

**Central Administrative Tribunal
Principal Bench**

OA No.1908/2014

New Delhi, this the 9th day of January, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Ms. Nita Chowdhury, Member (A)**

Vishwa Vibhuti,
S/o Late Shri B.B. Sinha,
R/o 178, Munirka Enclave,
New Delhi-110067.

...applicant

(By Advocate : Shri Anand Jha)

Versus

1. Union of India,
Through
Secretary,
Ministry of Health,
Nirman Bhawan,
New Delhi.
2. Director General Health Services,
Ministry of Health,
Nirman Bhawan,
New Delhi.
3. Chief Controller of Accounts,
Ministry of Health,
Nirman Bhawan,
New Delhi.
4. Drug Controller General of India,
Ministry of Health,
F.D.A. Bhawan,
New Delhi.
5. Pay & Accounts Officer,
Ministry of Health & Family Welfare,
Government Medical Store Depot.

...respondents.

(By Advocate : Shri Rajinder Nischal)

ORDER (ORAL)

Mr. Justice Permod Kohli, Chairman :-

While serving as Assistant Director General (Store) at Government Medical Store Depot, New Delhi, the applicant was served with a Memorandum dated 27.04.1998 on the recommendations of CBI and in consultation with CVC for major penalty proceedings under Rule 14 of the CCS (CCA) Rules, 1965 with the following charges :-

“ARTICLE-I

That Shri Vishwa Vibhuti, while working as Asstt. Director General of Govt. medical Store, M.S.O., Ministry of Health & Family Welfare, New Delhi as chairman of the Purchase Committee with Dr. A.K. Singh, Depot Manager, GMSD, New Delhi as Member of Purchase Committee during December 1991, approved the rates of neutracid submitted by Shri Vijaya Pharmacy, Hyderabad even when the firm was not registered with the Directorate General of Health Services, New Delhi, which resulted in issuance of supply order No.1678 dated 24.12.91 and 1757 dated 6.1.92 and thereby Sh. Vishwa Vibhuti has violated the provisions of Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

ARTICLE-II

That Shri Vishwa Vibhuti, while working as Asstt. Director General of Govt. medical Store, New Delhi placed two supply orders No.3151 and 3209 both of dated 23.2.94 for same items i.e. medicine proceph on M/s Sri Vijaya pharmacy, Hyderabad, to purchase 6500 quantity each of Rs.47,125/- each respectively to justify the supply orders within his financial powers. And thereby Sh. Viswa Vibhuti has violated Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

ARTICLE-III

That Shri Vishwa Vibhuti while working as ADG, GMSD, New Delhi placed different supply orders on same date for pronouncement of same item i.e. order No.4161 & 4162 both of dated 23.12.94 for medicine Campin-L Capsule and supply order No.4219 & 4223 both of dated 26.12.96 for medicine Campin-L

Capsule on M/S Invinex Pharmaceuticals, Hyderabad segregating the quantity of some medicines below Rs.50,000/- each item to bring within his financial powers. And thereby Sh. Vishwa vibhuti has violated Rule 3(1) (iii) of CCS (Conduct) Rules, 1964.

ARTICLE-IV

That Sh. Vishwa bibhuti while working as ADG, GMSD, New Delhi he has not intimated to his superior officers about his official dealings as ADG of GMSD, with M/s Sri Vijaya Pharmacy and Invinex Pharmaceuticals during the year 1991 to 1995, in which his wife Smt. Suman vibhuti was partner/director respectively. And thereby he has violated Rule 4(3) of CCS (Conduct) Rules, 1964.”

2. Prior to that, the applicant was placed under suspension in July, 1996 on account of contemplated disciplinary proceedings. The applicant was reinstated in September, 1998 and posted in Central Drug Control Organisation of DGHS as Incharge of Drug Inspector Training Scheme at Bombay. On receipt of the representation in respect of the charge memo, an inquiry was constituted. In July, 1999, the applicant was again placed under suspension. The inquiry officer submitted his report on 31.08.1999 holding article of charge I as not proved and articles of charge 2 to 4 as partly proved. The disciplinary authority vide its letter dated 29.09.1999 served copy of the enquiry report on the applicant giving him opportunity to file representation. The applicant submitted his response on 01.11.1999 to the inquiry report and requested for dropping the proceedings. Thereafter the applicant was reinstated in March, 2000. However, on 10.06.2002, the disciplinary authority conveyed a note of disagreement with the findings of the inquiry officer, and after consideration of the representation of the

applicant thereagainst, finally the disciplinary authority passed the order imposing penalty of compulsory retirement from service with immediate effect with 30% cut in pension otherwise admissible to the applicant on permanent basis. This order became subject matter of challenge in OA No.1151/2004. During the pendency of the said OA, order was passed on 25.05.2004, directing the respondents to pass necessary orders with regard to the 30% cut in pension. The applicant, however, filed Review Application before the Tribunal which was also disposed of on 27.01.2005, holding that there is no error apparent on the face of the record. The applicant filed a Writ Petition WP(C) No.2941/2005 before the Hon'ble Delhi High Court. The Hon'ble High Court remanded back the matter to the Tribunal with the following directions :-

“8. Accordingly, the orders dated 25th May 2004 in O.A. No.1151/2004 and 27th January 2005 in R.A. No.169/2004 passed by the CAT cannot be sustained and are set aside. The parties are required to appear before the Central Administrative Tribunal on 1st March 2007. The respondent to file reply to the O.A. within four weeks from today. Rejoinder thereon, if any be filed within four weeks thereafter. The Tribunal is directed to dispose of the O.A. not later than 31st August, 2007.”

3. While considering the validity of the order of penalty dated 26.05.2003, the Tribunal allowed the OA vide order dated 16.08.2007, with the following observations/directions :-

“16. As we have observed earlier, the report of the enquiry officer is dated 31.08.1999. It was communicated to the Applicant on 29.09.1999 and received by him on 21.10.1999. The report of the enquiry officer was sent to the Applicant without

giving the tentative reasons for disagreeing with the enquiry report. The Applicant made his representation to the enquiry officer on 01.11.1999 obviously under the impression that the enquiry report has been accepted by the disciplinary authority. The disciplinary authority thereafter has recorded a note of disagreement after taking into account the representation dated 01.11.1999 of the Applicant, which is also based on CVC's second stage advice. It has in a way become disagreement note to the representation of the Applicant. The correct procedure would have been the procedure as prescribed in Rule 15(2) of CCS (CCA) Rules which clearly states that in case of disagreement with the findings of the inquiring authority on any article of charge, the disciplinary authority has to send the copy of the report of inquiring authority together with its own tentative reasons for disagreement. It is very clear that this procedure has been violated in this case.

17. We have perused the official record as contained in File No.C.13011/31/96-Vig. and we do not find that procedure in accordance with Rule 15(2) of the aforesaid Rules has been followed.

18. In so far as the requirements of Rule 14(23) (i) of CCS (CCA) Rules are concerned, we have gone through the report of the enquiry officer and find that the requirements of the above Rule have been fully met in the report and this argument of the learned counsel for the Applicant is not acceptable.

19. On the above grounds, we allow the O.A. and quash the impugned order, which would give all consequential benefits to the Applicant. The Respondents are however at liberty, if so advised, to proceed in the matter strictly in accordance with law and rules. The parties are left to bear their own costs."

4. From para 18 of the above judgement, it appears that this Tribunal did not interfere in the inquiry report, however, set aside the order

imposing penalty on the ground that despite all the charges having not been proved by the inquiring authority, the disciplinary authority failed to furnish the disagreement note upon the applicant on the advice of CVC before imposing the penalty. The Tribunal however, granted liberty to the respondents to proceed in the matter strictly in accordance with law, if so advised. The order of this Tribunal dated 16.08.2007 passed in OA No.1151/2004 came to be challenged by the respondents before the Hon'ble Delhi High Court in WP(C) No.1885/2008. The said Writ Petition was dismissed in *limine* vide judgment dated 02.02.2009 in the following manner :-

“Learned tribunal quashed the penalty order on the ground that disagreement note was not sent to the respondent along with the enquiry report but was sent two years later. The learned counsel for the respondent informs that in compliance with the directions of the tribunal contained in the impugned judgment, note of disagreement has now been served upon the respondent and the respondent has given his reply thereto. Since the directions of the tribunal are complied with by the petitioner, it is not necessary to entertain this writ petition now.

With these observations the petition is dismissed. The necessary order as to how the intervening period is to be treated shall be passed on the outcome of the disciplinary proceedings.”

5. The present OA has been filed seeking the following reliefs :-

“a. To quash the Order dated 26.05.2003 whereby the Petitioner was ordered to be compulsorily retired from the service with immediate effect with 30% cut in pension otherwise admissible on a permanent basis.

- b. To direct the respondent to reinstate the Petitioner with all consequential benefits i.e. arrears of pension from 1.07.2006 till date amounting to Rs.2,98,125/-, arrears of pay, increment, and commiserating D.A. from 1.1.96 to 1.07.2006 amounting to Rs.8,85,894/-
- c. To direct release of rupees 11,84,019 amount and benefits of DA.
- d. To pass any other or further orders which this Hon'ble Court may deem fit and proper in the circumstances of the case.
- e. To award the cost in favour of Petitioner for mental agony, harassment and social degradation suffered by the Petitioner."

6. From the prayer made in the present OA, we find that the order dated 26.05.2003 whereby the applicant was compulsorily retired with 30% cut in pension has again been challenged, even though this order was quashed vide judgment dated 16.08.2007 passed in OA No.1151/2004. We fail to understand as to how in the wisdom of the applicant the order which has already been quashed, is again challenged. The other reliefs claimed in this OA relate to the pensionary and other service benefits which emanate on account of setting aside of the order of the compulsory retirement and 30% cut in pension.

7. The learned counsel for applicant has not been able to explain as to how he has challenged the order dated 26.05.2003 which had already been quashed by this Tribunal in earlier proceedings and the judgment has been upheld by the Hon'ble Delhi High Court.

8. In their counter affidavit, respondents have placed on record order dated 21.08.2014 passed by them during the pendency of this OA withdrawing the penalty order dated 26.05.2003 without prejudice to the disciplinary proceedings already underway against the applicant, providing further that for the period from the date of penalty order, i.e. 26.05.2003 till the date his superannuation, i.e. 31.08.2006 the applicant would be treated as on deemed suspension under the provisions of Rule 10(4) of CCS (CCA) Rules, 1965. The aforesaid order was followed by order dated 19.04.2016, again passed during the pendency of this OA. Vide this order, the respondents have imposed the penalty of 30% cut in pension, otherwise admissible to the applicant on permanent basis. However, the penalty of compulsory retirement has been withdrawn. It was on account of passing of this order that the applicant sought leave of the Tribunal for amendment of the OA, which was allowed vide order dated 13.05.2016. Since the detailed counter affidavit had already been filed, no fresh counter was filed despite opportunities.

9. We have heard the learned counsel for the parties. The admitted position that emerges is that original penalty order dated 26.05.2003 imposing penalty of compulsory retirement with 30% cut in pension otherwise admissible to the applicant on permanent basis was set aside by this Tribunal in OA No.1151/2004 with liberty to the respondents to proceed in the matter strictly in accordance with law and rules, if so

advised. It was under the aforesaid liberty that the note of disagreement was served upon the applicant for his representation. The applicant filed his representation dated 18.12.2008 which was duly considered by the disciplinary authority and even the advice of the Commission was obtained. The advice of the Commission was served upon the applicant vide Memorandum dated 04.02.2016 for his representation. The applicant submitted his representation in respect to the advice of the Commission vide his letter dated 21.02.2016. It is on consideration of the response of the applicant to the disagreement note in respect of the findings of the inquiring authority and to the fresh advice of the Commission that the disciplinary authority has passed the impugned order dated 19.04.2016 imposing penalty of withholding of 30% of monthly pension otherwise admissible to the applicant on permanent basis with immediate effect. As noticed hereinabove, the applicant has again challenged the original order of penalty dated 26.05.2003 in this OA as well. The said relief is not available to the applicant, order dated 26.05.2003 having already been quashed in OA No.1151/2004. The applicant has, however, in the amended OA challenged the validity of the order dated 19.04.2016. Challenge to the impugned order is primarily on account of (i) delay in completion of the disciplinary proceedings as the incident in respect to which the applicant has been charged relates to the years 1991-1995; (ii) that the second advice of the Commission dated 11.01.2016 is similar to the advice earlier given by the Commission on 09.05.2003 without application of mind; and (iii) victimization, particularly on account of non-payment of retiral dues.

10. Insofar as the first ground i.e. delay in completion of disciplinary proceedings is concerned, admittedly the charge memo was issued in the year 1998 and thereafter the order imposing penalty was passed on 26.05.2003. The applicant earlier approached this Tribunal in OA No.1151/2004. This Tribunal though set aside the order of penalty on legal ground of non furnishing of the disagreement note to the applicant, but the validity of the order was not interfered with on account of alleged delay. There have been continuous legal proceedings. Thus, interference in the disciplinary proceedings on account of delay at this stage is not permissible.

11. Insofar as the second ground is concerned, we failed to understand how the second advice of the Commission can be faulted with even if it is similar to the earlier one. The Tribunal/High Court in the earlier proceedings did not comment upon the validity of the advice of the Commission.

12. Insofar as the question of alleged victimization is concerned, at the first place, no specific averments are made in this regard nor victimization is attributed to any particular official/authority. The allegations are vague. However, it is true that despite setting aside the order of penalty dated 26.05.2003, the applicant's claim for pensionary benefits has not been settled. Not only this, even while passing the order dated 21.08.2014, the applicant was treated as on deemed suspension under provisions of rule 10(4) of CCS (CCA) Rules, 1965. How the

applicant can be treated under deemed suspension when earlier suspensions were specifically revoked. There were no criminal proceedings against him nor he was arrested in connection with any criminal charge. In any case, the aforesaid order has now been substituted by the impugned order dated 19.04.2016, which is subject matter of challenge in the present OA. We do not find that any ground has been made out for interference in the impugned order dated 19.04.2016 imposing penalty of 30% cut in pension, which is particularly in view of the findings in the OA No. 1151/2004 about the legality and validity of the inquiry report. Thus, challenge to the impugned order fails.

13. The applicant was due to retire on 31.08.2006. In view of setting aside of the order of compulsory retirement, the applicant is deemed to be in service with effect from the date of his compulsory retirement till the date of his superannuation i.e. 31.08.2006. All his suspensions have been revoked, however, without passing any order for treating the period of suspension. In absence of any order under FR 54, the applicant would also be entitled to full salary minus subsistence allowance already received by him during the period of suspension. The applicant is also entitled to pensionary benefits treating his date of retirement as the date of superannuation i.e. 31.08.2006.

14. In view of the above, this application is disposed of with following directions :-

- (i) Treat the date of retirement of the applicant as 31.08.2006, the date of his superannuation.
- (ii) The period of suspension in two spells shall be treated as on duty.
- (iii) Applicant be granted full salary from the date of his compulsory retirement till the date of superannuation i.e. 31.08.2006.
- (iv) Pensionary benefits of the applicant be determined in view of the above directions and all arrears of salary and pension be paid to the applicant, if not already paid, within a period of four months from the date of receipt of a copy of this order, after applying the cut in pension in accordance with the impugned order dated 19.04.2016. No costs.

(Nita Chowdhury)
Member (A)

(Justice Permod Kohli)
Chairman

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