

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.381/2016

Reserved on 29th January, 2016

Pronounced on 26th February 2016

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

V.K. Bahuguna, S/o S.N. Bahuguna,
Former Director General, ICFRE,
Aged about 61 years,
R/o Flat No.A-101, Jagdambe Apartment,
C-58/25 Opposite TOT Mall
Near Fortis Hospital
Sector 62, Noida-201309
Uttar Pradesh

..Applicant

(Dr. Harsh Pathak and Mr. Siddharth Shukla, Advocates)

Versus

Ministry of Environment, Forest & Climate Change
Through
Secretary
Indira Paryavaran Bhawan, Aliganj
Jorbhagh Road, New Delhi-3

..Respondent

O R D E R

Mr. K.N. Shrivastava:

This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985 against the order No.11013/19/2013-AVU dated 11.01.2016 issued by the respondent whereby Shri Mukesh Kumar, Director, Central Vigilance Commission (CVC), Commission of Departmental Inquiry (CDI) has been appointed as an inquiring officer to inquire into certain charges against the applicant. The respondent, vide

memorandum No.11013/19/2013-AVU dated 12.11.2013, has issued the charge memo to the applicant. The applicant has contended in the O.A. that Shri Mukesh Kumar is a junior ranked officer and as such he cannot be appointed as the inquiring officer to conduct inquiry against him. The reliefs sought by the applicant in the O.A. read as under:-

- “i. To quash and set aside the Order dated 11.01.2016 issued by the Respondent being illegal and bad in law.
- ii. To direct the Respondent to appoint an Inquiring Authority i.e. Single or Board being senior to the Applicant as per Rule 8 All India Services (Discipline & Appeal) Rules, 1969.
- iii. To call for all the records pertaining to present case from the Respondent.
- iv. To award the cost of this OA.
- v. Any other relief which this Tribunal deems fit in interest of justice, equity and good conscience/governance.”

2. The case was taken up for admission on 29.01.2016. Dr. Harsh Pathak with Mr. Siddharth Shukla, learned counsel for applicant argued the matter briefly. The contention of the learned counsel for applicant was that the charges pertained to the period when the applicant was working as Director General, Indian Council of Forestry Research and Education (ICFRE) in the Apex Scale of ` 80,000 fixed, which is equivalent to the rank of Secretary, Government of India. It was also contended that the inquiry has been contemplated under Rule 6 (1) of All India Services (Death-cum-Retirement Benefits) Rules, 1958 and that the procedure for imposing major penalties under Rule 8 (3) of All India Service (Discipline & Appeal) Rules, 1969 has not been duly complied with. Elaborating further, the learned counsel stated that as per Rule 8 (3) only a sufficiently senior officer can be appointed as an inquiry officer to inquire the matter against

the applicant, who has held the position equivalent to the Secretary, Government of India.

3. We have carefully considered the arguments put forth by the learned counsel for applicant. We have also perused the relevant rules prescribing the procedure for imposing penalty under All India Services Act. For clarity, Rules 8 (2) and (3) of All India Services (Discipline & Appeal) Rules, 1969 are extracted below:-

“8(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a member of the Service, it may appoint under this rule or under the provisions of the Public Servants (Inquiries) Act 1850, as the case may be, an authority to inquire into the truth thereof.

Provided that where there is a complaint of sexual harassment within the meaning of rule 3 of the All India Services (Prevention of Sexual Harassment) Regulations, 1998, the Complaints Committee established in each Ministry or Department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of these rules and the Complaints Committee for holding the inquiry into the complaints of sexual harassment, the inquiry as far as practicable, in accordance with the procedure laid down in these rules.

8(3) Where a Board is appointed as the inquiring authority it shall consist of not less than two senior officers provided that at least one member of such a Board shall be an officer of the Service to which the member of the Service belongs.”

4. After reading of these Rules, it could be seen that nowhere the seniority of an inquiry officer has been stipulated. Admittedly, the applicant while working as Director General, ICFRE was in the Apex Scale of `80,000 fixed but he has not produced any order of the Government of India to say that the said post is equivalent to Secretary, Government of India. Normally, in such cases, a specific order is issued to that effect. Further,

Shri Mukesh Kumar is working as a Director in the Commission of Departmental Inquiry (CDI) of CVC. The main work assigned to CDI, as its name would indicate, is to conduct departmental inquiries. The CDI has a number of Director level officers who are appointed as Enquiry officers whenever requests are received from Ministries/Departments for such appointments for the conduct of disciplinary enquiries. As stated earlier, Rules 8 (2) and (3) of All India Services (Discipline & Appeal) Rules, 1969 do not contemplate any seniority for an inquiry officer and considering the fact that the basic work assigned to Shri Mukesh Kumar is to conduct departmental inquiries, we do not see any merit in the arguments put forth by the learned counsel for applicant.

5. In view of the foregoing, we dismiss the O.A. at the admission stage itself as it is found to be devoid of any merit. We also direct the applicant to participate in the departmental inquiry. He, however, will have liberty to approach this Tribunal in case an adversarial order is passed by the disciplinary authority against him.

(K.N. Shrivastava)
Member (A)

(Raj Vir Sharma)
Member (J)

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