Central Administrative Tribunal
Principal Bench

OA No.2952/2013

Reserved on: 01.03.2017
Pronounced on: 01.08.2017

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)

Shri S. S. Bhadauria
S/o Late JNS Bhadauria
G-31, Ansari Nagar,
AIIMS Campus,
New Delhi 110 029. ... Applicant.

(By Advocate : Shri Prashant Sivarajan for Shri Ankur Chhibber)

Versus

1. Union of India
Through its Secretary
Ministry of Health & Family Welfare
Government of India
Nirman Bhavan,
New Delhi 110 011.

2. All India Institute of Medical Sciences
Through its
President/Governing Body,
Ansari Nagar,
New Delhi 110 029.

3. Director General of Health Services
Ministry of Health & Family Welfare,
Government of India,
Nirman Bhavan,
New Delhi 110 011. ... Respondents.

(By Advocate : Shri R. K. Gupta)

: O R D E R :

Justice Permod Kohli, Chairman :

The applicant has challenged Order dated 25.07.2013 passed by the Disciplinary Authority of Respondent No.2 imposing penalty of compulsory retirement and withdrawal of 50% of pension for a period of five years.

2. Brief facts for the purposes of present OA are noticed hereunder:-

The applicant was appointed as Store Keeper (Drugs) on 07.12.1980 in AIIMS, New Delhi (Respondent No.2). He was promoted to the posts of Junior Store Officer, Assistant Store Officer from time to time and finally as Store Officer on 24.11.1999. He claims to have served in various departments of AIIMS during his career of service. During the period, the applicant was serving as a Store Officer, a raid was conducted by Central Bureau of Investigation (CBI) at AIIMS in regard to allegations of dishonesty and fraudulently favouring M/s Rajiv Enterprises in the matter of placing supply orders on the said firm either directly or through NCCF and accepting highly sub-standard goods with a view to cause undue pecuniary advantage to the said firm and loss to the AIIMS. On the basis of the aforesaid raid, a FIR was registered on 04.03.1999. The CBI after investigation filed charge sheet against four officials of AIIMS on 29.11.2005. The applicant was not made as one of the

accused. On the basis of some of the allegations in the FIR, a Memorandum dated 14.11.2008 was issued to the applicant for initiating major penalty proceedings under Rule 14 of the CCS (CCA) Rules, 1965 with the following Article of Charge:-

> "**ARTICLE OF CHARGE**
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> That the said Shri S. S. Bhaduria while working as Assistant Stores Officer (now Store Officer) in C.N. Centre at the Institute has acted in placing the supply order to M/s Rajiv Enterprises and National Cooperative Consumer Federation (NCCF) during the period between October, 96 to October, 98 and also accepted high substandard goods which caused huge undue pecuniary advantage to the said firm and corresponding loss to the AIIMS.
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> Shri S. S. Bhaduria is thus responsible for gross misconduct and has failed to maintain devotion to duty, absolute integrity and has acted in a manner unbecoming of an Institute employee, thereby contravening Rule 3 (1) (i) (ii) & (iii) of the CCS (Conduct) Rules, 1964 as applicable to the employees of the Institute."

The applicant was asked to file his written statement of defence within ten days. He has filed his response. The Disciplinary Authority, however, decided to hold a regular inquiry against the applicant, and appointed one Shri T. S. Oberoi, Former Additional District and Session Judge and Former Member of CAT as Inquiry Officer to conduct the departmental inquiry. In the meantime, the CBI filed a supplementary charge sheet on 15.03.2010 including the name of the applicant as an accused in the criminal charge sheet. While the inquiry was in progress, the Inquiry Officer, Shri T. S. Oberoi died and in his place one Shri Inder Singh was appointed as

Inquiry Officer vide order dated 20.11.2010. The Inquiry Officer concluded the inquiry and submitted his report dated 20.06.2011 holding the charge against the applicant as partly proved. The Inquiry Report was submitted to the Disciplinary Authority. The Disciplinary Authority vide its letter dated 06.10.2012 forwarded a copy of the Inquiry Report dated 20.06.2011 along with CVC's advice memorandum dated 31.08.2012 to the applicant asking him to submit his representation. The applicant responded to the Inquiry Report vide his representation dated 13.10.2012 whereupon the Disciplinary Authority passed the impugned order imposing punishment of compulsory retirement along with withdrawal of 50% pension for a period of five years.

During the pendency of this Application, the criminal case against the applicant came to be decided vide judgment dated 12.08.2014, and the applicant has been acquitted of the criminal charge. The applicant also retired from service on 31.10.2013.

2. Validity of the impugned order is challenged primarily on two grounds; (i) that the Inquiry Officer had held the charge only partly proved and without issuing any Disagreement Note, the Disciplinary Authority held the charge to be proved against the applicant and imposed the penalty on that basis, which is contrary to statutory provisions of sub rule (2) of Rule 15 of CCS (CCA) Rules, 1965 as also violative of principles of natural justice and (ii) that the applicant has

already earned acquittal in the criminal case and thus he cannot be punished on the same allegations of charge in the departmental inquiry.

3. Respondent No.2 has filed detailed counter affidavit giving the details of CBI raid and the role of applicant and other officials involved, and the first stage advice of the CVC dated 29.12.2005. It is stated that the departmental proceedings were initiated against as many as seven officers. Two officers, namely, Dr. I. B. Singh and Dr. Siddhartha Satpathy, Associate Professors of Hospital Administration, AIIMS, were merely cautioned to be careful in future after considering their response by the President, AIIMS, whereas major penalty proceedings under Rule 14 of CCS (CCA) Rules, 1965 were initiated against the applicant. Regarding the Inquiry Report, it is admitted that Inquiring Authority held the charge to be partly proved, and the matter was referred to CVC, who vide its memorandum dated 31.08.2012 communicated the advise for imposition of suitable major penalty upon the applicant, and accordingly after serving copy of the Inquiry Report and advice of the CVC, and on consideration of the response of the applicant, impugned penalty has been imposed.

4. We have heard learned counsel for the parties.

5. The relevant findings of the Inquiry Officer in his report dated 20.06.2011 are as under:-

> "It is alleged in the statement of imputation of misconduct that Sh. Bahaduria gave false certificates/inspection note of good condition of materials received in CN Centre viz. Phenyl, Khadi Duster, Duster Swarb and X-ray form, which were found substandard during surprise check on 30.10.1998. Phenyle tins belonging to batch No.40 were received much beyond its expiry date. Further, the label on the tin indicated 450ml. quantity as against the normal quantity of 15 litres. Also, Khadi Duster, Duster Swab and X-ray forms, received were also substandard as aforesaid. Further, it is also alleged that despite rate contract, the material was purchased from NCCF on higher rates, thereby causing huge pecuniary loss to the AIIMS and favour to the private supplier i.e. M/s Rajiv Enterprises.
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> As regards the allegation that the stores received were substandard and not as per specifications and the CO gave false certificate of good conditions, the prosecution has not placed any evidence to support the allegation. The prosecution has neither listed nor provided during inquiry any document relating to supply order No.01/CNC/Gen./98-99 for Phenyl; NO. CNC/Linen/98-99 for Khadi Duster; No.01/CNC/Linen/98-99/259 for Duster Swab; and No.01/CNC/98-99 for X-ray form, as contained in statement of imputation of misconduct. But CO also not denied that he did not issue any such certificate, instead has taken a plea that he was responsible for receiving the material. He has stated that it is the store keeper at the first place receive and check/verify the material, and overall the Officer Incharge, as per GFR Rule NO.7. However, being Assistant Store Officer, CO cannot absolve of his role in receiving and verification of material. Hence, the CO also shares his responsibility in receiving/verifying the sub-standard stores items, as alleged in the charge. Regarding the allegation that orders were placed to NCCF at exorbitant rates, just to favour the private party, i.e., M/s Rajiv Enterprises and which cause pecuniary loss to AIIMS, the prosecution has not provided any evidence to show there existed any rate contract for the said items. On the contrary, the CO has provided a copy of the note dated 12.7.1996 initiated by Sh. S. L. Prasad, Stores Officer, inter alia proposing that " DDA may kindly accord approval to purchase the cleaning material from Kendriya Bhandar/Super

Bazar/NCCF/other Co-operative Store of govt. till the finalization of the contract of the cleaning material." It appears that the purchases continued to be made from the Govt. agencies including NCCF. Further, all the purchase proposals have apparently been processed, and approved by the competent authorities.

In view of the above, this part of the charge is held as ' partly proved' to the extent as mentioned above.

FINDINGS.

On the basis of analysis of evidence-documentary and oral, and overall circumstances of the case, the finding on the article of charge is as under:

Article of charge : Held as 'Partly Proved'."

6. It is admitted case of the parties that part of the charge against the applicant was held to be proved that the applicant issued certificate regarding receipt of the goods and also admitted having received the material of supplies. The material contained sub-standard items. The Disciplinary Authority, however, vide impugned order held the charge fully proved. The relevant observations of the Disciplinary Authority are reproduced herein below:-

"AND WHEREAS a copy of the inquiry report of the Inquiry Officer, along with a copy of advice of CVC, was forwarded to Shri S. S. Bhaduria vide this office memorandum of even number dated 6.10.2012 and he was given an opportunity of making such submission on the report of inquiry as he desired. His submission on the report of inquiry was received vide his letter dated 13.10.2012.

AND WHEREAS on careful consideration of article of charge, report of the Inquiry Officer, all other relevant material/facts/records and circumstances of the case in light of

> the submission made by Shri S. S. Bhaduria, together with the second stage advice of the CVC, the President, AIIMS reached to the conclusion that the charge against Shri S. S. Bhaduria **stands proved** and the representation dated 13.10.2012 submitted subsequently by Shri S. S. Bhaduria had no new material/fact, to rebut the charge. The President, AIIMS had further directed to place the matter before the Governing Body being Disciplinary Authority. Accordingly the matter was placed before the Governing Body in its meeting held on 19.7.2013."

From the above, it is thus evident that the quantum of punishment imposed upon the applicant is treating the entire charge as proved.

7. The contention on behalf of the applicant is that since the charge was only partly proved, the Disciplinary Authority could not have held the charge fully proved without serving a Note of Disagreement and providing opportunity to the applicant of making a representation, and in this manner the impugned order suffers from grave illegality being violative of sub rule (2) of Rule 15 of CCS (CCA) Rules, 1965, besides violative of principles of natural justice. Sub-rule (2) of Rule 15 of CCS (CCA) Rules, 1965 prescribed the procedure to be adopted while taking action on the Inquiry Report. The said rule reads as under:-

> "15. Action on the inquiry report.
>
> (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 on 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."

8. The aforesaid rule clearly mandates that the Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the Inquiry Officer along with its own tentative reasons for disagreement, if any, with the findings of the Inquiring Authority on any article of charge to the government servant for his response. It is true that copy of the Inquiry Report was furnished to the applicant, however, the Disciplinary Authority did not recorded his Note of Disagreement in regard to the findings of the Inquiry Officer to the extent he has held a part of the charge against the applicant not proved. The Disciplinary Authority is deemed to have accepted the entire Inquiry Report which contains the findings regarding only a part of the charge proved and other part of the allegations/charge not proved. To this extent, the impugned order holding the charge as fully proved while imposing the penalty is not sustainable in law.

9. Learned counsel for the applicant has relied upon the judgment of Hon'ble Supreme Court in the case of ***Lav Nigam vs. Chairman & MD, ITI Ltd. and Another*** reported in (2006) 9 SCC 440. In this case, the Hon'ble Supreme Court has held that in case the Disciplinary Authority differs with the view taken by the Inquiry Officer, he is bound to give a notice setting out his tentative conclusions and the reasons for disagreement with the findings of the Inquiry Officer to

the charged officer for his response and it is only after considering his response, he is made liable to punishment. Based upon this, it is argued that the Disciplinary Authority did not record his note of disagreement in respect to the part of charge held not proved by the Inquiring Authority and treating the entire charge as fully proved has imposed the punishment in contravention to law.

10. Insofar as sub rule (2) of Rule 15 of CCS (CCA) Rules, 1965 is concerned, it clearly provides that where the Disciplinary Authority has any reason to differ with the findings of the Inquiring Authority he is required to record his tentative opinion in the form of disagreement note and serve upon the charged officer for his response, and it is only after affording an opportunity to the charged officer, the Disciplinary Authority could pass the final order imposing penalty.

11. The facts of the present case are clearly distinguishable. The only one article of charge was framed against the applicant. The Inquiring Authority has held the charge partly proved for which reasons have been recorded, meaning thereby, part of the allegations/charge is not proved. The Disciplinary Authority in its wisdom chose not to record its disagreement note in respect to the findings of the Inquiry Officer to the extent charge was held not proved. This is indicative of the fact that the Disciplinary Authority

has accepted the Inquiry Report as it is and served the same upon the charged officer for his response. After considering the representation, the Disciplinary Authority has imposed the penalty treating the entire charge as proved where the error has crept in. The quantum of punishment imposed also demonstrate that the Disciplinary Authority has treated the entire charge as proved without recording his note of disagreement in respect to the findings of the Inquiry Officer holding part of charge not proved and without providing any opportunity to the applicant to submit his representation. However, it is not a simple case where the total charge is not proved. The Disciplinary Authority had authority to accept the Inquiry Report even without differing with the part of findings of the Inquiry Officer and impose punishment on that basis but that has not happened. Thus, the impugned order to the extent it has imposed penalty holding the entire charge to be proved is vitiated in law. However, this will not render the entire penalty order illegal but would have impact upon the quantum of punishment. The Disciplinary Authority accepting the findings in the Inquiry Report as they are still could impose penalty in respect to the findings of the Inquiring Authority holding the charge to be partly proved. Thus, the entire penalty order cannot be termed to be illegal or bad in law.

12. The other argument of learned counsel for the applicant is that the applicant has been acquitted of the criminal charge and thus the penalty has been rendered illegal. At the first place, it is not a ground in the OA. The Trial was going on when the OA was filed. It is only during the pendency of the OA that the acquittal order has come into existence. A copy of the acquittal order has been furnished to the Tribunal. We have carefully examined the judgment dated 12.08.2014 passed in C.C. No.2/11, R. C. No.12 (A)/99. The Special Judge, CBI has acquitted the accused holding that the prosecution has failed to prove commission of offences against them including the applicant.

13. The applicant has relied upon a judgment of Apex Court in the matter of ***G. M. Tank vs. State of Gujarat and Others*** reported in 2006 (5) SCC 446. In this case also, criminal as well as disciplinary proceedings were initiated against the charged officer on the basis of same set of allegations. The government officer was awarded penalty of dismissal in domestic inquiry. While the challenge to the penalty order by way of writ petition was pending before the High Court, he was acquitted by the Criminal Court. The High Court, however, dismissed the writ petition against the penalty of dismissal and an LPA against Single Bench order also came to be dismissed by the Division Bench. The Hon'ble Supreme Court in a Civil Appeal against the judgment of the High Court held that the departmental

proceedings and the criminal case are based upon identical and similar set of facts and the charge in a departmental case against the applicant and the charge before the Criminal Court are one and the same. The Hon'ble Supreme Court further held that this is a case of no evidence. There is no *iota* of evidence against the appellant to hold that the appellant is guilty of having illegally accumulated excess income by way of gratification.

14. The facts of the said case and the present case are clearly distinguishable. In the present case, the charged officer admitted in the disciplinary proceedings that he had issued certificates regarding the receipt of goods supplied by the supplier. It is not in dispute that the goods received by the charged officer were sub standard, and even some of the medicines were beyond expiry date. Under these circumstances, it cannot be said that there is no *iota* of evidence. The charged officer merely shifted his responsibility to the higher officials while admitting that he received the supplies and issued the certificate which was later found to be false. Thus, the findings of the Inquiring Authority that the charged officer cannot be absolved of his responsibility cannot be faulted with. It is not a case of no evidence but a case of proved allegations. It is equally a settled principle that the standard of proof in a criminal trial is different than the standard of proof in departmental proceedings. In criminal proceedings, the charge has to be proved beyond any shadow of doubt whereas in a

departmental proceeding the probability of commission of act which amounts to misconduct is the parameter. The findings of the Inquiry Officer, as noticed by us hereinabove, are clear and unambiguous. In any case, the applicant has not challenged the Inquiry Report in the present OA and thus he too has accepted the findings of the Inquiry Officer.

15. In view of the totality of facts and circumstances of the case, arguments of learned counsel for the applicant to set aside the penalty order in toto based upon acquittal in a criminal case cannot be accepted. However, there is one aspect which definitely needs consideration. The penalty of compulsory retirement along with 50% cut in pension for five years have been imposed treating the entire charge to be proved by the Disciplinary Authority. The applicant is at least entitled to the benefit of entire charge not proved by the Inquiring Authority. In such circumstances, we are of the considered view that the penalty imposed upon the applicant is excessive keeping in view findings of the Inquiry Officer and the fact that the penalty has been imposed, as if, the whole charge is proved against the applicant. The applicant deserves a lesser punishment on the basis of charge being only partly proved.

17. This OA is accordingly allowed in the following manner:-

(i) The impugned penalty order dated 25.07.2013 is hereby quashed.

(ii) The matter is remanded back to the Disciplinary Authority to reconsider the quantum of punishment as the charge is only partly proved and pass a fresh order within a period of two months from the date of receipt of certified copy of this order.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/pj/