

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

O.A. 050/00031/2014

**Reserved on- 08.09.2017.
Date of pronouncement 01.11.2017**

CORAM

Hon'ble Shri A.K. Upadhyay, Member [A]

Hon'ble Shri J.V. Bhairavia, Member [J]

1. Ratnesh Kumar son of late Ram Dev Sah Ex-L.D.C., I.A.R.I, Regional Station Wellington resident of Village- Balra Kishun, P.O.- Balra Ismail Via-Baghi, District- Muzaffarpur (Bihar).

.....Applicant

By Advocate : Shri A.N.Jha

Versus

1. The Union of India represented through the Director General Indian Council of Agricultural Research, Krishi Bhawan, New Delhi-110001.
2. The Director, Indian Agricultural Research Institute, New Delhi-110012.
3. The Joint Director (Administration) Indian Agricultural Research Institute, New Delhi-110012.
4. The Head Indian Agricultural Research Institute, Regional Station, Welhington, Nilgiri, Tamil Nadu-643231.

.....Respondents

By Advocate: Shri S.N.Pathak

ORDER

Jayesh V. Bhairavia, M [J]:

The applicant, through this O.A challenges the office order dated 03.10.2013 (removal from service), Order of Appellate Authority dated 07.01.2014 (Annexure A/15) and the Letter dated 30.10.2013/01.11.2013 by which the applicant has been directed to vacate the government quarter. As such, he prays for the following relief(s) in terms on para 8 of this O.A.:-

“[8.a] That your Lordships may graciously be pleased to quash and set aside the removal order bearing office order No.20-12/2012-OMU dated 03.10.2013 (Annexure A/11) issued by the respondent no.3 with direction to the respondents to treat the suspension and removal to reinstate period as on duty with all consequential benefits, the appellate order dated 07.01.2014 rejecting the appeal which is contained as Annexure A/15 may also be quashed and set aside.

[8.b] The respondents may further be directed to quash and set aside the Letter No. 2013-14/2607/2 dated 30.10.2013/01.11.2013 by which the applicant has been directed to vacate the government quarter No. 22/2 Type 1 as Pusa in Samastipur (Bihar).

[8.c] The respondents may please be directed to dispose of the appeal preferred by the applicant on 06.11.2013 to the respondent no.2.

[8.id] Any other order/directions that may be considered deemed fit and proper in the facts and circumstances of the case be passed/issued.

[8.e] Cost of proceeding may be awarded to the applicant.

2. The brief facts of the case, as submitted by the applicant, are as below :-

[i] The applicant namely Shri Ratnesh Kumar was initially appointed as LDC on compassionate ground vide letter dated 04.07.2009 (Annexure A/1). The applicant joined the said post on 14.07.2009. Subsequently, applicant was transferred from Pusa (Samastipur) to Welhington in Tamilnadu where he joined on 03.02.2012 and continued his service till the date of his removal. But, the applicant kept the government quarter allotted to him at Pusa, Samastipur (Bihar) in his possession.

[ii] A charge memo vide letter dated 04.01.2013 (Annexure A/2) was issued to applicant alongwith the list of witness asking him to submit reply/written statement for the charges alleged against him. The applicant was also placed under suspension vide letter dated 16.11.2012 and his Headquarter during his suspension was fixed at Welhington and he was restricted to leave the Head Quarter without permission.

[iii] The applicant submitted his reply/written statement on 22.01.2013 (Annexure A/3). Thereafter, on 28.02.2013 (Annexure A/5), the applicant was issued another memorandum of charge alongwith allegations list of witness and list of documents mainly of leaving headquarter without permission and he was asked to submit their reply to it within 10 days from the date of receipt of the memorandum.

[iv] The respondent no.3 i.e the Joint Director (Administration) Indian Agricultural Research Institute, New Delhi, vide letter dated 08.05.2013 (Annexure A/6), appointed Mr. Harish Chidiyal, Assistant Administrative Officer thereof as an Inquiry Officer to inquire into the charge and allegations against the applicant. The respondent authority also appointed Mr. Arun Kumar Tripathi, an officer of the office as the Presenting Officer to represent the respondents in the inquiry.

[v] The learned counsel for applicant submits that the applicant was never asked by the respondent authority to appoint anyone in his defence. However, the Inquiry Officer vide his letter dated 23.05.2013 (Annexure A/8) intimated the applicant that he might represent his case alongwith his Defence Helper before the Inquiry Officer on 27.09.2013. Looking no response, the Inquiry Officer completed the Inquiry in his absence of applicant. A copy of Inquiry report was received by the applicant through Disciplinary Authority vide letter dated 07.09.2013 (Annexure A/9).

[vi] The applicant vide his letter dated 20.09.2013 (Annexure A/10) submitted the contention of Inquiry Officer. Thereafter, the services of applicant was removed vide letter dated 03.10.2013 (Annexure A/1).

[vii] The applicant preferred an appeal before the Director concerned against the order of removal from service and non-payment of subsistence allowance from May, 2013 vide representation dated 06.11.2013 (Annexure A/12) whereby his appeal was rejected vide order dated 07.01.2014 (Annexure A/15).

In sum, the applicant submits that the action of the respondents is arbitrary, non-speaking, without applying the proper judicial mind and without giving opportunity of personal hearing; hence reliefs prayed for in para 8 of this OA.

3. The respondents, through their written statement, have submitted as below :-

(i) The learned counsel for respondents submits that statement of applicant that he was never asked to forward the name of defence assistant to defence his case is wrong. In the very first letter of Inquiry Authority, bearing No. Sasya/1171/3 dated 23.05.2013 addressed to Sh. Ratnesh Kumar by which he was asked to appear before the Inquiry Committee on 27.05.2013 at 11:00 AM alongwith his Defence Assistant in the Division of Agronomy, IARI, New Delhi-12.

(ii) The learned counsel for respondents submitted that the applicant was given enough opportunity to defend his case either personally or through his Defence Assistant but he did not took care of the proceedings which was warranted for the need of justice. The Disciplinary Authority, looking to the gravity of misconduct and his non-cooperative attitude during the Inquiry, imposed the penalty. While imposing penalty, the Disciplinary Authority took into consideration all material facts of the case available on record.

[iii] The learned counsel for respondents further submits that when the applicant was under suspension, he was given subsistence allowance. He further submits that in case of any doubt he can gathered the information from the Inquiry Authority or from the office.

In sum, the learned counsel for respondents submits that in view of the above, the applicant is not entitled for any relief and the O.A is fit to be dismissed as not maintainable and also having not merit.

4. No rejoinder to the written statement has been filed.

5. Heard the parties and considered the submissions of rival parties and perused the record carefully. It is apt to mention here that as per the provision of section 19 (4) of the Administrative Tribunal Act, 1985 which read as under :-

"19 (4) Where an application has been admitted by a Tribunal under Sub-section (3) every proceeding under the relevant service rules as to redressal of grievances in relation to the subject matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation

in relation to such matter shall thereafter be entertained under such rules.”

7. The present O.A has been filed on 03.01.2014 challenging the removal order of the applicant dated 03.10.2013 passed by the Joint Director, (Administration) Indian Agricultural Research council, and subsequently the appeal which was preferred before filing of the present O.A had been come to be decided by the Appellate Authority on 07.01.2014 and the applicant was allowed to amend the prayer clause for challenging the said order which was passed by the Appellate Authority.

It is important to note here that, as per the provision of the Act, 1985, no appeal or representation can be entertained after admission of application filed Under Section 19 of the Administrative Act, 1985. However, the Appellate Authority had passed another order on 08.05.2014, such order in appeal is not tenable as the same was observed by this Tribunal in its interim order dated 05.09.2014.

It is well settled in law that Tribunals or courts are not supposed to function as Appellate Authority over the evaluation of evidence or material made by the authorities. The scope of judicial review in disciplinary matter is limited to examine the legality and fairness of the proceedings. The Hon'ble Apex Court in recent pronouncement held that infringement of each and every procedure does not vitiate the departmental proceedings. What is important to see whether there has been "substantial" compliance of natural justice and whether the decision is based on some evidence. The valuable right to file appeal made available to the delinquent under the statutory rules for ventilate his grievance against the order of Disciplinary Authority. In the present case, the applicant has filed the appeal before the concerned Appellate Authority. However, without offering any appropriate opportunity to the applicant and also without considering the submission and contention raised by the applicant, the Appellate Authority has passed the order dated 07.01.2014 in mechanical manner which amounts taking away the valuable right of the applicant. The Appellate Authority ought to have consider all the material of the Inquiry, the gravity and the punishment imposed by the Disciplinary Authority alongwith the ground of defence submitted by the

applicant/appellant. However, the impugned order does not speak any cogent reason for rejecting the appeal of the applicant.

we note that removal also is the ultimate punishment for a government servant. The possibility of getting of another government employment is only a legal fiction, in practice, its chances are close to nil. Therefore, now that this point has been agitated before us, in our view in the interest of justice it would be prudent for the Appellate Authority to give appropriate opportunity to the applicant and if necessary personal hearing to the applicant so that he gets an opportunity to place before him if there are any mitigating circumstances or any other contributing causes for this mishap which might persuade the Appellate Authority to consider giving a lower punishment. In conclusion, the Appellate Authority's order dated 07.10.2014 is quashed and set aside and the matter is remanded to the Appellate Authority to pass fresh reasoned order in accordance with law after giving personal hearing to the applicant within a period of three months from the date of receipt of a copy of this order. this Tribunal has not expressed any opinion on the merit of the O.A. and direction issued to the Appellate Authority to consider the appeal of the applicant filed against the order of punishment dated 03.10.2013 issued by the respondent no.3 by which the applicant has been removed from the service. Accordingly, O.A is allowed in part. No costs.

(J.V. Bhairavia) M [J]

(A.K. Upadhyay] Member [A]

/mks/

