.R.I. at Mysore was made by the then Vice President of the C.S.I.R. who happened to be the concerned Minister for the Dept., viz., Science and Technology. The argument now urged is that having been appointed by the Minister, the Director General, who is certainly lower in rank to a Minister, therefore, cannot take any action that could lead to the imposition of a major penalty like dismissal. This argument is

obviously raised on the constitutional fiat under the proviso to Article 311(i) vis-a-vis no authority inferior to the appointing authority, is competent to impose penalty of removal or dismissal from service, etc., etc. But, that situation ex-facie does not arise here since the applicant is not a Govt. servant or a civil servant but is the servant of a Society which is not a State. Besides, the C.S.I.R. institution has framed its own rules for conduct of Disciplinary Enquiry as can be seen from Annexure-A12 which reproduces the earlier one of the year 1976 with its schedule. The position appears to be that the department has adopted the CCS(CCA) Rules, 1965, with necessary modifications. The schedule to the rule indicates the Disciplinary Authority and as per the schedule, the authority to take disciplinary action is the Director of the Institute vis-a-vis the applicant and for the Superintending Engineer, it is the Director General. The course of the Disciplinary proceedings, its institution, its conclusion and imposition of penalty are all regulated by the rules of the Society which has nonetheless adopted the CCS(CCA) Rules. The rules which are now **framed a disciplinary** authority designated under the rules is empowered to impose the higher penalty of dismissal. The contention that the said authority not having appointed the applicant did not have the necessary competence to remove or dismiss him is without any substance and Shri Hegde therefore wisely did not press it before us. The employees of C.S.I.R. are not civil servants and C.S.I.R. is not a State is what follows from the decision of a Full Bench of Supreme Court decided in *Sabhajit Tewary and Others Vs. C.S.I.R.* reported in AIR 1975(SC)1329.



13. We must now go back to Rule 16 of CCS(CCA) Rules. The powers to hold a common proceeding is what flows from Rule 18 of CCS(CCA) Rules. That rule reads:

18. Common Proceedings

(1) Where two or more Government servants are concerned in any case, the President or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding.

Note:- If the authorities competent to impose the penalty of dismissal on such Government servants are different, an order for taking disciplinary action in a common proceeding may be made by the highest of such authorities with the consent of the others.

(2) Subject to the provisions of sub-rule(4) of Rule 12, any such order shall specify:-

(i) the authority which may function as the Disciplinary authority for the purpose of such common proceeding;

(ii) the penalties specified in Rule 11 which such disciplinary authority shall be competent to impose;

(iii) whether the procedure laid down in Rule 14 and Rule 15 or Rule 16 shall be followed in the proceeding."

14. The proposal to initiate Disciplinary Enquiry against the applicant is in tune with the said rule and having been initiated by the Director General of the Society who certainly has the power of dismissing the Superintending Engineer he can thereby certainly impose a similar penalty on an officer inferior to the Superintending Engineer. Shri Hegde, however dissuaded us from recording findings on other points of malafides and the delay in institution of the proceedings, etc. He wanted us to leave them alone and asked us that his client be given an opportunity for making a further representation to the Director General urging him not to hold a common enquiry involving him and Jayaraman together. Hence, it is we have

not gone into that arguments touching the malafides and the so called delay in institution of the proceedings, but instead have confined ourselves to the point of granting an opportunity to the applicant to make a further representation to the first respondent limiting it to espousing the harm and prejudice that would be caused to him by holding a common enquiry along with the Superintending Engineer, Jayaraman. Shri Hegde wanted a copy of the charges framed against Shri Jayaraman to be served. ^{after} We asked the department to furnish the same. Standing Counsel says that he would do the needful immediately. After being furnished with a set of the ^{charges} charges, the applicant will make ^{as further} ~~what ever~~ representation to the Disciplinary Authority as indicated hereinbefore, within four weeks from this date and thereafter the first respondent will dispose off the said representation taking into consideration the points raised in the same. As pointed out earlier, the enquiry is yet to start and the starting of an enquiry was actually held back because of pendency of this application.

15. Now that the enquiry has not commenced so far, we think it appropriate to direct the enquiry to be held in abeyance, till the disposal of the applicant's representation by the first respondent and subject to whatever orders that may be passed by the first respondent, the course of the enquiry will ^{remain} stand regulated thereby.

16. With this observation, this application stands disposed off finally with no order as to costs.

TRUE COPY

Sd/-
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

Sd/-
(V. RAMAKRISHNAN)
MEMBER (A)

Sd/-
(P.K.SHYAMSUNDAR)
VICE CHAIRMAN

filed in Court
28/11/93
Cont. I.
3

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Appln. No. 707 of 1993

Between :

K. G. S. Bhat

Applicant

And

Council of Scientific &
Industrial Research and
another.

Respondents

A F F I D A V I T

I, Dr. S. R. Bhowmik, Director, Central Food
Technological Research Institute, Mysore do hereby
solemnly affirm and state as follows:

1. I am the second respondent in the above
proceedings and I know the facts of the case.

2. Already a detailed reply has been filed before
this Hon'ble Tribunal on behalf of the respondents. Since
certain personal allegations have been made against
the respondents and me in particular, I am swearing
this affidavit.

..... 2

No of corrections: *Nil*

19 NOV 1993



3. In para 17 of the application, the applicant has alleged that the respondents did not like him for approaching this Hon'ble Tribunal and that he is being harassed by the respondents. These allegations are not true and the same are denied. Further statement of the applicant that I called him and told him to take a transfer to Roorkee and his denial to agree to the said request are baseless and they are frivolous allegations. His presumption that I got enraged due to his refusal to oblige my orders are only figment of his imagination. I deny that such an incident had taken place.

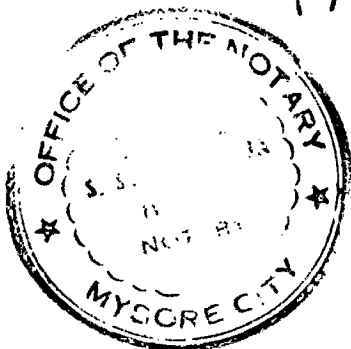
4. The allegation made by the applicant that as his transfer could not be effected outside Mysore, he is being harassed by me is utterly false. He further alleges that I prevailed upon the first respondent to initiate departmental enquiry against him is far from truth and opposed to facts of the case. In fact a Fact Finding Committee was constituted in 1991. Based on its findings and on the advice of the Central Vigilance Commission, the present Departmental proceedings are initiated against the applicant.

5. The further attribution that the applicant is being harassed and denied further promotion is also

No of corrections: 2

..... 3

19 NOV 1993



totally untrue. The directions of this Hon'ble Tribunal have been already complied with.

6. The present allegations of malafide are without any material and are made only to cast aspirations on me and to strengthen the case of the applicant. The said allegations are without any substance.

7. All the averments made in paras 17 and 18 of the application are hereby denied. The allegations against me are also hereby denied.

Place: Mysore

Dated: 19th Nov., 1993

a

No of corrections: *nil*

19/11

Identified by me.

SRBhuk
निदेशक
DEPONENT DIRECTOR,
केन्द्रीय खाद्य प्रौद्योगिकी
अनुसन्धान संस्थान, मैसूर-५७
Central Food Technological
Research Institute MYS-13

SOLEM NLY AFFIRMED
AND DECLARED
BEFORE ME ON..

19 NOV 1993

Shamugheva

NOTARY MYSORE CITY

19 NOV 1993

