

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA NO.3503/2011

RESERVED ON 16.09.2015
PRONOUNCED ON 01.10.2015

**HON'BLE SHRI JUSTICE B.P. KATAKEY, MEMBER (J)
HON'BLE SHRI K.N. SHRIVASTAVA, MEMBER (A)**

Surendera Kumar @ Verma
Aged about 45 years,
S/o Sh. Puran Singh Verma,
R/o H.No.52, Govt. of Delhi Colony,
Sector 11, Rohini, Delhi-85. ...Applicant

(By Advocate: Shri Nilansh Gaur)

VERSUS

1. Union of India
Through its Secretary,
Ministry of Agriculture,
Krishi Bhawan, New Delhi.
2. President, Indian Council of Agriculture
Research, Krishi Bhawan, New Dehi.
3. Director,
Central Soil & Water conservation
Research and Training Institute,
218, Kaulagarh road, Dehradun,
Uttranchal – 248 195. ...Respondents

(By Advocate: Shri Gagan Mathur)

:ORDER:

HON'BLE SHRI JUSTICE B.P. KATAKEY, MEMBER (J):

This OA is directed against the order dated 14.08.2009 passed by the Disciplinary Authority imposing the penalty of removal from service and the order dated 14.06.2010 passed by the Departmental Appellate Authority rejecting the appeal

preferred by the applicant and confirming the penalty imposed by the Disciplinary Authority. The applicant has also challenged the enquiry report dated 05.06.2009 submitted by the Inquiry Officer in the disciplinary proceeding initiated against him, apart from the order dated 13.12.2010 passed by the Reviewing Authority rejecting the review petition preferred by him.

2. A disciplinary proceeding was initiated against the applicant by issuing the charge memo dated 02.06.2003, under Rule 14 of the CCS (CCA) Rules, 1965, on the following three articles of charges:-

“Article-I:

That Shri Surendra Kumar while functioning as T-2 (Overseer) in the CSWCRTI, Research Centre, Koraput had resorted to molestation and physical assault of Ms. Nandini Badra, SRF under NATP, Project at the Centre on 13.8.2002 around 6.00 PM while she was working in the Computer Room.

By his above act, Shri Surendra Kumar misbehaved in a most irresponsible manner and acted in a manner unbecoming of the Council's employee violating the rule 3(1) (iii) of CCS (Conduct) Rules, 1964 as made applicable to the employees of ICAR.

Article-II:

(a) That the said Shri Surendra Kumar while functioning as T-2 (Overseer) in the CSWCRTI, Research Centre, Koraput had directly made false complaints to the Director, CSWCRTI, Dehradun against Center's Head.

(b) By making such unfounded false allegation, Shri Surendra Kumar had breached the relevant conduct rules by not only disturbing the peace at the place of his employment but also resorting to misutilisation of relevant constitutional provisions for selfish and ulterior motives, which is unbecoming on the part of a Council's employee.

Article-III

(a) That the said Shri Surendra Kumar while functioning as T-2 (Overseer) in the CSWCRTI, Research Centre, Koraput had involved himself in several other indisciplined acts.

(b) Shri Surendra Kumar though well acquainted with English language, insisted that all communications made to him, be given in Hindi otherwise he would not receive them. He resorted to such inconsistent and incompatible behavior and failed to discharge his duties peacefully at the centre which unbecoming of a Council's employee.

(c) Shri Surendra Kumar had frequently abstained from his duties assigned to him at the water shed and behaved with his Controlling Officer impolitely by referring to her singularly which are acts unbecoming of a council's employee."

3. The applicant on receipt of the charge memo submitted his written statement in defence. The Disciplinary Authority being not satisfied with the explanation given by the applicant decided to proceed with the enquiry and accordingly Inquiry Officer was appointed. After giving an opportunity to the applicant to make a representation against the findings recorded by the Inquiry Officer in his report, the Disciplinary Authority passed the order dated 21.08.2004 imposing the penalty of removal from service, against which though a departmental appeal was preferred, the same was rejected by the Departmental Appellate Authority vide order dated 30.03.2005. The applicant, thereafter, preferred OA No.549/2005 before the Cuttack Bench of this Tribunal. The said OA was allowed vide order dated 12.11.2008 by setting aside the aforesaid orders dated 21.08.2004 and 30.03.2005 passed by the

Disciplinary Authority and Departmental Appellate Authority and also quashing the report submitted by the Inquiry Officer, with the following directions:-

- "(i) De novo enquiry shall be conducted from the stage of appointment of IO & PO under intimation to Applicant;
- (ii) Status of the Applicant shall be as he was prior to the order of punishment under Annexure-A/8. Since the Applicant abandoned himself from attending the enquiry, the period from the date of termination till date shall be decided by the disciplinary authority after conclusion of the proceedings, pursuant to the above direction;
- (iii) Disciplinary Authority shall ensure that the de novo enquiry is conducted, completed and appropriate orders, as per the CCS (CC&A) Rules, 1965 are passed within a period of six months from the date of receipt of the copy of this order."

4. Pursuant to the aforesaid directions issued by the Cuttack Bench of this Tribunal, the enquiry against the applicant recommenced from the stage of appointment of the Inquiry Officer and Presenting Officer. The applicant participated in the said enquiry without any objection. During the enquiry, the deposition of the complainant victim, whose name ought not to have been indicated in the impugned order, as well as Shri Anchal Dass, Smt. Susama Sudhishri, Shri Sania Khora, Shri Purno Sisa, Shri M. Sivalingam, Shri Sunadhar Khindal were recorded. After completion of recording of the deposition of the aforesaid witnesses in support of the charge framed against the applicant, statement of the applicant was also recorded. No defence

witness, however, has been examined by the applicant in the said proceeding. The Inquiry Officer based on the materials available on record of the enquiry submitted his report dated 05.06.2009 holding that the charges framed against the applicant except the charge number 3(a), were proved. The charge number 3(b), has also been found to be partially proved. An opportunity to make a representation against the finding recorded by the Inquiry Officer was given to the applicant. The Disciplinary Authority upon appreciation of the materials available on record of the enquiry and also the representation made by the applicant against the findings recorded by the Inquiry Officer in his report, passed the order dated 14.08.2009 imposing the penalty of removal from service, as aforesaid.

5. Being aggrieved, the applicant preferred a departmental appeal, which has also been dismissed by the Departmental Appellate Authority vide order dated 14.06.2010.

6. We have heard the learned counsel, Mr. Nilansh Gaur, appearing for the applicant and the learned counsel, Mr. Gagan Mathur, appearing for the respondents.

7. The learned counsel appearing for the applicant submits that the applicant has challenged the aforesaid order passed by the Disciplinary Authority as well as the Departmental Appellate Authority on three counts, namely (i) that though a fresh charge memo was required to be issued, pursuant to the order dated

12.11.2008 passed by the Cuttack Bench of this Tribunal in OA No.549/2005 directing the de novo enquiry, the same has not been done, (ii) that the applicant has been denied the right for cross-examination of the complainant and (iii) the orders passed by the Disciplinary Authority as well as Departmental Appellate Authority are not reasoned or speaking orders, though they are required to pass speaking orders, upon appreciation of the entire materials available on the record of the disciplinary proceeding.

8. Elaborating his arguments, the learned counsel has submitted that since the final orders passed by the Disciplinary Authority as well as by the Departmental Appellate Authority on 14.08.2009 and 14.06.2010, respectively, including the enquiry report submitted by the Inquiry Officer, based on the charge memo dated 02.06.2003, have been set aside by the Cuttack Bench of this Tribunal, vide order dated 12.11.2008 passed in OA No.549/2005, the original charge memo dated 02.06.2003 ceased to exist and hence when this Tribunal directed the de novo enquiry, the Disciplinary Authority cannot proceed with the inquiring without issuing a fresh charge memo, which having not been done, the entire disciplinary proceeding, which culminated in issuance of the impugned order of the penalty is illegal. The learned counsel, therefore, submitted that the order passed by the Disciplinary Authority, Departmental Appellate Authority and also the enquiry report submitted by the Inquiry Officer need to

be set aside and quashed. The learned counsel for the applicant in support of his contention placed reliance on a decision of the Apex Court in **Chairman-cum-Managing Director, Coal India Limited and others Versus Ananta Saha and others** reported in (2011) 5 SCC 142.

9. Referring to the deposition of the complainant recorded on 17.04.2009 by the Inquiry Officer while conducting the de novo enquiry, it has been submitted by the learned counsel for the applicant that the same is nothing but the reproduction of the earlier deposition recorded by the Inquiry Officer in verbatim, pursuant to which the enquiry report dated 05.06.2009 had been submitted and the said enquiry report as well as the penal action taken by the Disciplinary Authority and the Departmental Appellate Authority earlier having been set aside by the Cuttack Bench of this Tribunal vide order dated 12.11.2008, the Inquiry Officer ought not to have recorded the finding of guilt against the applicant based on such deposition of the victim, more so, when the applicant has been denied the right of cross-examination of the complainant during the de novo enquiry conducted by the newly appointed Inquiry Officer.

10. Referring to the orders dated 14.08.2009 and 14.06.2010 passed by the Disciplinary Authority and the Departmental Appellate Authority, respectively, he has also submitted that though the said authorities were required to discuss all the

materials available on record of the disciplinary proceeding, it is evident from the said orders that the entire evidence available on record of the disciplinary proceeding conducted de novo, has not been discussed and hence the said orders are liable to be set aside.

11. Per contra, the learned counsel appearing for the respondents, supporting the orders passed by the Disciplinary Authority and the Departmental Appellate Authority as well as findings recorded by the Inquiry Officer, has submitted that the said enquiry having been conducted in compliance with the requirement of law as well as the principles of natural justice, the same do not require any interference by this Tribunal. Refuting the submission that a fresh charge memo was required to be issued, in view of the direction issued by the Cuttack Bench of this Tribunal for conducting the disciplinary proceeding de novo, it has been contended by the learned counsel that it is apparent from the aforesaid order dated 12.11.2008 passed by the Cuttack Bench of this Tribunal that such de novo enquiry was directed to be conducted from the stage of appointment of Inquiry Officer and Presenting Officer, while maintaining the charge memo issued to the applicant and hence there was no requirement for issuance of a fresh charge memo, while conducting the de novo enquiry against the applicant. The learned counsel also submits that the decision rendered by the Apex Court in **Chairman-cum-**

Managing Director (supra), on which the learned counsel for the applicant has placed reliance in support of his contention, has no application in this case as the Hon'ble Court had held that it was not permissible to proceed with the charge memo issued earlier, as the liberty to the appellant therein to conduct the de novo enquiry by quashing the entire proceeding, including the charge memo issued, was given. The learned counsel, therefore, submits that the said decision of the Apex Court will not help the applicant. The learned counsel referring to the decision of the Apex Court in **Ajit Jain Versus National Insurance Co. Ltd. and others** reported in (2002) 10 SCC 580 has also submitted that it is permissible to set aside the order imposing penalty and to direct conduct of the enquiry proceeding from the stage where the infirmity has crept in and hence no illegality has been committed by the respondent authority in conducting the de novo enquiry against the applicant from the stage of appointment of the Inquiry Officer and Presenting Officer as directed by the Cuttack Bench of this Tribunal vide the aforesaid order dated 12.11.2008.

12. Relating to the second contention of the applicant that he was denied the opportunity to cross-examine the complainant, it has been submitted by the learned counsel for the respondents that it is evident from the record of the de novo enquiry proceeding conducted against the applicant that the complainant

was duly cross-examined by the applicant and the same has also been recorded in the order sheet by the Inquiry Officer on 17.04.2009. It has also been submitted that the applicant in token of examination and cross-examination of the complainant on 17.04.2009 has also put his signature on the order sheet maintained by the Inquiry Officer. Learned counsel for the respondents further submitted that the applicant, never at any point of time, during the pendency of the enquiry, complained about denial of opportunity to cross-examine the complainant and hence he cannot be allowed to raise such plea at this stage.

13. The learned counsel, in reply to the third submission advanced by the learned counsel for the applicant, has submitted that it is apparent from the order passed by the Departmental Appellate Authority that all the relevant materials available on record of the disciplinary proceeding conducted *de novo*, have been discussed while dismissing the appeal preferred by the applicant. It has also been submitted that the Disciplinary Authority as well as Departmental Appellate Authority need not discuss again the entire evidence and come to the same finding as of the Inquiry Officer and give the same reason for such finding, when the Disciplinary Authority agrees with the findings of the Inquiry Officer and accepts the reason given in support of such finding. In the instant case, according to the learned counsel, since the Disciplinary Authority has agreed with the

finding of the Inquiry Officer and accepted the reasons given by him in support of such finding in his report, no fault can be found in the order passed by the Disciplinary Authority for not discussing the evidence available on record in details. Learned counsel in support of his contention has placed reliance on the decision of the Apex Court in **National Fertilizers Ltd. and another Versus P.K. Khanna** reported in AIR 2005 SC 3742.

14. The arguments advanced by learned counsel for the parties have received our due consideration. We have also perused the pleadings of both the parties including the annexures appended thereto. That apart, we have also perused the record of the disciplinary proceeding conducted against the applicant de novo, as produced by the learned counsel for the respondents during the course of hearing.

15. As noticed above, contention of the applicant is that since the Cuttack Bench of this Tribunal vide order dated 12.11.2008 directed de novo enquiry, the Disciplinary Authority cannot proceed with the disciplinary proceeding on the basis of the earlier charge sheet issued and without issuing a fresh charges. It is evident from the aforesaid order dated 12.11.2008 passed by Cuttack Bench of this Tribunal in OA No.549/2005 that direction for conducting of disciplinary proceeding against the applicant de novo from the stage of appointment of the Inquiry Officer and Presenting Officer was issued. By the said order the

entire disciplinary proceeding conducted against the applicant, including the charge memo issued, has not been set aside and quashed. The respondent authority in compliance with the aforesaid directions issued by the Cuttack Bench of this Tribunal conducted the disciplinary proceeding, based on the charge memo already issued, by appointing the Inquiry Officer as well as the Presenting Officer. The applicant never raised any objection in that regard during the inquiry proceeding. In **Chairman-Cum-Managing Director** (supra), on which the learned counsel for the applicant in support of his contention has placed reliance, the Hon'ble Supreme Court observed that it was not permissible on the part of the Coal India Limited to proceed on the basis of the earlier charge sheet. The ratio laid down in **Chairman-Cum-Managing Director** (supra) is not applicable in the case in hand for the reason that in the said case, the Hon'ble Supreme Court has set aside the order of dismissal passed by the Disciplinary Authority on the ground that it was in contravention of the statutory rules. In the said case, the Hon'ble High Court did not indicate the stage from which de novo enquiry proceeding was to be initiated, unlike in the case in hand, where the Cuttack Bench of this Tribunal in its order dated 12.11.2008 has clearly indicated the stage from which stage de novo enquiry has to be conducted. The applicant has never challenged this order before any higher forum and hence it has attained finality. The Apex Court in **Ajit Jain** (supra) while setting aside the order of dismissal directed

conduct of enquiry from the stage where the infirmity had crept in. In our considered opinion the Disciplinary Authority has to proceed with the inquiry de-novo from the stage where infirmity crept in, in the absence of any order quashing the charge memo by the Cuttack Bench. In view of the aforesaid discussion, the first contention of the applicant cannot be accepted and hence rejected.

16. The next contention of the applicant is that he was denied the reasonable opportunity to cross-examine the complainant during the enquiry conducted against him de novo. To appreciate the said contention, we have perused the record of the disciplinary proceeding wherefrom it appears that on 17.04.2009 the complainant was produced for her examination and accordingly her statement was recorded on the same day. She was also cross-examined by the applicant, which has been recorded in the order sheet maintained by the Inquiry Officer dated 17.04.2009. The applicant has accepted the same by putting his signature on the order sheet. He also did not raise any such plea before the Inquiry Officer that he has been denied the right of cross-examination of the complainant. It is also evident from the deposition of the complainant that she has referred to her complaint earlier lodged and stated that she stands by what has been recorded in the said complaint. It is not at all necessary that the complainant, who is a victim of sexual harassment by the

applicant, should narrate entire ordeal again, which would, in our considered opinion, be nothing but another harassment to a person who is the victim of sexual harassment. The second contention of the applicant is, therefore, not acceptable.

17. It has also been contended by the applicant, as notice above, that the orders passed by the Disciplinary Authority and the Departmental Appellate Authority are not reasoned orders. It appears from the order dated 14.08.2009 passed by the Disciplinary Authority that he has agreed with the finding recorded by the Inquiry Officer in his report and also with the reasons given in the support of such findings. He has also dealt with the plea taken by the applicant in the appeal. As held by the Apex Court in **National Fertilizers Ltd.** (supra), it is not necessary for the punishing authority to again discuss evidence and come to the same findings as that of the Inquiry Officer and give the same reasons for the findings, when the punishing authority agrees with the findings of the Inquiry Officer and accepts the reasons given by him in support of such findings. The Departmental Appellate Authority in his order dated 14.06.2010 broadly discussed the evidence available on record of the enquiry conducted de novo. The third contention of the applicant, therefore, also cannot be accepted.

18. In view of the above discussion, we do not find any merit in this OA so as to interfere with the orders passed by the Disciplinary Authority and the Departmental Appellate Authority imposing the penalty of removal from service. Hence, the OA stands dismissed. No costs.

(K.N. Shrivastava)
Member (A)

(B.P. Katakey)
Member (J)

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