

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH**

**ALLAHABAD**

**Original Application No.1668 of 2010.**

This, the 30<sup>th</sup> day of October, 2018

**HON'BLE MR. RAKESH SAGAR JAIN, JUDICIAL MEMBER**  
**HON'BLE MR. MOHD. JAMSHED, ADMINISTRATIVE MEMBER**

D.K. Guha Roy, son of Late B.B. Guha Roy, Joint Director, Process-cum-Product Development Centre, Meerut, (now retired) R/o D-19, Meenakshipuram, Meerut.

-Applicant

(By Advocate – Shri Ajay Rajendra/Shri Shailendra

**V e r s u s**

1. Union of India, through Secretary Ministry of Micro Small and Medium Enterprises, Government of India, New Delhi 110001.
2. Development Commissioner, Micro Small and Medium Enterprises, Government of India, also Chairman governing Council Porsess-Cum-Product Development Centre, Meerut, 701, Nirman Bhawan, New Delhi 110011.
3. Principal Director, also Incharge of Process-cum-Product Development Centre, Office at Delhi Road, Sports Goods Complex, Meerut.
4. Sri S.N. Misra, Director son of Ranjit Misra, Process-cum-Product Development Centre, Meerut, R/o Vill. And Post Pindi, District Deoria (U.P) 274508.
5. Governing Council, Process-Cum-Product Development Centre, Meerut through its Chairman.

-Respondents

(By Advocate – Shri B.B Varshney/Shri A.K. Singh)

## **ORDER**

BY HON'BLE MR. RAKESH SAGAR JAIN, JUDICIAL MEMBER

1. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking following reliefs:-

"(i) Issue order or direction commanding the respondents to set-aside the order impugned order 1.9.2008 passed by Chairman governing Council and proceeding of Governing Council dated 5.8.2008 (Annexure No. 25 and 26 of this writ petition).

(ii) Issue order or direction commanding the respondents authorities to exonerate the petitioner from proceeding which was without jurisdiction and provide the salary for the period he was not allowed to work to work as neither any charge-sheet was issued by the Competent Authority nor any proceeding was initiated by the Governing Council till date of superannuation of petitioner and petitioner may also be paid other consequential benefits in accordance with law to which he is entitled within the stipulated period of time fixed by this Hon'ble Tribunal.

(iii) Issue any other, order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case".

2. Case of applicant D.K. Guha Roy is that he is the Joint Director of Process-cum-Product Development Centre (hereinafter referred to as 'PCDC') which is a society registered in 1985-86 under the Societies Registration Act, 1860 and its functioning is under the control of Governing Council which manages the affairs of the Society including the appointment of the applicant in terms of Rule 42 to 45 of Memorandum of Association (hereinafter

referred to as the 'MOA'). The condition of service of the officers and their appointment of the Society is under the Governing Council in terms of Rule 44 (xii) of the MOA. At the time the impugned order dated 1.9.2008 was passed by respondent No. 5, Mr. A.P. Sharma was working as Principal Director and Incharge of the Governing Council.

3. The brief facts of the case that applicant was charged with the allegations that he was involved in corrupt practice of receiving, storing and providing chemicals (which were not purchased by PCC) to the customers coming for job work of leather processing and did not furnish his annual property statement. Find the applicant guilty on the aforementioned counts, punishment of compulsory retirement was imposed on him, which was challenged in the Hon'ble High Court and the order of punishment was set aside and remanded for re-consideration by the Governing Council, PCC, Meerut. The Governing Council after hearing the applicant maintained its earlier order of 'compulsory retirement' vide impugned order dated 01.09.2008.
4. Before proceeding further, it would be pertinent to note that vide order dated 10.6.2002, in the disciplinary proceeding, punishment of compulsory retirement was imposed upon the applicant which was set aside by the Hon'ble High Court vide order dated 05.05.2008, the operative part of which order reads as under

"However, since we are not sitting in the jurisdiction to consider the decision but decision making process, we are of the view that the case of the petitioner will be considered once again within a democratic set up. Therefore, there is no harm of the matter be placed before the governing council for the purposes of re-consideration of the cause in the place and instead of an individual for all purposes inclusive of actual retiral benefit to be given to the

petitioner in the light of the judgment and order of this Court as early as possible preferably within a period of two months from the date of communication of this order upon giving fullest opportunity of hearing and by passing a reasoned order thereon. For the purposes of effective adjudication copy of the writ petition, affidavits and annexures can also be treated as part and parcel of such proceeding. It is made clear that at the time of consideration of the cause by the governing council finding of the Regional Authority or Appellate Authority will not cause any influence".

5. So, as per the directions of the Hon'ble High Court, the matter was to be reconsidered by putting the matter before the Governing Council in the place and instead of an individual and at time of consideration of the cause by the Governing Council, finding of the Regional Authority or Appellate Authority will not cause any influence. The Governing Council reconsidered the matter and maintained the earlier order of compulsory retirement.
6. Applicant has challenged the impugned order on the following grounds: -

(i) At the time the matter was placed before the Governing Council (GC), the agenda was prepared in order to prejudice the members, incorrect information was given, judgment of Hon'ble High Court was criticized, the authorities mentioned three charges against the applicant while the charges which were proved against the applicant were charge No. 1 and 5 and that the charge No. 4 was deliberately mentioned in order to prejudice the members and provide incorrect information.

(ii) In para No. 8 of the agenda certain comments were given against the Judgment of the Hon'ble High Court so that decision of the members could be prejudiced which is illegal since members are required to apply their open mind.

(iii) It is apparent from the order impugned the submission/reply submitted by the petitioner not even perused by the members of the GC, they have not even referred in the resolution. Further no attempt was made on behalf of the Secretary of the GC placed the reply to the members, to that extent the decision taken by the GC in absence of reply of applicant.

(iv) The agenda which has been circulated among the members not only provides comments to produce the members but also provides the decision which is absolutely illegal as the mandate of the Judgment of this Hon'ble Court to apply mind afresh was defeated.

(v) It appears from the decision impugned that authorities have gone to consider only retiral benefit while Division Bench of this Hon'ble Court directed the authorities to consider the grievance for all purposes including actual retiral benefit. To that extent the order passed in teeth of the judgment of the Hon'ble Allahabad High Court.

(vi) No consideration was made even in reference to Charge Nos. 1 and 5 placed before the G.C. as very foundation for confirming the charge No. 1 was the stock register submitted by Pheru Singh and the statement of Daljeet Singh where petitioner has demonstrated that no stock register prepared by petitioner and Pheru Singh himself in his statement dated 5.11.1998 admitted that whatever he done in pressure of his immediate officer, he has denied the actual statement and

to that extent that only evidence for proving the charge was non existence. Another fact that Pheru Singh never appeared and his statement was never proved, to that extent the evidence cannot be taken into account for confirming the charge No. 1, the members of G.C. have not addressed to issue on merit rather simply confirming the decision already taken by Chairman, G.C. which was without jurisdiction and challenged by petitioner in the earlier writ petition.

(vii) The fact that the G.C. decided to consider the issue on merit, includes that the Chairman, G.C. was not within the jurisdiction to decide the issue earlier, in this circumstance, G.C. requires to decide the issue afresh rather consider the same charge-sheet which was prepared and confirmed by Chairman, G.C., the part of that disciplinary proceeding itself was without jurisdiction, the G.C. has not adopted procedure that requires to be done by Appointing Authority rather they have only consider the decision already taken by Chairman, G.C. To that extent such decision cannot be allowed to stay in view of the legal and settled principles.

(viii) No decision taken on the issue that Chairman, G.C. was not the Appointing Authority, in that circumstances, the entire proceeding initiated by Chairman, G.C. was without jurisdiction, hence proceeding itself collapsed and no decision could be taken against the applicant.

(ix) By perusal of the resolution, this could be verified that no separate mind was applied, no reconsideration of the grievance was made and even the earlier decision by which penalty was imposed and finally confirmed. This was the complete violation of the observation of Judgment of the Hon'ble Court where authorities were asked not to be influenced by the earlier decision, the observation as given by

the Hon'ble Court was that " it is made clear that at the time of consideration of the cause by the Governing Council finding of the Regional Authority or Appellate Authority is not cause any influence."

(x) By perusal of the aforesaid order impugned this could be verified that no attempt has been made to consider the issue like jurisdiction of Chairman to decide the earlier issue, no finding recorded on that issue. As a matter of fact, the matter remanded back for finding to Chairman, G.C. although the charge No. 1 was discussed as mentioned in the agenda but no finding recorded, no reasoning provided for what purpose the charge No. 1 and 5 found proved and no reconsideration was permissible.

(xi) The aforesaid order impugned is absolutely illegal, arbitrary and discriminatory, therefore, petitioner is entitled to be exonerated from the charges which never could be proved and in any manner, it was not of such nature or fatal where punishment of dismissal from service could be passed.

(xii) The order impugned is also passed in utter violation of principles of natural justice when the agenda of Chairman which includes the decision, the issue taken into account which has become reason for passing the order impugned but at no moment no opportunity was given to petitioner for rebuttal.

(xiii) The dismissal or compulsory retirement of petitioner was absolutely illegal, he is entitled of the salary for the period he was allowed to work and salary was not paid till the date of retirement and then also compensation for harassment of mental, physical and financial by authorities as caused to petitioner".

7. In the Counter Affidavit, filed by the respondents, it has been averred that on conclusion of inquiry, the articles of charge Nos. 1, 4 and 5 were proved whereas articles of charge Nos. 2, 3 and 6 were not proved against the applicant as per the inquiry report. Thereafter, in compliance to the directions of Hon'ble Allahabad High Court, the applicant was informed for personal presentation before the G.C. wherein the G.C. agreed that the retirement benefits as admissible under Rules to the officer, retired compulsorily following the disciplinary proceedings, be allowed to the applicant and authorized the Chairman to issue a reasoned order. The copy of minutes of meeting of the G.C. pertaining to the agenda item No. 30.07 is attached herewith as annexure CA-5. That the authorities had considered all the facts including the representations of the applicant before passing the order.
8. It is further averred in the C.A. that the respondents nowhere criticized the Judgment of Hon'ble High Court and that the agenda was prepared to appraise the members with the factual position and there was no attempt to prejudice the members. Therefore, it is wrong to say that there was no opportunity of rebuttal or objection to the applicant.
9. The respondents have categorically stated in paragraph-43 of the Counter that "In fact, the issues such as details of disciplinary proceedings, the penalty imposed and the Judgment dated 05.05.2008 of Hon'ble High Court, Allahabad on the writ petition No. 28210 of 2002 were gone through by the members as has also been recorded in the minutes of the meeting and the decision has been taken in a democratic manner giving fullest opportunity to the applicant for defending his case. There was no influence of earlier order. When the matter was discussed and decided by the G.C., the Chairman was authorized to issue necessary orders as per the minutes of the meetings. The

decision was taken by the governing council in a democratic atmosphere on the merit of the case and as such deserves to be upheld. The averment of the applicant contrary to it made in paragraphs under reply is incorrect, hence denied.

In para-46, the respondents have submitted that the disciplinary action taken against the applicant was in accordance with rules and the orders of penalty dated 05.12.2001 and 10.06.2002 imposed on applicant including the order dated 01.09.2008 are valid, justified and as per law and, therefore, deserves to be upheld and the same does not suffer from any illegality or irregularity. The grounds taken by the applicant are baseless, against the facts and without any substance and, therefore, untenable and liable to be ignored.

In para-49, the respondents have averred that in view of the facts and circumstances, as mentioned above, it is crystal clear that the disciplinary action taken against the applicant was in accordance with rules and the order of penalty dated 05.12.2001 and 10.06.2002 imposed on applicant including the proceeding of G.C. dated 05.08.2008 and order dated 01.09.2008 are valid, justified and as per law and therefore deserves to be upheld and pay and allowance for the period he was allowed to work has already been paid and payments such as Retirement Gratuity, Encashment of Earned Leave and Payment under Group Saving Linked Insurance Scheme in accordance with the order dated 01.09.2008 have also been made to the applicant. Therefore, the relief sought is untenable and needs to be rejected. The original application of applicant is devoid of any merit and deserves to be dismissed with exemplary cost.

10. We have heard and considered the arguments of the Learned Counsels for the parties and gone through the material on record as well as the written arguments filed by the learned counsel for applicant.
11. The Hon'ble High Court vide order dated 5.5.2008 very clearly and succinctly directed the GC to re-consider the case of applicant and dispose off the matter by passing a reasoned order (emphasised by us). The decision dated 5.8.2008 of the GC and the impugned order dated 01.09.2008 passed by the Chairman, GC is to be set aside. Both the orders do not fulfil the direction given by the Hon'ble High Court that there should be a reasoned order disposing the cause of applicant.
12. A cursory perusal of the decisions of GC and the Chairman, GC would show that they are cryptic, unreasoned and non-speaking. In fact, the direction was given by the Hon'ble High Court to the GC for a reasoned order but the GC comprising of number of members/officials passed the buck onto the Chairman GC to pass a reasoned order and the Chairman, GC went to pass an order but the same is unreasoned.
13. The decision of GC as per the Minutes of the 21<sup>st</sup> Annual General Meeting on Agenda item No. 30.7: Judgment of Allahabad High Court on Writ Filed by Shri D.K. Guha Roy, Former Joint Director is as follow:

"Agenda Item No. 30.7: Judgment of Allahabad High Court on writ filed by Shri D.K. Guha Roy, former Joint Director.

The details of the disciplinary proceedings, the penalty imposed and the judgment of Allahabad High Court on the Writ Petition (No. 28210/2002) filed by Shri D.K Guha Roy, as contained in the Agenda Note were gone through by the members of Governing Council. But, before arriving

at any conclusion, Shri D.K. Guha Roy was summoned before the Council to appraise the members, if he had any further defence in his favour.

2. Shri Guha Roy simply told the members, that he was innocent and his integrity should not be doubted. But, he could not convince the members that the charges due to which he had been punished were not correct in way.

3. The Governing Council discussed the matter at length, the agreed unanimously that the retirement benefits, as admissible under Rules to the officers, retired compulsorily following the disciplinary proceedings, may be allowed to Shri Guha Roy. The Council also authorized the Chairman to issue a reasoned order, as per directives of High Court, and payment of retirement benefits".

14. Applicant has challenged the impugned order dated 01.09.2008 which reads as under:

"F/No.20 (28)/1994-08-PPDCM-L-260 September 1, 2008

Sub: Writ Petition No. 28210/2002 of Shri D.K. Guha Roy, Joint Director- Judgment of Hon'ble Allahabad High Court, Implementation of.

Whereas Shri D.K. Guha Roy, Joint Director, PPDC, Meerut was involved in a disciplinary case and was awarded penalty of dismissal from service by the Disciplinary Authority vide his order dated 5.12.2001, on the following charges which were proved in the inquiry:-

- Charges No.I: Shri Guha Roy was involved in the corrupt practice of receiving, storing and providing chemicals (which were not purchased by the PPDC) to the customers coming for job work of leather processing.
- Charge No.V: Shri Guha Roy did not furnish information about acquisition of movable and immovable property to the office in the prescribed proforma inspite of specific advice from the office.

II. WHEREAS, the Appellate Authority considered the appeal of Shri Roy and reduced the penalty from dismissal to compulsory retirement effective from 5.12.2001 vide his order dated 12.6.2002.

II. Whereas Shri Roy filed a writ petition (No. 28210/2002) in Hon'ble Allahabad High Court against his compulsory retirement.

III. Whereas, Hon'ble Allahabad High Court in its judgment dated 5.5.2008 directed the Respondents:-

- To place the whole matter before the Governing Council, PPDC, Meerut for re-consideration of the case of all purposes including the retirement benefits.
- To give full opportunity of hearing of Shri Roy, and
- To issue a reasoned order.

IV. Whereas the Governing Council reconsidered the disciplinary case against Shri Roy in its meeting held on 5.8.2008 at New Delhi and noted that the Hon'ble High Court in its judgment dated 5.5.2008, had not taken the cognizance of the main charge NO.1 quoted above.

V. Whereas, the Governing Council gave a personal hearing to Shri Roy, and asked him to apprise the members if he had any further defence in his favour.

VI. Whereas, Shri Roy did not bring to the notice of Governing Council any new fact or material which has the effect of changing the nature of the case.

VII. And whereas, the Governing Council after considering all aspects of the case unanimously confirmed penalty of compulsory retirement imposed on Shri Roy and authorized the Chairman to issue an order in this regard and also advise the Principal Director Incharge of PPDC Meerut to settle the retirement benefits as are admissible in such cases under rules.

VIII. Now therefore, the undersigned acting on behalf of the Governing Council, PPDC, Meerut hereby confirms the

penalty imposed on Shri Guha Roy and direct Principal Director In-charge, PPDC, Meerut to settle the retirement benefits including payment of gratuity and encashment of leave as may be admissible to Shri Guha Roy under the Rules".

15. As can be seen both the decision of GC and order of Chairman, GC are unreasoned and do not implement the directions of the Hon'ble High Court that the matter be disposed off by a reasoned order.
16. Looking to the facts of the case as discussed above, the O.A. is allowed. The impugned decision of the GC dated 05.08.2008 and Order dated 01.09.2008 passed by Chairman GC are set aside. The case is remanded back to the Governing Council to consider the matter afresh and decide the same by way of a reasoned order as directed by the Hon'ble High Court within a period of two months from the date of receipt of the certified copy of this order. O.A. is accordingly disposed of. No order as to costs.

**(Mohd. Jamshed)**  
Member (A)

**(Rakesh Sagar Jain)**  
Member (J)

Manish/-