

**Central Administrative Tribunal
Principal Bench**

OA No.2560/2014

New Delhi, this the 21st day of November, 2016

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Shekhar Agarwal, Member (A)**

Dr. S. Kathioli
Scientist-G,
Room No.310, Prithvi Bhawan,
Ministry of Earth Sciences,
Lodhi Road,
New Delhi 110 003. Applicant.

(By Advocate : Shri A. K. Behera and Shri Soumyajit Pani)

Vs.

1. Union of India through
Secretary
Ministry of Earth Sciences
Prithvi Bhawan, IMD Campus,
Lodhi Road,
New Delhi 110 003.
2. Dr. Shailesh Nayak
Governing Council represented by Chairman
National Institute of Ocean Technology,
Pallikaranai, Velachery-Tambaram Road,
Chennai 600 100

Also at

Dr. Shailesh Nayak
54, New Moti Bagh,
New Delhi 110 021.

3. The Director
National Institute of Ocean Technology
Pallikaranai, Velachery Tambaram Road,
Chennai 600 100.
4. Mr. Arun Kumar
Inquiring Authority
B-38, Vrindavan Apartment,
Plot No.1, Sector-6, Dwarka,
New Delhi 110 075. Respondents.

(By Advocates : Shri S. M. Arif for respondent No.1
Shri Anil Srivastava for respondent No.2)

: O R D E R (ORAL) :

Justice Permod Kohli, Chairman:

The applicant joined the service of respondent (NIOT) in the year 1984 in the cadre of Scientist 'E'. He earned promotions from time to time and came to be promoted as Scientist 'G' in the year 2003.

2. An advertisement dated 07.02.2004 came to be issued by the Government of India (Page 340), Department of Ocean Development inviting applications for the post of Director in the respondent-organisation, an autonomous body established in 1993, as a registered society. This appointment was on contract basis for a period of five years or up to the age of sixty years whichever is earlier subject to satisfactory performance. Para 4 of the said advertisement which deals with the mode of recruitment also provides that those already working in Central/State autonomous bodies/PSU etc., to join on immediate absorption basis.

3. The applicant who was working as Scientist 'G' in the respondent organisation applied for the post. Accordingly, a proposal was sent by the Government of India, Department of Ocean Development for approval from the Appointment Committee of the Cabinet (ACC for short), as is evident from communication dated 27.05.2004. The relevant paras read as under:-

"5. In view of the above, the proposal to appoint Dr. S. Kathioli as Director, National Institute of Ocean Technology in the scale of pay of Rs.18,400-500-22,400/- with effect from the date of assumption of charge of the post till his superannuation (DOB 15.7.1956) may be placed before Appointment Committee of the Cabinet and their approval may be obtained and communicated to the Department at an early date as the post will fall vacant w.e.f. 31.5.2004.

6. Approval of Hon'ble Minister has been obtained. The proposal is sent herewith in the prescribed format."

On completion of the selection process, offer of appointment was issued to the applicant vide letter dated 31.08.2004 which clearly prescribes that the appointment is on the basis of approval accorded by the ACC. The applicant accordingly joined as Director in the respondent-organization. Since the appointment of the applicant was for a period of five years, as approved by the ACC, he joined the post of Director on 01.09.2004 which term expired on 31.08.2009, and another person, namely, Dr. M. A. Atmanand was appointed as Director of the respondent-society. The applicant challenged his appointment before the Hon'ble Madras High Court in W.P. No.9717/2011. The said writ petition was dismissed and an intra-court appeal, i.e., Letters Patent Appeal also resulted in dismissal before the said Court. Thereafter, the applicant filed Special Leave to Appeal Civil No.11822/2013 before the Hon'ble Supreme Court which also resulted in dismissal vide judgment dated 18.04.2013. As a consequence whereof, appointment of Respondent No.3, i.e., Dr. M. A. Atmanand came to be upheld. Reference to this judgment is for a limited purpose of ascertaining the fact as to whether the applicant continued beyond the period of five years as Director or not? On termination of his contract as Director, the applicant reverted back to the post of Scientist 'G' in the respondent-society. He was served with a charge memo dated 10.12.2013 for initiating disciplinary proceedings for major penalty under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. On being served with the aforesaid memo, the applicant filed the present Application seeking following reliefs:-

- “(a) declare the charge memo dated 10.12.2013 issued by the Respondent-NIOT illegal, without jurisdiction and quash the same; and
- (b) quash the impugned orders dated 02.04.2014 whereby the Chairman-GC appointed the Inquiry Authority, Presenting Officer and directed to hold a common proceedings as the

same are without jurisdiction as the said action are against the provisions of the bye-laws;

(c) cost of the litigation."

4. The entire emphasis of Mr. A. K. Behera, learned counsel for the applicant is that the applicant's appointing/disciplinary authority was Central Government and thus the minister-in-charge of the Department of Ocean Development was the only competent authority to initiate disciplinary proceedings and approve the charge sheet to be served upon the applicant, whereas the impugned charge sheet has been issued by the respondent (Society) institute under the orders of its Governing Council. From the perusal of the impugned charge sheet dated 10.12.2013 (Annexure A-2), we find that the same has been served upon the applicant by respondent-institute, and at the foot of the same, it is mentioned "By order and in the name of the GC, NIOT". It is accordingly pleaded that the respondent institute/society or for that matter Governing Council is not competent to initiate disciplinary proceedings against the applicant or serve upon him the charge memo. In order to impress upon this issue, Shri Behera has referred to the letter dated 27.05.2004 whereby the proposal for appointment of the applicant to the post of Director was forwarded to the ACC. He has also referred to the offer of appointment which clearly indicates that the offer of appointment was made to the applicant pursuant to the approval accorded by the ACC. He has further referred to the averments made in para 4.2 of the OA containing the averments that applicant's appointment was through open advertisement and by obtaining approval of the ACC. Further reference is made to paras 5 (O) and (P) whereby the applicant has made some allegations of alleged bias against respondent No.2, the then Chairman of the Governing Council. In response to these allegations, in paras 5 (O) & (P) of the counter affidavit, it is contended by the

respondents that the appointing authority of the applicant is minister-in-charge who alone is competent to take a final decision and Director is not competent to impose major penalty on him. These averments are obviously made to repel the allegations of alleged bias against respondent No.2 or for that matter the then Director of the respondent-organisation.

5. Shri S. M. Arif, learned counsel appearing on behalf of respondent No.1, however, contested the claim of the applicant. According to him, Governing Council of respondent No.1 is the competent authority to initiate disciplinary proceedings against the applicant. He has relied upon Staff Service Rules (as recommended by Finance Committee) of the respondent-organisation. The relevant rules relied upon by him are quoted hereunder:-

“1.1 Short Title of Staff Rules/Service Rules:

The National Institute of Ocean Technology shall adopt the rules and regulations regarding service matters of its employees in general, as per the Government of India Rules unless/otherwise modified in these Rules....”

“17. Powers and Functions of the Governing Council:

- (1) The general superintendence, directions and control of the affairs of the Society shall vest in the Governing Council of the Society. Save as herein expressly provided, all the duties, powers, functions and rights whatsoever or consequential and incidental to the carrying out of the objectives of the Society shall be exercised by the Governing Council.”
- (2) In particular and without prejudice to the generality of the foregoing provisions and subject to the provisions of Memorandum, the Governing Council may:
 - (xi) make, adopt, amend, vary or rescind from time to time bye-laws by special resolution and shall register the bye-laws with the Registrar of Societies;
 - (xiii) appoint and at their discretion, remove or suspend such staff members, scientists, managers, secretaries, officers, clerks, agents and servants for permanent, temporary or special services as it may from time to time think fit, and to determine their powers and duties and fix their salaries or emoluments and to

require security in such instances and for such amount as it thinks fit;"

"23. Functions and powers of the Member-Secretary of the Society:

- (iii) Subject to the rules, regulations and bye-laws and orders of the Governing Council the Member-Secretary of the Society shall be responsible for proper administration of the Society and for the conduct of the staff under the direction and control of the Governing Council.
- (iv) Specifically the Member-Secretary of the Society shall exercise the following full and absolute powers, except where any limit in quality and quantity is specified herein, namely:
 - (f) to grant leave of any kind, transfer, anywhere in India, accept resignation, take disciplinary action, suspend and inflict punishments of all kinds, except removal of all officers, employees, agents or servants of the Society."

According to Mr. Arif under Staff Service Rule 1.1, the respondent-organisation has adopted Government of India Rules and Regulations regarding service matters of its employees. His further reference is to Rule 17 which stipulates the powers and functions of the Governing Council and under sub-rule (xiii) of it appointment of the employees and their removal or suspension is under the domain of the Governing Council. Referring to Rule 23, sub-rule (iv) (f), it is submitted that for any disciplinary action, Secretary has been authorised to discharge the functions as Member-Secretary of the Society, and all actions on behalf of the respondent-organisation are to be carried out by the Secretary. However, in para 1.1 of the Staff Service Rules, it is stated that the respondent-organisation shall adopt the rules and regulations of the Government of India. Shri Arif has not been able to show us any notification/order which *inter alia* notifies the application of Government of India Rules, be it CCS (CCA) Rules, 1965 or CCS (Pension) Rules 1972 having been adopted by the employees of the Staff/employees of the respondent-organisation.

6. His further contention is that since Governing Council is the competent authority for initiating disciplinary proceedings against the applicant, the Governing Council has initiated the disciplinary proceedings as also the charge sheet has been approved by it. Reference is made to the Minutes of the special meeting of the Governing Council held on 02.12.2013. The same reads as under:-

“Minutes of the special meeting of the Governing Council (Spl.GC 01/2013) held on 2nd December, 2013 at 12.00 noon at MoES, New Delhi.

At the outset the Member-Secretary, Governing Council informed the Committee that the Special Meeting of GC was called vide bye-law 16 (1) instead of 8 (c) as indicated in the notice of the meeting issued to the Members.

The Governing Council noted that the CBI, Chennai investigated in to the matter relating to acquisition of Technology Demonstration Vessel (TDV) “Sagar Nidhi” and advised CVO, MoES to initiate RDA Major Penalty against Dr. S. Kathiroli, the then Director, NIOT, presently posted as Chief Scientist at MoES on the rolls of NIOT and Sri T. P. Ranga Maran, Office Superintendent, then S & P section (presently Dy. Manager, F & A Section) of NIOT. The Member-Secretary, GC apprised the Article of Charges of the Charges Sheet to the Members of GC. It was noted by the GC that CVO of MoES sought the advice and obtained concurrence of CVC. Hon’ble Minister of Earth Sciences also approved serving of charge sheet and initiation of proceedings for Major penalty against the above two officers.

After detailed deliberation among the Members, the Governing Council resolved and approved that the Disciplinary Action be taken as per the procedures laid down in CCS (CCA) Rules, 1965 against Dr. Kathiroli and Sri T. P. Ranga Maran.”

At page 430, he has referred to the note sheet which deal with the action against the applicant. The relevant part of the note sheet relied upon by the respondents is reproduced hereunder:-

“Page 430

11. In view of above, in-principle approval of Hon’ble Minister of Science & Technology and Earth Sciences is sought for referring the case to CVC for initiating the major penalty proceedings against Dr. S. Kathiroli and Shri Renga Maran. After the approval of the Hon’ble Minister of Science & Technology and Earth Sciences, the case will be further processed for sending it to CVC

in the prescribed format along with all necessary documents/chargesheet etc. (This was discussed with CVO).

Sd/

(A. K. Bhattacharyya)
Under Secretary (Vig.)

DS (Vig.)

JS (Vig.)

CVO

Secretary

**sd/
HMoES (23/9)"**

It appears that the above note sheet mentions about the processing of the case for sending it to CVC which note is approved by the Hon'ble Minister on 23.09.2013.

7. Learned counsel for the respondents has further referred to the note sheet at Page 406, relevant part of which reads as under:-

"Page 406.

The proposal on the file relates to the initiation of major penalty proceedings against two officers of NIOT viz. Shri S. Kathioli, Scientist G and Shri T. P. Renga Maran DM (F&A) for their alleged role in acquisition of a Ship.

5. It may be submitted that both above officers are employees of NIOT which is a society. The by-laws of the society provide that the powers and the functions of the Governing Council of the Society are to appoint and at their discretion remove or suspend such staff Members, Scientists, Officers.... as it may from time to time think fit. Director NIOT is the member secretary of the society. The by-laws also provide that the powers and the functions of the Member Secretary of the Society are to grant leave of any kind, transfer anywhere in India, accept resignation, take disciplinary action, suspend and inflict punishments of all kinds **except removal of all officers** employees agents or servants of the Society.

6. It may be mentioned that Scientists G are appointed in NIOT with the approval of the Hon'ble MoES. Dr. Kathioli is Scientist G. This disciplinary case on a reference from CBI has been processed in the Ministry in consultation with CVC. It has been done keeping in view Article 311 of the Constitution which provide

that no Govt. employee will be dismissed or removed by an authority subordinate to that by which he was appointed.

7. It is felt that in view of the position explained in para 5 above, the position regarding disciplinary case in respect of both the officers be placed before the Governing Council of the Society. The Governing Council should consider it and approve the issue of the charge-sheets to both the officers of NIOT. Further action is now to be taken by NIOT after obtaining approval of the Governing Council. The charge-sheets may indicate that the approval of the Appointing Authority has been taken.

8. The CVC advice now received for initiation of major penalty action against both the officers of NIOT may kindly be submitted to the Hon'ble MoES for obtaining kind approval before the matter is referred to NIOT for taking further action.

Sd/

(A. K. Bhattacharya)
Under Secretary (Vig.)

DS (Vigilance)

JS (Vig)

CVO

Secretary

sd/
HMoES (14/11)"

Secy. ES"

It appears that the disciplinary proceedings were sought to be initiated against the applicant, and according to the opinion of the Under Secretary who initiated the proposal, the applicant is employee of NIOT and thus the proceedings are required to be initiated by the NIOT, though para 8 also refers that CVC advise has been received and the matter be submitted to the Hon'ble Minister of Earth Sciences for approval before the matter is referred to the respondent-organisation for taking further action. This note is approved by the Hon'ble Minister of Earth Sciences on 14.11.2013.

8. From the above, we find that the first approval of the Minister of Earth Sciences was for referring the case to the CVC and second was for

forwarding the case to the respondent-organisation for initiating disciplinary proceedings against the applicant. At no stage, Hon'ble Minister either approved initiation of disciplinary proceedings on the basis of the material produced before him nor the charge sheet served upon the applicant was ever approved.

9. Shri Behera, however, rebutted the contention of Mr. Arif, and according to him, Scientist 'G' is in the same grade/scale of Director, and even the appointment of Scientist 'G' is required to be made by the minister-in-charge. To support his contention, he has relied upon the Recruitment Rules for Autonomous Institutes under Ministry of Earth Sciences (Scientists), 2011. Rule 11 of the said recruitment rules specifies the appointing authority, which reads as under:-

“11. Appointing Authority:- In the case of Scientist 'B' and Scientist 'C' the appointing authority will be Director of the Institute and in case of Scientist 'D' and Scientist 'E' Chairman Governing Council will be Appointing Authority. For Scientist 'F' and Scientist 'G' appointing authority will be Minister-in-Charge.”

The aforesaid Recruitment Rules do not specify any disciplinary authority. Therefore, in absence of any nomination of the disciplinary authority, the appointing authority shall be deemed to be the disciplinary authority, and in the present case, the Minister-in-Charge being the appointing authority shall be deemed to be the disciplinary authority of the applicant. No record has been placed before us that the Minister-in-Charge has approved initiation of disciplinary proceedings against the applicant, and later the charge sheet which is mandatory requirement of Rule 14 of CCS (CCA) Rules, 1965. The position in law is no more *res integra* having been settled by the Apex Court in **Union of India & Ors. vs. B. V. Gopinath and others** reported in (2014) 1 SCC 351, wherein the Hon'ble Supreme Court has held as under:-

“52. In our opinion, the submission of the learned Additional Solicitor General is not factually correct. The primary submission of the respondent was that the charge sheet not having been issued by the disciplinary authority is without authority of law and, therefore, non est in the eye of the law. This plea of the respondent has been accepted by CAT as also by the High Court. The action has been taken against the respondent in Rule 14 (3) of the CCS (CCA) Rules which enjoins the disciplinary authority to draw up or cause to be drawn up the substance of imputation of misconduct or misbehaviour into definite and distinct articles of charges. The term “cause to be drawn up” does not mean that the definite and distinct articles of charges once drawn up do not have to be approved by the disciplinary authority. The term “cause to be drawn up” merely refers to a delegation by the disciplinary authority to a subordinate authority to perform the task of drawing up substance of proposed “definite and distinct articles of charge sheet”. These proposed articles of charge would only be finalised upon approval by the disciplinary authority. Undoubtedly, this Court in P. V. Srinivasa Sastry vs. CAG has held that Article 311 (1) does not say that even the departmental proceeding must be initiated only by the appointing authority. However, at the same time it is pointed out that :

“4. However, it is open to the Union of India or a State Government to make any rule prescribing that even the proceeding against any delinquent officer shall be initiated by an officer not subordinate to the appointing authority.”

It is further held:

“4... Any such rule shall not be inconsistent with Article 311 of the Constitution because it will amount to providing an additional safeguard or protection to the holders of a civil post.”

10. Thus, the disciplinary proceedings initiated against the applicant, i.e., initial initiation and the charge sheet are not sustainable in law. The same are simply liable to be set aside.

11. There is another aspect of the case. Admittedly, the applicant is retired from service on 31.07.2016 on attaining the age of superannuation. It is also admitted case of the parties that the job of Scientist ‘G’ is not pensionable. He is only entitled to gratuity which is primarily governed by the Gratuity Act, 1972. Even though disciplinary proceedings were initiated against the applicant when he was in service, however, on his retirement the disciplinary proceedings cannot be continued unless the rule so prescribe.

12. Shri Arif submits that since according to the applicant his appointing authority is the Minister in-charge, he is definitely governed by CCS (CCA) Rules, 1965 as also CCS (Pension) Rules, 1972. He accordingly has relied upon Rule 9 of CCS (Pension) Rules. At the first place, Staff Service Rules though mention that the government service rule shall be adopted, however, in absence of any resolution/notification of the competent authority of the respondent-society adopting the government service rule, the argument cannot be accepted. Assuming for the sake of argument that government service rules, i.e., CCS (CCA) Rules 1965 are applicable, in any case after the retirement of a government servant it is only Rule 9 of Pension rules where under the disciplinary proceedings, if initiated during service or after retirement with the sanction of the competent authority, can be continued under the situations enumerated therein. Admittedly, job of Scientist 'G' is not a pensionable job. Thus, Pension Rules will not be applicable. No other rule or regulation of the respondent (society) institute has been brought to our notice empowering continuation of the disciplinary proceedings after retirement. The job being not pensionable, penalty envisaged under rule 9 of the CCS (Pension) Rules, 1972 also will have no application.

13. The issue is no more *res integra* having been settled by a plethora of judgments of the Apex Court. In ***Bhagirath Jena v Board of Directors, OSFC & Others*** [(1999) 3 SCC 666], the appellant before the Apex Court, an employee of the Orissa Financial State Corporation was served with a charge-sheet while in service under the Orissa Financial State Corporation Staff Regulations, 1975. The inquiry could not be completed before his superannuation. He retired on superannuation. The employee challenged continuation of the disciplinary proceedings.

Considering the Regulations of the Corporation, the Hon'ble Supreme Court held as under:-

“6. It will be noticed from the abovesaid regulations that no specific provision was made for deducting any amount from the provident fund consequent to any misconduct determined in the departmental enquiry nor was any provision made for continuance of the departmental enquiry after superannuation.

7. In view of the absence of such a provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30-6-1995, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement.”

A similar view has been expressed by the Apex Court in ***Dev Prakash Tewari v UP Cooperative Institutional Service Board, Lucknow & Others*** [(2014) 7 SCC 260]. The Hon'ble Supreme Court observed as under:-

“8. Once the appellant had retired from service on 31.3.2009, there was no authority vested with the respondents for continuing the disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority it must be held that the enquiry had lapsed and the appellant was entitled to get full retiral benefits.”

14. Although the disciplinary proceedings were initiated during service but its continuation is unwarranted in the absence of any rule permitting such continuation. This is based upon simple proposition that the master and servant relationship ceased to exist on retirement of an employee.

15. In view of the totality of circumstances, this OA is allowed. Impugned charge sheet and all consequential disciplinary proceedings, if any, are hereby quashed. Since continuation of disciplinary proceedings

is impermissible in law, respondents are not entitled to initiate fresh disciplinary proceedings against the applicant. No order as to costs.

(Shekhar Agarwal)
Member (A)

(Justice Permod Kohli)
Chairman

/pj/