

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

22.09.2011

OA No. 148/2011

Mr. Gaurav Sharma, counsel for applicant.
Mr. Mukesh Agarwal, counsel for respondent no. 1.
Mr. Gaurav Jain, counsel for respondent nos. 2 & 3.

Learned counsel appearing for the applicant submits that he will be filing the rejoinder in the registry during the course of the day with an advance copy of the same to the learned counsel for the respondents. The registry is directed to place the same on record. Put up the matter on 29.09.2011.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

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

Registrar

9/8

29/09/2011 [OA 148/2011]

Mr. Sanjeev Prakash Sharma, Senior Advocate
with Mr. Ankit Sethi, Counsel for the
applicant.

Mr. Mukesh Agarwal, counsel for respondent
No. 1.

Mr. Gaurav Jain, counsel for respondent No. 2 & 3.

Heard.

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

Anil Kumar
[Anil Kumar]
Member (A)

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

Rejoinder not
Filed *9/8*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 29th day of September, 2011

OA No. 148/2011

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Prabhu Singh Rawat
s/o late Shri Ladu Singh Rawat,
r/o D-9/194, Chitrakoot Scheme,
Vaishali Nagar, Jaipur
At present: Ayurved Centre Research Institute,
Indira Colony, Bani Park,
Jhotwara Road, Jaipur

... Applicant

(By Advocate : Shri Sanjeev Prakash Sharma, Sr. Advocate with
Shri Ankit Sethi)

Versus

1. The Union of India
through Secretary,
Department of Ayush,
Government of India,
Ministry of Health and Family Welfare,
Red Crossing Building,
IRCS Road, New Delhi.
2. The Hon'ble Union Minister,
Health and Family Welfare,
Government of India,
In his capacity as President,
Governing Body,
Central Council for Research Ayurveda and
Siddha (CCRAS), Ayush Department,
Nirman Bhawan,
New Delhi.

3. The Director General,
Central Council for Research
Ayurveda and Siddha (CCARAS),
61-65, Institutional Area,
Opposite D Block,
Janakpuri,
New Delhi.

... Respondents

(By Advocate : Shri Mukesh Agarwal for resp.No.1 and Shri Gaurav Jain for resp. No. 2 and 3)

ORDER (ORAL)

The brief facts of the case are that the applicant while working on the post of Assistant, a charge sheet was served upon him on 21.6.2002 for conducting a joint enquiry along with other senior officials and four charges were leveled against the applicant. The applicant submitted a detailed reply to the charge sheet. The respondents after receipt of the reply from the applicant conducted enquiry in terms of Rule 14 and 18 of the CCS (CCA) Rules, 1965 and the Enquiry Officer after conducting the enquiry submitted report which was conveyed to the applicant vide letter dated 6.9.2006. In the enquiry report, the applicant was exonerated of all the charges and none of the charge was found to be proved against the applicant but the applicant was asked to submit his comments on the enquiry report within 10 days. The applicant submitted comments and accepted the version of



the Enquiry Officer and further prayed that he may be exonerated in terms of the enquiry report.

2. The applicant is aggrieved by the decision of the Disciplinary Authority reducing pay of the applicant by two stages and further declaring that the applicant will not be eligible for further promotion from the post of Head Clerk (Assistant).

3. So far as the second stage opinion given by the Central Vigilance Commission is concerned, it is alleged that the same was not conveyed to the applicant.

4. Aggrieved and dis-satisfied with the impugned order, the applicant submitted appeal before the Appellate Authority. Since the Appellate Authority has not decided the appeal for a pretty long time, the applicant filed OA No. 455/2010 before this Tribunal wherein he has prayed that the respondents may be directed to decide the appeal dated 3.7.2007 within a justified period. In the aforesaid OA, the respondents filed Misc. Application and prayed that the OA be declared infructuous in terms of order dated 28.3.2011 passed in appeal, therefore, the OA was declared as infructuous and accordingly dismissed.

5. This appellate order dated 28.3.2011 is assailed by the applicant by way of filing the present OA on the ground that since the Enquiry Officer has already exonerated the



applicant, the Disciplinary Authority could not held him guilty for the charges without giving him opportunity to represent his case against the dis-agreement as has been held by the 3 Judges Bench of the Hon'ble Supreme Court in the case of Punjab National Bank vs. Kunj Behari Sharma reported in (1998) 7 SCC 84. Also challenged on the ground that the Disciplinary Authority has relied upon the second stage opinion given by the CVC which could not have been relied upon without giving an opportunity to the applicant to submit his comments thereon. Thus action of the respondents is not only in violation of principles of natural justice but also violative of CVC circular dated 28.9.2000. The applicant also referred to Rule 15(2) of CCS (CCA) Rules, which reads as under:-

"15. Action on the inquiry report

(1).....

(2) The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge to the Government servant who shall be required to submit, if so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective



of whether the report is favourable or not to the Government servant."

Also referred to Rule 15(B) of CCS (CCA) Rules, relevant portion of which reads as under:-

"(B) Advice of CVC also to be furnished-

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3..... a copy of the Commission's first stage advice may be made available to the concerned employee along with a copy of the charge-sheet served upon him for his information. However, when the CVC's second stage advice is obtained, a copy thereof may be made available to the concerned employee, along with the IO's report to give him an opportunity to make representation against IO's findings and the CVC's advice, if he desires to do so.

6. The learned counsel appearing for the respondents submitted that a fraud and embezzlement of cash to the tune of Rs. 3,05,114/- came to the knowledge of the Internal Audit Team of the Council while conducting the internal audit of the institute during the month of September, 2000. Accordingly, preliminary enquiry was conducted by deputing three officers of the Central Council for Research in Ayurveda and Sidda, Head Office and prima-facie 4 officials of the Central Research Institute (Ay.) Jaipur were identified and name of the



applicant find place at Sl.No.4. Therefore, first stage advice was obtained from CVC on 28.2.2002 and the CVC agreed to initiate major penalty proceedings against all the persons. Accordingly, common charge sheet was prepared against the officials found guilty in supervisory lapses.

7. Further stated that on receipt of the enquiry report from the Enquiry Officer, the matter was referred to the Department of Ayush, Ministry of Health and Family Welfare along with a note of Chief Vigilance Officer of the Council for acceptance of the enquiry 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 CVC as well as comments of the delinquent officials on the enquiry report were obtained by the Council. The opinion of the CVC was received on 7.11.2006, wherein with regard to applicant the CVC opined to impose a suitable major penalty. Therefore, the Disciplinary Authority imposed the penalty of reduction by two stages from Rs. 6900/- to Rs. 6550/- of pay with declaring him non eligible for further promotion on receipt of the approval of Minister of Health and Family Welfare in the capacity of President of Governing Body. The Appellate Authority also upheld the punishment imposed by the Disciplinary Authority. After review of the appeal of the



applicant, it was found that as per the Government of India's instructions No.21 and 22 below Rule 11 of CCS (CCA) Rules the officials under punishment are ordinarily debarred to the promotion during their entire period of promotion. The punishment was imposed on the applicant for the entire remaining period of his service and therefore, he became automatically debarred for any future promotion as per provisions of the above instructions. As such, the Hon'ble Health and Family Welfare Minister in his capacity as President of the Governing Body by exercising the powers conferred upon him vide Rule 59 of the Memorandum of Association, Rules Regulations and Bye Laws of CCRAS rejected the appeal of the applicant.

8. With regard to powers and functions of the President, the respondents referred to Rule 49 of Bye Laws (Ann.R/2) which provides as under:-

"49. Nothing in these rules shall prevent the President from exercising any or all the powers of the Governing Body in case of emergencies for furtherance of the objects of the Central Council and the action taken by the President on such occasions shall be reported to the Governing Body subsequently for rectification."

9. Having heard the rival submissions of the respective parties and upon careful perusal of the material available on



record as well as the provisions which are referred to by the respective parties as well as the judgments, it is evident that the relief has been claimed by the applicant against the memorandum dated 21.6.2002. Bare perusal of this Memorandum, issued to as many as 4 officials including the applicant, reveals that these officials were directed to submit, within 10 days of receipt of this Memo, a written statement of their defence and also to state whether she or he desires to be heard in person and photocopies of documents listed in Annex.III and reports of listed witnesses in Ann.IV were provided in the enclosed preliminary and supplementary reports duly attested by the Dy. Director (Admn.) of the Council and if any of the official is interested in verifying a particular photocopy with its original, she or he may do so with the Presenting Officer to be appointed in due course if an oral inquiry is warranted.

10. Further challenged the penalty order dated 23.5.2007 wherein the Disciplinary Authority has considered the report of the Enquiry Officer, submissions of the charged officer and also the second stage opinion of the CVC given vide memorandum dated 7.11.2006 and the President of the Governing Body of the CCRAS did not find any substance in disagreeing with the findings of the Inquiry Officer and the second stage opinion given by the Central Vigilance



Commission, therefore imposed a major penalty on the charged officer.

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

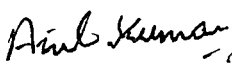
"19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagree with the enquiry authority on any article of charge, then before it records its own findings on such charge, 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."

12. It is not disputed that the Enquiry Officer has exonerated the applicant but on the basis of second stage advice of the CVC, the punishment order has been passed. As per the ratio



decided by the Hon'ble Supreme Court in the case of Punjab National Bank (supra), bare minimum principles of natural justice have to be followed by providing opportunity to be heard before taking a final decision and imposing penalty and in view of the above ratio, the respondents ought to have given opportunity to the charged official to file representation before the Disciplinary Authority. The Disciplinary Authority recorded its findings on the charges framed against the charged official 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 shall pass order strictly in accordance with provisions of law.

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


(ANIL KUMAR)
Admv. Member


(JUSTICE K.S.RATHORE)
Judl. Member

R/