

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.2100/2011

Order Reserved on: 03.02.2016
Order pronounced on 19.02.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri V. N. Gaur, Member (A)

E. Nagachandran
S/o Shri P. Eeaswaran
Deputy Director,
Ministry of Corporate Affairs
C-305, Pragati Vihar Hostel
New Delhi – 110 003. Applicant

(Applicant in person)

Versus

1. Union of India,

Through the Chief Statistician of India and Secretary
Ministry of Statistics and Programme Implementation,
Sardar Patel Bhawan, Sansad Marg
New Delhi – 110 001. Respondent

(By Advocate: Shri R.N.Singh and Dr. Ch. Shamsuddin Khan)

O R D E R

By V. Ajay Kumar, Member (J):

The applicant, an STS level officer of ISS, filed the OA questioning the impugned minor penalty charge memorandum dated

22.02.2010 (Annexure A2), and the order of minor penalty of censure dated 13/14.05.2010 of the respondents.

2. Shorn of the unnecessary details, the facts required for adjudication of this case are that the respondents issued a letter dated 21.10.2009 which reads as under:

"I am directed to enclose a copy of the letter under your signature dated 16.10.2009. Please confirm immediately whether you have actually written the letter so that further course of action in the matter could be decided in the Ministry. In case no reply is received from you by 30.10.2009 at the latest it would be presumed that the same has been written and signed by you and necessary action will be taken as per rules."

3. The applicant submitted his reply thereto on 26.10.2009, which reads as under:

"I am in receipt of the letter No.A-19011/20/2008-ISS dated 21.10.2009 which is nothing but an intimidatory tactics on your part to browbeat me into submission. I am sorry to state that I will not give in to such tactics and as you have not issued the chargesheet to me as yet, and thereby necessitating an avoidable extension of the suspension, which therefore I am sure will be extended for another term, I am separately filing my complaint/representation to the Hon'ble Minister for Statistics and Programme Implementation. I also wish to submit to you that I have not been paid the subsistence allowance for the month of September, 2009 even now, thereby increasing my pain further.

Thanking you,

Yours faithfully,
Sd/
26.10.2009
(E. Nagachandran)
Deputy Director (U/S)"

4. Again the respondents issued the Memorandum/Show Cause Notice, dated 06.11.2009 to the applicant which reads as under:

"Sh. E. Nagachandran, STC level officer of ISS who was posted as Deputy Director in R.O. NSSO (FOD), Hyderabad and who is presently under suspension has sent a letter dated 16.10.09 addressed to Secretary, MOSPI. It is observed that Sh. Nagachandran has used intemperate language in the letter which has been addressed to the highest ranking officer of the Ministry.

A very serious view has been taken in the Ministry about the lapses on the part of Sh. Nagachandran. Sh.

Nagachandran by his above act has behaved in a manner unbecoming of a Govt. servant in violation of Rule 3(iii) of CCS (Conduct) Rules, 1964.

Sh. Nagachandran is hereby allowed an opportunity to explain his above behaviour immediately. In case no reply is received by 13.11.2009 it would be presumed that he has nothing to represent in his defence and action will be taken as per the provisions of the relevant rules."

5. When the applicant has not given any reply to the said Memorandum/Show Cause Notice, the respondents issued the impugned minor penalty chargesheet dated 22.02.2010 under Rule 16 of the CCS (CCA) Rules, 1965 and the charge levelled thereunder reads as under:

"4. The Competent Authority has observed that the tone and tenor of the letters 16.10.09 and dated 26.10.09 is quite harsh, especially when the letter is addressed to a Senior official like Chief Statistician of India and Secretary. The use of intemperate language by Sh. E. Nagachandran in official communication is unbecoming of a Govt. servant in violation of provisions of Rule 3(iii) of CCS (Conduct) Rules, 1964."

6. The applicant vide his reply dated 02.03.2010 while denying the charges levelled against him, requested the respondents that if they are not satisfied with his reply, an inquiry may be held in the matter by an independent authority on a day-to-day basis, where he will prove his innocence.

7. However, the respondents vide the impugned order dated 13/14.05.2010 imposed the penalty of censure on the applicant, and the said order reads as under:

"Whereas Shri E. Nagachandran, an STS level officer of ISS was charge sheeted under Rule 16 of CCS (CCA) Rules, 1965 for using intemperate language in his communications dated 16.10.09 to 26.10.2009 addressed to Chief Statistician of India and Secretary. The use of such language in official communication was observed as unbecoming of a Government Servant in violation of provisions of Rule 3(iii) of CCS (Conduct) Rules, 1964. Shri Nagachandran, the Charged Officer was provided with a statement of imputation of misconduct alongwith copies of documents and was asked to submit his representation.

2. Whereas the Charged Officer submitted his representation vide his letter dated 2.3.2010 denying the charges as false, motivated and manufacture. In his submission, he mentioned the scenario assuming that Secretary might not have been offended and if so, Secretary should not take part in the deliberations of the matter. Thus, instead of extending pointed reply, the CO evaded the charges levelled against him.

3. Whereas after going through the charges against Sh. Nagachandran, his reply and the relevant papers, the Disciplinary Authority observed that charges regarding using abusive language against Secretary were very specific and Charged Officer had tried to evade the issues by going into unrelated matter. After going through the available documentary evidence, the Disciplinary Authority has found the charges as proved.

4. Now therefore as a measure of punishment, the Disciplinary Authority has decided to impose the penalty of '**Censure**' upon the Charged Officer."

8. Heard both sides and perused the pleadings on record.

9. Shri E. Nagachandran, who appeared in person, by way of his oral arguments as well as through the voluminous written arguments filed by him, raised various contentions in support of his prayer for quashing of the impugned orders. We do not find any merit in any of the said grounds, so far as the challenge to the impugned charge Memorandum dated 22.02.2010.

10. However, in our considered view, this OA can be disposed of on one of those grounds, without going into the other grounds, i.e., violation or non-compliance of the mandatory requirements while passing minor penalty orders under Rule 16 of the CCS (CCA) Rules, 1965.

11. Rule 16 of the said Rules reads as under:

"16. Procedure for imposing minor penalties

(1) Subject to the provisions of sub-rule (3) of Rule 15, no order imposing on a Government servant any of the

penalties specified in Clause (i) to (iv) of Rule 11 shall be made except after-

- (a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;
- (b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 14, in every case in which the Disciplinary Authority is of the opinion that such inquiry is necessary;
- (c) taking the representation, if any, submitted by the Government servant under Clause (a) and the record of inquiry, if any, held under Clause (b) into consideration;
- (d) recording a finding on each imputation of misconduct or misbehaviour; and
- (e) consulting the Commission where such consultation is necessary.

(1-A) Notwithstanding anything contained in Clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government servant under Clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (23) of Rule 14, before making any order imposing on the Government servant any such penalty.

(2) The record of the proceedings in such cases shall include-

- (i) a copy of the intimation to the Government servant of the proposal to take action against him;
- (ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;
- (iii) his representation, if any;
- (iv) the evidence produced during the inquiry;
- (v) the advice of the Commission, if any;
- (vi) the findings on each imputation of misconduct or misbehaviour; and
- (vii) the orders on the case together with the reasons therefor.

12. The Hon'ble Apex Court in **Food Corporation of India v. Saratchandra Goswamy**, (2015) 1 SCC (L&S) 286 = (2014) 7 SCALE 558, while examining Regulation No.60 of the FCI, which is akin to Rule 16 of the CCS (CCA) Rules, 1965, held as under:

6. The interpretation of the said Regulation engaged the attention of this Court in A. Prahalada Rao (supra). A two-Judge Bench, adverting to the anatomy of the Regulation and taking into consideration the submissions advanced with regard to the abuse of the Regulation, came to hold as follows:

" In our view, on the basis of the allegation that Food Corporation of India is misusing its power of imposing minor penalties, the Regulation cannot be interpreted contrary to its language. Regulation 60(1)(b) mandates the disciplinary authority to form its opinion whether it is necessary to hold inquiry in a particular case or not. But that would not mean that in all cases where an employee disputes his liability, a full-fledged inquiry should be held. Otherwise, the entire purpose of incorporating summary procedure for imposing minor penalties would be frustrated. If the discretion given under Regulation 60(1)(b) is misused or is exercised in an arbitrary manner it is open to the employee to challenge the same before the appropriate forum. It is for the disciplinary authority to decide whether regular departmental enquiry as contemplated under Regulation 58 for imposing major penalty should be followed of not. This discretion cannot be curtailed by interpretation, which is contrary to the language used. Further, Regulation 60(2) itself provides that in a case if it is proposed to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of retirement benefits payable to an employee and in such other case as mentioned therein, the disciplinary authority shall hold inquiry in the manner laid down in Regulation 58 before making any order imposing any such penalty."

XXX XX X X X X XXXX X X X X X XX X X X XX XX X X

10. Once it is held that there has to be formation of opinion and such an opinion is assailable in a legal forum, we are of the view that the said opinion has to be founded on certain objective criteria. It must reflect some reason. It can neither be capricious or fanciful but demonstrative of application of mind. Therefore, it has to be in writing. It may be on the file and may not be required to be communicated to the employee but when it is subject to assail and, eventually, subject to judicial review, the competent authority of the Corporation is required to satisfy the Court that the opinion was formed on certain parameters indicating that there was no necessity to hold an enquiry. Thus, the High Court has correctly understood the principle stated in A. Prabhakar Rao (supra) and we do not find any fault with the same.ö

13. In view of the aforesaid categorical observations made by the Hon'ble Apex Court, it is to be seen whether the respondents have formed any specific and reasoned opinion, before deciding to dispense with the inquiry and, if formed, whether the said opinion has founded on any objective criteria.

14. The applicant vide Annexure A7 enclosed the copy of the record pertaining to the impugned orders and the note filings thereto (running pages from 68 to 79 of the OA), which were said to have been obtained under the provisions of Right to Information Act, 2005, and not disputed by the respondents. A careful perusal of the said Annexure A7, indicate that the disciplinary authority has not formed any opinion much less with any objective criteria before deciding to dispense with the inquiry as required under Rule 16 ibid. It is trite that the disciplinary authority is empowered to opine that enquiry is not necessary and the said formation of opinion need not be mentioned in the impugned order and required to be communicated to the employee and the same may be only on the file, but whereas, as held by the Hon'ble Apex Court, but once the same is subject to assail and judicial review, the competent authority is required to satisfy the Court that the opinion was formed on certain parameters indicating that there was no necessity to hold an inquiry. Either from the counter or from the reply written arguments filed by the respondents, no specific answer is forth coming, whether any such opinion was formed before issuing the impugned order.

15. We are conscious that there can be zero tolerance for indiscipline and insubordination in service, but before a person is punished for such a misconduct, the orders should be passed only after following the due procedure.

16. In the circumstances and in view of the aforesaid reasons, the OA is partly allowed and the impugned penalty order dated 13/14.05.2010 (Annexure A1) is quashed and set aside. However, the respondents are directed to continue the minor chargesheet proceedings from the stage of consideration of the reply submitted by the applicant and to pass appropriate orders in accordance with law, within three months from the date of receipt of a copy of this order, and the benefits, if any, entitled by the applicant, in consequence to the quashing of the impugned penalty of censure, shall be dependent on the said final orders to be passed by the respondents. No costs.

(V. N. Gaur)
Member (A)

(V. Ajay Kumar)
Member (J)

/nsnrvak/