(Reserved on 04.01.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No. 330/00539/2007

This the 24th day of January, 2018

HON'BLE DR. MURTAZA ALI, MEMBER (J)
HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)

C.P. Thomas, son of Sri C.T. Porinchu, resident of C-105/5, Rajendra Nagar, Bareilly.

.....Applicant

By Advocate: Shri K.P. Singh

Versus

1. The Union of India through Secretary, Agriculture Department, Government of India, Krishi Bhawan, New Delhi .

2. The Indian Council of Agricultural Research, Rajendra Prasad Road, Krishi Bhawan, New Delhi through its Secretary.

3. The Director General, Indian Council of Agricultural Research, Rajendra Prasad Road, Krishi Bhawan, New Delhi.

4. Under Secretary (Vig.), Indian Council of Agricultural Research, Rajendra Prasad Road, Krishi Bhawan, New Delhi - 110001.

.....Respondents

By Advocate : Sri M.B. Singh
Sri V.K. Singh

O R D E R

DELIVERED BY:-

HON'BLE MR. GOKUL CHANDRA PATI, (MEMBER-A)

By way of the instant original application, the applicant has prayed for quashing the impugned order dated 28.04.2007 passed by the respondent No. 4 (Annexure A-13 to the O.A) imposing the penalty of 'dismissal from service' on the applicant. Prayer has also been made for a direction to the respondents to release all post retiral and pensionary benefits to the applicant.

2. The facts of the case, in brief, are that the applicant was initially joined the service as Administrative Officer on 07.07.1977. While working as Chief Administrative Officer (in short CAO), IVRI, Izatnagar, Bareilly he was served with a letter dated 24.07.2006 (Annexure-1 to the O.A) issued by the Chairperson of the Complaint Committee (in short CC) on the basis of complaint made by Smt. Anjali Kushwaha (referred hereafter as complainant) dated 04.05.2006 and he was asked to appear before the CC on 22.08.2006. It is alleged by the applicant that copy of the complaint dated 04.05.2006 by the complainant was not enclosed with the letter dated 24.07.2006. Hence, vide letter dated 31.07.2006 (Annexure-2 to the O.A) written to the CC, the applicant requested for the complaint dated 04.05.2006 which was provided to him by the Chairperson of the CC alongwith letter dated 11.08.2006 (Annexure-3 and 4 to the O.A).

3. The applicant denied the allegations made in the complaint dated 04.05.2006 vide his written deposition dated 21.08.2006 to the CC (Annexure-6 to the O.A). The applicant also filed a Suppl. Deposition on 24.08.2006 (Annexure-7 to the O.A). It is stated that neither any charge sheet was framed by the disciplinary authority on the basis of alleged complained dated 04.05.2006, nor any evidence was recorded by the CC. On 19.04.2007, the applicant was served with a letter dated 05.04.2007 issued by Senior Administrative Officer alongwith copy of letter dated 28.03.2007 of Under Secretary (Vigilance) and the enquiry report dated 02.03.2007 submitted by the CC (Annexure-8, 9 and 10 respectively) asking him to submit his explanation on the inquiry report dated 02.03.2007 within a period of 15 days.

4. It is submitted in the O.A that the inquiry report was incomplete and without the relevant enclosures as mentioned in the enquiry report. Therefore, vide letter dated 19.04.2007, the applicant demanded the relevant documents (Annexure-11 to the O.A). Vide letter dated 20.04.2007 (Annexure-12 to the O.A), served upon the applicant on 24.04.2007, the applicant was supplied copies of enclosures of the enquiry report and he was directed to submit his explanation by 25.04.2007. It is stated that although the reply to the letters dated 02.03.2007 and 20.04.2007 was under preparation, the Under Secretary (Vig.) passed the impugned order dated 28.04.2007 imposing the penalty of "dismissal from service" upon the applicant.

5. Aggrieved by such action of the respondents, the applicant has filed the instant original application on the ground that impugned order dated 28.04.2007 has been passed in an arbitrary manner without taking into consideration the material fact on record. The findings of fact recorded by the disciplinary authority are stated to be incorrect. The applicant was never called upon to appear before the Committee. It is also stated that the letter dated 05.04.2007 supplying him a copy of inquiry

report was served on the applicant on 19.04.2007. Therefore, if the period of 15 days allowed to the applicant to submit his representation to disciplinary authority ought to have been counted w.e.f 19.04.2007 then he would have got time till 03.05.2007 to furnish his reply after receiving enclosures to the inquiry report on 24.04.2007. But no such time was allowed and the impugned order dated 28.04.2007 was passed. It is also stated that the principles of natural justice have been violated as no adequate opportunity was given to the applicant. It is stated that the written deposition submitted by the applicant on 21.08.2006 and 24.04.2007 have not been taken into consideration while passing the impugned order. It is stated that the punishment awarded to the applicant is harsh in comparison to the allegations. In similar situation and in respect of identical charge, one Shri U.K. Shukla has been awarded lesser punishment, whereas the applicant has been awarded major penalty.

6. It is further stated that the as the applicant is Class I officer hence the advice from the Union Public Service Commission was necessary, which in this case has not been taken by the respondents. The action of the respondents is also violative of Rule 17 of CCS (CCA) Rules, 1965 and also the judgment of Hon'ble Apex Court in the case of Vishaka and Ors. Vs. State of Rajasthan & Ors – AIR 1997 SC 3011.

7. The respondents have filed Counter Affidavit (in short CA) . It is stated that the complainant filed a complaint on 04.05.2006 at ICAR headquarter alleging that she was being transferred from IVRI, Izatnagar to Project Directorate, ADMAS, Bangalore against her willingness by Shri C.P. Thomas (the applicant) and Shri U.K. Shukla. Allegation of sexual harassment was also made. Since the action of the applicant was against Rule 3C of CCS (Conduct) Rules (Annexure CA-2 to the C.A), the complaint was referred to the CC constituted in accordance with the guidelines contained in the judgment of Hon'ble Apex Court in the case of Vishaka & Ors. Vs. State of Rajasthan & Ors. The CC investigated the matter and gave opportunity to the applicant to present his case before the CC on 22.08.2006 and again on 22.01.2007 but he did not appear, although he filed written deposition to the CC. The CC submitted its report on 02.03.2007 and recommended for appropriate penalty. It is submitted that as per the DOP&T O.M No. 11013/11/2001-Estt(A) dated 04.08.2005 (Annexure CA-3 to the CA), the report of the CC shall be deemed to be an enquiry report under CCS Rules and the disciplinary authority has to act on the report in accordance with the rules. Since the report of the CC was agreed by the disciplinary authority, it was sent to the applicant on 28.03.2007 for submission of his reply. But the applicant did not furnish his reply and adopted delaying approach on one pretext or the other and never appeared in the disciplinary proceeding. The applicant did not even submit his reply when the enquiry report as tentatively agreed by the disciplinary authority was sent to him. Therefore, keeping in view the gravity of charge and the findings of the CC, the disciplinary authority was left with no other option but to pass the order dated 28.04.2007 imposing the penalty of dismissal from service upon the applicant. It is contended that the instant original application has been filed by the applicant without exhausting the departmental remedy of appeal available to him as per rules. Hence, the O.A is liable to be dismissed on the ground the alternative remedy.

8. It is contended that there is no necessity to issue separate charge sheet because after the O.M dated 04.08.2005, sub rule 2 of Rule 14 of the CCS (CCA) Rules 1965 has been amended to provide that the CC shall be deemed to be the Inquiring Authority appointed by the disciplinary authority. The CC

took the evidence of the complainant and recorded her statement. A copy of enquiry report was sent to the applicant vide Memo dated 28.03.2007 but he proceeded on leave in order to delay the matter as he was due to retire on 30.04.2007, hence the enquiry report could be served upon him on 19.04.2007. It is stated that the Under Secretary (Vigilance), who is authorized to sign the order on behalf of D.G, ICAR, passed the order dated 28.04.2007 after taking into consideration all available material facts of the case. It is further stated that the applicant was given adequate opportunity by the CC to defend his case before it but he did not appear. It is further stated that even if the notice dated 11.08.2006 was served upon him on 22.08.2006, he ought to have represented to the Chairman of the CC but he never appeared before the CC. As regards the contention of the applicant that the punishment is disproportionate , the respondents have stated that the charge of sexual harassment of a woman employee is grave in nature and the disciplinary authority has imposed the penalty on the basis of statement of Ms. Anjali Kushwaha and other facts and circumstances. It is also stated that the nature and gravity of charge against the applicant was not similar to the charge against Shri U.K. Shukla and the punishment awarded to the applicant is commensurate to the charge leveled against him.

9. The applicant has filed Rejoinder Reply (in short RR) reiterating the facts in the O.A. It is stated that as per letter dated 27.04.2006 (Annexure R.A-III to the RR), Smt. Anjali Kushwaha never made any complaint against the applicant. It is further stated that complainant was trying to pressurize the applicant to cancel her transfer from IVRI, Bereilly to ADMAS, Bangalore, but since the transfer order was passed by the Director, IVRI, Izatnagar, he refused to cancel her transfer. It is contended that the inquiry committee has been constituted by the authority two step lower in rank to the appointing authority of the applicant. Further, the Inquiry Officer consisted of authority lower in rank than the applicant and the applicant has never been given the reasonable opportunity which is violative of Article 14 of the Constitution. It is submitted that the action of the respondents is discriminatory as the applicant has been dismissed from service whereas the similarly charged officer Shri U.K. Shukla , who was also found guilty, was given lesser punishment of stoppage of three increments.

10. We have heard Shri K.P. Singh, learned counsel for the applicant and Shri V.K. Singh with Shri M.B. Singh, counsels for respondents . Records have also been perused.

11. Learned counsel for the applicant argued mainly on the ground that there has been violation of the CCS (CCA) Rules 1965 by the disciplinary authority while passing the impugned order dated 28.04.2007 for the following reasons: -

(i). No charges were framed in this case against the applicant although after the judgment of Hon'ble Supreme Court in Vishaka's case the CCS (CCA) Rules have been amended to provide that the CC shall be deemed to be the inquiry authority appointed by the disciplinary authority. But framing of charge against the applicant as required under rule 14(3) of CCS (CCA) Rules is mandatory. This has not been complied in this case.

(ii). The cause of action, as stated in the complaint, arose in IVRI, Izatnagar and as per the guidelines of Hon'ble Supreme Court in Vishaka case, the CC constituted for IVRI, Izatnagar should have received the complaint and inquired into it. But in this case the complaint was assigned to the CC of the ICAR,

New Delhi. Moreover, the complainant had not given any complaint against the applicant when she was working in IVRI, Izatnagar.

(iii). Reasonable opportunity was not given to the applicant by the CC to appear before it to defend the charges and the inquiry was conducted ex-parte against the applicant without following the procedure prescribed under the Rules.

(iv). Fifteen days time, as required under rule 15(2), was not allowed to the applicant to furnish his representation on the report of the CC which was forwarded by the disciplinary authority without enclosures, which were sought by the applicant before submitting his representation. The relevant enclosures to the inquiry report were served on the applicant on 24.04.2007 directing the applicant to submit his representation by 25.04.2007. But the impugned order was passed before the applicant could submit his representation. Hence, fifteen days time after submitting all enclosures of the inquiry report was not allowed.

(v). The complaint in this case was against the applicant and against Shri U.K. Shukla, who was one of the subordinate officer of the applicant. But the disciplinary authority awarded minor penalty upon Shri U.K. Shukla, while imposing major penalty of dismissal from service on the applicant. Hence, there was discrimination against the applicant by the disciplinary authority.

(vi). Since the applicant was a Group 'A' officer, advice of UPSC was required to be taken by the disciplinary authority before passing the punishment order, as required under the rules. This was not done.

12. Learned counsel for the applicant also argued that the punishment of dismissal from service imposed on the applicant is disproportionate compared to the charges, since for similar charge another official Shri U.K. Shukla was awarded minor penalty. He further argued that the disciplinary authority acted in a manner to victimize the applicant without extending reasonable opportunity as required under the law. It was also submitted that the main reason for the complaint is the transfer of the complainant from IVRI, Izatnagar to IVRI, Bangalore which was issued with the approval of Director, IVRI. But the complainant felt that the applicant was responsible for her transfer and in spite of her request for cancellation of the transfer, the applicant did not take steps for cancelling the said transfer order. It was also submitted that the applicant was also pressurized to cancel the transfer of the complainant as explained in the R.R.

13. Learned counsel for the applicant has submitted the copy of following judgments to support his contentions: -

i. Sengara Singh and others Vs. State of Punjab & Ors - (1983)4 SCC 225.

ii. Tata Engineering & Locomotive Co. Ltd. Vs. Jitendra Prasad Singh & Ors. – (2001)10 SCC 530.

iii. Order of this Tribunal dated 30.08.2013 passed in O.A No. 286/2011 – Shishir Kumar Vs. U.O.I & Ors.

14. Learned counsel for the respondents mentioned that in view of the amended rule 14, the report of the CC based on the complaint submitted by the complainant is to be treated as the report of the Inquiry Officer for which there is no provision for framing of charges by the disciplinary authority. He also submitted that opportunities were given by the CC to the applicant to appear before it to defend

himself, but the applicant chose not to appear and submitted a written deposition dated 22.08.2006 (Annexure A-5 to the O.A) to the CC. Hence, it cannot be said that reasonable opportunity was not given to the applicant. The learned counsel also argued that the applicant has directly approached the Tribunal without filling the appeal, as explained in para 11 of the C.A. Hence, under Section 20 of the Administrative Tribunals Act, this O.A is not maintainable.

15. We have carefully considered the pleadings and the submissions made by the counsel for the parties in this case. Before proceeding further in the case, the maintainability of the O.A is to be decided in view of the objection of the respondents on the ground that no appeal was filed by the applicant. Section 20(1) of Administrative Tribunals Act states as under: -

"20……..

(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances."

It is seen that in this case, this Tribunal had admitted the present O.A vide order dated 28.05.2007 passing the following order: -

"Heard Shri H.P. Pandey, counsel for the applicant. Admit. Issue notice to the respondents returnable within four weeks. RA, if any may be filed within two weeks thereafter.

List before Registrar for completion of pleadings on 10.08.2007."

It is further seen that no objection has been raised by the respondents against this order dated 28.05.2007 to admit the O.A , nor any step was taken to modify or recall this order. This point was not raised by the respondents before this matter was heard on merits. Since the O.A has already been admitted by this Tribunal and no objection was raised by the respondents to this order, it will not be appropriate to revisit the issue at this stage after the matter was heard on merits. Hence, this objection of the respondents about maintainability of the O.A is rejected.

16. Following two issues are required to be decided in this case : -

(i). Whether there has been violation of the rules as indicated in the pleadings and the submissions of the applicant.

(ii). Whether the punishment awarded to the applicant is grossly disproportionate to the charges and whether there has been any discrimination by the disciplinary authority against the applicant, as alleged, since on the similar complaint different punishment was given to another official against whom the complaint was also directed.

17. Before considering the facts of the case, relevant to the issues as indicated above, we note that the power of this Tribunal for judicial review of the orders made by the disciplinary authority is limited, as laid down by the Hon'ble Supreme Court in catena of cases. In the case of B.C. Chaturvedi vs. Union of India & Ors reported in 1995(6) SCC 749, Hon'ble Apex Court has observed as under: -

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while

exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare case impose appropriate punishment with cogent reasons in support thereof.

.....

22. The aforesaid has, therefore, to be avoided and I have no doubt that a High Court would be within its jurisdiction to modify the punishment/penalty by moulding the relief, which power it undoubtedly has, in view of long line of decisions of this Court, to which reference is not deemed necessary, as the position is well settled in law. It may, however, be stated that this power of moulding relief in cases of the present nature can be invoked by a High Court only when the punishment/penalty awarded shocks the judicial conscience."

18. Again in the case of State of Meghalaya Vs. Mecken Singh N Marak reported in 2009 Law Suit (SC) 1935, the Hon'ble Apex Court has also held as under:-

"A court or a tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment is not commensurate with the proved charges. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The jurisdiction of High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment imposed by the disciplinary authority or the Appellate Authority unless shocking to the conscience of the court, cannot be subjected to judicial review.

19. In the case of Director General, RPF v. Ch. Sai Babu, reported in (2003) 4 SCC 331, Hon'ble Supreme Court held as under:-

"Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of and discipline required to be maintained, and the department/establishment in which the delinquent person concerned works."

20. In the case of Pragyesh Misra versus State of U.P. and others, Hon'ble Allahabad High Court in the Writ Oetition No. 1126 of 2011 (SB) has held as under:-

"In R.S. Saini Vs. State of Punjab, 1999 (8) SCC 90 the Apex Court held that standard of proof required in disciplinary proceedings is that of preponderance of probability where there is some

relevant material which the authority has accepted and which material may reasonably support the conclusion that the officer is guilty. It is not the function of the High Court to review the material and to arrive at its own independent finding. It was also held that if the enquiry has been properly held, the question of adequacy or reliability of the evidence cannot be canvassed before the Court. This is followed in Lalit Popli Vs. Canera Bank and others 2003(3) SCC 583 (Para16-19)

The same view has been followed by the Apex Court in High Court of Judicature at Bombay Vs. Shashikant S. Patil AIR 2000 SC 22, wherein it has been held :

"Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such inquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority, (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the inquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed before Article 226 of the Constitution."(para 16)"

21. In the case of Dr. Bhishambar Dayal Gupta v. Visitor/President of India, Aligarh Muslim University,Aligarh & Ors. involving the charge of sexual harassment 2006(3) SLR 159 (All-DB), Hon'ble Allahabad High Court has held observed:-

"17. In the aforesaid judgment the Hon'ble Supreme Court has clarified that object of rules of principles of natural justice is to ensure that there would not have been failure of justice. The Hon'ble Supreme Court has reiterated that the rules of principles of natural justice are not inflexible rules and mere technical violation of some of the rules of procedure prescribe d will not amount to negation of justice. The Court is to keep in mind that the object of the rules is to ensure that there should not be failure of justice, but every violation of the rules of the procedure cannot vitiate the action taken, if in interest of State or public interest rules of procedure are required to be curtailed. The Court must balance public/state interest with the requirement of principles of natural justice. It has been held that several procedural provisions governing disciplinary enquiry under the statutory provisions "are nothing but elaborations of the principles of natural justice and their several process". The ultimate test is "all proceedings taken together, whether the delinquent officer/employee did or did not have a fair hearing. The complaint of violations of principles of natural justice has to be examined from view point of substantial compliance, as the overriding objective underlying the rules is to ensure a fair hearing and to ensure that there is no failure of justice."

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22. From the case laws as discussed above, it is clear that this Tribunal can interfere with the impugned penalty order if there is violation of the principles of natural justice or violation of statutory rules/regulations and if the decision of the authority is not based on evidence but on extraneous considerations etc. so as to result in failure of justice for the applicant. Now the facts of this OA can be analyzed to see if there is violation of the Rules so as to result in failure of justice and if the applicant has been allowed a fair hearing by the disciplinary authority while deciding the disciplinary proceedings against the applicant.

23. One of the contention of the applicant in para 4(xlv) of the OA is that the facts of the case establish that the impugned order has been passed in violation of the provisions of the Article 311(2) of the Constitution of India. In reply, the respondents in the CA have simply denied that there is violation of Article 311(2) in passing the impugned order. Article 311(1) and (2) of the Constitution of India state as under:-

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State

(1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank ins satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry

Hence, as per the Article 311(2) of the Constitution of India, before imposing the punishment of dismissal or removal from service, it is necessary to conduct an inquiry in which the concerned officer is informed of the charges against him and he is given reasonable opportunity of being heard in respect of those charges, unless the conditions in the second proviso to the Article are satisfied. It is not the case of the respondents that the applicant's case is covered under the second proviso to the Article 311(2). How the charges are to be communicated is specified under the Rule 14(3) of the CCS(CCA) Rules, 1965 which states as under:-

"14(3). Where it is proposed to hold an inquiry against a Government servant under this rule and Rule 15, the Disciplinary Authority shall draw up or cause to be drawn up –

(i). the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

(ii). A state of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain –

(a). a statement of all relevant facts including any admission or confession made by the Government servant;

(b). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained".

The purpose of the above Rule is to inform the delinquent about specific charge and the evidence and witness to be relied upon for proving the charges, based on which he can reasonably prepare his defence of charges. In absence of charges framed as specified under the Rule 14(3), the delinquent officer can not be given reasonable opportunity of being heard, which is his right guaranteed under the Article 311(2) of the Constitution of India. The respondents have admitted that no charge is framed in this case against the applicant vide para 23 of the CA, which states:-

"……sub-rule 2 of Rule 14 of the CCS (CCA) Rules, 1965 has been amended to provide that the complaints committee shall be deemed to be the Inquiring Authority for the purpose of these rules. Accordingly, the question of issuing the charge-sheet by the Complaint Committee in such cases of sexual harassment does not arise."

24. We are unable to agree with the contentions of the respondents that no article of charges alongwith the statement of imputations of the misconduct and other details as specified under Rule 14(3) are necessary in cases of sexual harassment as there is no such exception made in the CCS(CCA) Rules, 1965. Further, charges with other details as under the Rule 14(3) are required to be specified so as to give a reasonable opportunity to the applicant of being heard in respect of the charges framed against him, which is a constitutional right.

25. The applicant has stated that he was not allowed 15 days time to submit representation on the Inquiry Report as required under the Rule 15(2) of the CCS (CCA) Rules, 1965. Para 26 of the CA mentions that the Inquiry report was finally served on the applicant on 19.04.2007. Hence, the applicant should have been allowed at least 15 days time to file his representation against the Inquiry report as required under Rule 15(2) of the CCS(CCA) Rules, 1965. Admittedly, this time as required under Rules was not allowed for the reasons best known to the respondents and without waiting for the representation of the applicant on the inquiry report, the disciplinary authority passed the impugned order dated 28.04.2007 (Annexure A-1) imposing the penalty of dismissal from service.

26. It was necessary for the respondents to have allowed this opportunity to the applicant to file his representation on the inquiry report as requested under the Rules, particularly since the inquiry was completed in this case without presence of the applicant.

27. It clear from the discussions in the preceding paragraphs that there was violation of the Rules and the applicant was not given a reasonable opportunity of being heard in respect of the charges/complaints against him as established in the inquiry report, which has resulted in failure of justice. The first issue framed in paragraph 16 is , therefore, answered accordingly.

28. Regarding the issue of punishment disproportionate to the charge and discrimination, it is stated by the applicant in the O.A that Shri U.K. Shukla, who was a co-accused alongwith the applicant for the same sexual harassment as per complaint dated 04.05.2006 and who also faced inquiry by the CC was imposed a penalty of reduction of his pay by three stages till his retirement vide order dated 28.04.2007 enclosed at Annexure -15 to the O.A. It is further stated that Shri U.K. Shukla has been awarded less punishment whereas the applicant has been awarded a major penalty which shows hostile discrimination against the applicant. In reply to the contention in the O.A that the punishment on the applicant is disproportionate to the charges, it is stated in the CA that "....the charge of sexual harassment of a woman employee is a very grave charge and the Disciplinary Authority has imposed the penalty commensurate with the charge, as established". It is further stated that the nature and gravity of the charges against the applicant are not the same as against Shri U.K. Shukla.

29. But the respondents have not explained how the gravity of charge against the applicant is different from Shri U.K. Shukla. Perusal of the complaint dated 04.05.2006 would indicate that as per the complaint, Shri U.K. Shukla appears to be also responsible for the alleged sexual harassment of the complainant. In case, there was a different finding by the CC in respect of Shri U.K. Shukla, it should have been mentioned in the C.A. In absence of any materials in the pleadings, it is difficult to accept the contention of the respondents that nature and gravity of the charges against the applicant are not same as against Shri U.K. Shukla. Therefore, for similar complaint, different punishment has been imposed on Shri U.K. Shukla, who is the co-accused alongwith the applicant as per the complaint dated 04.05.2006.

30. In this regard, the cases cited by the learned counsel for the applicant are relevant. In the case of Sengara Singh (Supra), the petitioners were dismissed from service on account of their participation in agitation. Some of them were dismissed from service and other were taken back by the Government. The Hon'ble Supreme Court has held as under: -

"12. Logically the appellants must receive the same benefit which those reinstated received in the absence of any distinguishing feature in their cases. Accordingly, the appellants would be entitled to reinstatement in service. Therefore, both the appeals succeed and are allowed and the order of the High Court dismissing the writ petitions is quashed and set aside. ....."

31. In the case of Tata Engineering & Locomotive Co. Ltd (Supra), unequal treatment against Workmen found tobe guilty of misconduct for identical charges was not acceptable by the Court.

32. In another case of Shishir Kumar (Supra), this Tribunal held as under: -

"14. From the facts of the case it is evident that with regard to the case of Shri Dinesh Chandra Sharma and the applicant the respondents have adopted double stand, which is not sustainable in the eyes of law. It is a clear case of discrimination. If in the case of Shri Dinesh Chandra

Sharma the respondents after the decision of the Tribunal took decision to reinstate him in service and dropped the proceeding against him, it is escape comprehension as to on what ground or for what reason the inquiry against the applicant was continued for the same charges and based upon the finding of the continued inquiry report he was compulsorily retired. .....".

33. It is clear from the facts available on record that for similar charges the co-accused of the applicant was imposed a less stringent penalty whereas the applicant was awarded penalty of dismissal from service just before his date of retirement without giving him a faire and reasonable opportunity to make a representation to the ex-parte inquiry report as required under rule 15(2) of CCS (CCA) Rules 1965 and without framing specific charges against the applicant. Hence, it is established from the materials available on record that the punishment imposed on the applicant is grossly disproportionate to the charges and also, there is discrimination against the applicant. The second issue framed in paragraph 16 of this order is answered accordingly.

34. In view of the above, we are of the view that the impugned punishment order dated 28.04.2007 is violative of CCS (CCA) Rules 1965 and the impugned punishment imposed on the applicant is grossly disproportionate to the charges against him. Applying the principles as laid down by the judgments of Hon'ble Supreme Court as discussed in this case, the impugned order dated 28.04.2007 being not sustainable under law, is liable to be set aside and quashed. .

35. Accordingly, we quash and set aside the impugned punishment order dated 28.04.2007 (Annexure-13 to the O.A) and remit the matter to the disciplinary authority to reconsider the facts of the case in the light of this order and pass a fresh order as per provisions of law within two months from the date of receipt of a copy of this order.

36. Regarding the relief of post retiral benefits, since the impugned punishment is quashed and set aside by us, the disciplinary proceedings against the applicant is treated as pending as on date of retirement of the applicant. Hence, the respondents are directed to consider sanction of provisional pension in favour of the applicant during pendency of the disciplinary proceeding as per the provisions of the CCS (Pension) Rules, 1972.

37. The O.A is allowed as above. No costs.

(GOKUL CHANDRA PATI) (DR. MURTAZA ALI)
MEMBER-A MEMBER-J
Anand...