CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 4302/2011

New Delhi this the 11th day of August, 2016

Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Mr. V.N.Gaur, Member (A)

Shri K.P.Singh,
S/o Shri Brahm Singh.
Aged about 49 years,
R/o Tilakpuram Colony, Mawana Road,
Keserubuxsar, P.O. Rajpura,
Meerut (UP) and was working as
S.S.Gr-1 under the respondents but
Compulsory retired w.e.f. 14.1.10. ... Applicant

(By Advocate: Mr. S.S.Tiwari)

VERSUS

1. Indian Council of Agricultural Research,
   Through Director General, ICAR,
   Krishi Bhawan, Dr. Rajendra Prasad Road,
   New Delhi.

2. The Director General,
   Indian Council of Agricultural Research,
   Krishi Bhawan, New Delhi.

3. Project Director,
   Project Directorate on Cattle,
   Grass Farm Road, Meerut (UP). ... Respondents

(None for the respondents)

O R D E R (ORAL)

Hon'ble Mr. V.N.Gaur, Member (A):

The applicant is an ex-serviceman who was working as Supporting Staff Grade-1 (SS Grade-I) at Project Directorate on Cattle, Meerut, when vide order dated 14.01.2010 the major

penalty of compulsory retirement was imposed on him. The applicant has filed the present OA with a prayer to quash the orders passed by the Disciplinary Authority (DA) and Appellate Authority (AA) and his reinstatement in service with all consequential benefits.

2. The DA served on him a charge sheet dated 28.01.2009 containing the following charges:

> "ARTICLES OF CHARGE
>
> 1. Negligence in official duties.
> 2. Non maintenance of office decorum and misbehaviour with senior officers.
> 3. Disobeying of orders of competent authority."

3. The applicant denied all the charges but not satisfied with his reply, the DA ordered Departmental Enquiry (DE). In his report dated 26.10.2009, the Enquiry Officer (EO) proved all the charges against the applicant. He was given opportunity to make representation against the findings of the EO and after considering the same, the DA passed the impugned order dated 14.01.2010 imposing the major penalty of compulsory retirement. The appeal dated 22.02.2010 was also rejected by the AA on 29.11.2010.

4. According to learned counsel for the applicant, the disciplinary proceeding against the applicant was totally

illegal, arbitrary and unconstitutional and it was conducted by an enquiry officer against whom the applicant has alleged bias. He was under pressure from the DA to prove the charges. He misinterpreted even the statement of DW Shri C.P.Singh in order to prove the charge of indiscipline. The applicant is an ex-serviceman having a good service record and prior to working at Project Directorate on Cattle, he was working at NDRI Karnal and there was no complaint against him. The respondents only levelled false charges with a view to penalise him for not obeying illegal orders like preparation of tea and washing of utensils. When guests visited Dr.Rajendra Prasad, Principal Scientist, with whom he was attached he was asked to bring eatables from the market even though it was not his duty. He was never given any oral or written warning by the Director. He was given a Memo on 30.12.2008 for not wearing uniform while on duty, but the respondents did not consider the fact at that time winter uniform were under stitching and had not been issued to him. The EO violated the mandatory provision under Rule 14 (18) of the CCS (CCA) Rules of examining the applicant before closing the evidence. The disciplinary proceeding was liable to be quashed on this ground alone, as has been laid down by Hon'ble Supreme Court in several judgments. The DA and AA in the impugned orders did not consider various grounds raised by the

applicant in his representations and, lastly, according to the learned counsel the penalty of compulsory retirement imposed on the applicant was grossly disproportionate to the allegations of misconduct arising from allegations of not carrying out illegal orders.

5. The learned counsel for the respondents while denying the grounds taken by the learned counsel for the applicant, raised the preliminary objection of mis-joinder of parties stating that respondent no. 1 and 2, namely, ICAR through DG, ICAR and Director General, ICAR can be sued through the Secretary, ICAR only. The applicant did not notice that the appellate order has been passed by Secretary, ICAR and not by Director General, ICAR. He further submitted it is well settled law that this Tribunal cannot sit as an appellate forum against the orders passed by disciplinary or appellate authority. The scope of judicial review by Courts was limited to see whether findings of the enquiry officer or disciplinary authority were perverse, or the statutory rules or the principles of natural justice had been violated. In the present case, the respondents have meticulously followed the procedure prescribed for the disciplinary proceedings by giving full opportunity to the applicant to defend himself. The orders passed by disciplinary and appellate authority are confined to their own respective

jurisdictions and there is no justification for interference by this Tribunal. The applicant had complained about the alleged bias on the part of the EO but without any supporting evidence. The allegation against the applicant were that he was not cleaning instruments of lab, was absent from duty during office hours for long time, refusal to distribute dak, not wearing the uniform etc. but he has tried to trivialize it by stressing on alleged incidents relating tea making and cleaning utensils etc. Referring to the additional affidavit filed by the respondents, the learned counsel submitted that the applicant had been given oral and written warnings on a large number of occasions, as can be seen from the annexures filed with the additional affidavit. With regard to violation of Rule 14 (18) of CCS (CCA) Rules, the learned counsel submitted that the applicant has earlier appeared as a witness and, therefore, it was not mandatory for the EO to examine him again.

6. We have heard the learned counsel for the parties and perused the record. During the arguments the main emphasis of the learned counsel for the applicant was on the violation of Rule 14 (18) of CCS (CCA) Rules during the departmental enquiry. The relevant Rules read as follows:-

> "The Inquiring Authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the

> purpose of enabling the Government servant and explain any circumstances appearing in the evidence against him."

7. Where the Government servant has not examined himself, the aforesaid sub-Rule makes it mandatory for the inquiring authority to generally question the Government servant on the circumstances appearing against him in the evidence. However, if the Government servant has examined himself, it is the discretion of inquiring authority to invoke sub-rule 18 or not. From the daily order sheet dated 29.08.2009 which is part of the report of the EO, placed on record as Annexure-I, it is observed that the applicant was examined and cross-examined during the DE. Under these circumstances, it was not mandatory for the EO to have questioned the applicant once again under Rule 14 (18) of the CCS (CCA) Rules.

8. The applicant has also alleged bias and pressure from the DA on the EO but has not been able to support the allegation with any evidence. He has made other allegations like winter uniform had not issued to him on the day he was accused of not wearing the uniform; he had not been given any oral or written warning; he was asked to perform the task of making tea and washed utensils which he was not expected to do the tasks he was asked to do being a Security Supervisor. These

contentions have been examined by the EO as well as the DA. It has been brought out that the applicant had already been issued summer uniform earlier in the year which he was expected to wear. The applicant designation was Supporting Staff, Grade-1 and not a Security Supervisor. The allegation against him was that he was not performing the duties of cleaning lab equipment, remaining away from his duty for long period of time etc. and one incident of making tea etc cannot exonerate him from the main charge. The respondents have also filed copies of large number of memos showing written warnings and having mention of oral warnings, given to him during his tenure at Project Directorate on Cattle Meerut. The ground of impugned orders being non-speaking orders is also baseless as these orders are detailed, and deal with the issues raised by the applicant.

9. With regard to the ground of proportionality, it is settled law that fixing of quantum of penalty is within the realm of the powers of the disciplinary authority, the Courts may not interfere in this unless the penalty is such that shocks the conscience of the Court. In the present case, the charges against the applicant have been proved and DA after considering the representation of the applicant has imposed the penalty of compulsory retirement. Apparently, the

disciplinary authority has taken lenient view and chosen not to dismiss him from service. Therefore, there is hardly any reason to conclude that the penalty imposed on the applicant is grossly disproportionate to the misconduct proved against him. In **Praveen Bhatia** Vs. **UOI & Others** (2009 (1) SCC (L&S) 801) the Hon'ble Supreme Court observed thus:

> "15. The power of the court to interfere with the quantum of punishment is extremely restricted and only when the relevant factors have not been considered the Court can direct re-consideration or in an appropriate case to certain litigation, indicate the punishment to be awarded; and that can only be in very rare cases."

10. The Hon'ble Supreme Court in **Om Kumar and Others** Vs. **Union of India** (2001(2) SCC 386) after examining various judgments on the issue came to the following conclusion:

> "Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as 'arbitrary' under Article 14, the Court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing Court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The Court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the Courts, and such extreme or rare cases can the Court substitute its own view as to the quantum of punishment."

11. It is relevant to recall the Hon'ble Apex Court in **B. C. Chaturvedi vs. U.O.I.**, (1995) 6 SCC 749 holding that "the judicial review is not an appeal from a decision but a review of the manner in which the decision has been made". This

limitation imposed on the jurisdiction of the Tribunal in the matter of disciplinary proceedings is common with the judgments of Hon'ble Supreme Court in **Union of India vs. Parma Nand**, AIR 1989 SC 1185, **Union of India vs. Sardar Bahadur**, 1972 (2) SCR 225 and **Union of India vs. A.Nagamalleshwara Rao**, AIR 1998 SC 111.

12. In view of the preceding discussion and for the reasons stated, we do not find any justification to interfere in the decision taken by the disciplinary and appellate authorities. The OA is dismissed as devoid of merit. No costs.

(V.N.Gaur)
Member (A)

(Justice M.S. Sullar)
Member(J)

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