

**Central Administrative Tribunal
Principal Bench**

TA No.1446/2009

Reserved on : 28.03.2017
Pronounced on : 08.09.2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

B. R. Suman
S/o Shri Mangal Singh
R/o B.Extn-2, Pepalwala Road,
Mohan Garden,
New Delhi 110 059.

.... Petitioner.

(By Advocate, Ms. Asha Jain)

Vs.

1. The Secretary,
Ministry of Rural Development,
Govt. of India,
Krishi Bhawan,
New Delhi 110 001.
2. The Chairman
Council for Advancement of People's Action &
Rural Technology (CAPART)
India Habitat Centre, Zone 5-A (Core-C)
2nd Floor, Lodhi Road,
New Delhi 110 003.
3. The Director General
Council for Advancement of People's Action &
Rural Technology (CAPART)
India Habitat Centre, Zone 5-A (Core-C)
2nd Floor, Lodhi Road,
New Delhi 110 003.

... Respondents.

(By Advocate, Shri S. K. Rungta, Sr. Advocate with Shri Prashant Singh and Shri Shivankur Shukla)

: O R D E R (ORAL) :**Justice Permod Kohli :**

This Petition has been received on transfer from Hon'ble High Court of Delhi vide order dated 02.02.2017 passed in W.P. (C) No.927/2002 & CM No.15938/2005.

2. Validity of the order dated 17.04.2000 whereby the petitioner was compulsorily retired from service has been challenged in this petition, with a further relief or direction in the nature of mandamus for reinstatement of the petitioner in service with full back wages.

3. The petitioner was posted as Assistant Director in the Headquarter of Council for Advancement of People's Action & Rural Technology (CAPART) under the Ministry of Rural Development, Government of India. He was served with a Memorandum dated 19.07.1995 seeking explanation for his conduct as narrated in the aforesaid memorandum within ten days. The allegations contained in the memorandum are noticed hereunder:-

"SUBSTANCE OF ARTICLE OF CHARGE AGAINST SHRI B. R. SUMAN, ASSISTANT DIRECTOR, CAPART.

In 1993-94 while functioning as AD, Shri Suman had dealt with a project of a voluntary organisation namely Gulab Singh Mahila and Bal Kalyan Sang, Dist. Siwan (Bihar) for construction of 40 hand-pumps in Gandey Block of Giridh Dist. The proposal was received in CAPART through Sr. Dir. (Shri machhal) on the 27-10-94, and it was processed, examined and approval of competent authority obtained on the same date.

Shri Suman had issued the sanction next day i.e. on 28-10-94. The RA, in his examination of the proposal had alluded to previous projects executed by the above VO and also a favourable report of a monitor on earlier sanctioned projects. Shri Suman had not asked for any such previous reference for proper examination of the fresh proposal. Nor Shri Suman had pointed out, in his note, an important factor that the VO was based in district Siwan though the project was for Giridh Distt, 300KMs away.

An important pre-requisite for release of CAPART financial assistance is a resolution of executive body of VO accepting terms and conditions of CAPART's sanction. This resolution was reportedly passed by the VO at 8 A.M. on 30-10-94, at Siwan and was personally handed over to CAPART's officers on the very next day, i.e. on 31-10-94. This is obviously improbable. Apparently the representation of the VO had already brought the resolution along with him on 27-10-94, and had been sitting all along in Delhi and had produced the resolution on 31-10-94, on receipt of the acceptance resolution. The proposal for release of Rs.4.8 lakhs was dealt with on the same day i.e. on 31-10-94, by RA (M.P. Singh) and AD (Suman). For certain reasons, the release of funds could not take place. Nevertheless, Shri Suman had exhibited undue haste in examination of the project and to that extent Shri Suman had contravened sub-rule 3 (1) (i) of CCS (Conduct) Rules, 1964."

4. The petitioner gave reply to the aforesaid Memorandum vide letter dated 31.07.1995 giving his version/explanation. It is stated that on receipt of reply from the petitioner, the case was further investigated by the Consultant (V&L), an officer in the department of Vigilance of CAPART. The report on the findings was submitted to the Chief Administrative Officer on 16.08.1995 in the form of a note. In the said report, responsibility was pointed towards Sr. Director and Research Assistant. The report did not find the petitioner responsible. It is stated that in the meantime, Shri R. N. Malhotra, Administrative Officer also conducted a preliminary inquiry in the

whole affair to pinpoint the guilty. He submitted his report on 09.02.1996 wherein he indicted Sr. Director, Shri S. S. Machchal and Shri M. P. Singh. The Director General issued charge sheet to the petitioner and also appointed Shri C. L. Kumar, a retired government officer as Inquiry Officer. On completion of inquiry, the Inquiry Officer submitted his report dated 12.11.1998 wherein he held the charge as proved. The Executive Committee imposed the punishment of compulsory retirement upon the petitioner vide impugned order dated 17.04.2000. It is stated that the Inquiry Report was considered by the Director (competent authority to impose minor penalty) and accepting the findings of the Inquiry Officer opined that the imposition of penalty of withholding of two increments with cumulative effect is warranted in this case. It is mentioned that the Vigilance Commission recommended imposition of suitable major penalty and it was on account of the advice of the Vigilance Commission that major penalty of compulsory retirement has been imposed upon the applicant.

5. The petitioner filed an appeal against the impugned order of penalty before the Chairman, CAPART (Hon'ble Minister for Rural Development) vide appeal/revision dated 25.05.2000 and 09.07.2000. The same was rejected vide order dated 29.11.2001. The petitioner has challenged the impugned order of imposition of penalty on three counts;

- (i) that the award of project was in continuation and not a fresh project;
- (ii) that the findings by the Inquiry Officer are presumptive in nature; and
- (iii) that the punishment is disproportionate to the charge.

6. It is explained that the procedure for granting financial assistance to a voluntary organisation is that the voluntary organisation submits the project it wishes to undertake to the CAPART. The CAPART Research Assistant examines the project submitted by Voluntary Organisation and prepares a comprehensive note bringing out the viability of the project. The note is forwarded to Assistant Director who examines the proposal of Research Assistant and forwards it to Sr. Director, who again studies the proposal and if satisfied, forwards it to Deputy Director General for sanction.

7. It is stated that during 1993-94, Gulab Singh Mahila and Bal Kalyan Sangh (a Voluntary Organisation) of district Siwan (Bihar) submitted a project for construction of 40 hand pumps in various villages in Gandey Block of District Giridih (Bihar, now Jharkhand) at a cost of Rs.7.16 lakhs vide their proposal dated 22.11.1993. This proposal was addressed to Shri S. S. Manchhal, Sr. Director, CAPART. The Voluntary Organisation issued a reminder vide their proposal dated 23.10.1994. The said proposal was received in the

office of CAPART Headquarter at New Delhi on 27.10.1994. The proposal was processed on the same day for sanction and Deputy Director General accorded his sanction also on the same day, i.e., on 27.10.1994. The Research Assistant put up the letter of sanction to the petitioner on 28.10.1994 for signature and the petitioner signed the letter of sanction on the same day. The Research Assistant delivered the letter of sanction to the Voluntary Organisation on 28.10.1994. It is also mentioned that pre-requisite for the release of CAPART's financial assistance is that the Executive Committee of the Voluntary Organisation accepts the terms and conditions of the CAPART through a resolution of its Executive Committee. The Voluntary Organization submitted a copy of the resolution of its Executive Committee, purportedly passed on 30.10.1994, in CAPART's office on 31.10.1994. The Research Assistant (Shri M. P. Singh) and the petitioner processed the proposal for release of Rs.4.8 lakhs on the same day. However, by the time the funds could be released, the Deputy Director General (Shri A. Prasad) was transferred and the successor Deputy Director General, Shri B. K. Sinha took over the charge. Shri Sinha forwarded the case to Director General on 28.01.1995 with the recommendations that (i) the sanction be cancelled; (ii) charges are drawn up against the persons involved and (iii) legal action is taken after having ascertained mensrea of each of the persons in Voluntary Organisation. The Director General

accepted the recommendations of DDG on 04.02.1995 and processed the case file for directions whereupon the applicant was served with Confidential Memorandum dated 19.07.1995.

8. The applicant had explained that the Voluntary Organisation was already executing a part-project with the financial assistance of CAPART. This project was the remaining part of that project and not a new one. It was further explained that the Monitor appointed by CAPART evaluated its earlier Technology Mini Mission Project and submitted his satisfactory report which tantamounted to sanctioning in continuation of the earlier project.

9. The allegations against the applicant are twofold. The first allegation is that the petitioner acted in an unduly haste and in a slipshod manner in sanctioning the project. The said project proposal received on 27.10.1994 was examined, processed and approved, all on one day, i.e., on 27.10.1994. The sanction letter was issued on the next day, i.e., 28.10.1994. The terms and conditions were accepted on 31.10.1994 and approval for release of Rs.4,79,800/- was also given on the same date. Thus, the entire project got approval just in three consecutive working days (29.10.1994 & 30.10.1994 being the government holidays).

10. The second set of allegation is that the Voluntary Organisation was just sitting in Delhi along with the pre-prepared resolution and

submitted the same. There was hardly any time available to the Voluntary Organisation to go to Siwan from Delhi and produce the resolution in one day. Another allegation was that there was also no consideration of the distance from the organisations headquarter and the area of operation of the project. The office of VO was based in district Siwan whereas the project was for Giridh Distt, 300KMs away.

11. During the course of inquiry, the Inquiry Officer framed following question for determination:-

“5. POINTS FOR DETERMINATION

The points required to be determined are:

whether the promptness with which the C.O. processed the Project in question can be termed as “Undue haste” in the entirety of the facts and circumstances of the case.

whether the C.O.’s examination of the project was slip shod, incomplete, improper and/or misleading and,

whether the alleged “Undue haste” and “Slip Shod” examination of the project, alone or together, lead to the imputation of lack of integrity violative of Rule 3 (1) (i) of the CCS (Conduct) Rules, 1964.”

The IO considered the question whether there was any urgency to process the case, and observed as under:-

“The project was approved both by the Sr. Director and the DDG on the same day and only on the basis of the notes of the RA and the AD without adding a word.

The questions that now arise are:

Whether there was any reasons for urgency for the RA and the CO to process the case and approve it on the same day?

Whether, even so, the project was well analysed by the RA and the CO, having regard to the nature of scrutiny required in a case involving release of huge amounts of money, as much as Rs.13,29,500/- as in this case.

As regards the question of urgency and the need for dealing with the project the "same day", there is nothing on the file that can justify it. There is no reason given in the project proposal itself necessitating its processing the same day. There is no written direction also from the Sr. Director that the project should be put up on the same day. The Sr. Director had only appended his initiated on the communication on 27/10/94 without any direction. In our view therefore, the circumstances were normal, and it was not necessary for the RA and the CO to process the case with so much haste.

However, at this stage it may be observed that processing of a case "on the same day", or expeditiously, by itself is not culpable."

The Inquiry Officer proceeded to record:-

"Now as regards the quality of analysis and scrutiny of the project by both RA and the CO, we have not found it satisfactory or adequate.

In this connection we revert to the notes recorded by the RA and the CO:

From the R.A.'s note it is prima facie apparent that no critical examination of the project had been carried out by him. He had not referred to any check list contained in the guidelines. He relied upon the Monitor's report on VO's past performance and that too without linking it with the file. In his oral testimony he states that it is the DDG who is competent to say whether the Monitor's Report is satisfactory or not; but in his own note he himself certifies that the Monitor Report is satisfactory, without referring to any opinion of the DDG on it. He further states that "The Society has done good work and recommended by Monitor".

In our view, the Monitor's report can reflect only the overall past performance of a Society in "earlier" projects; it cannot have any bearing on the substantive issues in fresh projects. The fresh projects have to be examined independently on the basis of their own intrinsic merits and in accordance with the relevant scheme. No recommendatory powers or influence of the Monitor's Reports can therefore, be assumed in dealing with fresh projects."

Summing up the inquiry, the Inquiry Officer recorded his findings and held the charge as proved, which reads as under:-

"11. SUMMING UP

In the summing up we would observe as follows:-

Promptness or haste or urgency in handling of cases in Govt. or its instrumentalities is not culpable by itself; in fact these are qualities that deserve appreciation. But when promptness or haste or urgency begin to smack of being "Undue", particularly in matters involving finances, financial sanctions or release of funds or other benefits, the whole exercise begins to look suspect. When the examination and handling of such matters is found to be incomplete, improper, perfunctory, superficial, mechanical, or slip shod, the suspicions of malafide or improper motive get strengthened.

In the instant case, there has been inexplicable "Haste" in its processing. The "Haste" was "Undue" for there was no justification for skipping over proper and detailed examination. Coupled with "Undue Haste" has been overwhelmingly in evidence "Slip Shod" examination, or "misleading examination". The case has therefore all the elements that make the entire exercise look motivated.

But before we record our findings on the charge, we would like to observe that the onus for improper, or motivated, or as mentioned in the imputations "Slip Shod" examination does not lie ALONE on the lower levels of the hierarchy; each one of the functionaries handling a matter at his level has to share the responsibility if anything is found amiss. In fact, the higher the ladder, the higher the accountability. In the instant case, while the lower levels revelled in "Slip Shod" examination, the higher levels "Indulgently acquiesced" to such examination and granted recommendation and/or approval without raising

eyebrows. In equity, such a situation warrants independent probe to ascertain the culpability of the action of the senior officers also.

12.FINDINGS

In final analysis of the evidence on record and all the facts and circumstances of the case I hold the charge as proved.”

These findings have been returned on the basis of the documentary as also the oral evidence.

12. We have heard learned counsel for the parties.

13. Learned counsel for the applicant has not been able to point out as to how the findings arrived at by the Inquiry Officer are without any evidence. It is settled law that in exercise of powers of judicial review, the Tribunal or Court can only examine the decision making process and not the decision. The Court cannot sit as a Court of appeal to examine the validity of the decision even if second view is possible.

14. Learned counsel for the respondents has relied upon the judgments of Apex Court in *B. C. Chaturvedi v. Union of India & ors.* [AIR 1996 SC 484]; *V. Ramanna v. A.P.S.R.T.C. & Ors.* [AIR 2005 SC 3417] and *State of Meghalaya & Ors. vs. Meeken Singh N. Marak* [AIR 2008 SC 2862].

15. From the report of the Inquiry Officer and the order passed by the Disciplinary Authority, we find that there was evidence before

the Inquiry Officer. The adequacy of the evidence cannot be gone into by this Tribunal in exercise of powers of judicial review. On the question of penalty being disproportionate, the judgments relied upon by the respondents deal with this issue in *V. Ramanna (supra)*, wherein their Lordships have held as under:-

“The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the *Wednesbury's* case (*supra*) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.”

Similar view has also been taken by the Apex Court in *State of Meghalaya and Others (supra)* and *S. R. Tewari vs. Union of India and Another* [(2013) 6 SCC 602]. In *S. R. Tewari's* case, the Hon'ble Supreme Court has held as under:

“28. The role of the court in the matter of departmental proceedings is very limited and the court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the court is very limited and restricted to exceptional cases. 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. The court has to record reasons as to why the punishment is disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice. “

The petitioner has also referred to the following judgments:-

- (i) Union of India vs. H. C. Goel [(1964) SCR 718].
- (ii) Narinder Mohan Arya v. United India Insurance Co. Ltd. (2006) 4 SCC 713.
- (iii) Union of India vs. Gyan Chand Chattar (2009) 12 SCC 78.

16. We have examined the aforesaid judgments. The sum and substance of the ratio of aforesaid judgments is that the findings are perverse, if there is no evidence, and suspicion cannot take place of proof. As noticed by us hereinabove, there was material before the IO to arrive at the findings/conclusion. Thus the findings of the IO are not perverse in nature.

17. On the question of penalty being disproportionate, there is one important aspect which is required to be noticed. No doubt, the charge of acting in haste has been proved against the petitioner. It is also proved that the project was sanctioned in one day. However, the fact remains that the project was never executed. The same having been cancelled by the higher authorities. There was no loss to the exchequer. This aspect has not been taken note of by the Disciplinary Authority nor even by the Inquiring Authority. The Research Assistant who was equally found responsible along with the petitioner, was also subjected to a separate inquiry and has been awarded penalty of stoppage of one increment. Another senior officer, i.e., Sr. Director, Shri S. S. Machhal who sanctioned the project was not proceeded against in any manner. It was his responsibility as

well to find out as to how the project has been processed in one day. He is equally party to the processing of the project as he was the final sanctioning authority. Though in matters of disciplinary proceedings it may be difficult to draw a parity, however, the fact remains that all those who may be responsible for any kind of misconduct or misdemeanour are dealt with according to law.

18. In view of the ratio of the judgment in **S. R. Tiwary's case** (supra), we are of the considered view that the penalty of compulsory retirement imposed upon the applicant is excessive and disproportionate to the charge, particularly, when no loss has been caused to the state exchequer. The applicant has retired on 30.04.2011. The penalty being harsh and not commensurate to the charge, we set aside the impugned order imposing the penalty of compulsory retirement and direct the Disciplinary Authority to reconsider the quantum of punishment and award any lesser penalty to the applicant which should be commensurate to the alleged misconduct/charge and consequential order be passed. Let this exercise be completed within a period of three months from the date of receipt of copy of this order.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/pj/

