

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-3040/2013

New Delhi this the 9th day of November, 2016.

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Shekhar Agarwal, Member (A)**

Sh. Kumar Vivek aged about 47 years,
S/o Dr. S.C. Srivastava,
R/o V/2, C.I.A.E. Colony,
Nabi Bagh, Berasia Road,
Bhopal-462038 (MP).

..... Applicant

(through Sh. G.D. Gupta, Sr. Advocate with Sh. Vikram Singh,
Advocate)

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,
Safarkta Bhawan, INA, New Delhi.
 4. Under Secretary,
Vigilance ICAR,
Krishi Bhawan, New Delhi.
- Respondents

(through Sh. S.S. Lingwal, Advocate)

ORDER (ORAL)

Mr. Shekhar Agarwal, Member (A)

The applicant initially joined service as an Administrative Officer with the respondents in the year 1998-1999. He was confirmed w.e.f. 22.12.2000. On 20.04.2008, he was transferred to Indian Institute of

Soil Science, Bhopal where he joined on 24.04.2008. He was issued a charge sheet for major penalty on 28.08.2009. He filed his reply to the same denying the charges levelled against him. However, on 05.03.2010, the Disciplinary Authority (DA) passed an order by which it was directed that common proceedings be held against the applicant and some other co-delinquents. The enquiry commenced from 07.04.2010. The Enquiry Officer (EO) submitted his report on 20.09.2010 in which he held only three charges out of ten to have been proved against the applicant. Further, three charges were held to be only partly proved. The report of the EO along with second stage advice of CVC as well as disagreement note was supplied to the applicant on 15.03.2012. The applicant submitted his representation against the same on 02.04.2012. The respondents, however, imposed the penalty of compulsory retirement on the applicant vide their order dated 18.06.2012. The applicant filed OA-3012/2012 against the aforesaid order on 07.8.2012. Meanwhile, vide the impugned order dated 27.08.2012, the respondents reduced the penalty of the applicant to the minimum of the scale in Pay Band-3 for a period of five years with cumulative effect and with further direction that he will not earn future increments during this period and it will have the effect of postponing his future increments. It was further directed that the period between his date of compulsory retirement and date of reinstatement shall be treated as dies-non

even though this period shall count for pensionary benefits. The applicant has now filed this O.A. seeking the following relief:-

“(a) quash and set aside the impugned order dated 27.08.2012 passed by the President, ICAR i.e. respondent No. 2;

(b) quash and set aside the order dated 5.3.2010 (wrongly mentioned as 5.03.2009) 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 28.8.2009 to the applicant.

(c) May also pass any further order (s) and direction (s) as be deemed just and proper to meet the ends of justice.”

2. The respondents have filed their reply opposing the averments made by the applicant and stating the enquiry has been carried out in accordance with rules and does not warrant any interference from this Tribunal.

3. The applicant has challenged the action of the respondents on various grounds, one of them being that the charge sheet has been issued without the approval of the DA. Learned counsel for the applicant argued that indisputably the DA of the applicant was President of ICAR i.e. Hon'ble Minister of Agriculture. However, the charge sheet issued to the applicant has not been approved by the DA under Rule-14(3) of the CCS (CCA) Rules and is therefore liable to be set aside as laid down by Hon'ble Supreme Court in the case of **UOI & Ors. Vs. B.V. Gopinath** [SLP(C) No. 6348/2011].

3.1 Learned counsel for the applicant further stated that in the case of co-delinquent, a Co-ordinate Bench of this Tribunal in the case of **Shyam Babu Sharma Vs. ICAR & Ors.** (OA-1896/20123) on 21.07.2016 has quashed the charge sheet dated 28.08.2009.

4. We have heard both sides. On our directions, the respondents also produced the original file in which the case of the applicant herein has been dealt with. On perusal of the same, we found that while DA (Hon'ble Minister of Agriculture) has approved initiation of major penalty proceedings against the applicant and sending draft charge sheet to CVC for their advice, the final charge sheet has not been approved by him. Consequently, this case is covered by the judgment of this Tribunal in the case of **B.V. Gopinath Vs. UOI & Ors.** (OA-808/2008) dated 05.02.2009 as affirmed by Hon'ble Supreme Court of India on 05.09.2013 in SLP(C) No. 6348/2011.

5. Therefore, without going into the other grounds raised by the applicant to challenge the orders passed against him in the disciplinary proceedings, we allow the O.A. and quash the charge sheet dated 28.08.2009 issued to the applicant. Consequently, the impugned order dated 27.08.2012 based on this charge sheet also cannot survive and is hereby quashed. The respondents shall, however, be at liberty to proceed against the applicant afresh from the stage of 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 O.A. so as not to prejudice further action in the matter in future. No costs.

(Shekhar Agarwal)
Member (A)

(Justice Permod Kohli)
Chairman

/Vinita/