

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

16

ORDERS OF THE BENCH

Date of Order: 28.02.2012

OA No. 387/2009 with MA No. 208/2011

Dr. Saugath Roy, counsel for applicant.
Mr. Gaurav Jain, counsel for respondents.


MA No. 208/2011

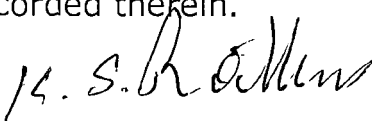
Heard on the Misc. Application bearing No. 208/2011 filed on behalf of the respondents praying for taking the additional affidavit on record of the OA. The Misc. Application stands allowed. The additional affidavit along with the annexures is taken on record of the OA.

OA No. 387/2009

Heard learned counsel for the parties.

O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.


(ANIL KUMAR)
MEMBER (A)


(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 28th day of February, 2012

ORIGINAL APPLICATION No. 387/2009

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Dr. Mrs. S.K.Dave wife of Dr. K.J. Dave, aged 65 years, Retired Assistant Director (Ayurveda), Central Council for Research in Ayurveda and Siddha, New Delhi. Permanent resident of 2/196, SFS Agarwal Farm, Mansarovar, Jaipur (Rajasthan).

... Applicant

(By Advocate : Dr. Saugath Roy)

Versus

1. Union of India through Secretary, Department of AYUSH, Ministry of Health and Family Welfare, Red Cross Bhawan, Red Cross Road, New Delhi.
2. The Director, Central Council for Research in Ayurveda & Siddha, 61-65, Industrial Area, Opposite D Block, Janakpuri, New Delhi.
3. The Minister of Health and Family Welfare, Nirman Bhawan, New Delhi.

... Respondents

(By Advocate: Mr. Gaurav Jain)

ORDER (ORAL)

The applicant had filed this OA thereby praying for the following reliefs:-

- "(i) That the charge sheet dated 21.6.2002, enquiry report dated 26.05.2005 served vide Memorandum dated 06.09.2006, impugned order of penalty dated 23.05.2007 passed by the Disciplinary Authority and the order dated 12.02.2009 passed by the Appellate Authority be quashed and set aside.
- (ii) That the official respondents be directed to restore the 5% cut in pension imposed upon the applicant and the amount already withheld of the applicant be returned back to the applicant with interest.
- (iii) The cost of the application is quantified in favour of the applicant from the official respondents.

Anil Kumar

2. In brief, facts of the case, as stated by the applicant, are that she was posted as Assistant Director at Jaipur from October, 1995 to 2000. Subsequently, she was transferred from Jaipur to CRIA, New Delhi in the year 2000 and retired on 31.08.2003 on attaining the age of superannuation. While she was posted in New Delhi, she was served with a Memorandum including articles of charges dated 21.06.2002 (Annexure A/3). It was proposed to hold inquiry for major penalty against the applicant with other officials namely Dr. K.J. Dave, Assistant Director, Dr. R.P. Chippa Research Officer, Shri P.S. Rawat Head Clerk for the period when the applicant was holding the post of Assistant Director in charge and posted at Jaipur. The allegation levelled against the applicant was that she was serving as Assistant Director in charge at Jaipur, there was a cash embezzlement and fraud to the tune of Rs.4,05,114/-. It was found by the preliminary inquiry that one Mr. R.H. Vashnani, UDC/Cashier was directly responsible for all the irregularities leading to fraud. That there were 6 articles of charge levelled against the applicant. The applicant in order to furnish reply submitted one representation to the Director, CCRAS, New Delhi on 10.07.2002 (Annexure A/4) and requested that the copies of the documents called upon by her be supplied to her but the same were not furnished to her. That the applicant submitted her reply to the memorandum with the help of the document available with her and in the statement of defence dated 24.07.2002, she categorically stated that the denial of her request for supply of copies is clear violation of the Rule 14 of the CCS (CCA) Rules, 1965. The copy of the

Anil Kumar

defence statement has been filed as Annexure A/5. That without taking into consideration the reply submitted by the applicant, a full fledged inquiry was conducted against her. The copy of the inquiry report was furnished to the applicant (Annexure A/6). She has further submitted that only one charge of lack of supervision was proved against her but other charges were not proved by the Inquiry Officer. The applicant submitted her comments on the Inquiry report on 16.09.2006 (Annexure A/7). However, without taking into consideration the comments submitted by the applicant, the Disciplinary Authority vide order dated 23.05.2007 (Annexure A/2) inflicted the penalty of cut of 5% in her pension. The applicant preferred an appeal before respondent no. 3. That the applicant was not supplied the copies of the second stage advice of the CVC. Therefore, she was not given an opportunity to make a representation against the advise of the CVC. It has also been mentioned that the advice of the UPSC has not been obtained before passing the order of cut in pension. The Appellate Authority without application of mind and without going through the appeal, rejected the appeal filed by the applicant in a very casual manner (Annexure A/1).

3. The applicant has further submitted that the charge sheet issued to her was signed by the Director whereas it should be signed by the Joint Secretary for and on behalf of the President of the Governing body. Therefore, the charge sheet deserves to be quashed and set aside on this ground alone. The penalty order should have been passed by the competent authority

Anil Kumar

under his signature. It is only in cases where the President is the prescribed Disciplinary/Appellate/Reviewing Authority and where Minister has considered the case and given his order that the order may be communicated by an officer not below the rank of Joint Secretary but no such exercise was made in the case of the applicant and as such the action of the respondents deserves to be quashed and set aside because in this case, Hon'ble President of India is not the prescribed Disciplinary/Appellate/ Reviewing Authority and as such Disciplinary Authority cannot delegate its powers to any subordinate authority. It was for the President, G.B., CCRAS to issue the punishment order over his own signature in the capacity of Disciplinary Authority and Director CCRAS is not authorised to authenticate order on behalf of the President and as such the orders signed by the Director CCRAS in case of the applicant is invalid and deserves to be quashed and set aside. That preliminary inquiry was conducted by an officer, who was junior to the applicant and was holding the post of Administrative Officer. Inquiry should have been conducted by an officer who is sufficiently senior to the officer against whom inquiry is made. Thus there is a violation of the instructions on the subject and as such the action of the respondents deserves to be quashed and set aside. Therefore, the applicant has submitted that the charge sheet dated 21.06.2002, inquiry report dated 26.05.2005, penalty order dated 23.05.2007 and Appellate order dated 12.02.2009 be quashed and the amount of pension, which has been withheld by the respondents

Anil Kumar

because of 5% cut be returned back to the applicant with interest and 5% cut in pension be restored.

4. The respondents have filed their reply. In their reply, it has been stated that fraud and embezzlement of cash to the tune of Rs.3,05,114/- was came into the knowledge of Internal Audit tem of this council while conducting the internal audit of the institute during the month of September, 2000. Accordingly, one preliminary inquiry was conducted by the team of three officers of the Central Council for Research in Ayurveda and Siddha Head Office and prima facie the following officers of the Central Council for Research in Ayurveda and Siddha, Jaipur were identified:-

Shri R.H. Vasnani, Cashier, Prime accused in the embezzlement case.

And supervisory lapses against:-

1. Dr. (Mrs.) S.K. Dave, the then AD Director Incharge & drawing and Disbursement Officer.
2. Dr. K.J. Dave, the then AD and co-signatory of cheques.
3. Dr. R.P. Chhipa, the then RO (Ay.) and co-signatory of cheques.
4. Shri Prabhu Singh, the then Head Clerk.

5. That first stage advice was obtained from Central Vigilance Commission on 28.02.2002 and the Commission agreed to initiate major penalty proceedings against all the five persons. Accordingly, common charge sheet was prepared against the officials found guilty in supervisory lapses including the applicant. Separate simultaneous proceedings were initiated against all of them on the charge sheet already ^{issued} and the Deputy Director (Administration) of the National Institute of

Anil Kumar

Ayurveda, Jaipur was appointed as Inquiry officer. On receipt of the inquiry report from the Inquiry officer, the matter was referred to the Department of AYUSH, Ministry of Health and Family Welfare along with a note of the CVO of the council for acceptance of the inquiry report by the President of the Governing Body of the Council i.e. Union Minister of Health and Family Welfare. On receipt of the instructions from the Director, AYUSH, Ministry of Health and Family Welfare, the second stage advice of the Central Vigilance Commission as well as comments of the delinquent officials on the inquiry report was obtained by the Council. The opinion of the CVC was received on 07.11.2006 wherein they opined that a suitable cut in the pension against Dr. (Mrs.) S.K. Dave (Retired) be imposed as punishment. On the basis of the advice of the CVC, the Disciplinary Authority imposed the punishment of reduction of pension by 5% on Dr. (Mrs.) S.K. Dave on 23.05.2007. That all five delinquents officials including the applicant, appealed against the punishment order. The appeals were placed before the Governing body in its meeting held on 23.12.2008. After due consideration of all the facts, defence submitted by the applicant, material available on record, the Governing Body dismissed the appeal filed by the applicant and upheld the punishment imposed on her. It has been submitted by the respondents that article 1 to 6 of the charges were not proved against the applicant but administrative lapse and supervisory negligence of the applicant was clearly proved.

Amal Kumar

6. The respondents have further submitted that as per Bye-Laws 46 (ii) of the council, if the charge sheet is against the officer other than Director of the council, the charge sheet will be signed by the Director of the council on behalf of President of the Governing Body. The applicant was a Group 'A' (i) officer in the council when the disciplinary proceedings were initiated against her. As per provisions in Annexure to Bye-Laws 46, the Governing Body is the disciplinary authority in her case. Hon'ble Minister of Health & Family Welfare in exercising the provisions of Rule 49 of the Rules & Regulations of the Council approved the charge sheet of the applicant before it was issued by the Director of the council on behalf of the President of the Governing Body. Therefore, issuance of the charge sheet by the Director on behalf of the Governing body was legal and in accordance with the provisions of rules.

7. The CVC in its manual has suggested to the authorities that one copy of the second stage advice may be provided to the charge sheeted officer while obtaining the comments on finding of the Inquiring Authority. But it has not ^{been} made ~~been~~ mandatory by the CVC. They have further stated that UPSC is no way concerned for the selection of an officer for this council. Therefore, the question of referring the matter of imposing penalty to a Group 'A' officer to UPSC does not arise. The CCRAC is an autonomous organization under the Department of AYUSH, Ministry of Health & Family Welfare and registered under the Societies Registration Act, 1860. The selections of the officers of the Council are made as per the approved

Anil Kumar

recruitment rules of the council and by a selection committee as per the provisions in the recruitment rules. Therefore, consultation of the UPSC was not required before imposing the penalty of cut in pension to the applicant.

8. The respondents have further submitted that as per Bye-Laws 46, the Disciplinary Authority in the case of the applicant is the governing body. Appellate Authority is also the governing body of the council. In the Bye Laws of the council, there is no provision of Reviewing Authority. While imposing the penalty, the President of the Governing Body exercised the power conferred upon him vide Rule 49 of Rules and Regulations of the Council which were subsequently ratified in the meeting of the Governing body.

9. With regard to submission of the applicant that a preliminary inquiry was conducted by an officer, junior to her, the respondents have stated that preliminary investigation is done to see whether any prima facie case is established in the matter and if so to proceed further to initiate the disciplinary proceedings. In this case, preliminary inquiry was headed by the then Administrative Officer, which is as per the rules of the procedure on the subject. The requirement of a senior officer to conduct an inquiry meant for a regular departmental inquiry and in this case, council nominated a sufficiently higher officer to the applicant as Inquiry authority. Therefore, the respondents have submitted that the OA has no merit and it deserves to be dismissed.

Anil Kumar

10. The applicant has filed a rejoinder. The respondents have filed an additional affidavit in response to the rejoinder.

11. Heard the learned counsel for the parties and perused the documents on record. Learned counsel for the applicant reiterated the facts which he has taken in the OA. He argued that the applicant requested the copies of certain documents required by her to give a reply, which was denied to her. Therefore, she was not given adequate opportunity to defend her case and thus the principles of natural justice was violated. The charge sheet was signed under the signature of the Director, though the charge sheet should have been signed by the Joint Secretary. Second stage advice of the CVC was not provided to the applicant to make a representation against that advice. When the applicant submitted her reply to the inquiry report, the disciplinary authority without appreciating the contents of the reply inflicted the punishment of cut in pension. Even the UPSC was not consulted though it is required to consult the UPSC under the rules. The appeal preferred by the applicant was rejected without application of mind by the Appellate Authority. Learned counsel for the applicant referred to an order of this Tribunal passed in OA 148/2011 decided on 29.09.2011 [**Prabhu Singh Rawat vs. Union of India & Others**] and argued that this case is covered by the ratio laid down in the said order. Therefore, he argued that the OA may be allowed and the charge sheet dated 21.06.2002, Inquiry report dated 26.05.2005 served with Memorandum dated

Anil Kumar

06.09.2006, impugned order of penalty dated 23.05.2007 passed by the Disciplinary Authority and order dated 12.02.2009 passed by the Appellate Authority be quashed and set aside and 5% cut in the pension be restored to the applicant.

12. On the contrary, learned counsel for the respondents argued that the entire disciplinary proceedings against the applicant have been conducted as per rules. The applicant requested for certain documents, which were not necessary for submitting her reply. Therefore, her request for those documents was not accepted and she was accordingly informed vide Memorandum dated 18.07.2002 (Annexure R/2). She was given all connected documents with regard to articles of charges framed against her. Therefore, there is no violation of principles of natural justice. With regard to giving a copy of the second stage advice of the CVC, learned counsel for the respondents argued that it is not mandatory under the rules to provide a copy of the second stage advice of the CVC to the applicant though the CVC in its manual has suggested the authority to provide one copy of the second stage advice of the CVC to the charge officer. With regard to consultation of the UPSC, learned counsel for the respondents argued that UPSC is in no way concerned for the selection of an officer. Therefore, the question of referring the matter on imposition of penalty of on Group 'A' officer to UPSC does not arise. He further argued that charge sheet was issued under the signature of the Director which is according to the rules of the Council and there

Anil Kumar

is no violation of any rule in this regard. He submitted that there is no merit in this OA. Therefore, it deserves to be dismissed.

13. Having heard the rival submissions of the parties and after perusal of the relevant documents on record, and after going through the various provisions with regard to the disciplinary proceedings in the case of the applicant, we are of the opinion that the charge sheet was issued to the applicant under the signature of the competent authority. The Director was the competent authority to issue the charge sheet under his signature. We are further of the view that consultation of the UPSC before imposing the penalty of cut was not required in this case. The CCRAC is an autonomous organization under the Department of AYUSH, Ministry of Health & Family Welfare and registered under Societies Registration Act, 1860. The selection of the officers of the council is made as per the approved recruitment rules of the council and by a selection committee as per the provisions in the recruitment rules. UPSC is no way concerned for selection of an officer for this council and, therefore, it was not necessary for the respondents to refer the case to UPSC before imposing cut of 5% in pension. However, with regard to furnishing of the second stage advice is concerned, the respondents have themselves admitted that as per the Manual of the CVC, second stage should have been provided to the charged officer to submit his representation but in this case the respondents have not furnished the second stage advice to the applicant. We have gone through the order

Anil Kumar,

passed by this Tribunal in OA No. 148/2011 decided on 29.09.2011 in the case of **Prabhu Singh Rawat vs. Union of India & Others**. Shri Prabhu Singh Rawat was also served charge sheet alongwith the applicant and, therefore, the ratio as laid down in the said order is squarely applicable in this case. We quote Para No. 11 of the order dated 29.09.2011, which is as under:-

"11. The Hon'ble Supreme Court in the case of Punjab National Bank vs. Kunj Behari Mishra (supra) observed as under:-

"19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagree with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

14. It is not disputed that the applicant has been awarded the punishment of cut in pension on the basis of second stage advice of the CVC. As per the ratio decided by the Hon'ble Supreme Court in the case of **Punjab National Bank vs. Kunj Behari Sharma** reported in 1998 (7) SCC 84, bare minimum principles of natural justice have to be followed by providing opportunity to be heard before taking a final decision and

Anil Kumar

imposing penalty and in view of the ratio above, the respondents ought to have given opportunity to the charged official to file representation to the disciplinary authority on the basis of second stage advice given by CVC. The Disciplinary Authority recorded its finding on the charges framed against the charged officer on the basis of the second stage opinion given by the CVC and admittedly, no opportunity of being heard has been given to the applicant. Therefore, we allow this OA and quash and set aside the impugned order passed by the Disciplinary and Appellate Authorities and remit the matter back to the Disciplinary Authority to pass order afresh after providing opportunity of being heard to the applicant and providing copy of the second stage advice of the CVC and shall pass order strictly in accordance with the provisions of law.

15. With these observations, the OA stands disposed of with no order as to costs.

Anil Kumar

(Anil Kumar)
Member (A)

AHQ

J. S. Rathore

(Justice K.S.Rathore)
Member (J)