

**Central Administrative Tribunal  
Principal Bench**

**OA No.1896/2013**

New Delhi this the 21<sup>st</sup> day of July, 2016

**Hon'ble Mr. Justice M.S. Sullar, Member (J)**  
**Hon'ble Mr. V.N. Gaur, Member (A)**

Shyam Babu Sharma, Aged about 50 years,  
S/o Shri Mool Chand Sharma,  
R/o T-III/12, NRCAF Campus,  
Gwalior Road,  
Jhansi-284003 (UP),  
Asstt. Finance and Accounts Officer,  
Jhansi

...applicant

(By Advocate : Shri G.D. Gupta, Sr. Advocate with Shri Vikram Singh)

**Versus**

1. Indian Council of Agricultural Research,  
Through its Secretary,  
Krishi Bhawan,  
New Delhi.
2. President, ICAR,  
(Through Director General, ICAR & Secretary to the  
Govt. of India, DARE),  
Krishi Bhawan,  
New Delhi.
3. Commissioner of Departmental Inquiries (IO),  
Central Vigilance Commission,  
Satarkta Bhawan, INA,  
New Delhi.
4. Director,  
Central Institute for Research on Goats,  
Makhdoom, PO Farah-281122,  
Mathura (U.P.).
5. Director,  
National Research Centre for Agroforestry,  
Jhansi-284003.
6. Under Secretary,  
Vigilance ICAR,  
Krishi Bhawan,  
New Delhi.

...respondents

(By Advocate: Shri S.S. Lingwal)

**ORDER (ORAL)****Hon'ble Mr. V.N.Gaur, Member (A)**

A charge sheet was issued to application dated 28.08.2009, and separately to two other officers, for common major penalty proceeding for failing to maintain devotion to duty and acting in a manner unbecoming of a public servant. The charges pertained to the year 2007 when the applicant was working as Junior Accounts Officer (JAO) at the Central Institute for Research on Goats (CIRG), Mathura, U.P. Later he was transferred in 2008 to NRC for Agro-Forestry, Jhansi as Asst. Finance and Accounts Officer (AF&AO). The applicant denied all the charges. However, a common proceeding was initiated against the applicant and other charge-sheeted officers with the approval of the President, ICAR. The Inquiry Officer submitted his report on 15.03.2012, which was made available to the applicant along with the second stage advice of the CVC as well as disagreement note of the Disciplinary Authority. The applicant submitted his reply to the disagreement note and also his comments on the inquiry report. On 20.06.2012, the respondents issued an order imposing the penalty of "reduction to a lower Grade Pay of Rs.4200 (from Rs.4600) in Pay Band II for a period of five years with cumulative effect." The applicant has, therefore, approached this Tribunal with the following prayers :-

- “(a) quash and set aside the impugned order dated 20.06.2012 passed by the President, ICAR i.e. respondent No.2;
- (b) quash and set aside the impugned Office Order dated 3.7.2012 passed by the Head of

Office, NRC for Agroforestry, Jhansi with the approval of Respondent No.5;

- (c) quash and set aside the order dated 5.3.2010 (wrongly mentioned as 5.3.2009) passed by the President, ICAR for holding common proceedings under sub-rule (1) and (2) of Rule 18, CCS (CCA) Rules, 1965 and other proceedings pursuant to the said order including the charge sheet issued vide memorandum dated 28.08.2009 to the applicant;
- (d) May also pass further order (s) and direction(s) as be deemed just and proper to meet the ends of justice.”

2. Shri G.D. Gupta, learned Sr.Counsel appearing for the applicant submitted that the charge against the applicant was that during the brief absence of the Finance and Accounts Officer (F&AO) for a few days, the applicant, who as JAO was next in the hierarchy on the finance/accounts side, gave financial concurrence to the proposals pertaining to purchase of office furniture for decorating the office of Director, CIRG, Makhdoom, repair/replacement of parts of photocopier and for purchase of one compactor (movable almirah). It was alleged that there was no urgency to give such approval when the F&AO was on leave and that there were many irregularities in the purchase procedure. According to the learned Sr. Counsel, being next to the F&AO in the hierarchy, the applicant was duty bound to discharge the functions of F&AO when the latter was not available. The disciplinary proceeding conducted against the applicant also suffered from several anomalies. He referred to the following grounds mentioned in the OA for challenging the impugned orders:-

- (i) The penalty imposed on the applicant of reduction to a lower Grade Pay of Rs.4200 from Rs.4600 is illegal as the present pay scale of the applicant as AF&AO is PB-II with Rs.4600 Grade Pay. He can not be reduced in rank.
- (ii) There has been violation of the natural justice in the conduct of the disciplinary proceeding and the Inquiry Officer had wrongly concluded that he was guilty on the basis of no evidence.
- (iii) The applicant while according financial concurrence had acted in discharge of his supporting role of the decision making hierarchy without any malafide.
- (iv) The order of common proceeding made against three officers was illegal as that order was passed by an authority which was not the Disciplinary Authority of the applicant. According to the schedule of Disciplinary and Appellate Authorities circulated by the ICAR vide order dated 31.05.2001, the Director General is the Disciplinary Authority for initiating minor penalty proceeding.
- (v) By initiating the proceeding against the applicant, in the name of the President, ICAR, his right to make appeal has been taken away.

(vi) The Disciplinary Authority had taken a tentative view on the report of the IO and sought the advice of the CVC without first calling for the comments of the applicant on the Inquiry Report.

(vii) As Head of Institute, Director, CIRG was the Competent Authority to take the final decision in the purchases for which the applicant had only given financial concurrence; therefore, recommendatory authority could not have been held responsible for the violation of the Rules.

3. In support of his contentions, the learned Sr. Counsel made references to a number of judgments, which are not being adverted to as we are intending to first examine the validity of the charge sheet in the face of the averment that it was not approved by the competent authority. In this regard the learned Sr. Counsel relied on the judgment in the case of **Union of India and Ors. Vs. B.V. Gopinath**, JT 2013 (12) SC 392 in which Hon'ble Supreme Court held that the charge sheet which has not been approved by the Disciplinary Authority under Rule 14(3) of the CCS (CCA) Rules is liable to be set aside.

4. The learned Counsel for respondents refuted all the contentions raised by the learned Sr.Counsel for the applicant and submitted that the respondents had strictly followed the laid down procedure for conducting departmental proceeding and the principles of natural justice. According to the practice followed in the department during the absence of an officer for a short period, the financial powers should not

automatically be exercised by the next officer in hierarchy. Further, while discharging the functions as F&AO, which the applicant did on his own, he overlooked the procedural flaws in the proposal while giving the concurrence and, now, he cannot shift the responsibility of the same to any other officer. He also pointed out that during the General Examination of the charged officer conducted by the Inquiry Officer on 30.06.2010, the applicant expressed his satisfaction with the enquiry proceeding and admitted that sufficient opportunity had been given to him to defend the case. With regard to the approval of the chargesheet by the Disciplinary Authority, the learned Counsel referred to the procedures of the CCS (CCA) Rules which provided that in the case of a common proceeding the Disciplinary Authority will be the highest ranking officer of the Disciplinary Authorities of the charged officers. Therefore, the Disciplinary Authority this case was the President ICAR (Minister, Agriculture) and not DG ICAR. On the directions of the Tribunal, he produced the original record showing that the President ICAR had approved initiation of the disciplinary proceeding against the applicant; therefore, the judgment of Hon'ble Supreme Court in the case of **B.V. Gopinath** (supra) would not be applicable. It was contended that the note that was approved by the Disciplinary Authority also made reference to the chargesheet that was placed in the file.

5. We have heard the learned Counsels for the parties and perused the record. In our view, the main issue to be examined is whether the chargesheet dated 28.08.2009 had been approved by the Disciplinary Authority or not.

6. The learned Sr. Counsel for the applicant has taken the plea that chargesheet had not been approved by the Disciplinary Authority of the applicant i.e. the Director General, ICAR. We do not agree with this submission of the learned Sr. Counsel for the applicant. The rule 18 (1) of the CCS (CCA) Rules, 1965 regarding common proceedings reads thus:

**“18. Common Proceedings**

- (1) Where two or more Government servants are concerned in any case, the President or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding.

**NOTE-**

If the authorities competent to impose the penalty of dismissal on such Government servants are different, an order for taking disciplinary action in a common proceeding may be made by the highest of such authorities with the consent of the others.”

7. Thus in the case of a common proceeding the highest of the Disciplinary Authorities would be competent to pass orders in respect of all the officers. In this case, the President, ICAR was such Disciplinary Authority and it would be sufficient compliance of the rules if the chargesheet was approved by the President, ICAR.

8. On perusal of the original records, it is seen that the President, ICAR had only approved the proposal to initiate disciplinary proceeding against these officers but the chargesheet had not been approved by him. Learned Counsel for respondents strenuously argued that in the note put up to the President, ICAR, at one place there was a mention that the

chargesheet had been placed at “Flag ‘X’”. We are unable to accept this argument in the face of the fact that at the end of the note the points for consideration and approval of the President ICAR were precisely enumerated, but that enumeration made no mention of the chargesheet. This is not to say that such a mention in the concluding para would have met the conditions laid down in the case of the **B.V. Gopinath** (supra). It is, therefore, clear from the records that the charge sheet against the applicant was never approved by the President, ICAR who is the Disciplinary Authority in the case.

9. Taking into account the law laid down in **B.V. Gopinath** (supra), we quash the charge sheet dated 28.08.2009, with liberty to the respondents to proceed against the applicant from the stage of the approval of the charge sheet, if so advised. It is also made clear that we have not gone into other grounds taken by the applicant in this OA so as not to prejudice further action in the matter in future.

( **V.N. Gaur** )  
Member (A)

July 21, 2016

‘rk’

( **Justice M.S. Sullar** )  
Member (J)