

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.941/2017

Monday, this the 24th day of March 2017

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

Suresh Sharma, 63 years (Senior Citizen) (A)
Retd. Addl Controller (Admn.), NTRO
s/o late Mr. O P Sharma
r/o 305, Pink Apartments
Sector – 18B, Dwarka, New Delhi

..Applicant

(Mr. M K Bhardwaj, Advocate)

Versus

1. NTRO through its Chairman
NTRO, Block III
Old JNU Campus, New Delhi – 67
2. Controller of Administration
NTRO, Block III
Old JNU Campus, New Delhi – 67
3. Maj. Gen (Retd.) S K Wadhawan
Retd. Centre Director (CED)
NTRO and IO, Block III
Old JNU Campus, New Delhi – 67
4. Air Cmde (Retd.) V. Sehgal, Retd. OSD (on contract)
& Ex. Director Establishment II
NTRO, Block III
Old JNU Campus, New Delhi – 67
5. Mr. Rahul Roy Choudhary
Dy. Director
NTROl, Block III
Old JNU Campus, New Delhi – 67
6. Dy. Director (Estt. I)
NTRO, Block III
Old JNU Campus, New Delhi – 67
7. Director-in-Charge of NTRO
Prime Minister's Office, South Block
New Delhi – 11

..Respondents

(Mr. Rajesh Katyal, Advocate)

O R D E R (ORAL)

Mr. K N Shrivastava:

Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:-

“(i) To quash and set aside the impugned Letter No.V (B)/Misc. (SS)/218/19116/2012-66 dt. 9.2.17 and letter dated 14.3.2017 being illegal and arbitrary.

(ii) To declare all actions of the respondents in pursuance of the impugned letter as non est.

(iii) To recommend disciplinary action against those respondents responsible for harassing applicant, by deliberately delaying the conclusion of the DE proceedings, as provided for in the CCS (CCA) Rules, 1965 and CCS (Conduct) Rules, 1964.”

2. The brief facts of the case as under:-

2.1 The applicant joined the Government of India in July 1974. After having served in the Government for a considerably longer period, he applied for and was appointed as a Deputy Secretary in the respondent-organization – National Technical Research Organization (NTRO) in the year 2005. He secured his promotion to the post of Additional Controller in 2009. The applicant has since retired from the service.

2.2 On 07.09.2012, vide Annexure A-3 memorandum, a charge-sheet was issued to the applicant by the respondents, in which the following charge has been made against him:-

“Article-I

That the said Shri Suresh Sharma, Additional Controller while functioning as Director (Estt-I) facilitated illegal and irregular appointments of following persons with ulterior motives/malafide:-

- (i) Shri Vibhav Vikrant, as External Pilot in the Pay Scale of Rs.8,000-13,500/-,
- (ii) Shri Shilesh Kumar Pandey as Observer/Intelligence Interpreter in the Pay Scale of Rs.8,000-13,500/-, and
- (iii) Shri Diwakar Roy as System Engineer in the Pay Scale of Rs.10,000-15,200/- (Revised to Rs.15,600-39,100 with Grade Pay Rs.6600).

Thus, Shri Suresh Sharma acted in a manner unbecoming of a Govt. servant, caused financial loss to the Govt. (by facilitating irregular and illegal appointments) and committed grave misconduct in violation of Rule 3 of the CCS (Conduct) Rules, 1964.”

2.3 The disciplinary authority (DA) (Prime Minister) appointed an inquiry officer (IO), who, as per the prescribed procedures, conducted the inquiry and submitted his report to the DA.

2.4 The inquiry report was accepted by the DA. The Director, NTRO, vide Annexure A-7 letter dated 06.07.2015, forwarded a copy of the inquiry report to the applicant and asked him to submit his written representation, if any, against the said report, within fifteen days. The said letter reads as under:-

“Shri Suresh Sharma, Addl. Controller (Admn.) (Retd.) may please refer to NTRO letter of even number dated 07.10.2014 on the subject cited above whereby a copy of the Inquiry Report was forwarded to him and his letter dated 10.10.2014 in response thereto.

2. Hon’ble Prime Minister as Minister-in-charge and the Disciplinary Authority has accepted the Inquiry Report submitted by the Inquiry Officer. The Central Vigilance Commission (CVC) to whom the case was referred to has advised for imposition of a major penalty in the matter. A copy of CVC letter No.014/CAB/003/272943 dated 21.01.2015 is enclosed.

3. Shri Suresh Sharma, Addl. Controller (Admn) (Retd.) is requested to submit his written representation, if any, against the findings of the Inquiry Report within 15 days of receipt of this letter for consideration by the Disciplinary authority. A copy of the Inquiry Report is again sent herewith.”

2.5 The NTRO also forwarded a copy of the inquiry report to the Union Public Service Commission (UPSC) for consultation. The UPSC, vide its letter dated 04.03.2016, informed the NTRO that the IO had not done general examination of the charged official, as required under Rule 14 (18) of the CCS (CCA) Rules, 1965 (for short “Rules 1965”).

2.6 The NTRO, acting on the *ibid* letter of UPSC and taking cognizance of the aforementioned procedural flaw in the conduct of the inquiry, vis-à-vis, Rule 14 (18) of the Rules 1965, decided to conduct *de novo* inquiry in regard to the charge sheet dated 07.09.2012 from the stage of general examination of the charged official (applicant) in terms of Rule 14 (18) of the Rules 1965. Accordingly, the NTRO issued a memorandum dated 09.02.2017 informing the applicant thereby about the *de novo* inquiry.

2.7 The applicant, vide his Annexure A-2 letter dated 20.02.2017, wrote to the DA (Prime Minister) that *de novo* inquiry in respect of the charge sheet dated 07.09.2012 cannot be held against him in view of the fact that the DA became *functuous officio* once the inquiry report, submitted by the IO, has been accepted by the DA. The second reason mentioned in the said letter against the *de novo* inquiry was that the matter is *sub judice* before the Principal Bench of the Tribunal and arguments in the same have since been concluded and orders reserved. Hence, any further action in the matter pending orders from the Tribunal would be violative of Articles 19 of

the Administrative Tribunals Act, 1985 and may also tantamount to the contempt of court.

2.8 Replying to the letter of the applicant, the NTRO, vide letter dated 14.03.2017 (page 30-A), *inter alia*, informed him as under:-

“3.... On receipt of Inquiry Officer’s Report, a copy of the same alongwith CVC advice dated 21.01.2015 was sent, with the approval of Hon’ble Prime Minister as Minister-in-Charge and the Disciplinary Authority, to the Charged Officer vide letter dated 06.07.2015 for his representation. In reply, the Charged Officer, Shri Suresh Sharma submitted his representation dated 11.09.2015. The case was put up to the Hon’ble Prime Minister as Minister-in-Charge and the Disciplinary Authority and as ordered by the Disciplinary Authority, the case was taken to the Union Public Service Commission (UPSC) vide letter dated 3/4.03.2016 for their consultation/advice. However, the UPSC observed vide their letter dated 04.03.2016 that the Inquiry Officer has not done the general examination of the Charged Officer as required under Rule 14 (18) of CCS (CCA) Rules 1965. File was again submitted to the Hon’ble Prime Minister as Minister-in-Charge and the Disciplinary Authority and the Disciplinary Authority, approved de-novo proceedings. Accordingly, orders for de-novo proceedings from the stage pointed out by the UPSC were issued vide orders dated 09.02.2017...”

Aggrieved by the impugned NTRO’s letters dated 09.02.2017 and 14.03.2017, the applicant has filed the instant O.A. praying for the reliefs as mentioned in paragraph (1) above.

4. On the short issue of starting of *de novo* inquiry, the arguments of learned counsel for the parties were heard on 24.03.2017.

5. The contention of learned counsel for the applicant is that *de novo* inquiry is otherwise not permissible under the Rules. There seems to be substance in the contention. Rule 15 of the Rules 1965 deals with the action on the Inquiry Report. Under sub-rule (1) thereof, the DA, where it is not itself the Inquiring Authority, is entitled to remit the case to the Inquiring

Authority for further inquiry and report by recording reasons and the Inquiring Authority is required to proceed to hold further inquiry according to the provisions of Rule 14 of the Rules 1965.

6. What is contemplated under Rule 15 of the Rules is that the DA may ask for further inquiry and not the *de novo* inquiry. Further inquiry, *inter alia*, includes rectification of deficiency, if any. The expression used in the impugned memorandum dated 09.02.2017 as “de novo inquiry” is misnomer. As a matter of fact, the DA had no intention to order for *de novo* inquiry. He has simply asked him to complete the exercise from the stage of general examination of the charged officer. It is thus not a *de novo* inquiry but only rectification of the deficiency on account of non examination of the charged officer under Rule 14 (18) of the Rules 1965. This falls within the purview of Rule 15 (1) of the Rules. In this, such direction is to comply the mandate of Rule 14 (18) of the Rules.

7. In the conspectus of the factual matrix, as described in the pre-paragraphs, and discussion in the paragraph (5) above, we are of the view that the action of the respondents in further inquiry by recording the statement of the charged officer under Rule 14 (18) of the Rules was absolutely in order.

8. The O.A. is thus found to be devoid of any merit and as such it is dismissed. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

March 24, 2017
/sunil/