

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 216 of 1999

Jabalpur, this the 5th day of February, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri G. Shanthappa, Judicial Member

Dr. Bangali Balan Saxena,
S/o. Late Shri B.R. Saxena,
aged 54 years, R/o. C-8,
Nehru Nagar, Bhopal.

... Applicant

(By Advocate - Smt. S. Menon)

V e r s u s

1. The Secretary,
Council for Agricultural Research,
Krishi Bhawan,
New Delhi - 110 001.
2. The President, Indian Council of
Agricultural Research, Ministry
of Agriculture, Government of
India, Krishi Bhawan,
New Delhi - 110 001.
3. Central Institute of Agricultural
Engineering (CIAE), Post Nabi Bagh,
Baresia, Bhopal - 462108.
4. The Director General, Indian
Council of Agricultural Research,
Krishi Bhawan,
New Delhi - 110 001.

... Respondents

(By Advocate - Shri P. Shankaran)

O R D E R

By G. Shanthappa, Judicial Member -

By this Original Application the applicant has claimed
the following main reliefs :-

"(i) to quash the order dated 9.2.99/Annexure A-8
passed by respondent No. 2 and declare it as wholly
inoperative, malafide and ab initio void.


(i)(a) to quash the order dated 2.3.2001/Annexure AX-1
as illegal and contrary to the Service Rules in force.

(iii) to award cost of this application to the
applicant and against the respondents."

2. The brief facts of the case as stated by the applicant

are that the applicant was working as Principal Scientist at CIAE, Bhopal. The applicant was falsely implicated, only with an intention to mar the future career of the applicant, hatched by number of false stories. The complaint against the applicant was that he mis-behaved and manhandled Shri N.V. Pillai (Senior Mechanic) on 05.05.89 and also he had manhandled Shri R.S. Aherwar, T-5, KVK. A fact finding committee was appointed, headed by Dr. Newab Ali, Chairman, to find out the correctness of the incidence occurred on 26.08.1995, between the applicant and Shri R.S. Aherwar. The fact finding committee had conducted the enquiry and submitted the opinion. The quarrel between the applicant and Mr. N.V. Pillai was mainly because of disobedience of Director's order given by the applicant in not transferring the Jeep No. CPC 5541 alongwith the Driver to EM&V Section. The recommendation of the committee was i) that the applicant should be transferred to any other ICAR Institute with immediate effect, ii) in order to redress the grievances of some of the staff members of the Institute, the Director may like to re-open enquiry cases and review them further, in which the applicant was involved. The said report was submitted on 23.05.1989. In the meanwhile a criminal case trial No. 380/1995 was also lodged. The incident took place on 05.05.1989 and the fact finding committee has submitted the report on 23.05.1989.

2.1. The applicant was suspended ~~from~~ ^{dated} 27.09.1995 vide order ^{dated} 27.09.1995. After lapse of more than 7 years, from submission of the report of the fact finding committee, the applicant was served with a charge memorandum dated 12th April, 1996. The charges levelled against the applicant are as follows :



"Article I of the Charge

While working as Principal Scientist at Central Institute of Agricultural Engineering, Bhopal and in-charge of KVK, Dr. B.B. Saxena has not been maintaining cordial relations with his subordinates/fellow employees and has been quarrelling with them and also has been manhandling/beating his subordinates with shoes. He has also been committing atrocities against his subordinates on the grounds of caste on the basis of which the Police Commissioner, Madhya Pradesh, Bhopal recommended his transfer. This has resulted into threat of agitation by the aggrieved staff members.


Article II of the Charge

Dr. B.B. Saxena, while working as Principal Scientist and Incharge KVK, Central Institute of Agricultural Engineering, Bhopal has been creating hinderance in the official working."

An enquiry officer was appointed having equal status with the applicant. The applicant has submitted his representation to the charges on 11th May, 1996, denying all the charges. The detailed representation runs upto 8 pages. The applicant has also submitted that there is a procedural irregularity, glaring legal lacuna and infirmities in framing the charges against him. The applicant has pointed out the glaring legal lacuna by submitting his representation dated 21.03.1998 (Annexure A-5). Hence the charges are illegal and is not tenable in the eye of law. The enquiry officer conducted the enquiry and submitted the enquiry report dated 27.04.1998. In the enquiry report the charge No. 1 against the applicant was dis-proved and the second charge was doubtful credibility. The exact finding of the enquiry officer is as follows :

"After careful analysis of the evidence including the testimony of witnesses, in my opinion, in view of the doubtful credibility of Shri R.S. Aherwar (PW-3), a benefit of doubt can be given to the Charged Officer that he did not deliberately prevent the staff of KVK from signing the attendance register. Though looking to the overall situation and behaviour of the Charged Officer at that time, it would appear that Dr. Saxena's actions did cause hindrance in the official working of the institute."

The said enquiry report was served on the applicant and the




applicant submitted a detailed representation to the President, ICAR and disciplinary authority, through Director General, ICAR, dated 19th June, 1998. On the basis of the enquiry report, the applicant has explained that the charges levelled against him are not proved. Thus he has requested for revocation of his suspension, as he has already undergone indescribable mental torture and also suffered loss in reputation alongwith career retardation and financial crisis during this period. He has requested the President, ICAR to close this chapter as a special gesture of humanity.

2.2. On the basis of the enquiry report and the submissions made by the applicant, the disciplinary authority has passed the order dated 09.02.1999 (Annexure A-8) imposing the penalty of reduction to lower stage in the time scale of pay for 2 years with immediate effect on the applicant. During the period of reduction the applicant will not earn increments of pay and on the expiry of this period, the reduction will not have the effect of postponing his future increments. The applicant submitted that the impugned order is not a speaking order as the disciplinary authority has mentioned in the conclusion para that having regard to the findings of the enquiry officer and taking into consideration the other relevant facts, records and circumstances of the case, the disciplinary authority is s-atisfied that good and sufficient reasons exist for imposition of the penalty on the applicant. The disciplinary authority has not explained ^{that} what are the other relevant facts, records and circumstances. When there are no relevant facts and no records, simply passing an illegal order by imposing the punishment is not proper and is also not sustainable in the eye of law. Hence the said impugned

order is liable to be quashed.

2.3. Against the said order of the disciplinary authority the applicant preferred an appeal dated 06.03.1999 to the President, ICAR. The said appeal was returned to the applicant vide the respondents endorsement dated 20th April 1999 with an observation that under Rule 22 of CCS(CCA) Rules, no appeal shall lie against any order made by the President. Since the penalty of reduction to lower stage in the time scale of pay was imposed by President, ICAR, the present appeal cannot be entertained by the Council and the same is, therefore, returned herewith in original. The applicant is challenging the impugned orders of the disciplinary authority and also the impugned endorsement dated 20th April, 1999 issued by the ICAR, New Delhi. Subsequent to filing of this Original Application the applicant received an office order dated 2nd March, 2001 issued by the ICAR, New Delhi. The same is produced as Annexure AX-1 alongwith an application No. 871/2001, to this OA. The said office order has been passed by the authority deciding the suspension period of the applicant from 27.09.1995 to 07.03.1999 as dies non for all purposes such as drawal of increments, pension and other service matters. The order of suspension was revoked vide order dated 08.03.1999 with effect from 08.03.1999. The applicant is also challenging the ^{office} order dated 2nd March, 2001 by which the suspension period of the applicant has been treated as dies non. Aggrieved by this the applicant has filed this Original Application claiming the aforesaid reliefs.

3. The respondents have filed their reply denying the averments made in the Original Application. The respondents have admitted that the charge sheet was issued under Rule



14 of the CCS(CCA) Rules, 1965 on 12.04.1996 on the allegation that the applicant was not maintaining cordial relations with his subordinates/fellow employees and has been quarrelling with them and also has been manhandling/ beating his subordinates with shoes. It was further alleged against the applicant that he had also committed atrocities against his subordinates on the ground of caste because of which the Police Commissioner, Madhya Pradesh, Bhopal had recommended for his transfer. The departmental enquiry was conducted in conformity with the rules governing conduct of such employees. The applicant was given full and fair opportunity of ^{his} defence. The applicant participated in the enquiry and based on the material which came before the enquiry officer, the enquiry officer submitted his report on 27.04.1996. The respondents submitted that the charge No. 1 has been proved and the second charge has been partially proved. Based on the said enquiry report the applicant submitted his submission and after considering the same the competent authority has issued the impugned order of penalty. There is no illegality or irregularity committed by the enquiry officer or the disciplinary/competent authority while issuing the order of punishment and treating the suspension period as dies non. Regarding transfer of the applicant on the recommendation of the Police Commissioner, the respondents have submitted that the posting of the applicant was not done at his own request ^{but on public interest.} It is evident from the order dated 25.10.1979 that the applicant availed TA and joining time. The respondents further submitted that the Director General of Police, Welfare of Scheduled Caste sent a letter dated 28.10.1988 seeking action to be taken against the applicant on account of his harassment done to Shri R.S. Aherwar. Subsequently the applicant was involved in another incident of man-

handling a fellow worker namely Shri N.V. Pillai on 5.5.89. Hence he was again transferred to Jodhpur vide order dated 08.06.1989. The applicant filed an OA No. 409/1989 regarding cancellation of his transfer order. The transfer order was cancelled and the applicant withdrawn the said OA and was allowed to join duty in the Institute on 18.07.1989. The entire action was taken on the basis of the report submitted by the fact finding committee. There is nothing wrong in initiating the departmental proceedings against the applicant. Since the charges are proved the competent authority has imposed the punishment. It is an admitted position that some documents were not supplied to the applicant and this does not mean that any prejudice has been caused to the applicant, in any manner whatsoever. About non-supply of the documents the enquiry officer has noted the same in the proceedings. Hence the entire proceeding is conducted in a fair manner and opportunity was also given to the applicant to defend his case. The charges were proved before the enquiry officer and the disciplinary authority has considered all aspects and passed a reasoned order. Accordingly, the Original Application is liable to be dismissed.

4. Heard the learned counsel for the parties and after considering all aspects of the case, we have proceed to decide the case finally.

5. To verify the allegations against the applicant which was occurred on 05.05.1989, a fact finding committee was constituted and the committee submitted its report on 23.05.1989. Simultaneously a criminal case trial No. 380/1995 was also lodged against the applicant. After lapse of



more than 7 years, on the same set of facts a memorandum of charges was served on the applicant. There was a delay in framing the charges against the applicant. For the delay the respondents have not stated anything in the proceedings. The applicant denied all the charges levelled against him vide his representation dated 11.05.1996. The applicant has also pointed out certain legal lacunas in the departmental enquiry by submitting his another representation dated 21.03.1998. The enquiry officer had proceeded to conduct the enquiry and the applicant has also participated in the enquiry. The applicant had requested for supply of certain documents. Since the enquiry officer had no documents as the file of the applicant was seized by the vigilance, hence the enquiry officer was not able to supply the documents. There is a proceeding written by the enquiry officer in the daily order sheet dated 19th March, 1998, relating to the examination of the documents. The relevant para of daily order sheet dated 19th March, 1998 is extracted below ;

"2. Following points were noted ;

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| PE-1 | : The original letter of complaint was not available. However, photocopy attested by one of the officers of the CIAE on the basis of which the charges have been framed by the disciplinary authority were made available for examination. |
| PE-2 | : Original document was examined. |
| PE-3 | : Original document was examined. |
| PE-4 | : As in the case of PE-1. |
| PE-5 | : Original document was examined. |
| PE-6 | : Original not available. Also, photocopy not attested. |
| PE-7 | : Original document was examined. |
| PE-8 to 10 | : Originals not available. Photocopy not attested. |
| PE-11 | : Not available. |
| PE-12 | : Original not available. Photocopy of an unsigned letter was only available. The correction of date from 28.10.95 to 22.10.86 as requested by Under Secretary |

vide his undated letter No. 3(37)/95-Vig.D to the Inquiry Officer was noted.

- DE-1 : Original examined and copy made available to the Charged Officer.
- DE-2 : Original had been examined earlier on 05.03.1998 and copy given to Charged Officer."

As per the daily order sheet dated 19th March, 1998 it is clearly established that some relevant documents were not supplied to the applicant. Hence the enquiry proceedings vitiate by violating the principles of natural justice. In the enquiry report also at para II(ix) the enquiry officer also recorded that "the next hearing of the Inquiry was held on 5.3.98 (Appendix Ic). The original documents listed in Annexure III of the Charge Sheet could not be procured for inspection by the Presenting Officer. It was therefore agreed that these should be produced positively on March 19, 1998, on the regular date of next hearing at CIAE, Bhopal." Subsequently the documents were not supplied to the applicant. The applicant had submitted a detailed representation to the enquiry report. There ~~was~~ a procedural irregularity and ~~no~~ opportunity of cross-examination of the witnesses was given to the applicant. The fact of the criminal case was in favour of the applicant and the applicant was exonerated by the Court of ADM(J) was also not taken into account.

5.1. The impugned order imposing the penalty dated 09.02.1999 has been passed by the disciplinary authority in a cryptic manner. It is relevant to mention here that in para 5 of the order the authority has observed that "having regard to the findings of the Inquiry Officer and taking into consideration the other relevant facts, records and circumstances of the case, the disciplinary authority is satisfied that good and sufficient reasons exist for

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imposition of penalty on the applicant." In this case certain points strikes the conscious of the Tribunal. 1) The disciplinary authority has not explained the reasons regarding non-supply of the documents, which is a serious lacuna and which violates the principles of natural justice, 2) The disciplinary authority has also not explained as to why the charges were framed against the applicant after lapse of ^{more than} 7 years from the date of submission of the report of the fact finding committee, 3) When the records were not available and was seized by the vigilance, then how the disciplinary authority has come to the conclusion that on the basis of the records the enquiry officer has submitted the report, 4) Under what circumstances the disciplinary authority has come to the conclusion to impose the penalty on the applicant, and 5) The disciplinary authority has mentioned relevant facts, when there is no facts to prove the charges against the applicant the question of relevant facts does not arise.

5.2. When such being the fact the disciplinary authority order is not a speaking order and is not sustainable in the eye of law. Accordingly, the impugned orders are liable to be quashed.

5.3. The Hon'ble Supreme Court has held that if there is delay in initiating the proceedings against the delinquent officer, the enquiry proceedings vitiates. In the case of State of Punjab Vs. Chaman Lal Goyal reported in (1995) 2 SCC 570, the Hon'ble Supreme Court dealt with a situation in which a charge sheet was served on the delinquent after a delay of five and a half years from the date of the incident. In a writ petition filed before it, the Punjab & Harayana High Court set aside the memo of charges, interalia, on the ground that there was no

acceptable explanation for the delay in serving the memo of charge. The Hon'ble Supreme Court has held that :

"Now remains in the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the Delinquent Officer. Such delay also makes the task of proving the charges difficult and thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the Court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the Delinquent Officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the Court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the Court has to indulge in a process of balancing."

The Hon'ble High Court ^{of} ~~Delhi~~ in the case of P.V. Mahashab-
dey Vs. Delhi Development Authority & Ors. reported in
2003(3) SLJ 367 held in regarding the delay of initiating
the departmental proceedings. In the said case the demanded
copies were not supplied on the ground that the documents
were with the Police authorities. Some copies were supplied
but were ²illegible. The Hon'ble High Court has held that
delay is fatal and no fair trial has been held.

5.4. Accordingly, we find that the procedure followed by the enquiry officer, delay in initiating the enquiry proceedings and also the way of passing the impugned order of penalty is unjust and inequitable. Hence the enquiry is vitiated in law and violates the rights of the applicant to a just, fair and reasonable treatment at the hands of the State. Thus the impugned order dated 09.02.1999 is quashed. When the impugned order of penalty is quashed the question of order of suspension does not arise. The impugned order of suspension is not sustainable in law.


(G. Shanthappa)
Judicial Member

(M.P. Singh)
Vice Chairman

"SA"

Topic:
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13-2-09

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(1) सचिव ए.

(2) अध्यक्ष ए.

(3) पणजी ए.

(4) ...

सूचना एवं ...

12/2/04

Sgt. S. Meneu
P. Shunkam