IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

Original Application No.190 of 2012

Date of CAV: 07.08.2018

Date of Order:20.08.2018

Between:

Narottam Pradhan, S/o. K.C. Pradhan,
Aged 41 years, Working as Technician
(House Keeper), National Institute of Nutrition,
Indian Council of Medical Research,
Jamai-Osmania PO., Hyderabad – 500007,
R/o. Quarter No. C-2, NIN Campus, NIN,
Tarnaka, Hyderabad – 500 007.

… Applicant

And

1. Union of India, Rep. by Director General,
Indian Council of Medical Research,
V. Ramalingaswamy Bhavan,
Ansari Nagar, New Delhi – 110029.

2. National Institute of Nutrition,
Indian Council of Medical Research,
Jamai-Osmania PO., Hyderabad – 500007,
Rep. by its Director.

3. Dr. Kalpagam Polasa,
Scientist 'F' & Head, FDTRC & Inquiry Officer,
National Institute of Nutrition,
Indian Council of Medical Research,
Jamai-Osmania PO., Hyderabad – 500007.

… Respondents

Counsel for the Applicant … Mr. T.P. Acharya, Advocate

Counsel for the Respondents … Mr. B.N. Sharma, SC for NIN

CORAM:
Hon'ble Mr. B.V. Sudhakar ... Member (Admn.)
Hon'ble Mr. Swarup Kumar Mishra … Member (Judl.)

ORDER
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

The O.A has been filed by the applicant praying for setting aside the impugned order dt 30/12/2011 passed by first respondent communicated vide

letter No.Vig/1/2007 (RHN) dt 11.1.2012 and the order dated 14.5.2009 vide NIN/PERS/P-14(113)/2009/144 passed by Respondent No. 2, whereby the authorities have imposed penalty of reduction by one stage from Rs 10,440 with grade pay of Rs.2800 to Rs 10,050 in PB-1-of Rs 5,200-20,200 against the applicant for a period of four years w.e.f. 01.05.2009 and for a direction to the respondents to grant the applicant all consequential benefits that would flow therefrom.

2. Before plunging into the facts of the case and arrive at a decision whether the applicant deserves the relief he claims, it would be appropriate to have a grip on the legal position of disciplinary proceedings crystallized by various decisions and telescope the contents upon the facts of the case which only would lead to passing a just order, instead of just an order.

3. Some of the salient features of the Disciplinary proceedings are as under:-

> *(a) The enquiry must be conducted bona fide and care must be taken to see that the enquiry does not become an empty formality.* ***(State of Uttaranchal vs Kharak Singh (2008) 8 SCC 236)*** *Inquiry to be strictly in accordance with rules, charges should be specific and definite giving details of the incident which formed the basis of charges – has to be conducted fairly, objectively and not subjectively -* ***Union of India and Others vs Gyan Chand Chattar – (2009) 12 SCC 78***
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> *(b) An inquiry officer acting in a quasi-judicial authority is in the position of a pendent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. ....* ***State of U.P. v. Saroj Kumar Sinha,(2010) 2 SCC 772 :***
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> *(c) And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the employee concerned prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are*

incredible? ***(Kashinath Dikshita vs Union of India (1986) 3 SCC 229)***

(d) a document not confronted to the delinquent cannot be relied upon for establishing the fact that the delinquent is guilty of a misconduct (see ***Nicks (India) Tool vs Ram Surat, (2004) 8 SCC 222 at page 227.)***

(e) summoning a witness by the delinquent officer should be considered by the enquiry officer. It was obligatory on the part of the enquiry officer to pass an order in the said application. He could not refuse to consider the same. It is not for the Administration to contend that it is for them to consider as to whether any witness should be examined by it or not. It was for the enquiry officer to take a decision thereupon. A disciplinary proceeding must be fairly conducted. An enquiry officer is a quasi-judicial authority. He, therefore, must perform his functions fairly and reasonably which is even otherwise the requirement of the principles of natural justice. ***Union of India v. Prakash Kumar Tandon,(2009) 2 SCC 541.*** *Appreciation of evidences would be permissible by the Inquiry Officer to the limited extent to see whether the case is one of some evidence evidence.*

*(f) Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. The enquiry officer cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot enquire into the allegations with which the delinquent officer had not been charged with. (****M.V. Bijlani vs Union of India (2006) 5 SCC 88)***

(g) The Disciplinary authority shall record reasons while passing an order adversely affecting an individual: (***G.Vallikumari v. Andhra Education Society,(2010) 2 SCC 497****) :*

(h) The appellate authority shall apply his mind to the entire case and ascertain to consider (1) whether the procedure laid down in the rules has been complied with; and if not, whether such non-compliance has resulted in violation of any of the provisions of the Constitution of India or in failure of justice : (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty, or remit back the case to the authority which imposed the same. ***Ram Chander v. Union of India, (1986) 3 SCC 103 , Narinder Mohan Arya v. United India Insurance Co. Ltd.,(2006) 4 SCC 713 Apparel Export Promotion Council v. A.K. Chopra***

(i) Judicial review is a review of the manner in which the decision is made. to ensure that the individual receives fair treatment The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding

> *reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case* ***(B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749)***

4. Now, a vignette of the facts of the case with terse sufficiency. The applicant has been working in the second respondent Institute as Technician (House Keeper) since 2002. He has been assigned the duty of maintaining the mess along with other duties of maintaining the guest house and Hostel.

5. The second respondent has issued a charge sheet dt 12.6.2007, under Rule 14 of CCS (CCA) Rules 1965 on the ground of collecting mess advance from inmates of the International hostel without issuing official receipts. The applicant having denied the charges, the same entailed appointment by the Disciplinary Authority of the Presenting Officer to prosecute the case and Inquiry Officer to render his findings after conducting the inquiry dispassionately.

6. Surprisingly, the inquiry officer declined the request of the applicant to engage a defence assistant, which directly and proximately, infringes the tenets of Principles of Natural Justice. The Tribunal had to intervene to permit engagement of the defence assistant on the applicant's approaching the Tribunal in this regard, vide OA 804/2007 vide order dt. 28.11.2007.

7. The spinal, rather, the lone charge against the applicant is that he has not issued any official receipts for the money collected.

8. The prosecution, to prove the case had relied upon certain documents and also produced certain witness. SW-2, the hostel in-charge, refused to be cross examined though he gave a key note about alleged financial mismanagement by the applicant. SW-3 during inquiry has confirmed the note of financial mismanagement which is intrinsic to the present case. SW-1 has deposed that there are no written guidelines and that conventional procedures are being followed over the last 30 years in running the mess. She did confirm that there were complaints against the applicant from the inmates and that she did complain to the Director. It is the case of the prosecution that informal and improvised procedure was adopted by the applicant in issue of official receipts, which does not live up to the rigors of a strict accounting and auditing procedures. Therefore in the strict sense of the word 'official receipts' receipts were not issued.

9. On the part of the applicant, it has been contended that the mess was being run by NIN Alumini which is a private body and that his discharge of duties for a private body, does not come under the ambit of official duties for proceeding under CCS (CCA) rules. This contention is bereft of any merit as supervising of dining services is one of duties prescribed in the Employment notification for Technician (House Keeper).

10. The next contention of the applicant is that there is no prescribed format of official receipt and as such, the applicant resorted to giving receipts for the amount received by him from the scholars in paper cards as per the procedure in vogue.

11. Official receipts, normally, have a structured format and are designed for a specific purpose to be signed by an authority authorized to do so which, when so followed, would stand the scrutiny of law in contrast to paper cards that are devoid of acceptable accounting practices, if there be a prescribed format. In the present case under annexure III of the charge sheet it is adduced that small paper cards were issued by the applicant as token of receiving the mess advance. Rules and Regulations enclosed as annexure XVII of OA only pronounce that the scholars have to deposit one month's mess charges in advance with the international Hostel and clear the bills by the end of every month. It does not mention about any specific procedure to be followed. Though issue of receipt in token of receipt of the money is latent in the regulation, the same has not been made patent by prescribing any format of receipt. Therefore, the very charge that applicant has not issued 'official receipts' is devoid of legal strength. It is not the case of the prosecution that no receipt has been issued for the amount received, much less the amount misappropriated. Even if there be one such allegation, the same has to be proved in the inquiry and the Inquiry Officer must record the finding to that effect. Hence the contention of the counsel for the applicant that there was no official receipt prescribed does hold good. The defence has not much to say in the reply statement on this count nor in their averments before the Tribunal.

12. The contention of the applicant includes that there has been an infringement in the procedure in as much as no opportunity had been afforded to him in respect of cross examination of witnesses and the same has vitiated the proceedings. He had referred to the fact that SW-2 was not cross examined though he authored the note of financial mismanagement and it being the

fulcrum of evidence against the applicant. The respondents have not ably answered as to why the inquiry should not be considered as vitiated on this score. Again, S.W -1 confirmed that there are no written guidelines but only conventional procedures were followed from the last 30 years strengthens the case of the applicant in as much as, he was following the procedure established over the years. S.W-3 who appended his signature to the note of financial mismanagement admitted that he is ignorant of the rules and regulations which govern the running of the mess. S.W-4 confirms the conventional procedure being followed. All these, according to the applicant go in his favour. The respondent No.3 who has sworn to the reply statement on behalf of the respondents is incidentally Inquiry Officer in the present case. Therefore, the counsel for the applicant has argued that it will lead to bias in placing the facts before the Tribunal.

13. The respondents have commented in the reply statement that the amount collected has to be remitted to the respective account. True, but this was not part of the charge sheet and hence extraneous and therefore loses its vitality to be taken on record against the applicant. Again, the finding of the I.O. that the money was not used for any other purpose and handed over to the convener of the hostel committee on demand establishes the fact that there was no misuse.

14. Respondents urged that the applicant had kept the money with him and not in the NIN chest. Applicant's response was that it cannot be operated by him, since it is an official cash chest of NIN. The same was kept in a almirah kept in the store and operated by him.

15. Taking into account all the above, the conclusion arrived at by the Inquiry officer holding that the charge is proved is not at all based on any legally admissible evidence for the twin reasons:-

(a) Since there was no official receipt prescribed at the first instance, the very charge becomes invalid. Any form of receipt, in the absence of a prescribed format, would fill the bill. This has been, admittedly, carried out by the applicant,

(b) **I.O has confirmed that the applicant has not utilized the money for any purpose and returned by the applicant when demanded by the convenor of the hostel committee**. Thus, it goes to prove that there was no embezzlement or misuse of the money collected.

16. The Disciplinary Authority has imposed the penalty, by concurring with the I.O report. When there was material content which was not in pursuance of the rules, at least an examination of the same with appropriate comments would have made the conclusion of the Disc. Authority more balanced.

17. The appellate authority having not disposed the appeal despite repeated representations, the applicant had to seek judicial intervention by filing OA 273/2010. This again is unfair. Reasons for such delay in disposing the appeal have not been expounded in the reply statement nor during the submissions before this Tribunal.

18. Thus, as can be seen from the stage of instituting the charge against the applicant to the stage of disposing of the appeal there appears to be an element of bias and prejudice against the applicant. Be it not allowing the applicant to engage the defence assistant or non disposal of appeal until mandated by this

Tribunal to do so, are instances which go against the respondents in not upholding the Principles of Natural Justice. Besides, the very foundation of the charge sheet under rule 14 has been dismantled by charging that official receipts were not issued by the applicant when the respondents themselves did not prescribe such official receipts or well laid down procedures to concur with the established accounting and auditing procedures in dealing with the amounts collected. The appellate authority referring to extraneous issues not cited in the cha0072ge sheet do not go well in upholding the letter and spirit of CCS(CCA) rules and cited judgements. Thus, the principles of natural justice have not been followed by the concerned authorities causing serious prejudice to the applicant and thereby justice has been denied to him.

19. In view of the aforesaid facts, the impugned orders No.NIN/PERS/P 14(113)/2009/144 dt 14.5.09/20.5.2009, and dt 30.12.2011 communicated vide Vig/1/2007 (RHN) dt. 11.01.2012 are legally untenable and are, therefore, liable to be quashed and set aside, which we order accordingly. The curtain is drawn on the saga of the applicant in knocking the doors of this Tribunal by directing the respondents to release all the benefits that are due consequent to quashing of the impugned orders from the date from which he is eligible.

20. The O.A is thus allowed to meet the ends of justice. As regards cost, this being the third round of litigation, though cost, if levied, would justify, the sober submission of the counsel for the respondents dissuades us from levying any cost. Hence, No order as to costs.

(SWARUP KUMAR MISHRA) **(B.V. SUDHAKAR)**
MEMBER (JUDL.) **MEMBER (ADMN.)**

Dated, the 20th day of August, 2018

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