

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.174/2014

Order Reserved on:12.02.2016

Pronounced on:03.03.2016

**Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)**

S.P. Vashisht,
S/o late Sh. Hari Ram Vashisht,
R/o G-44, Ansari Nagar East,
All India Institute of Medical Science,
New Delhi.

-Applicant

(By Advocate Shri Yogesh Sharma)

-Versus-

1. All India Institute of Medical Sciences,
Through its Director,
Ansari Nagar, New Delhi.
2. The Deputy Secretary & Chief Vigilance Officer,
All India Institute of Medical Sciences,
Ansari Nagar, New Delhi.

-Respondents

(By Advocate Shri R.K. Gupta)

O R D E R

Mr. K.N. Shrivastava, Member (A):

This O.A. has been filed under Section 19 of the
Administrative Tribunals Act, 1985, challenging order
No.F.Vig./2-271/99(Vol.III) dated 18.07.2013
(Annexure A-1) passed by Chief Vigilance Officer, All
India Institute of Medical Sciences (AIIMS), whereby

penalty of compulsory retirement has been imposed on the applicant.

2. The brief facts of this case are as under.

The applicant was appointed as a Hawaldar at AIIMS. After getting his promotions he reached to the post of Sanitation Inspector. When he was posted as a Sanitation Inspector at the main hospital, on 30.10.1998 CBI conducted a raid and found that certain medical items procured were of sub-standard quality and some of them were procured from firms who were not having licence from the Drugs Controller of Government of National Capital Territory of Delhi. An FIR was registered on 04.03.1999. The CBI requested the respondents to sanction prosecution of the officials involved, including the present applicant and also recommended for starting RDA for imposition of major penalty against the applicant and others. The CBI report in this regard was received at AIIMS on 05.09.2001. A charge-sheet was issued to the applicant vide AIIMS's Memorandum No.F-Vig./2-271/1999 dated 14th November, 2008 (Annexure A-2) in which the following Article of Charge was levelled against him:

“That the said Shri S.P. Vashisth while working as Sanitation Inspector at the Institute has acted as instrument in accepting highly substandard goods from M/s Rajiv Enterprises and National Cooperative Consumer Federation (NCCF) during the period between October, 96 to October, 98 which caused huge undue pecuniary advantage to the said firm and corresponding loss to the AIIMS.

Shri S.S. Vashisth is thus responsible for gross misconduct and has failed to maintain devotion to duty, absolute integrity and has acted in a manner unbecoming of an Institute employee; thereby contravening Rule 3 (1)(i)(ii) & (iii) of CCS (Conduct) Rules, 1964 as applicable to the employees of the Institute.”

Disciplinary inquiry was started against the applicant. The inquiry officer submitted his report on 26.02.2011 (Annexure IV) in which his finding was that the charge is ‘**partly proved**’ against the applicant. Acting upon the said inquiry report, Annexure A-1 impugned order has been passed by Chief Vigilance Officer, AIIMS by order and on behalf of the President, AIIMS & Disciplinary Authority (DA) imposing the penalty of ‘**compulsory retirement**’ on the applicant. Aggrieved by the impugned order, the applicant has filed the instant OA.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. The case was taken up for hearing of arguments on 12.02.2016. Shri Yogesh Sharma, learned counsel for

the applicant and Shri R.K. Gupta, learned counsel for the respondents argued the case.

4. The learned counsel for the applicant submitted, *inter alia*, that the President, AIIMS, who is also Union Minister for Health and Family Welfare, is the DA of the applicant, as is clearly evident from Annexure A-1 impugned order; whereas the Annexure A-2 charge-sheet has been issued by the Director, AIIMS. He further submitted that the Hon'ble Apex Court has laid down law in the case of **Union of India v. B.V. Gopinath**, [(2014) 1 SCC 351)], holding that the charge-sheet should have approval of the DA, if it is not done, then the charge-sheet as well as the disciplinary proceedings and any consequential action taken thereafter would be *void ab initio*. The learned counsel emphatically argued that in the instant case the charge-sheet does not have the approval of the competent authority, i.e., the President, AIIMS; it has been issued by Director, AIIMS.

5. Without going into various other aspects of the case argued by the learned counsel of the parties orally as well as in the pleadings, we would first like to go into the issue whether the law laid down by the Hon'ble Apex Court in the case of **B.V. Gopinath** (supra) has, in fact, been followed or not.

6. A plain reading of the impugned order makes it clear that the President, AIIMS is the DA for the applicant. In this connection we would like to reproduce the relevant extract from the impugned order and the same reads as under:

“NOW THEREFORE, after careful consideration of article of charge, findings of the Inquiry Officer, representation of Shri S.P. Vashisht, Sanitation Officer and all other relevant material/facts and circumstances of the case, the President, AIIMS being Disciplinary Authority in exercise of the powers conferred by Rule 15 of the CCS (CCA) Rules, 1965 read with regulation 33 (2) of the AIIMS regulations (as amended), 1999, now for good and sufficient reasons has decided to impose the penalty of “Compulsory Retirement” on Shri S.P. Vashisht, Sanitation Officer. Accordingly, the penalty of “Compulsory Retirement” is hereby imposed on Shri S.P. Vashisht, Sanitation Officer with immediate effect.”

7. We also notice that Annexure A-2 charge-sheet has been issued by the Director, AIIMS under his own signature. The charge-sheet nowhere states that it has the approval of the President, AIIMS, who is the DA.

8. In view of the above position, without looking into other aspects of this case, we are of the view that the law laid down by the Hon'ble Apex Court in the case of **B.V. Gopinath** (supra) has not been followed by the respondents. On this ground itself the charge-sheet becomes *ab initio void* and so also all further

action taken by the respondents based on the charge-sheet, including the Inquiry Officer's report as well as the impugned Annexure A-1 punishment order passed by respondent No.2. Under these circumstances, we set aside the Annexure A-1 impugned order as well as Annexure A-2 charge-sheet. The respondents are at liberty to initiate fresh disciplinary inquiry against the applicant by following the procedure laid down in the CCS (CCA) Rules, 1965, and in terms of the law laid down by the Hon'ble Supreme Court in the case of **B.V. Gopinath** (supra).

9. With the above direction, the OA is disposed of.

10. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Raj Vir Sharma)
Member (J)

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