

**Central Administrative Tribunal
Principal Bench**

OA No.1866/2009

Reserved on: 20.08.2016
Pronounced on: 14.03.2017

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

Dr. Sadachari Singh Tomar
aged about 58 years,
S/o Late G. P. S. Tomar
R/o 101, NASC, Pusa,
New Delhi 110 012.

.... Applicant.

(By Advocate : Shri Ramesh K. Mishra)

Vs

1. Union of India
Through Secretary
D/o Agricultural Research and Education
and DG, ICAR,
Krishi Bhawan,
New Delhi 110 001.
2. President
Indian Council of Agricultural Research
Ministry of Agriculture,
Krishi Bhawan,
New Delhi 110 001.
3. Secretary
Indian Council of Agricultural Research
Ministry of Agriculture,
Krishi Bhawan,
New Delhi 110 001.
4. Central Vigilance Commissioner
Satarkta Bhawan,
GPO Complex,
Block-A,
INA,
New Delhi.
5. Dr. S. R. Misra
(Former Director, IISR, Lucknow)
R/o Sector-1, House No.A/1558,
LDA Colony, Kanpur Road,
Lucknow.

.... Respondents.

(By Advocates : Shri S. R. Mathur, Shri Gagan Mathur and
Shri Varun Kumar)

: O R D E R :

Justice Permod Kohli, Chairman :

The applicant suffered disciplinary proceedings which resulted in imposition of penalty. He has challenged the entire disciplinary proceedings in the present OA, and sought following reliefs:-

- “(i) to quash and set aside Inquiry Report dated 24.11.2005, order dated 12.07.2007, order dated 30.07.2008 and order dated 27.08.2007;
- (ii) to pass such other and further orders, which this Hon’ble Tribunal deem fit and proper.”

2. The disciplinary proceedings were initiated against the applicant vide Memorandum dated 13.02.2003 issued under Rule 14 of CCS (CCA) Rules, 1965 for major penalty. He was asked to make representation within fifteen days of the receipt of Memorandum. The Memorandum was accompanied with Articles of Charge, imputation of misconduct, list of witnesses etc., as required under the Rules. Following charges were framed against him for inquiry:-

“ARTICLE OF CHARGE I

While working as ADG (ARIS) at ICAR Headquarters, Dr. S. S. Tomar stayed at Sindhu Guest House in IARI for more than one year w.e.f. 15.1.98 to 17.6.99 and fraudulently claimed HRA for the period of his stay in the Sindhu Guest House of IARI which was not admissible to him as per rules. By the above act Dr. S. S. Tomar has failed to maintain absolute integrity and behaved in a manner unbecoming of the Council’s employee and has thus violated the provisions of Rule 3 (i) and (iii) of the CCS (Conduct) Rules, 1964 as extended to ICAR employees.

ARTICLE OF CHARGE II

While working as ADG (ARIS) the tenure of Dr. S. S. Tomar was curtailed and he was posted as Sr. Scientist at CIAE, Bhopal vide order 4-2/92-Per.III dated 31.1.2001 with immediate effect. Dr. Tomar did not report at CIAE, Bhopal till 31.3.2002. He has thus absented himself unauthorisedly w.e.f. 31.1.2001 to 31.3.2002. By the above said act Dr. S. S. Tomar has demonstrated lack of devotion to duty and behaved in a manner unbecoming of a Council’s employee and has thus violated CCS (Conduct) Rule No.3 (1) (ii) and (iii) as applicable to the ICAR employees.

ARTICLE OF CHARGE III

While functioning as ADG (ARIS) at ICAR Headquarters Dr. S. S. Tomar misbehaved with Sh. H. K. Joshi, LDC attached to him on 22.3.2000 at about 10.00AM in his Office Room No.202 in Krishi Bhavan, New Delhi. Dr. Tomar physically lifted Shri H. K. Joshi from the chair and pushed him outside the room. By the above said act Dr. S. S. Tomar has behaved in a manner unbecoming of a Council's employee and has thus violated CCS (Conduct) Rule 3 (1) (iii) as applicable to ICAR employees.

ARTICLE OF CHARGE IV

While working as ADG (ARIS) at ICAR Headquarters Dr. S. S. Tomar was deputed to attend the workshop of ISNAR new technology for Agricultural Research at Bangkok from 22-29 November, 1999 without any financial liability of GOI/ICAR. However, it was found that his name did not figure in the ISNAR list of participants from India in the above workshop and he did not have proper sponsorship from ISNAR. He was, therefore, directed not to proceed to Bangkok but he didn't comply with the orders of the Council and proceeded to Bangkok, thus showing utter disregard to the orders of the competent authority. By his above act Dr. S. S. Tomar has behaved in a manner unbecoming of this Council's employee and has thus violated the provisions of Rule 3 (1) (ii) & (iii) of the CCS (Conduct) Rules, 1964 as applicable to the ICAR employees.

ARTICLE OF CHARGE V

While working as ADG (ARIS) at ICAR Headquarters, Dr. S. S. Tomar has maligned the ICAR as an organisation through the press.

By the above said act Dr. Tomar has behaved in a manner unbecoming of Council's employee and thus violated CCS (Conduct) Rules 8 and 9 of the CCS (Conduct) Rules as applicable to the ICAR employees."

The applicant made various representations for supply of legible complete, signed and paged documents relating to Memorandum vide his letters dated 25.02.2003, 08.05.2003, 11.08.2003 and 03.07.2006. The Disciplinary Authority appointed one Dr. Nagendra Sharma, Director, CIRG, Makhdoom as the Inquiry Officer vide his order dated 27.08.2003. The said appointee conveyed his inability to function as Inquiry Officer and consequently vide letter dated 19.02.2004, the President, ICAR, appointed Dr. S. R. Misra, former Director, IISR as the Inquiry Officer to inquire into the charges framed against the applicant. The Disciplinary

Authority also appointed Presenting Officer vide order dated 27.08.2003. The Charged Officer, i.e., the applicant made a representation dated 12.04.2004 seeking change of Inquiry Officer and Presenting Officer, as also for dropping of charges. One of the grounds for dropping the inquiry was that earlier an inquiry was conducted by Dr. Kiran Singh, the then DDG (AS) who exonerated the applicant. Request of the charged officer was declined vide Memorandum dated 09.07.2004. Vide the aforesaid Memorandum, it was also conveyed to the applicant that Dr. Kiran Singh had conducted only the preliminary inquiry and his report was not accepted by the President, ICAR. One of the grounds taken in the representation of the applicant that CVC should have been consulted was also answered stating that CVC has already been consulted and CVC has not nominated any CDI for appointment as Inquiry Officer in the case.

3. The applicant made another representation dated 26.07.2004 for change of Inquiry Officer and dropping the charges. Vide Memorandum dated 04.05.2005, the applicant was informed that he is delaying the inquiry proceedings, as many as ten dates have been fixed for preliminary hearing. He was advised to cooperate with the Inquiry Officer for expeditious hearing. It seems that the Inquiry Officer proceeded with the inquiry. The charged officer did not participate and an ex-parte inquiry was held. The Inquiry Officer completed the inquiry and submitted his report dated 24.11.2005 holding all the charges as proved. A copy of the Inquiry Report was served upon the applicant vide Memo dated 16.01.2006. The charged officer replied to the Inquiry Report on 01.04.2006. He made further correspondence, and was provided further opportunity to furnish his reply on the findings of the Inquiry Officer. He submitted another reply dated 03.07.2006. The

Disciplinary Authority on consideration of the Inquiry Report and reply of the charged officer passed the impugned order dated 12.07.2007 (Annexure A-2) imposing the following penalty:-

“ACCORDINGLY, the penalty of withholding of increments due for a period of three years with cumulative effect is hereby imposed on Dr. S. S. Tomar, Principal Scientist, IARI, New Delhi.”

Vide a separate order dated 27.08.2007, period of absence of the applicant from 31.01.2001 to 31.03.2002 was treated as *dies non*. The applicant made a representation for regularising the period of his *dies non* by granting leave of kind due or extraordinary leave. This request was also rejected by separate order dated 31.10.2007. The charged officer preferred an appeal against the penalty order. The said appeal was rejected vide order dated 30.07.2008.

4. The applicant has challenged the proceedings on the following grounds:-

- (i) Second inquiry on the same facts is barred under law;
- (ii) Violation of Rule 15 (2) of CCS (CCA) Rules, 1965;
- (iii) Documents not furnished during the inquiry.

5. A detailed counter affidavit has been filed by the respondents contesting all the contentions raised in the OA. It is stated that the applicant has delayed the disciplinary proceedings by remaining absent on one pretext or the other. It is also alleged that the applicant has not furnished his written statement of defence to the charge memo within the stipulated time, and it was only after the Inquiry Officer was appointed vide order dated 27.08.2003, he submitted his written statement of defence vide letter dated 18.09.2003. Even though it was not a proper stage, nevertheless the same was considered by the President, ICAR, and on consideration of the written statement, the President, ICAR finding no

merit decided to continue the proceedings. The appointed Inquiry Officer, namely, Dr. Nagendra Sharma expressed his reservations about working as Inquiry Officer and thereafter one Dr. S. R. Misra, respondent No.5, former Director, IISR was appointed as Inquiry Officer vide order dated 19.02.2004. The applicant never participated in the inquiry proceedings, except once on 13.04.2004 and on rest of the 15 occasions (dates mentioned in para (iv) of the counter affidavit), the applicant remained absent feigning sickness during the period from 03.08.2004 to 12.08.2005. The Inquiry Officer held the ex-parte inquiry holding the charges as proved. The applicant made his submissions to the findings of the Inquiry Officer. His submissions were considered by the President, ICAR, and after taking into consideration the same, penalty of withholding of increments due for a period of three years with cumulative effect was imposed upon him vide order dated 12.07.2007. An OA filed by the applicant before Principal Bench of this Tribunal challenging the ex-parte inquiry was withdrawn with liberty to challenge the ex-parte inquiry after taking all the pleas made in the OA which shall be considered by the Appellate Authority, who shall pass a reasoned order. It is further stated that even though no appeal lies against the order of the President, ICAR, however, in view of the directions of the Hon'ble Tribunal, the President, ICAR considered the appeal as a special case and after granting him personal hearing, considered all the points raised by the applicant. Even a written brief was submitted by the applicant. The President, ICAR, found no merit in the appeal, maintained the penalty order dated 12.07.2007 as commensurate with the gravity of the charge.

6. Regarding the contention of the applicant that earlier an inquiry was held by Dr. Kiran Singh, DDG (AS), it is stated that Dr. Kiran Singh

was asked to conduct a preliminary inquiry specifically with regard to the conduct of the applicant to going to the Press. This was only a fact finding inquiry to help the Disciplinary Authority to come to a conclusion as to whether a prima facie case existed for initiation of formal disciplinary proceedings. It is further stated that the scope of the preliminary inquiry was reiterated by the then Secretary, ICAR in her letter dated 27.03.2001. According to the respondents, charge sheet dated 13.02.2003 served upon the applicant and impugned in the present OA is the only charge sheet ever issued to him. The respondents have further mentioned about the charges which are said to have been proved during the course of the inquiry. As regards the grievance of the applicant that he has not been furnished the documents, it is stated that at least four times listed documents were provided to him. It is stated that firstly the documents were supplied along with the charge sheet and second time, pursuant to the request of the applicant, the Council again supplied the documents vide letter dated 25.04.2003 (Annexure R-VI). Subsequently, again on the request of the applicant, the Council supplied the copies of the listed documents to him vide Memorandum dated 17.03.2016 (Annexure R-VII), and thereafter, after the completion of the disciplinary proceedings and imposition of penalty, the applicant inspected the complete case file under Right to Information Act, 2005, and took certified copies of 1935 pages of this file. It is also stated that vide Council letter dated 05.03.2002, the case was referred to CVC for first stage advice. The Commission in its advice dated 02.07.2002 observed that all the charges are in the nature of administrative lapses and accordingly, Council was asked to take action as deemed fit, whereupon a charge sheet was issued to the applicant. Since the case was only of administrative lapses, appointment of CDI of CVC as Inquiry

Officer was not required. A copy of the CVC advice was demanded by the applicant. The same was provided to him on 17.03.2006.

7. We have heard learned counsel for the parties.

8. With regard to the contention of the applicant that the second inquiry on the same facts is barred under law, the applicant has referred to a letter dated 04.08.2000 (Annexure A-6). This letter mentions for institution of an inquiry as per CCS (CCA) Rules, 1965. The said letter reads as under:-

“While giving his directions in a case related to procurement of computers under NATP, the Hon’ble Agriculture Minister has approved the institution of an inquiry under CCS (CCA) Rules against Dr. S. S. Tomar, ADG (ARIS) for his conduct in going to the press. The Hon’ble AM has appointed Dr. Kiran Singh, DDG (Animal Sciences), ICAR as the Inquiry Officer for this purpose. It should be ensured that all the lapses or misconduct on the part of Dr. S. S. Tomar in the case relating to purchase of computers etc. for NATP and his conduct thereafter should be taken into consideration at the time of framing the charges, in consultation with DDG (Engg.), if necessary.

Further necessary action should be taken immediately in this regard including the issue of chargesheet and initiation of the proceedings as per CCS (CCA) Rules, 1965 as applicable to ICAR.”

On reading of the aforesaid letter, it is argued on behalf of the applicant that Hon’ble Agriculture Minister appointed Dr. Kiran Singh, DDG (Animal Sciences), ICAR as the Inquiry Officer. It is stated that the letter clearly mentions that it was an inquiry under CCS (CCA) Rules, 1965. The applicant has also referred to the report of Dr. Kiran Singh (IO) (Pages 114 to 118). In this report, the conclusion drawn is that charges against the applicant are baseless and motivated. The applicant has also relied upon additional affidavit filed by him on 17.03.2015 accompanied with letter dated 27.03.2001 addressed to Dr. Kiran Singh, DDG (AS). The said letter reads as under:-

“I pursuance of the orders given by the Hon’ble Agriculture Minister for institution an enquiry under CCS (CCA) Rules against Dr. S. S. Tomar, ADG (ARIS), the scope of the enquiry is being reiterated in order to expedite the conduct of the enquiry.

The above mentioned order of the AM stipulates that the inquiry should be against Dr. S. S. Tomar, ADG (ARIS) specifically for his conduct in going to the Press. You are, therefore, requested to kindly enquire into this specific point at your earliest and finalise your report within a month of receipt of this letter.”

It is accordingly stated that the inquiry against the applicant was at the instance of the Minister and after having held the first inquiry, second inquiry through the charge sheet is impermissible in law.

9. To counter the aforesaid submission, learned counsel for the respondents has referred to the letter dated 04.08.2000 quoted hereinabove. In the last paragraph of the said letter, it is mentioned that “Further necessary action should be taken immediately in this regard including the issue of chargesheet and initiation of the proceedings as per CCS (CCA) Rules, 1965 as applicable to ICAR”. It is accordingly contended that the said letter was not a regular charge sheet but only for a fact finding inquiry by Dr. Kiran Singh, with a further direction to initiate the steps for issuing charge sheet under CCS (CCA) Rules, 1965. The respondents have also relied upon the Note dated 18.07.2000 of the then Agriculture Minister, accompanied with the additional affidavit filed by the applicant. The said note reads as under:-

“I have gone through all papers available on the file. The issue raised in the press prima-facie appear to be quite serious and it is a fit case to be investigated by Vigilance Branch of ICAR in consultation with CVC.

As regards, ICAR proposal to initiate disciplinary proceedings against Sh. Tomar for his conduct to go to the press, this should be enquired into and action taken on the basis of enquiry report under the provisions of Central Civil Service (Conduct) Rules, 1964 as applicable to the ICAR Officers.

The Secretary, DARE may take immediate necessary action accordingly.”

In the aforesaid note, the then Agriculture Minister observed that the matter is serious, and it is a fit case to be investigated by vigilance branch of ICAR in consultation with CVC. It was further observed that proposal to initiate disciplinary proceedings against the applicant for his conduct to go to Press should be inquired into and action taken on the basis of the Inquiry Report under the provisions of CCS (Conduct) Rules, 1965 as applicable to the ICAR Officers. Another document dated 27.07.2000 is issued by the Secretary, DARE & DG, ICAR whereby a note was prepared on the basis of the aforesaid observations of the Hon'ble Agriculture Minister, wherein it is noted that the fact finding committee is required to be constituted to establish prima facie the facts of the case to be proceeded further in the matter, and a committee of four officers was constituted.

10. The aforesaid note was followed by the note of the then Agriculture Minister dated 29.07.2000 (Annexure A-6) with the Additional Affidavit. In this note, the Hon'ble Minister reacting to the Note dated 27.07.2000 made certain observations regarding the conduct of the applicant to go to Press and in regard to proposal of the Department of Agricultural Ministry to conduct the preliminary inquiry, it was observed that senior most CVO of the department of Animal Husbandry and Dairying shall conduct preliminary inquiry, and submit his report within one month and on receipt of such report, the advice of CVC shall be obtained for further action in the matter. It was further observed that it will not be proper to involve a Member of ASRB, instead Dr. Kiran Singh, DDG (Ani. Sci), ICAR may be appointed as the Inquiry Officer. The respondents have further relied upon letter dated 21.12.2000 written from Dr. Kiran Singh addressed to the applicant, which reads as under:-

“I have been asked to conduct a preliminary enquiry into the matter cited above. You are therefore requested to meet me in my Chamber in Krishi Bhavan on any working day ascertaining my availability.”

Based upon the aforesaid documents which, in fact, have been placed on record by the applicant, it is contended that the intention had always been to appoint Dr. Kiran Singh to hold a preliminary inquiry. There is another document on record, i.e., Note dated 08.02.2001 signed by Dr. Kiran Singh, DDG (AS). In this note, a reference is made to the questionnaire issued by Dr. Kiran Singh and response of the applicant. About 30 questions were served upon the applicant. These documents are being read by the parties to support their respective contentions. It is true that in some of the documents referred to above, reference is made to CCS (CCA) Rules, 1965, and during the inquiry being held by Dr. Kiran Singh, a questionnaire was also issued to the applicant. He has also responded to that questionnaire. On the basis of the aforesaid factual background that there had been an earlier inquiry, the applicant had earlier filed OA No.1866/2009 before this Tribunal after imposition of final penalty. The same issue was raised in the said OA that there had been an earlier inquiry by Dr. Kiran Singh. This Tribunal considering the matter held as under:-

“It is not in dispute that the said inquiry was never taken to its logical end, inasmuch as there was neither any dissent note, nor surely the same was communicated to the applicant asking him to submit his representation. The matter appears to have been left there and yet, a memorandum dated 13.02.2003 came to be issued for proceeding departmentally against the applicant under Rule 14 of the CCS (CCA) Rules, 1965 amongst such charges as mentioned above, which had already been subject matter of the inquiry. This procedure, as adopted by the respondents, appears to us to be wholly illegal. There was no reason for the respondents to have made an inquiry against the applicant for the same charges already subject matter of the inquiry. No doubt, the respondents could proceed against the applicant in regard to fresh charges, but combination of fresh with old charges makes the procedure illegal.”

Regarding the validity of the second inquiry, the Tribunal held as under:-

“5. Surely, the applicant has now been held guilty of all the charges. If the inquiry had been conducted in respect of new charges only the punishment given to the applicant may have been far less. We find from the records of the case that insofar as the second inquiry conducted against the applicant is concerned, the same was ex-parte. It has been the consistent case of the applicant that he was sick and unable to attend the inquiry. We will not, however, go into this question at this stage.

6. We quash memorandum dated 13.02.2003, order of punishment dated 12.07.2007 and order passed by the Appellate Authority dated 30.07.2008. We also quash order dated 27.08.2007 treating the period from 31.01.2001 to 31.03.2002 as dies non with liberty to the respondents to proceed afresh against the applicant with regard to only such charges which may be fresh, i.e., the one which were not the subject matter of the inquiry culminating into report dated 25.01.2001, wherein the applicant would have right to defend his case.”

The aforesaid judgment of this Tribunal was challenged before the Hon’ble High Court of Delhi in W.P. (C) No.3328/2010, which was decided on 30.09.2014. Similar arguments were addressed before the High Court as before us. After examining the contentions and some of the documents referred to by us hereinabove and taking into consideration the provisions of Rule 14 to 16 of the CCS (CCA) Rules, 1965, the Hon’ble High Court held as under:-

“In the facts of the present case, the absence of any charge sheet outlining the Statement of Imputations and the material sought to be relied upon leads us to conclude that the so called findings and conclusions recorded on 21.05.2001 were only in the nature of preliminary investigation report of the concerned officer Dr. Kiran Singh. These could not have been characterized as in inquiry report....”

The applicant preferred a Special Leave Petition No.2371/2015 before the Apex Court. The said Petition came to be disposed of vide order dated 05.02.2015 with the following observations:-

“After noting the direction issued by the Division Bench in para 7 we further direct the Central Administrative Tribunal to examine the said issue with particular reference to Rules 14 to 16 of Central Civil Services (Conduct) Rules and as to whether the Inquiry Report dated 21st May 2001 can be considered as one falling under the Rules before rendering its findings.

The Special Leave Petition stands disposed of on the above terms.”

11. We have carefully examined the facts on record and perused the documents relied upon by the parties.

12. It is not in dispute that an inquiry was constituted vide Memorandum dated 04.08.2000. Two issues relating to conduct of the applicant, viz., (i) going to Press; and (ii) procurement of computers were referred to the enquiry committee. The Memorandum specifically mention in the last para for issue of charge sheet and initiation of proceedings as per CCS (CCA) Rules. It is also not in dispute that Dr. Kiran Singh's Committee issued a questionnaire to the applicant for his response and the applicant responded to some of the questionnaires. Except this, no other proceedings as prescribed under Rule 14 of CCS (CCA) Rules, 1965 were held. Dr. Kiran Singh though filed his inquiry report exonerating the applicant, but no action was taken thereon. The moot question that falls for consideration by this Tribunal and as per observations of the Apex Court and Hon'ble Delhi High Court is as to whether Dr. Kiran Singh's Committee's inquiry could be termed as an inquiry in terms of CCS (CCA) Rules

13. Admittedly, the first inquiry was permitted by the Agriculture Minister rather he also nominated the Inquiry Officer. It is also evident from the documents produced with the Additional Affidavit filed by the applicant that the Hon'ble Agriculture Minister, who is the disciplinary authority, asked for holding the inquiry under CCS (CCA) Rules. However, no memorandum was ever prepared delineating the Articles of charges, nor any statement of imputations of misconduct or misbehaviour was formulated. Similarly, no exercise was carried out to identify the documents and the witnesses for purposes of holding the regular inquiry in accordance with the statutory provisions of Rule 14 of

CCS (CCA) Rules. It seems to be purely off the cuff action in the administrative domain, beyond the provisions of statutory rules governing the inquiry. No procedure whatsoever prescribed under the rules 14 to 16 of the CCS (CCA) Rules, 1965 was followed. Neither Presenting Officer nor defence assistant appointed. Only a questionnaire was prepared by the Inquiry Officer which was served upon the applicant. As a matter of fact, no charge sheet was prepared either by the Disciplinary Authority or under his orders by any authorized person. The questionnaire prepared by the Inquiry Officer cannot be termed as a charge sheet, particularly when the same was not prepared by the Disciplinary Authority or under his directions by an authorized person. Hon'ble Agriculture Minister straightway appointed Dr. Kiran Singh as the Inquiry Officer vide his Note dated 29.07.2000 to conduct a preliminary inquiry against the applicant. The mandatory requirement of holding a regular disciplinary proceeding as prescribed under Rule 14 of CCS (CCA) Rules, 1965, *inter alia*, require following steps:-

“(1) No order imposing any of the penalties in Clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this Rule and Rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(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 Government servant, it may itself inquire into, or 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-C of the Central Civil Services (Conduct) Rules, 1964, 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 shall hold, if separate procedure has not been prescribed for 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.”]

EXPLANATION 1.- Where the Disciplinary Authority itself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) to the inquiring authority shall be construed as a reference to the Disciplinary Authority.

(3) Where it is proposed to hold an inquiry against a Government servant under this rule and Rule 15, the Disciplinary Authority shall draw up or cause to be drawn up-

- (i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge.
- (ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

A statement of all relevant facts including any admission or confession made by the Government servant;

A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.”

No such steps were adopted while appointing Dr. Kiran Singh as Inquiry Officer. From the Note dated 29.07.2000 of the then Agriculture Minister, it becomes apparent that intention was to constitute a fact finding committee. Even Dr. Kiran Singh's committee, in its notice dated 21.12.2000 asking the applicant to meet him in Chamber, only indicate that it was a fact finding exercise not intended to be a regular statutory inquiry. Even if not acted upon in accordance with the procedure prescribed under Rule 15 (2) of CCS (CCA) Rules, 1965, the charge sheet dated 13.02.2013 issued to initiate regular disciplinary proceedings cannot be said to be barred under any law.

14. On consideration of the aforementioned circumstances, we are of the considered view that the first inquiry constituted vide memorandum dated 04.08.2000 was not an inquiry contemplated under Rule 14, notwithstanding any reference to CCS (CCA) Rules, 1965 . It was in the nature of a preliminary/fact finding inquiry.

15. As regards the second contention of the applicant of violation of Rule 15 (2) of CCS (CCA) Rules, 1965, it is contended by learned counsel for the applicant that since in the first inquiry of Dr. Kiran Singh, charges against the applicant were not proved, the only recourse available to the Disciplinary Authority was to have proceeded under Rule 15 (2) of CCS (CCA) Rules, 1965, which reads as under:-

“(2) The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority or any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.”

It is argued on behalf of the applicant that the Disciplinary Authority has failed to adhere to the provisions of Rule 15 (2), and thus, it shall be presumed that the report of the Inquiry Officer exonerating the applicant had been accepted and non compliance to the provisions of Rule 15 (2) of CCS (CCA) Rules, 1965 would result in abatement of the disciplinary proceedings against the applicant.

16. We need not to go into this aspect in detail for the simple reason of our findings on first issue. We have already held that the first inquiry was only preliminary in nature and a fact finding exercise, hence it would not attract the mandate of Rule 15 (2) of CCS (CCA) Rules, 1965 to proceed further in the matter. Since there was no regular inquiry earlier held against the applicant, the Competent Authority was well within its authority to issue charge sheet delineating the specific charges by issuing the memorandum of charges and to proceed on that basis in accordance with the procedural requirements of Rule 14 of CCS (CCA) Rules, 1965 which has been done in this case. This leaves us to examine

two issues raised by the applicant: (i) bias of the Inquiry Officer, and (ii) fairness of the regular inquiry as observed by Hon'ble High Court of Delhi in the aforesaid writ petition.

17. The applicant has alleged bias against respondent No.5 (Inquiry Officer) on the following grounds:-

- (i) he was not senior to the applicant; and
- (ii) that the applicant had submitted some complaints of misappropriation of computer peripherals against him during the period 1998-2001.

18. As regards the allegation of bias against the Inquiry Officer, the respondents have denied that Dr. S. R. Misra (IO), former Director, IISR, was junior to the applicant. It is mentioned that on withdrawal of Dr. Nagendra Sharma as Inquiry Officer, Dr. S. R. Misra, who was next in the panel, was appointed as the Inquiry Officer. It is further stated that the applicant was not senior to Dr. S. R. Misra. The averment appears to be factually correct. To explain this, it is stated that at the time of issuance of charge sheet, the applicant was Senior Scientist, whereas Dr. S. R. Misra (IO) retired as Director, IISR, Lucknow. The allegations of *malafide* and lack of fair play against the IO are also denied. Regarding the allegation of the applicant that he had submitted some corruption complaints against Dr. S. R. Misra, it is mentioned that on examination of the representation dated 12.04.2004 of the applicant and the documents furnished by him, it was found that the applicant in discharge of his duties as ADG (ARIS) during 1998-2000 had made correspondence with Dr. S. R. Misra regarding installation/supply of computer related equipments at IISR, Lucknow to strengthen ARIS activities and these documents do not, in any way, corroborate the

charges of corruption against Dr. Misra. The applicant was asked to furnish all relevant records in support of his allegations of corruption against Dr. Misra within one week vide Memorandum dated 03.06.2004. The applicant responded vide letter dated 08.06.2004 but did not provide any relevant document to substantiate his allegations of bias against the Inquiry Officer and accordingly, the representation of the applicant was rejected vide a speaking Memorandum dated 09.07.2004 and he was asked to cooperate with the inquiry and not to indulge in dilatory tactics. As regards his subsequent representation dated 26.07.2004, it was only a repetition and the same had also been disposed of. From the Inquiry Report, it appears that in the first hearing, i.e. on 13.04.2004, the Charged Officer did not appear and communicated to the IO that he has submitted a request to the President, ICAR for change of the Inquiry Officer. The inquiry was, thus, kept in abeyance till further orders from ICAR. The inquiry was thereafter resumed on 03.08.2004 with intimation to charged officer by registered post.

19. Another ground of bias is that the Inquiry Officer did not consider the request of the applicant for deferment of the inquiry on medical grounds of the applicant. In this regard, the applicant relies upon various medical certificates. The applicant has produced four medical certificates viz., dated 01.07.2005 recommending him rest for six days, dated 06.07.2005 recommending thirty days' rest, dated 05.08.2005 again recommending him rest for thirty days and fitness certificate dated 29.08.2005 declaring him fit to resume duty. All these certificates are issued by Ayurvedic Doctor at Satna, MP.

20. Prima facie, the genuineness of the medical certificates is doubted. No medical certificate was supported with evidence of treatment. The

medical certificates were issued by an Ayurvedic Doctor at Satna, MP, whereas the applicant was posted in Delhi. No explanation is tendered by the applicant in this regard. He was given fifteen opportunities to appear for preliminary hearing, but on every occasion, he used to fell ill in the nick of the time, and thus ex parte proceedings were initiated on 11.08.2005 to complete the inquiry. Except the certificates issued by Ayurvedic Doctor, no prescription or treatment details have been shown. These certificates were dispatched from the Supreme Court Post Office, New Delhi and IARI Post Office, New Delhi, which clearly establish that the applicant was in New Delhi, but despite that he did not attend the inquiry held on 11.08.2005 and 12.08.2005. He was feigning sickness to stall the inquiry proceedings, and due to these dilatory tactics, inquiry was held ex-parte. It is further stated that the Head, Division of Agricultural Engineering, IARI, has informed that neither any medical leave was sanctioned to the applicant for the period 08.06.2005 to 29.08.2005, nor any station leave was granted to him for proceeding to Satna, Madhya Pradesh. It is further noticed that the charged officer was sending intimations on the eve of further date of hearing about his illness. The Inquiry Officer was justified in proceeding against ex parte against the applicant. We do not find that there was any violation of principles of natural justice when the charged officer himself chose not to participate in the inquiry proceedings. Neither there is any bias nor fairness of the inquiry can be questioned under the given circumstances.

21. For the above reasons, we find no merit in this OA, dismissed accordingly. No costs.

(Shekhar Agarwal)
Member (A)

(Justice Permod Kohli)
Chairman

/pj/