

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.2946/2012
and
O.A.No.3082/2012

Order Reserved on: 10.11.2016
Order pronounced on 13.12.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Dr. Birendra Kumar Sinha, Member (A)

O.A.No.2946/2012:

Mr. Charan Singh
S/o Shri Nandram Singh
Aged about 50 years
Presently posted in M.E.Unit
Directors Office, IARI
R/o E-25, Pusa Campus
IARI, New Delhi – 110 012. ... Applicant

(By Advocate: Ms. Suman Sirohi)

Versus

1. Indian Council for Agricultural Research
Through its President
Krishi Bhawan
New Delhi.
2. Director
Indian Agricultural Research Institute
Pusa, New Delhi – 110 012. ... Respondents

(By Advocate: Mr. Praveen Swaroop)

With

O.A.No.3082/2012:

Mr. Suresh Kumar Gajmoti
S/o Shri Chhote Lal
Aged about 45 years
Presently posted as SAO
Genetics Division, IARI
R/o M-387, 1st Floor
Guru Hari Kishan Nagar
Paschim Vihar,
New Delhi – 110 087.

...

Applicant

(By Advocate: Ms. Suman Sirohi)

Versus

1. Indian Council for Agricultural Research
Through its Secretary
Krishi Bhawan
New Delhi.

2. Director
Indian Agricultural Research Institute
Pusa, New Delhi – 110 012. ... Respondents

(By Advocate: Mr. Praveen Swaroop)

O R D E R (Common)

By V. Ajay Kumar, Member (J):

Since the facts and question of law involved, in both the OAs, are identical, they are being disposed of by this common order.

2. For the sake of convenience, we have taken the facts from OA No.2946/2012.

3. While the applicant was working as T-6, Indian Agricultural Research Institute (in short, IARI), New Delhi, common disciplinary proceedings were initiated against the applicant and others, and Annexure A-4- Charge Memorandum dated 08.07.2010 was issued to the applicant, under Rule 16(i)(b) of the Central Civil Services (CCA) Rules, 1965 as extended to the employees of Indian Council of Agricultural Research (in short, ICAR). The Article of Charge levelled against the applicant is, as under:

“Shri Charan Singh while working as Technical Officer (T-6), IARI committed serious irregularities in execution of work `Replacement of damaged sanitary fittings, flooring and polymer plastering at Farmer's Hostel, IARI, New Delhi. The scope of the work was changed from Rs.3,73,677/- to Rs.8,87,895/- as the initial estimates were not drawn properly and no quality control standard was maintained which resulted in sub-standard work. Further the work was carried out without any revised administrative approval and expenditure sanction and any revised work order. Shri Charan Singh acted in collusion with Dr. G.P.Singh, Sr. Scientist, Shri S.K.Gajmoti, SAO, IARI in allowing the work through M/s Sanjeev Constructions and Engineers, New Delhi which was not registered with the CPWD in an irregular manner and thus showing undue favour to the firm.

By his above acts, Shri Charan Singh, Technical Officer (T-6) has failed to maintain absolute integrity, has exhibited lack of devotion to duty and has acted in a manner unbecoming on the part of Council's employee and thereby, has contravened the provisions of the Rule 3(1)(i)(ii) and (iii) of CCS (Conduct) Rules, 1964 as extended to ICAR employees.”

4. The applicant, vide annexure A5- Representation dated 19.07.2010, denied the charges levelled against him. Though the chargesheet was issued under Rule 16, a regular departmental inquiry was conducted and the Inquiry Officer, vide his Annexure A6, Inquiry Report dated 14.01.2011 held that the charge levelled against the applicant was not proved.

5. However, the disciplinary authority disagreed with the said findings of the inquiry officer, and accordingly vide Annexure A1, Memorandum dated 12.09.2011, communicated the reasons for his disagreement on the findings of the inquiry officer along with the copy of the inquiry report, and called for the representation of the applicant against the same. The applicant vide Annexure A7(Colly.) representations submitted his representation against the disagreement note of the disciplinary authority. However, the disciplinary authority, vide Annexure A2-Order date 14.03.2012, imposed the penalty of withholding of one increment with cumulative effect on the applicant.

6. The applicant in OA No.3082/2012 was working as SAO and was also proceeded in the similar manner, since he was also involved in the same charge and common disciplinary proceedings for minor penalty were initiated against him, which were also ended in passing the impugned Annexure A-2-Order dated 14.03.2012, therein, by imposing the penalty of withholding one increment without cumulative effect.

7. Heard Ms. Suman Sirohi, the learned counsel for the applicant and Mr. Praveen Swaroop, the learned counsel for the respondents, and perused the pleadings on record.

8. The learned counsel for the applicant mainly contends that the disagreement note dated 12.09.2011 was illegal, arbitrary and violative of principles of natural justice and Rule 15(2) and 2(A) of the

CCS (CCA) Rules, 1965, and, as a result, seriously prejudice the rights of the applicant in defending his case, in as much as the disciplinary authority vide the said disagreement note instead of communicating his tentative reasons for his disagreement on the findings of the inquiry officer, pre-judged the issue and came to the opinion that the charge levelled against the applicant stand proved, even before calling for representation from the applicant.

9. The learned counsel while drawing attention to paragraph 4 of the 'disagreement note' communicated vide Annexure A1-Memorandum dated 12.09.2011, submits that the Disciplinary Authority opined that the charge levelled against the applicant was stand proved even before calling for the representation from the applicant.

10. The learned counsel placed reliance on a decision of the Hon'ble Apex Court in **Yoginath D. Bagde v. State of Maharashtra and Another**, JT 1999 (7) SC 62.

11. Per contra, the learned counsel appearing for the respondents would submit that full and fair opportunity in accordance with the rules and principles of natural justice and also as per the law enunciated by the Hon'ble Apex Court in the matter of disagreement by the disciplinary authority with the findings of the inquiry officer, were duly followed before imposing the penalty on the applicant and hence, no interference by this Tribunal is warranted.

12. The learned counsel further submits that the CCS (CCA) Rules, 1965 envisages furnishing of tentative reasons for disagreement, if the disciplinary authority disagrees with the findings of the inquiry officer, along with the copy of the inquiry report to the applicant, and to call for his written representation or submission thereon, before imposing any penalty. Accordingly, the disciplinary authority rightly furnished his tentative reasons for disagreement on the findings of the inquiry officer vide Annexure A1-Memorandum dated 12.09.2011 and called for the representation or submission of the applicant and after considering the same only imposed the punishment on the applicant.

13. The learned counsel while drawing attention of this Tribunal to Paras 3 and 6 of the 'disagreement note' dated 12.09.2011, categorically submits that at no stage the disciplinary authority has prejudged the issue and that the reasons furnished therein were only tentative and hence, there is no violation of any rule or law by the disciplinary authority.

14. Rule 15 of the CCS (CCA) Rules, 1965 read as under:

"15. Action on inquiry report

- (1) The disciplinary authority, if it is not itself the Inquiring Authority may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be.
- (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.

(2-A) The Disciplinary Authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (3) and (4).

(3) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (i) to (iv) of Rule 11 should be imposed on the Government servant, it shall, notwithstanding anything contained in Rule 16, make an order imposing such penalty:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the Disciplinary Authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant.

(4) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the Disciplinary Authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government servant."

15. In view of the rival contentions, it is necessary to refer to the relevant paragraphs of the 'disagreement note' on which the counsel on either side placed reliance, which reads as under:

"3. The Inquiry Report has been examined with reference to the records. It is observed that the Inquiry has been held as per procedure prescribed. With reference to the findings of the Inquiry Officer, the disciplinary Authority viz. President, ICAR has tentatively decided to disagree with the findings of Inquiry Officer in Para 2(i)(ii) and (iii) above for the following reasons:-

i) Director (Works) in his deposition in reply to question No.12 stated that the work of polymer

plaster was sub-standard. In his deposition (while replying to Q.No.9), he has stated that rates for polymer plaster are generally four to five times more than the normal plaster due to chemical compound and method of application. Director (Works) in his deposition before the Inquiry Officer has stated that quality control aspects are to be as per the manual of the CPWD and that IARI does not have a full fledged engineering set up, Therefore, as per Director (Works), IARI should have ensured that all the materials procured should have been of ISI brand and IARI should have checked the invoices of supplier. While replying to question No.5, Director (Works) stated that he could not find any evidence that the invoices of the material was checked by the IARI.

- ii) Shri Charan Singh, 1-6 vide his note dated 30.1.2006 stated that due to shaky and weak RCC Structures, the expenditure may increase slightly and requested that Chairman Works Committee may visit the site. Shri R.K.Manchanda, the then AEE (Civil) now retired in his note dated 30.1.2006 stated that revised sanction of work will be taken at the time of completion of work. At this stage, Shri S.K. Gajmoti, SAO (Works) forwarded the file to Chairman Works Committee (Director, IARI) with the comments that members of the Works Committee may visit the site for their comments. Then, Chairman Works Committee (Director, IARI) constituted a team directing them to assess the estimate. This committee after visiting the site recommended that a revised estimate of work may be prepared and may be submitted for approval of Competent Authority. However, the work was carried out without any administrative approval and expenditure sanction. Council also recommended disciplinary action against Shri R.K.Manchanda but when CVC recommended only for Minor penalty proceedings, the Disciplinary proceedings were not initiated against Shri R.K.Manchanda as he had already retired by then. Further, from the note dated 9.5.2006 of Shri Charan Singh {which was also seen by Shri S.K. Gajmoti being SAO (Works)}, it is evident that issue was referred to Director (Works) only after executing the expenditure upto Rs.7.84 Lakhs i.e. when the work was almost in the final stages.
- iii) In his reply to the Charge sheet, CO himself admitted that he did not maintain MB on day to day basis. Further, on this issue, Director (Works) has mentioned in his deposition that as per the CPWD manual, measurement book is maintained by the Junior Engineer. Measurement Book gives the progress of work as the measurements are recorded with the pace of work on day to day basis duly signed by the Junior Engineer and countersigned by assistant engineer. When the work is completed the Measurement Book becomes the basis of making

the final bill. The quality of work is also recorded by site incharge. For hidden items like steel, 100% checking is countersigned by the assistant engineer and 25% by the Executive Engineer. Further polymer plaster is a specialized work. It is applied in two to three stages for varying thickness depending on the item. Therefore the measurement for the same is also done for each of the stages with the date duly signed by junior engineer and should be countersigned by the Assistant Engineer.

4. In view of the position explained above, the Disciplinary Authority is of the opinion that the Article of Charge against Shri Charan Singh contained in Charge Sheet of even number dated 8.7.2010 stand 'Proved'.

5. A copy of the Inquiry Report is hereby enclosed. Further, a copy of the CVC 2nd Stage advice furnished by CVC vide Office Memorandum No.010/AGR/006/140221 dated 11.8.2011 are also enclosed.

6. Shri Charan Singh is hereby given an opportunity to make his submissions on the findings of the Inquiry Officer in para 2 above and on the reasons for disagreement by the Disciplinary Authority with the findings of the Inquiry Officer in para 3 and the tentative view of the Disciplinary Authority above within a period of 15 days of the receipt of the Memorandum failing which it would be presumed that he has nothing to say in the matter and further action, as per rules, will be taken in this case."

16. In **Yoginath D. Bagde** (supra) the appellant, an Additional District and Session Judge, was proceeded with departmentally and when the inquiry officer held the charges levelled against the appellant were not proved, but the disciplinary committee of the High Court, having disagreed with the said findings, tentatively decided to impose the penalty of dismissal and accordingly after issuing a notice to show cause why the proposed penalty be not imposed upon the appellant, along with the copy of the inquiry report, and after considering the reply of the appellant, recommended to the Government of Maharashtra to dismiss the applicant and accordingly he was dismissed from service by the Government.

17. The said action was questioned on various grounds, including on the ground that the show cause notice issued to the appellant was to show cause why the proposed penalty shall not be imposed on him but not that why the disciplinary authority shall not come to a conclusion that the charges levelled against the appellant were proved as against the findings in the Report of the Inquiry Officer, whereunder, it was held that the charges levelled against the appellant were not proved. The Hon'ble Apex Court, after considering its decisions in **Punjab National Bank & Others v. Kunj Behari Mishra**, JT 1988 (5) SC 548, etc., observed as under:

"33. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away in any legislative enactment or Service Rule including Rules made under Article 309 of the Constitution."

18. Thereafter, in the facts of the said case, held that the disciplinary committee had taken its final decision without giving an opportunity of hearing to the applicant at the stage at which it proposed to defer with the findings of the inquiry officer and accordingly allowed the appeal.

19. In the present case, as noted above, the disciplinary authority, vide the Annexure A1-Disagreement Note, dated 12.09.2011, not called the applicant to show cause why any specific penalty shall not be imposed but on the other hand, asked the applicant to show cause how the tentative reasons for disagreement of the disciplinary authority on the findings of the inquiry officer are incorrect. A conjoint reading of the Memorandum dated 12.09.2011 clearly indicate that the disciplinary authority has not come to a final conclusion that the charge levelled against the applicant was proved and that the notice was issued to call for the representation of the applicant on the tentative reasons of the disciplinary authority.

20. The disciplinary authority in its 'disagreement note' at para 3 given its tentative reasons, in detail, that why it is intending to take a different view, basing on the evidence adduced in the inquiry, which clearly gives a fair and proper opportunity to the applicant to submit his representation. Therefore, the contention of the applicant that the opportunity given to him is not, in terms of Rule 15 or the decision in **Yoginath D. Bagde** (supra), is unsustainable and unacceptable. The

applicant also failed to establish that any prejudice is caused to him in the decision making process of the respondents.

21. In the circumstances and for the aforesaid reasons, both the OAs are dismissed being devoid of any merit. No costs.

(Dr. Birendra Kumar Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

/nsnrvak/