

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.1849/2012

Order Reserved on:15.03.2016

Pronounced on:23.03.2016

**Hon'ble Dr. Brahm Avtar Agrawal, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Jata Shankar Mishra aged about 51 years
S/o Late Sh. Chandra Shekhar Mishra,
R/o Flat No.47, Neel Kamal Apartment,
H III, Vikaspuri, New Delhi-110018.

-Applicant
(By Advocate Shri Bharat Bhushan)

-Versus-

1. Union of India through its Secretary,
DSIR, Ministry of Science & Technology,
Anusandhan Bhawana, Rafi Marg,
New Delhi.
2. Council of Scientific & Industrial Research
Through its Vice President,
Anusandhan Bhawan, Rafi Marg,
New Delhi.

-Respondents

(By Advocate Miss K. Iyer)

O R D E R

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

This OA has been filed under Section 19 of the
Administrative Tribunals Act, 1985. The specific
reliefs prayed in the OA, read as under:

“(A) quash the (i) impugned orders No.6-11(60)/2002/E-III dated 14.01.2004, (ii) order dated 01.07.2005, (iii) order dated 18.02.2008, (iv) order dated 28.01.2009 No.6-11(60)/2002-E-III, (v) order dated 05.01.2010 bearing No.15-47(16)/2004-Vig and (vi) order dated 14.07.2011 bearing NO.15-47(16)/2004-Vig.

(B) Payment of the arrear with interest as applicable in GPF.

(C) Payment of cost.

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

2.1 The applicant joined as Assistant Executive Engineer in CSIR on 20.07.1990. For his alleged misconduct, Annexure P-2 charge-memo dated 21.05.1997 was issued to him in which the following article of charge was levelled against him:

“Shri J.S. Mishra while functioning as Assistant Executive Engineer (Civil) IHBT, Palampur for the period from 20.07.1990 onwards committed misconduct in-as-much as in the matter of award of work for construction of Phase-II of Main Lab. Building of the Institute, he in collusion with others allowed one of the tenderers M/s Satinder Mahajan to change the rate of item No.6.2 from Rs.410/- per sqm to Rs.490/- per sqm in the tender papers of the said Contractor after tenders had been duly opened, and thus attempted to allow undue pecuniary benefit to latter to the extent of Rs.2,33,520/- (Rupees two lakhs thirty three thousand five hundred only).

By doing so, Shri Mishra exhibited lack of absolute integrity and acted in a manner wholly unbecoming of a Council employee, contravening thereby Rule 3(1)(i)&(iii) of the CCS (Conduct) Rules, as made applicable to Council employees.”

2.2 The above charge-memo was issued to him by the Director, Institute of Himalayan Bio-Resource Technology (IHBT), Palampur under whom he was then working. IHBT is one of the units of CSIR. Pursuant to the said charge-memo, a disciplinary enquiry was held against the applicant. The DG, CSIR, vide his Annexure P-1 (Colly.) order dated 14.01.2004 imposed the following penalty on the applicant:-

“Reduction of pay by three stages for a period of three years with cumulative effect with further stipulations that during the period of reduction, increments will not be drawn and on expiry of the period of penalty, the reduction will have the effect of postponing the future increment of pay upon Shri J.S. Mishra.”

2.3 The applicant preferred an appeal dated 13.04.2004 before the Appellate Authority (AA), namely, Vice President, CSIR (Respondent No.2), who vide his order No.15/47/(16)/2004-Vig. dated 01.07.2005 dismissed the appeal (page 16 of the paper book) and confirmed the order passed by the Disciplinary Authority (DA), i.e., DG, CSIR. The applicant filed a review petition before the AA, i.e., Vice President, CSIR, who vide his order No.15-

47(15)/2004-Vig. dated 18.02.2008 (page 21 of the paper book) held as under:

“I have carefully considered the Review Petition dated 03.04.2007, of Sh. J.S. Mishra, AEE, ESD, CSIR Hqrs against the penalty imposed upon him vide Order No.6-11(60)/2002-EIII dated 14.01.2004.

It has been made clear, inter-alia, in the Review Petition that there has been a serious infirmity in the proceedings as regards the various authorities, which considered the Inquiry Report. I find that as per the extant Schedule of Disciplinary Authorities, the JS (A) ought to have been the Disciplinary Authority and the DG, CSIR, the Appellate Authority. But the order dated 14.1.2004 was issued by the DG, CSIR as the Disciplinary Authority. It is seen that the report had not been further considered by the correct Disciplinary Authority.

Now therefore, in view of the procedural infirmity as stated above, I hold that the Inquiry Report needs to be submitted again to the Disciplinary Authority, i.e., the Joint Secretary (A), who shall further consider the Inquiry Report along with all other relevant documents, apply his mind and pass further orders in this case.”

2.4 In view of the ibid order dated 18.02.2008 of Vice President, CSIR, in which it was held that the DA for the applicant was Joint Secretary (Admn) and not DG, CSIR, the DA, namely Joint Secretary (Admn) vide his order No.6-11(60)/2002-E.III dated 28.01.2009 passed the penalty order. The operative part of the said order reads as under:

“Now therefore, on careful consideration of the submissions made by Shri Mishra in his

representation dated 01.10.2003, the report of Inquiry Officer and other records of the case the undersigned feels that ends of justice would be sufficiently met if penalty of reduction of pay by three stages for a period of three years with cumulative effect and with the stipulation that during the period of the reduction increments will not be drawn and on expiry of the period of the penalty, the reduction will have the effect of postponing the future increments of pay, is imposed on Shri Mishra.”

2.5 The applicant preferred an appeal against the order dated 28.01.2009 passed by the DA (Joint Secretary (Admn)) before the AA, namely DG, CSIR who vide his order No.15-47(16)/2004-Vig. dated 05.01.2010 (page 39 of the paper book) modified the penalty. The operative part of the said order reads as under:

“However, it cannot be denied that the appellant has undergone suffering owing to this case. I, therefore, modify the aforesaid penalty to that of reduction of pay by three stages for a period of three years without cumulative effect and for the period of reduction he will not earn increments of pay and on expiry of the period of penalty, the reduction will not have the effect of postponing the future increments of pay.”

2.6 The applicant filed a revision petition on 20.01.2010 under Rule 29 of the CCS (CCA) Rules, 1965 before the Revisional Authority, i.e., V.P., CSIR, who vide his order No.15-47(16)/2004-Vig. dated

14.07.2011 (page 43 of the paper book) further modified the penalty imposed to that of '**Censure**'.

2.7 Aggrieved by the order of the Revisional Authority, the applicant has filed the instant OA, praying for the aforementioned reliefs.

3. Pursuant to the notices issued, the respondents entered appearance and filed their written reply to which applicant filed his rejoinder. Applicant also filed an additional affidavit.

4. On completion of pleadings, the case was taken up for hearing on 15.03.2016. Shri Bharat Bhushan, learned counsel for the applicant and Ms. K. Iyer, learned counsel for the respondents argued the case. The learned counsel for the applicant, besides underscoring the points raised by the applicant in the OA, rejoinder and in his additional affidavit, stated that the DA while passing the impugned order dated 28.01.2009 completely relied upon the concluded enquiry report pursuant to the charge-memo dated 21.05.1997 and thus has violated the provisions of Article 20 (2) of the Constitution of India. It was also submitted that the DA without applying his mind, has simply reiterated

the earlier order dated 14.01.2004 passed by the incorrect DA. The learned counsel further submitted that the Revisional Authority in his order dated 14.07.2011 has clearly held that the applicant has not caused any pecuniary loss to the organization, i.e., CSIR. The learned counsel vehemently argued that the delay in the completion of the disciplinary proceedings, which ultimately has culminated into imposition of the penalty of '**Censure**' on the applicant, has resulted in heavy financial loss to the applicant; in fact the applicant has suffered a financial loss to the tune of Rs.23 lacs by way of not getting the financial benefits in terms of the revised Merit and Normal Assessment Scheme (MANAS). The learned counsel also submitted that the respondents had started common proceedings against the applicant and two other officials, the applicant has been punished whereas the proceedings against two others have been set aside on account of procedural infirmities and hence there is miscarriage of justice and equity. Concluding his arguments, the learned counsel prayed for allowing the OA and to grant the reliefs, as prayed for in the OA.

5. The learned counsel for the respondents submitted that it is incorrect on the part of the applicant to say that he has not been getting the benefits of financial upgradation and career advancement under MANAS. She said that the applicant was promoted to the post of Executive Engineer on 21.07.1995, then to Superintending Engineer on 21.07.2000 and then to Senior Superintending Engineer on 21.07.2005. She also controverted the allegation of the applicant that the applicant has suffered financial loss on account of the initial punishment order dated 14.01.2004 passed by the DG, CSIR, who was not the competent DA for the applicant then. She said that in his order dated 28.01.2009, the competent DA, namely Joint Secretary (Admn), CSIR has imposed the same penalty of reduction of pay by three stages for a period of three years with cumulative effect and with a stipulation that during the period of reduction, increments will not be drawn and on expiry of the period of penalty, the reduction will have the effect of postponing the future increments of pay of applicant. She said that the ibid order of the DA was challenged by the applicant in appeal before the AA, namely,

DG, CSIR, who vide order dated 05.01.2010 has modified the order of the DA to the extent that reduction of pay by three stages will not have the effect of postponing the future increments of pay of the applicant. The learned counsel also stated that the punishment already undergone by the applicant in terms of order dated 14.01.2004 passed by the DG, CSIR, who was not the concerned DA, by way of the financial loss has since been compensated to him after passing of the order of the Revisional Authority dated 14.07.2011, whereby the penalty has been reduced to that of '**Censure**'. She vehemently argued that no benefit under MANAS has been denied to the applicant. She drew our attention to clause 6.10(3) of MANAS, to say that the actual monetary benefit is to accrue to the applicant only from the date following the date of imposition of the penalties. She said that the Revisional Authority order is dated 14.07.2011, whereby the penalty imposed on the applicant by the DA and AA has been reduced to that of '**Censure**', all monetary benefits in terms of MANAS have been given to the applicant. Concluding her arguments, the learned counsel

submitted that there is no substance in the OA and as such, the OA is liable to be dismissed.

6. We have considered the arguments put-forth by the learned counsel for the parties and have also perused the pleadings and the documents annexed thereto. The scope of judicial scrutiny in a disciplinary enquiry case is highly limited. The Courts are only supposed to see as to whether the disciplinary enquiry has been conducted as per the prescribed procedures, whether principles of natural justice have been followed in the conduct of the disciplinary enquiry and whether the punishment imposed is proportionate to the offence committed. In the instant case, we find that the enquiry has been conducted strictly in accordance with the procedure laid down under the CCS (CCA) Rules, 1965. The applicant has participated in the inquiry and no principles of natural justice have been violated. The applicant has been ultimately awarded the punishment of '**Censure**'. The charge against the applicant was that he had allowed manipulation of rate of a particular item in a tenderbid submitted by a tenderer. Taking into consideration the charge levied and the punishment finally inflicted on him,

we are of the clear view that the punishment awarded is not at all disproportionate to the offence committed.

7. Coming to the grievance of the applicant that he has not been given his due under MANAS, we consider it appropriate to reproduce the extract of clause 6.10 (30) of MANAS as under:

“3. In case the disciplinary proceedings result in imposition of penalty of "censure" or "recovery from pay of the whole or part of any pecuniary loss caused by the official's negligence or breach of orders" to the Council the case would be placed before the same Assessment Committee(s) for the relevant year(s), as far as possible, which will review it with reference to the original recommendations kept in the sealed cover(s), the circumstances leading to disciplinary action and the penalty imposed; and after taking into consideration all the aspects, give specific recommendations for promotion or otherwise from the due date(s). Even if the employee is recommended for assessment promotion from his due date, his pay on promotion will be fixed notionally from the due date but actual monetary benefit shall accrue to him only from the date following the date of imposition of any of these penalties.”

8. From the above, it is quite clear that the disciplinary proceedings resulting in imposition of '**Censure**', which is exactly the case of the applicant, even if the employee recommended for assessment promotion from his due date, only his pay on promotion is to be fixed notionally from the due date but the actual monetary benefit shall accrue to him

only from the date following the date of imposition of penalty. In the present case the respondents have released the financial benefits to the applicant strictly in terms of this clause. As such, we do not agree with the learned counsel for the applicant on this point. We also do not agree with the learned counsel for the applicant that violation of Article 20 (2) of the Constitution of India has occurred in the instant case. The said Article says that no person shall be prosecuted or punished for the same offence more than once. In the instant case the applicant has not been punished twice. As a matter of fact, the punishment awarded to him vide order dated 14.01.2004 by the DG, CSIR, who was not the competent DA, has been set aside by the Revisional Authority and thereafter, the competent DA, namely, Joint Secretary (Admn), CSIR has passed the impugned order dated 28.01.2009.

9. In view of the foregoing, we are of the view that there is no substance nor any merit in the OA. As such, the OA is liable to be dismissed. Accordingly, the OA is dismissed.

10. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Dr. Brahm Avtar Agrawal)
Member (J)

‘San.’