

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 25th day of August, 2008

ORIGINAL APPLICATION NO. 423/2007

CORAM :

HON'BLE MR. M. L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B. L. KHATRI, ADMINISTRATIVE MEMBER

O.P.Nagar,
S/o Late Shri Nandaram Nagar,
R/o Type-IV/39, CSWRI,
Avikanagar,
Tehsil Malpura,
District Tonk.

... Applicant

(By Advocate : Shri R.P.Sharma)

Versus

The Indian Council of Agricultural Research
Through its Secretary,
Krishi Bhawan,
New Delhi.

... Respondent

(By Advocate : Shri V.S.Gurjar)

ORDER

PER HON'BLE MR. B. L. KHATRI

The applicant has filed this application under Section-19 of the Administrative Tribunals Act, 1985, praying for a direction to quash and set aside the order dated 23.10.2007 (Ann.A/4), whereby a penalty of withholding of one increment for one year without cumulative effect has been imposed upon him. He has also prayed for a direction to quash and set aside the charge-memo dated 7.4.2006. (Ann.A/1).

2. The first charge is while functioning as F&AO, CIRG, Makhdoom, during March, 2002, Shri O.P.Nagar [the applicant] concurred to the proposal for purchase of six Photocopiers of Ricoh Brand costing Rs.12.22 lakhs from a private dealer (i.e. M/s Sicuro Systems, Agra) without any application of financial rules and regulations. Second charge is that while functioning as F&AO, CIRG, Makhdoom, during March, 2002, Shri O.P.Nagar [the applicant] concurred to the proposal for purchase of 15 Dust Neutralizers and 40 Odour Boxes from a private dealer i.e. M/s Donewell Rotaries, New Delhi, at a cost of Rs.3.83 lakhs without application of financial rules and regulations. For these purchases, a Purchase Committee had been constituted of Dr.Nagendra Sharma, Director, Shri I.S.Harit, Administrative Officer, Shri D.P.Verma, F&AO, Dr.N.K.Sinha, Principal Scientist, Shri O.P.Nagar, F&AO, Shri Kumar Vivek, AO, and Shri J.L.Sharma, PA to Director. The applicant was one of the members of the aforesaid purchase committee and he concurred jointly with recommendations of all members of the committee. "The applicant submitted that all these purchase had been made as per various circulars and instructions of the ICAR, DOPT & GFR. He placed reliance on the Office Memorandum dated 4.2.88 (Ann.A/5), wherein it was directed that if the Kendriya Bhandar etc. is not able to supply a particular item, such purchase should be made from other sources as per rules after obtaining a 'No Objection Certificate'. He has also placed reliance on Office Memorandum dated 10.2.2000 (Ann.A/6),

wherein it was stated that if the Society is not able to supply a particular item, it will then be permissible for them to make local purchases from other sources. He has also placed reliance on Circular dated 30.6.89 (Ann.A/7), wherein in para-3 it is stated that 'Single Tender System' may be adopted in the case of articles which are specifically certified as of proprietary nature by the indenting authorities or when it is to the knowledge of the procuring agency that only a particular firm is the manufacturer of the stores demanded."

3. The applicant further submitted that while working as F&AO at CIRG, Makhdoom, he did not leave any lacuna in his performance but has discharged his duties and functions in accordance with the duties defined in audit manual (Chapter-5) by following the prescribed rules and procedure specified in GFR, ICAR instructions and guidelines issued by the DOPT (Govt. of India) from time to time. That Central Purchase Cell of CIRG, Makhdoom, proposed on the basis of requisition received from various Sections/Divisions i.e. Store, Library, EESE Section for purchase of the 'Ricoh' Brand Photocopiers which was also recommended and justified by the purchase section and the administrative officer to meet out the requirement for smooth functioning of their sections. Keeping in view the recommendation and requirements of the Section/Divisions, the Finance Wing at CIRG, Makhdoom, vetted the proposal and forwarded it to the competent authority for sanction. Accordingly, the

sanction was issued to purchase the requisite number of photocopiers. In view of sanction accorded by the then Director, six photocopiers of 'Ricoh' Brand were purchased from the authorised dealer of the 'Ricoh' Company M/s Sicuro System Agra on approved rate of Kendriya Bhandar/NCCF and thereby made payment of Rs.12.20 lacs after satisfactory installation certified by the users. It is one of the significant features to be specified that the applicant being F&AO though vetted the proposal of purchase of the photocopiers but put the remark as under :

"i) Performa invoice is submitted on Kendriya Bhandar and NCCF rates, however, the same be considered for approval and sanction of Rs.5,82,660.00 as proposed" 'X' at prepare.

ii) The validity of the rate contract are not known therefore this may not be considered or this may be clarified.

However, after the proper justification given by the CP&C Section and the Administrative Officer the case was reconsidered and observed that "in view of the requirement for the purchase of photocopiers of CP&C and DDO on prepare mark as 'X' at NSP-6 may be considered for approval and sanction". The proposal and remark put by the applicant by taking into consideration the Rules including the peculiar circumstances considered it proper and thereby accorded sanction by using his mind and wisdom. That similarly for the purpose of electronic Air Dust Neutralizer the Purchase Section of CIRG, Makhdoom, proposal was sent with full justification by the Administrative Officer by submitting as under :

AM

"The proposal for the purchase of 15 Air Dust Neutralizer from M/s. Donewell Rataries, New Delhi, on the proprietary certificate as accepted by the sister institutes in ICAR System seems to be justified. It seems to be in order as the rate are competitive being accepted by the sister institutes. It attracts the approval of sanction of the CA. Thus, the proposal was sent to Finance Wing for vetting."

The matter was examined by the Finance Wing and it was observed that "keeping in view the proprietary certificate at 17/C, however, may be considered for approval and sanction as proposed". Accordingly, sanction was accorded by the then Director for purchase of requisite Neutralizers. The entire action was in conformity with the rules and guidelines issued by the ICAR and the DOPT circulars including the provisions of GFR. The action did not suffer from any illwill or malafides. The purchase was made in respect of the proprietary items and the set norms including guidelines indicated in the ICAR Circular No.18(2)/85 CDN (A&A) dated 14th June, 1989 which is supported by the provisions of GFR. The applicant also referred to Rule-6(1) of GFR, which reads as under :

"(1) **Standards of financial propriety** - Every officer incurring or authorizing expenditure from public moneys should be guided by high standards of financial propriety. Every office should also enforce financial order and strict economy at every step and see that all relevant financial rules and regulations are observed, by his own office and by subordinate disbursing officers. Among the principles on which emphasis is generally laid are the following :-

- (i) Every officer is expected to exercise the same vigilance in respect of expenditure incurred from public moneys as a person of ordinary prudence would exercise in respect of expenditure of his own money.

- (ii) The expenditure should not be *prima facie* more than the occasion demands.
- (iii) No authority should exercise its powers of sanctioning expenditure to pass an order which will be directly or indirectly to its own advantage.
- (iv) Expenditure from public moneys should not be incurred for the benefit of a particular person or a section of the people, unless -
 - (1) a claim for the amount could be enforced in a Court of Law, or
 - (2) the expenditure is in pursuance of a recognized policy or custom
- (v) The amount of allowances granted to meet expenditure of a particular type should be so regulated that the allowances are not on the whole a source of profit to the recipients. . . .

3. A joint inquiry was conducted against the applicant including Dr.Nagendra Sharma, Director, Shri I.S.Harit, Administrative Officer, Shri D.P.Verma, F&AO, Dr.N.K.Sinha, Principal Scientist, Shri Kumar Vivek, AO, and Shri J.L.Sharma, PA to Director. The inquiry officer submitted his report on 16.12.2006 to the Disciplinary Authority i.e. the President, ICAR, recommending that both the charges are not proved. The Disciplinary Authority tentatively agreed with the findings of the inquiry officer. Thereafter, the inquiry report alongwith the Disciplinary Authority's tentative view was forwarded, vide letter dated 19.3.2007, to the Central Vigilance Commission (CVC) for its advice and the advice was tendered vide Office Memorandum dated 9.4.2007. Thus, vide memorandum dated 1.5.2007, an explanation was called for. Accordingly, the applicant submitted his representation dated 8.5.2007 thereby explaining that on the basis of evidence and

record it is established that the charges are not proved and thus the Disciplinary Authority tentatively showed his agreement with the findings of the inquiry officer, but the CVC advised penalty other than 'Censure'. On receipt of the advice of the CVC, the applicant again made a request that the matter may be referred back to the CVC for reconsideration. Accordingly, the matter was forwarded vide letter dated 30.8.2007 by the Disciplinary Authority to the CVC for reconsideration of its advice. Vide order dated 23.10.2007 (Ann.A/4), a penalty of withholding of one increment for one year without cumulative effect has been imposed upon the applicant even after the disciplinary authority had asked the CVC to reconsider the advice.

4. Learned counsel for the applicant further submitted that the conditions of service of the applicant are regulated and governed by ICAR Rules mutatis-mutandis in accordance with the principles of fundamental rules, supplementary rules and such other rules and orders as are issued by the Government of India from time to time. While working as F&AO at CIRG, Makhdoom, the applicant did not leave any lacuna in his performance but has discharged his duties and functions in accordance with the duties defined in Audit Manual (Chapter-5) by following the prescribed rules and procedure specified in GFR, ICAR instructions and guidelines issued by the DOPT (Government of India) from time to time. All the purchase had been made as per the recommendation of

the Purchase Committee, wherein the applicant was one of the members, and after having satisfied about the dealings of purchase. The then Director, after perusing the proposal and remark put by the applicant, by taking into consideration the rules including the peculiar circumstances, considered it proper and thereby accorded sanction after due application of mind. Under the rules, the Director was the sanctioning authority and was responsible and accountable for exercising financial powers to procure any item on government account. The sanctioning authority is fully responsible for his act i.e. the Director, CIRG, Makhdoom, and could be held responsible and accountable for the purchase of items but by any stretch of imagination the applicant cannot be held responsible for the aforesaid purchase as he did not deviate from the normal procedure for purchase.

5. That in the aforesaid joint inquiry, on behalf of the prosecution no witness was produced, whereas it was necessary to exhibit the documents by producing oral evidence. However, on behalf of the defence side Shri B.L.Jangira, Ex Director Finance, ICAR, was produced who in his statements revealed that the ICAR is funded by the Government of India and hence facilities created by the Central Government regarding purchase are available to the ICAR, whereas ICAR can purchase from the firms contracted on rate contract by DGS&D/KB/NCCF and no further tenders from those firms are required to be invited but the orders can be placed directly with

the firms or through these outlets. The DW-1, Shri B.L.Jangira, further stated that the proprietary items are purchased from the firm directly without inviting any quotations in view of the proprietary nature of items and the payments can be made directly to the firm on the rate contract or through such agencies also i.e. both the options are available. Though the DW-1 was cross examined by the presenting officer but his evidence remained uncontroverted. As a matter of fact, by the statements of the witness it was well proved that by making purchase of Photocopiers and Air Dust Neutralizers no irregularity/illegality was committed so as to blame to deviate from the normal procedure for purchase as prescribed in GFR. Despite the fact that charges remained not proved and the disciplinary authority tentatively agreed to accept the findings of the inquiry officer unfortunately CVC vide letter dated 9.4.2007, advised to exonerate Dr.Nagendra Sharma, Director (Retired), Shri D.P.Verma, F&AO (Retired) and I.S.Harit, AO, but in respect of the applicant, including Dr.N.K.Sinha, the Principal Scientist, and Shri J.L.Sharma, PA to Director, it was observed that there was no malafide on their part and also there has been no loss but these officers deviated from the prescribed purchase procedure and faulted to the extent they failed to follow the prescribed procedure for purchase and recommended that minor penalty other than 'Censure' may be imposed, whereas the disciplinary authority was to exercise his authority independently. The penalty was imposed on the basis of advice of the CVC. The applicant has relied upon

for

the case of Nagraj Shivarao Karjagi v. Syndicate Bank, Head Office, Manipal & Anr. [1991 SCC (L&S).

965] for the purpose that the CVC neither can suggest the punishment nor its advice is binding upon the disciplinary authority.

6. The respondents have contested this application and filed their reply. In the reply, the respondents have submitted that the charges leveled against the applicant had not been proved as per the inquiry report dated 16.12.2006 and there was no malafide on the part of the charged officer and no loss was caused to the exchequer. The disciplinary authority tentatively agreed with the findings of the Inquiry Officer and held charges as 'not proved'. In their eagerness to utilize the funds before 31st March, tenders were not invited by the Institute Authorities, instead they preferred to make purchase from private parties on NCCF and Kendriya Bhandar rates. Thereafter, the inquiry report alongwith disciplinary authority's tentative view was forwarded to CVC vide letter dated 19.3.2007 for its advice. The Commission vide OM dated 9.4.2007 advised that as regards Dr.N.K.Singh, Principal Scientist, Shri O.P.Nagar, F&AO, Kumar Vivek, AO, and J.L.Shrima, PA to Director, it is observed that there was no malafide on their part and also there has been no loss. But these officers deviated from the prescribed procedure for purchase. The contention of ICAR that these officers did not invite tenders in their eagerness to utilize the funds before the close of financial year cannot be accepted. In view of the

facts and circumstances mentioned above, the Commission advised imposition of minor penalty other than 'Censure' on Dr.N.K.Sinha, Principal Scientist, Shri O.P.Nagar, F&AO, and Shri Kumar Vivek, AO. The Commission, however, advised exoneration of Shri Sharma, PA to Director, as in their opinion he had no role in the purchases.

7. The case was accordingly forwarded, vide letter dated 3.8.2007, to the CVC for reconsideration of its advice. The Commission vide its OM dated 17.9.2007 tendered the following advice; "The reference made by the ICAR has been examined in the Commission. The Commission advised imposition of minor penalty other than 'censure' on S/Shri Kumar Vivek, AO, O.P.Nagar, F&AO, and Dr.N.K.Sinha, Principal Scientist, as these officials had deviated from the prescribed purchase procedure and violated the same. However, none of them has contested the Commission's arguments. Therefore, there is no case to reconsider the Commission's advice in their cases except in the case of Dr.N.K.Sinha as he was basically a Scientist and was asked to work as Chairman/F&AO as an interim arrangement. His claim that he performed his duties in a bonafide interest of the Institute without any involvement of private motives seems to be acceptable. The Commission would, therefore, reiterate its advice of imposition of minor penalty other than 'censure' on Shri O.P.Nagar."

8. Learned counsel for the respondents, after having placed reliance on the reply, also referred to

/m/

the judgement of the Apex Court in the case of **Satyendra Chandra Jain v. Punjab National Bank & Ors.** [1997 (11) SCC 444] and submitted that the judgement in the case of Nagraj Shiva Rao Karjagi (supra) had been considered in this case and stated that in the facts and circumstances, the case deserves to be remitted back to the disciplinary authority for reconsideration.

9. We have heard the rival contentions and perused the record and the relevant case law.

10. The brief facts of the case are that certain purchase has been made on the basis of recommendation of the purchase committee. The applicant was one of the members of the purchase committee and had concurred with the proposal alongwith others. Sanction was accorded by the Director after perusal of record and application of mind. The photocopiers 'Ricoh' Branch were purchased from the authorised dealer of 'Ricoh' Company i.e. M/s. Sicuro System Agra on approved rate of KB/NCCF. The inquiry officer has held that no irregularity has been committed and the charge is not proved. The expenditure has not been incurred for the benefit of any person and the expenditure is not more than the occasion demands as laid down under Rule-6 of GFR. The object of inviting tender is to make purchase on a competitive rate without causing any financial loss to the Government. Therefore, prima-facie, it appears that the applicant has not committed any irregularity or illegality. As regards purchase of electronic Air Dust Neutralizer

Am

from M/s Donewell Rotaries, New Delhi, on the proprietary certificate as accepted by the sister institute in ICAR, no irregularity seems to have been committed after perusal of various rules, circulars and report of the inquiry officer.

11. The Inquiry Officer stated in his report that Shri O.P. Nagar had concurred with the proposal for purchase of six photocopiers of Ricoh Brand from Dealer because it was proposed to be purchased at the approved rates of KB/NCCF which is permissible under the government instructions and the practice being followed in ICAR (Evidence of DW-1). To purchase a particular Brand from particular Dealer is an administrative matter for which F&AO, the applicant, is not a competent authority. Similarly, the applicant had concurred with the proposal for purchase of Air Dust Neutilizers/45 Odour Boxes of their being certified as Proprietary items of the Manufacturers i.e. M/s Done Well Rotaries. Moreover, these items/goods were also stated to be purchased by sister institutes of ICAR. His contention in both cases is supported by Evidence of DW-1. Thus, it appears from the report of the inquiry officer that the applicant had made purchase as per the practice being followed by the other branches of ICAR. The CVC had concurred with the view of the inquiry officer and the disciplinary authority that there was no malafide on the part of the officials and no loss was caused to the exchequer. We find that these purchases had been made in eagerness of the Institute to spend the fund before the close of

It is also pertinent to quote relevant portion of para-19 of the case of **Nagraj Shivarao Karjagi** (supra), as under :

"The punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer."

In the case relied upon by the respondents i.e. **Satyendra Chandra Jain** (supra), the Apex Court held that having regard to the decision in the case of **Nagraj Shivarao Karjagi** and the fact that matter was referred to the disciplinary authority to take appropriate decision, in the case of **Nagraj Shivarao Karjagi**, the disciplinary authority was inclined to impose a lesser punishment but imposed a higher punishment on the basis of recommendation made by the CVC. In the case before us, the decision of disciplinary authority was influenced by the recommendation/direction issued by the CVC for imposition of penalty other than 'censure'. It is settled law that disciplinary authority is not bound by the advice of CVC.

13. Thus, in view of factual and legal position explained in this order, the order of punishment dated 23.10.2007 (Ann.A/4) is hereby quashed and set aside with a direction to the disciplinary authority to form independent opinion and decide issue of

[Signature]

from M/s Donewell Rotaries, New Delhi, on the proprietary certificate as accepted by the sister institute in ICAR, no irregularity seems to have been committed after perusal of various rules, circulars and report of the inquiry officer.

11. The Inquiry Officer stated in his report that Shri O.P. Nagar had concurred with the proposal for purchase of six photocopiers of Ricoh Brand from Dealer because it was proposed to be purchased at the approved rates of KB/NCCF which is permissible under the government instructions and the practice being followed in ICAR (Evidence of DW-1). To purchase a particular Brand from particular Dealer is an administrative matter for which F&AO, the applicant, is not a competent authority. Similarly, the applicant had concurred with the proposal for purchase of Air Dust Neutilizers/45 Odour Boxes of their being certified as Proprietary items of the Manufacturers i.e. M/s Done Well Rotaries. Moreover, these items/goods were also stated to be purchased by sister institutes of ICAR. His contention in both cases is supported by Evidence of DW-1. Thus, it appears from the report of the inquiry officer that the applicant had made purchase as per the practice being followed by the other branches of ICAR. The CVC had concurred with the view of the inquiry officer and the disciplinary authority that there was no malafide on the part of the officials and no loss was caused to the exchequer. We find that these purchases had been made in eagerness of the Institute to spend the fund before the close of

March. However, all these purchase had been made after approval of the Director and after sanction by him. We find that the disciplinary authority had tentatively agreed with the opinion of the inquiry officer that both the charges leveled against the applicant are not proved and no action was called for. However, on the advice of CVC, the penalty was imposed. In this connection, it is considered pertinent to refer to the following judgements; **State of U.P. & Ors. v. Maharaja Dharmander Prasad Singh etc.** [AIR 1989 SC 997], **Nagraj Shivarao Karjagi v. Syndicate Bank, Head Office, Manipal & Anr.** [1991 SCC (L&S) 965] and **Satyendra Chandra Jain v. Punjab National Bank & Ors.** [1997 (11) SCC 444].

12. It is considered pertinent to reproduce relevant portion of para-24 in the case of **State of UP & Ors. (supra)**, as under :

"It is true that in exercise of powers of revoking or canceling the permission is akin to and partakes of a quasi-judicial complexion and that in exercising of the former power the authority must bring to bear an unbiased mind, consider impartially the objections raised by the aggrieved party and decide the matter consistent with the principles of natural justice. The authority cannot permit its decision to be influenced by the direction of others as this would amount to abdication and surrender of its discretion. It would then not be the Authority's discretion that is exercised, but someone else's. If an authority "hands over its discretion to another body it acts ultra vires". Such an interference by a person or body extraneous to the power would plainly be contrary to the nature of the power conferred upon the authority".

PN

It is also pertinent to quote relevant portion of para-19 of the case of **Nagraj Shivarao Karjagi** (supra), as under :

"The punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer."

In the case relied upon by the respondents i.e. **Satyendra Chandra Jain** (supra), the Apex Court held that having regard to the decision in the case of **Nagraj Shivarao Karjagi** and the fact that matter was referred to the disciplinary authority to take appropriate decision, in the case of **Nagraj Shivarao Karjagi**, the disciplinary authority was inclined to impose a lesser punishment but imposed a higher punishment on the basis of recommendation made by the CVC. In the case before us, the decision of disciplinary authority was influenced by the recommendation/direction issued by the CVC for imposition of penalty other than 'censure'. It is settled law that disciplinary authority is not bound by the advice of CVC.

13. Thus, in view of factual and legal position explained in this order, the order of punishment dated 23.10.2007 (Ann.A/4) is hereby quashed and set aside with a direction to the disciplinary authority to form independent opinion and decide issue of
part

exoneration or levy of minor penalty after having considered instructions/circulars/GFRs/inquiry report and reply of the applicant, report sent to the CVC and also the submissions made through this petition without acting under the direction of the CVC and after allowing an opportunity of having heard to the applicant, if deemed necessary.

14. This OA is allowed with the above directions with no order as to costs.



(B.M. KHATRI)
MEMBER (A)



(M.L. CHAUHAN)
MEMBER (J)

vk