

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.4650/2015

Order Reserved on: 12.09.2017
Order pronounced on 27.10.2017

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)

C.S.Malik
Aged 60 years
S/o Sh. Ran Singh
Retired Senior Deputy Financial Advisor
CSIR, New Delhi
R/o H.No.274, Sector 14, Rohtak (Haryana). ... Applicant

(By Advocate: Shri R.N.Singh with Sh. Amit Sinha)

Versus

1. Council of Scientific & Industrial Research
Through its Director General
Anusandhan Bhawan
2 Rafi Marg
New Delhi – 110 001.

2. The Chief Vigilance Officer
Council of Scientific & Industrial Research
Anusandhan Bhawan
2 Rafi Marg
New Delhi – 110 001. ... Respondents

(By Advocate: Shri Praveen Swaroop)

ORDER

By V. Ajay Kumar, Member (J):

The applicant, a retired Senior Deputy Financial Advisor of the 1st Respondent-Council of Scientific and Industrial Research (in short, CSIR), filed the OA questioning the Annexure A1-Charge Memorandum dated 31.08.2015.

2. Briefly stated, the applicant attained the age of superannuation on 31.08.2015. After he was relieved at the end of the office hours on 31.08.2015, i.e., on the date of his superannuation, he was dropped at his residence by the official vehicle of the Respondent-CSIR at 6.00 PM. On 03.09.2015, he was served with the impugned Charge Memorandum dated 31.08.2015 issued under Rule 14 of the CCS (CCA) Rules, 1965, through Speed-post which was delivered to him at 4.45 PM on the said date.

3. The impugned Annexure A1-Charge Memorandum dated 31.08.2015 contains one Article of Charge and the same reads as under:

"Shri CS Malik, Sr. Deputy Financial Adviser, while functioning in the year 2010 at CSIR Hqrs., New Delhi committed misconduct inasmuch as, he, in the matter of payments to QHFs-Quick Hire Fellows in respect of NISTADS, New Delhi, by his irregular and violative recommendation on 12.01.2010 for making payments to QHFs from P-01 sub-head, from which salary is paid to scientists, led to the accordance of approval by the Financial Adviser and thereby perpetuated the payments made to the tune of over Rs.1.0 crore to QHFs in NISTADS, although no such power was delegated to the officer under the existing rules. By his aforesaid acts of omission and commission, the said Shri Malik exhibited lack of absolute integrity and devotion to duty and acted in a manner unbecoming to a Council servant contravening the Rule 3 (1)(i), (ii) and (iii) of CCS (Conduct) Rules, 1964."

4. Shri R.N.Singh, the learned counsel appearing for the applicant in support of the OA averments, interalia, contended, as under:

- i) Rule 35 of the CCS (Pension) Rules, 1972 read with FR 56 prescribes that a Government servant shall retire from service with effect from the afternoon of the last day of the month in which his date of retirement falls. Hence, once the applicant was allowed to retire from service at the end of the office hours of the afternoon of 31.08.2015, no chargesheet can be issued under Rule 14 of the CCS (CCA) Rules, 1965, thereafter.
- ii) Though the applicant was very much available in the office till the afternoon of 31.08.2015, the respondents sent the impugned charge memorandum issued under Rule 14 of the CCS (CCA) Rules, 1965, through Speed-post which was booked on 31.08.2015 at 20.35 hours, i.e., after the relief of the applicant from service, and delivered to the applicant on 03.09.2015. No chargesheet can be issued under Rule 14 of the CCS (CCA) Rules, 1965 to the applicant on 03.09.2015, as he was retired from service, unconditionally, on 31.08.2015 itself.
- iii) Neither the draft charge memorandum nor the impugned charge memorandum were approved by the Director General of CSIR, who is the competent disciplinary authority of the applicant and hence, in view of the decision of the Hon'ble Apex Court in **B.V.Gopinath v. Union of**

India, (2014) 1 SCC (L&S) 161, the impugned Charge Memorandum is liable to be quashed being non-est.

- iv) The Vice President of the CSIR is the appellate authority. The impugned Charge Memorandum was issued on behalf of the Vice-President and against whose orders no appeal is available. Hence, the applicant lost his substantial right of appeal. On this ground also, the impugned Charge Memorandum is liable to be quashed.
- v) The charge levelled against the applicant in the impugned charge memorandum dated 31.08.2015, pertains to the year of 2010 and hence abnormally delayed. The respondent-CSIR failed to give any valid reasons for the said delay. Due to the said inordinate and unexplained delay the applicant's rights are prejudiced adversely.
- vi) The gist of the charge levelled against the applicant was that he made irregular recommendation for payment to Quick Hire Fellows (QHF) of NISTADS, Delhi which led to the accordence of approval by the Financial Advisor and thereby perpetuated the payments made to the tune of over Rs.1 Crore, although no such power was delegated to him under the existing rules. Admittedly, the power of approval for such payment was vested with the Financial Advisor. But the respondents leaving the Financial Advisor and others charge-sheeted the applicant illegally. The

charge does not constitute any misconduct. There was also no allegation of wrongful gain to the applicant.

5. Shri Praveen Swaroop, the learned counsel, appearing for the respondents, inter-alia, would submit that a Government servant retire at 12 PM of the day of his superannuation. Rule 35 of the CCS (Pension) Rules, 1972 and FR 56 pertaining to different context and cannot be made applicable in connection with the disciplinary proceedings. Since the impugned chargesheet was issued on 31.08.2015, i.e., the date of superannuation, and the Speed-post containing the Charge Memorandum was sent to the applicant at 20.35 hours of the same day, i.e., before the actual retirement of the applicant, there is no illegality in issuing the same under Rule 14 of the CCS (CCA) Rules, 1965.

6. The learned counsel for the respondents would further submit that the Director General is the competent authority and the Vice President is the Appellate Authority. A chargesheet under Rule 14 can be issued by the competent disciplinary authority or by any higher authority. Hence, the impugned chargesheet, issued by the Vice President, is valid and legal. Loss of opportunity to appeal cannot make the Charge Memorandum as invalid in every case, such as one on hand, in the circumstances. The Vice President has approved the initiation, draft charge memorandum and also the impugned charge memorandum and hence, the submissions made by the applicant are unsustainable.

7. The learned counsel for the respondents, on the merits of the charge, would submit that the applicant recommended for payment to Quick Hire Fellows (QHF) of NISTADS, Delhi, though not entitled from the head of regular employees, which was irregular and against to rules in vogue. In any event, this Tribunal would not interfere with the disciplinary proceedings at the Chargesheet stage, in exercise of its judicial review power.

8. Heard Shri R.N.Singh and Shri Amit Sinha, the learned counsel for the applicant and Shri Praveen Swaroop, the learned counsel for the respondents, and perused the pleadings on record.

9. Rule 35 of the CCS (Pension) Rules, 1972 and the Government of India decision vide OM NO.33/12/73-Ests.(A) dated 24.11.1973 issued thereunder, read as follows:

"35. Superannuation pension

A superannuation pension shall be granted to a Government servant who is retired on his attaining the age of compulsory retirement.

(1) Retirement on the afternoon of last day of the month in which superannuation falls. - It has been decided that as from 1st day of November, 1973, the Civilian Government servants in Groups 'B', 'C' and 'D' services of posts and as from 1st days of April, 1974, the Civilian Government servants in Group 'A' services or posts, shall retire from service with effect from the afternoon of the last day of the month in which their date of retirement according to Fundamental Rule 56 falls, without prejudice to clauses (j), (k), (l) and (m) of that rule.

[G.I., C.S. (Dept. of Per.), O.M. No. 33/12/73-Ests. (A), dated the 24th November, 1973 and the 2nd May, 1974.]"

10. The relevant part of FR 56 reads as under:

“F.R. 56(a) Except as otherwise provided in this rule, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years:”

11. In **Sushila Devi v. District Collector and Others**, Special Appeal No.1056/2005 dated 06.09.2005, on which the respondents placed reliance, the husband of the applicant, who was a Government servant, died at 07.10 PM on the date of his retirement and when the respondents rejected the claim of the applicant for granting compassionate appointment to her son and granting extraordinary pension to her, on the ground that her husband retired from service by the end of the office hours, i.e., at 5 PM, on the date of his retirement, and he died thereafter, i.e., 7.10 PM, a Division Bench of the Hon'ble Allahabad High Court, after examining the Rules applicable therein, and also Rule 56-A of the Fundamental Rules, held that the words 'afternoon of the last day of the month', are wide enough to include the whole day of the date of retirement, i.e., till the end of the day at 12 PM, and the death of the husband of the applicant at 7.10 PM of his date of retirement should be treated to have occurred during his service. In view of the categorical finding of the Hon'ble Allahabad High Court, that the word 'afternoon' is wide enough to include the date of superannuation till 12 PM in the night, the contention of the applicant that afternoon means closure of the office hours at 5 PM is unsustainable.

12. It is the settled principle of law that it is enough if the Charge Memorandum is issued before the required date and the actual service of the same on the delinquent officer is immaterial. Since it is admitted

that the charge memorandum was issued on 31.08.2015 by booking the Speedpost at 20.35 hours, the contention of the applicant that the same cannot be issued under Rule 14 of CCS (CCA) Rules, 1965, is unacceptable. The contention of delay in issuing the charge memorandum is unsustainable, in the circumstances and in view of the decision of the Hon'ble Apex Court in **Shri Anant R. Kulkarni vs. Y.P.Education Society**, (2013) 6 SCC 515.

13. The original record submitted by the respondents' counsel supports his contention that the initiation of the major penalty proceedings, draft charge memorandum and the impugned Charge Memorandum were approved by the Vice President, CSIR, who is also the Hon'ble Minister for the concerned ministry, hence, the decision in **B.V.Gopinath** (supra) has no application. As rightly submitted by the learned counsel for the respondents loss of opportunity to appeal cannot vitiate the Charge Memorandum issued by the appellate authority in every case. In the circumstances of the present case, i.e., where the charges are common and levelled against the Director, NISTADS and also the officers of CSIR, Headquarters, we do not find any illegality in issuing the impugned Charge Memorandum by the Vice President, who is the appellate authority.

14. A detailed examination of the original record submitted by the respondents' counsel, reveals the following:

- (a) On receipt of a CVC referred complaint dated 13.06.2012, under PIDPIR regarding the irregular

appointments of Quick Hire Fellows in SUPRA Project in NISTADS, the then Hon'ble Minister vide his Note dated 15.05.2014 besides ordering for initiation of major penalty proceedings against Dr. P. Banerjee, the then Director, NISTADS and Members of Selection Committee, and minor penalty proceedings against administrative officials also ordered that a special audit of all payments to QHFs under this Project be done and the first stage advice of CVC should be obtained.

- (b) On 28.08.2015, the then Hon'ble Minister & Vice President, CSIR, opined that both NISTADS and CSIR, Headquarters are at fault of engaging persons beyond their competence, thereby making excess payments and causing loss to the exchequer and major penalty proceedings should be initiated against all those responsible at NISTADS and as well as at CSIR, Headquarters.
- (c) But on 31.08.2015, i.e., the date of superannuation of the applicant, he was alone issued with a charge memorandum, without issuing any prior memo or show cause notice and providing any prior opportunity to him.
- (d) Some of the paras of the Note dated 30.12.2016 read as under:-

"Since Shri CS Malik, the then Sr. Dy. FA, CSIR who was one of the officers identified and involved in

the afore-said irregular payments, his case was referred to the CVC on 31.08.2015 as Shri Malik's retirement was due on the very same day i.e., 31.08.2015 without completing requisite steps and the Commission was apprised of the situation for sending the matter in a very haste manner.

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Thereafter, on 07.01.16 (read as 07.04.2016), US (HR) forwarded a copy of note wherein the DG, CSIR, while raising doubts on seeking versions of concerned officers after obtaining the recommendation of the VP, CSIR, had requested the VP, CSIR to review and rescind the case relating to recruitment of QHFs and subsequent booking of expenditure, which was agreed to by the Hon'ble VP, CSIR.

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The afore-said position is submitted for consideration and orders as to whether a re-considered advice of the Commission may be obtained in this matter due to – (i) change in scenario where the Hon'ble Vice-President, CSIR, who had earlier ordered for initiation of major penalty proceedings, has approved to rescind the matter as a result of which CVC's 1st stage advice dated 12.04.2016 could not be processed further for issuance of charge-sheets; (ii) the then CVO, CSIR had questioned the authority to review its own decision without consulting CVC; and (iii) one of the involved officer i.e. Shri CS Malik had already been charge-sheeted and being defended before Hon'ble CAT, Delhi.

Submitted for consideration order, please."

e) Note dated 10.07.2017 duly approved upto the Hon'ble Minister, reads as under:-

"The doubt of then CVO on page 33/N is addressed, in seriatim, as under:-

1. Seeking version of the individuals (show cause) is a prerequisite for preliminary investigation and in line with the principle of natural justice, in order to obtain the suspect officers version of 'facts', so that the public servant is not proceeded unjustifiably. After due diligence of the versions/reply, of the accused officers, the then CVO should have placed the matter before the disciplinary authority for proposed further course of action. This has not been followed in this case as the versions of the individuals were not placed before the disciplinary authority. The then CVO should have taken the 1st stage advice of CVC only after following the prescribed procedure.

- (i) Therefore, now that the show cause has been served in respect of five officers in October, 2015 and their versions also examined by the CVC which tendered its advice on 12.4.2016 to initiate major penalty proceedings, the matter may be placed before VP, CSIR without any further delay, with full facts clearly

mentioning that the provisions of para 2.3 and 2.6 of Vigilance Manual have been complied with.

- (ii) In respect of officers who were served show cause notice in December, 2015, complete facts may be placed before the disciplinary authority afresh for proposing further course of action and thereafter 1st stage advice of CVC may be taken.
2. As regards note dated 13.4.2016 of the then CVO, CSIR in which question was raised regarding authority to review its own decision without consulting CVC (through this note has not been put up to the competent authority on file), attention is invited to GIO decision No.5 below Rule 14 of CCS (CCA) Rules which provides that the disciplinary authority has the inherent power to review and modify the articles of charge of drop some of the charges or all the charges after the accused Government servant. Further, CVC should be consulted where the disciplinary proceedings were initiated on the advice of the Commission and the intention is to drop or modify any of or all the charges on the basis of the written statement of defense submitted by the accused Government servant. In terms of para 2.11 of Vigilance Manual it has been categorically mentioned that *"The date of commencement of a vigilance case will, in cases in which CVC is consulted, be the date on which the commission tenders its advice."* CVC tendered its advice only on 12.4.2016. Therefore, the averments of the then CVO with respect to 'review of own decision by the disciplinary authority' and 'date of commencement of a vigilance case' is not in conformity with the rules and Vigilance Manual respectively.
3. No comments is needed as Shri CS Malik had already been charge-sheeted and the process is in conformity with para 2.4 and 2.11 of Vigilance Manual. The case is also being defended by CSIR before Hon'ble CAT Delhi.

VP, CSIR may kindly consider the advice of CVC dated 12.4.2016 for initiation of major penalty proceedings in respect of officers mentioned therein and further course of action as per para 1(ii) above in respect of remaining officers.

Sd/-
(Girish Sahni)
DG, CSIR"

15. The main issue is the appointment of Quick Hire Fellows in NISTADS on various dates and continuation of them even after termination of SUPRA Project, i.e., beyond 31.03.2012. Payment of salaries/remuneration to QHFs, for the period they were continued, is a consequential action, though it cannot be denied that the officers in the finance department of CSIR, such as the applicant, were required to object for any payment, if, it was not as per rules.

16. Para 1 of the note dated 10.07.2017 (supra), clearly indicate that the respondents proceeded against the applicant, in haste and in violation of the principles of natural justice and discriminately, may be in view of his impending superannuation. Admittedly, though the then Hon'ble Minister, directed to initiate major penalty proceedings against the then Director, NISTADS and others, way back on 15.05.2014, till date, no chargesheet was issued to any other officer, except to the applicant, that too on the date of his superannuation, hastily, and in violation of principles of natural justice. In case of all others, the respondents have issued show cause notices and provided them opportunity to submit their representations and consulted the CVC at various stages. But in case of applicant, no such procedure followed. Even the CVC opinion obtained in few hours. When the respondents are empowered to proceed against the applicant, even after his retirement, if circumstances warrant, under the provisions of CCS (Pension) Rules, 1972, the hasty action against him, in issuing the charge memorandum under Rule 14 of the CCS (CCA) Rules, 1965, without giving him the same opportunity of show cause on par with other officers, is unjustified and unsustainable.

17. In the circumstances and for the aforesaid reasons, the OA is allowed and the impugned charge memorandum is quashed, with all consequential benefits. The respondents shall release all the retirement benefits of the applicant within 90 days from the date of receipt of this order, but without any interest, in the circumstances of the case. However, this order shall not preclude the respondents from

proceeding against the applicant, as per applicable rules and in such an event, the applicant shall co-operate with the respondents in early completion of the said proceedings. No costs.

Registry is directed to return the Departmental Record(s), i.e., File No.15-43(27)/2013-Vig. (Notes - Vol.I) and File No.15-43(27)/2013-Vig. (Correspondence - Vol.II), to the concerned under proper receipt immediately.

(Nita Chowdhury)
Member (A)

(V. Ajay Kumar)
Member (J)

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