

OA.No.170/00327/2017 & 00454/2017/CAT/Bangalore Bench

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATIONS NO.170/00327/2017 & 170/00454/2017

DATED THIS THE 26th DAY OF NOVEMBER, 2018

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI DINESH SHARMA, ADMINISTRATIVE MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Sourav Kumar,
S/o Sri Rajendra Prasad,
Aged 57 years,
Working as Principal Scientist Grade IV (4),
Central Food Technology and
Research Institute,
Mysuru – 570 026,
residing at No. 300,
CFTRI Layout, Bogady 2nd Stage,
Mysore – 570 026

.....Applicant

(By Advocate Shri A.R. Holla)

Vs.

1. Union of India
By Secretary,
Ministry of Science and Technology,
Technology Bhavan,
New Mehrauli Road,
New Delhi – 110 016.

2. The Director General,
Council of Scientific and
Industrial Research,
Anusandhan Bhavan,
2, Rafi Ahmed Kidwai Marg,
New Delhi – 110 001.

3. The Director,
Central Food Technology
And Research Institute (CFTRI)
Mysuru – 570 026.

....Respondents

(By Shri K. Ananda, Counsel for R2 & R3
Shri S. Prakash Shetty, Counsel for R1)

ORIGINAL APPLICATION NO.170/00454/2017

Sourav Kumar,
S/o Sri Rajendra Prasad,
Aged 55 years,
Working as Principal Scientist Grade IV (4),
Central Food Technology and Research Institute,
Mysuru – 570 026,
Residing at No. 300,
CFTRI Layout, Bogadi 2nd Stage,
Mysore – 570 026

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3. The Director,
Central Food Technology
And Research Institute (CFTRI)
Mysuru – 570 026

4. Prof. Ashwini Kumar Nangia,
(Ad hoc Disciplinary Authority),
Director, CSIR-National Chemical Laboratory,
Dr. Homi Bhabha Road,
Pune – 411 008

....Respondents

(By Shri K. Ananda, Counsel for R2–R4)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER(A) AS 3RD MEMBER)

There are two OAs handled in the decision, viz.OA.No.327/2017 relating to the promotion of the applicant w.e.f. 12.06.2011 based on the meeting of the assessment committee from 9.9.2013 to 28.11.2013 and the finding of the committee

OA.No.170/00327/2017 & 00454/2017/CAT/Bangalore Bench in December 2013 that he was fit for the promotion and OA.No.454/2017 where the issue relates to challenging the charge memo issued in January 2014. The Hon'ble Judicial Member has concluded that the decision in the Janakiraman's case is applicable to the case of the applicant and there has been an unjust deprivation of the career enhancement of the applicant. He has also gone into the details of the equipment working to the satisfaction of the team from CBI etc., and therefore concluded that the charge should not lie. There have also been certain allegations made by the applicant as to why the machinery ordered was not installed so as to pave the way for new purchase. The Hon'ble Judicial Member has also found fault with the bland letter of the CVC and has given the benefit of doubt to the applicant having been a junior officer and that too only one among others responsible. The Hon'ble Administrative Member has taken the view that the decision of the Janakiraman's case cannot be applied blindly and when the proceedings against the applicant had commenced from the surprise check of 2010, merely because the charge sheet was issued after the committee meeting would not entitle the applicant to gain a promotion especially since the matter of integrity was being probed and giving promotion to him at that stage would not meet the ends of justice. On the charge memo, the Hon'ble Judicial Member has kept the same in abeyance for the time being and has ordered for the Director General, CSIR to call for the explanation of all the officials concerned and take a decision as to the further continuance of the proceedings because of the inordinate delay and the involvement of other officials.

2. On the first issue regarding promotion, it is clear that the charge sheet against the individual was issued on 20.01.2014 and there is no dispute that the question of fixing responsibility on the applicant was going on for quite some time based on the joint surprise check conducted in February 2010 itself by a CBI team along with the officials of the respondents' organisation. The fact remains that on the date when the committee considered the applicant's case, there was no charge

sheet issued and therefore, following the sealed cover procedure would not have arisen at all. In this particular case, the purchase orders were issued in the year 1999 and the supply was completed as early as January 2000. The allegations on the purchase were made in the year 2010, i.e. ten years later, subsequent to which the CBI conducted a surprise check and a vigilance report(Annexure-R7) was also submitted wherein a conclusion was arrived at that the applicant had not taken adequate initiative for installation of the costly Horizontal Roller Mill indented by him and that he had on 8.3.2001 submitted a false Inspection Report certifying that the unit was installed and working satisfactorily. An internal report submitted by officials of CFTRI vide Annexure-R9 came to the conclusion that the purchase of the equipment has, however, been made following prescribed purchase procedure. The issue was under correspondence between CSIR Headquarters and CFTRI for quite some time and glaring delays are noticed at every stage. As already noted, a purchase made in 1999-2000 gets investigated a full decade later and that too based on an internal complaint. In the year 2012, an adhoc disciplinary authority was appointed by CSIR and the official had requested for according approval to proceed against the applicant and to obtain the first stage advice from CVC. This letter is dated 30.03.2012 and the reply from Headquarters of CSIR emerges more than 1 ½ years later on 15.10.2013 citing the letter of CVC dtd.26.09.2013. The CVC letter also refers to CSIR's letter dtd.12.08.2013. It is crystal clear that even for getting the first stage advice from CVC, the organisation had taken more than 1 ½ years. The sequence of events above, while not directly exposing any malafide intentions on the part of the authorities, does not show that the issue was taken as seriously as one would have expected in a matter like this. Therefore, the plea that the disciplinary proceeding was contemplated and was in process at the time when the assessment committee met and therefore the chances of promotion should be

OA.No.170/00327/2017 & 00454/2017/CAT/Bangalore Bench denied to the applicant cannot be accepted. I therefore, agree with the Hon'ble Judicial Member regarding the grant of promotion w.e.f. 12.06.2011 to the applicant who was found fit by the assessment committee in December 2013 well before the issue of charge sheet against him. The order of the Hon'ble Apex Court in Janakiraman's case clearly supports this decision.

3. Regarding the other issue relating to the charge memo dtd.20.01.2014 vide OA.454/2017, the same issue has already been traversed by this Tribunal in OA.No.673/2014 wherein the representation of the applicant dtd.20.3.2012 with a big volume of papers was ordered to be sent to the then Secretary in-charge and it was ordered that he should look into the matter and pass appropriate orders so that the economy of the nation may not be diminished unduly. This Tribunal also ordered that the charge sheet be kept in abeyance till the Secretary had a chance to look into it and pass a composite order on the continuation of the order also, if he so feels, after examining the entire documents. This order of the Tribunal was passed on 23.06.2015. However, nothing was done by the respondent institution leading to a miscellaneous application No.272/2016 which was disposed of on 20.06.2016 by this Tribunal to comply with the order within two more months. Based on this direction of the Tribunal, the DG, CSIR finally passed an order dtd.19.09.2016 and subsequent to that the respondents have issued orders separately for changing the enquiry officer, presenting officer etc. The Hon'ble Administrative Member has opined that "it is indeed unfortunate that an apparent wastage of public money remained undetected for 10 years. But it will be a greater travesty of justice, if, for that reason alone, any attempt to proceed against person considered prima-facie responsible is obstructed through judicial (or quasi judicial) intervention. The applicant will have a fair chance to defend himself in any such inquiry and the delay may act as much in his favour as it is to his prejudice". He has, therefore, not agreed for quashing the charge memo. The

Hon'ble Judicial Member has ordered the DG, CSIR to hold a fresh inquiry into the responsibility of all the officials concerned after giving them the chance of explanation and also that the present inquiry must be held in abeyance for the time being. The Hon'ble Judicial Member has also authorised the DG, CSIR to re-open the inquiry after having obtained the replies of the concerned officials including Dr.Venkateswara Rao and the applicant. This examination by the DG has been ordered to be completed within the next two months and show cause notice to be issued to all concerned. From the details of the case, it is seen that the said equipment was supplied as early as January 2000 and at the time of surprise check by the CBI team in February 2010, it was categorically informed by the officials of the respondents that the Horizontal Roller Mill was used for continuous grinding of cleaned wheat and the same is being used only for demonstration purpose for the use of trainees since the beginning of the purchase. The CBI team also notes that the officials of the FMBCT operated the said equipment. However, in reply to the communication from the CVO, CSIR, the applicant vide Annexure-R12 himself states that the Horizontal Roller Mill was not installed as it required integration work with the existing mill. He has also pointed out that the HOD of the department was sanctioned a further sum of Rs.5 lakhs in the year 2002 itself for integrating the new mill with the existing mill and installation of the same. He has also stated that an amount of \$4500 got sanctioned by him for the installation by the foreign suppliers has also not been paid till date as the installation is not completed and the applicant has also been repeatedly stating that the Roller Mill can be made functional even now which was also noted by this Tribunal in its order in OA.No.673/2014. Therefore, the conclusion one can arrive at is that the equipment was received and erected but the installation and integration to the existing mill was never completed whatever be the reasons or allegations against the different HODs etc. The equipment was

OA.No.170/00327/2017 & 00454/2017/CAT/Bangalore Bench received in January 2000 and the certification of inspection regarding installation and working satisfactorily was signed by the applicant on 8.3.2001 i.e. almost one year 2 months later. It is not clear as to what prevented the applicant and other officials concerned from taking necessary steps to install the equipment in these 14 months. The plea taken by the applicant that the certificate signed by him in March 2001 was only for the purpose of accounting it in the stores department and effecting payment for receipt cannot be accepted on the face of it since as the inspecting officer, he had signed in the certificate regarding the installation and satisfactory working of the Mill. He had not made even a foot note regarding the non-integration with the existing mill. Therefore, he cannot claim that he is completely blameless in this regard despite the fact of considerable delay noticed at every stage and that he was too junior and others were also responsible etc. It is also noted that the then HOD Dr.Venkateshwara Rao is no more and the HOD before him has also retired. Therefore, no useful purpose will be served if the DG, CSIR is to take up a detailed examination once again and take further action. The applicant himself states in several correspondences that he is willing to explain all the issues before a Committee constituted by the DG, CSIR. As rightly stated by the respondents, if he is willing to appear before the Committee, there is no reason as to why he should not make the same pleadings and furnish the details before the inquiry officer. I, therefore, come to the conclusion that the inquiry initiated on 20.01.2014 should be completed without any further delay and the applicant must make use of this opportunity to vindicate himself. The DG, CSIR may also take further action as noted at para(f) of Annexure-R22 on the other allegations.

/ps/

Annexures referred to by the applicant in OA No. 170/00327/2017

Annexure A1 Copy of the memo dated 20.01.2014
Annexure A2 Copy of the applicant's representation dated 25.03.2014
Annexure A3 Copy of the applicant's representation dated 12.05.2014
Annexure A4 Copy of the letter dated 10.07.2014
Annexure A5 Copy of the applicant's representation dated 24.07.2014
Annexure A6 Copy of the order dated 09.09.2014
Annexure A7 Copy of the letter dated 26.06.2015
Annexure A8 Copy of the applicant's representation dated 14.09.2015
Annexure A9 Copy of the applicant's representation dated 23.11.2015

Annexures with reply statement:

Annexure-R1: Copy of the indent No. 3219 dated 12.02.1999
Annexure-R2: Copy of the recommendation of the Indentor
Annexure-R3: Copy of the Purchase Order dated 15.03.1999
Annexure-R4: Copy of the note dated 25.03.1999
Annexure-R5: Copy of the inspection and installation report submitted by the applicant
Annexure-R6: Copy of the joint surprise check proceedings of the CBI
Annexure-R7: Copy of the vigilance report of CVO, CSIR
Annexure-R8: Copy of the letter dated 27.01.2011
Annexure-R9: Copy of the report dated 07.03.2011
Annexure-R10: Copy of the letter dated 16.05.2011
Annexure-R11: Copy of the letter dated 19.05.2011
Annexure-R12: Copy of the reply dated 20.05.2011
Annexure-R13: Copy of the letter dated 30.01.2012
Annexure-R14: Copy of the letter dated 30.03.2012
Annexure-R15: Copy of the letter dated 15.10.2013
Annexure-R16: Copy of the letter dated 24.10.2013
Annexure-R17: Copy of the letter dated 02.01.2014
Annexure-R18: Copy of the charge memo dated 20.01.2014
Annexure-R19: Copy of the letter dated 28.02.2014
Annexure-R20: Copy of the OM dated 12.03.2014
Annexure-R21: Copy of the order dated 17.04.2014
Annexure-R22: Copy of the order dated 19.09.2016

Annexures referred to by the applicant in OA No. 170/00454/2017

Annexure A1 Copy of the memo dated 20.01.2014
Annexure A2 Copy of the report dated 08.03.2001
Annexure A3 Copy of the letter dated 12.03.2001
Annexure A4 Copy of the applicant's representation dated 26.03.2014
Annexure A5 Copy of the order dated 23.06.2015 in O.A. No. 673/2014
Annexure A6 Copy of the order dated 19.09.2016
Annexure A7 Copy of the applicant's representation dated 17.10.2016

Annexure A8 Copy of the order dated 23.12.2016

Annexure A9 Copy of the order dated 23.05.2017

Annexure A10 Copy of the order dated 23.05.2017

Annexures with MA No. 408/2017

Annexure A11 Copy of the order dated 04.09.2017

Annexure A12 Copy of the notice dated 13.09.2017

Annexures with reply statement:

Annexure-R1: Copy of the indent No. 3219 dated 12.02.1999

Annexure-R2: Copy of the recommendation of the Indentor

Annexure-R3: Copy of the Purchase Order dated 15.03.1999

Annexure-R4: Copy of the note dated 25.03.1999

Annexure-R5: Copy of the inspection and installation report submitted by the applicant

Annexure-R6: Copy of the joint surprise check proceedings of the CBI

Annexure-R7: Copy of the vigilance report of CVO, CSIR

Annexure-R8: Copy of the letter dated 27.01.2011

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Annexure-R10: Copy of the letter dated 16.05.2011

Annexure-R11: Copy of the letter dated 19.05.2011

Annexure-R12: Copy of the reply dated 20.05.2011

Annexure-R13: Copy of the letter dated 30.01.2012

Annexure-R14: Copy of the letter dated 30.03.2012

Annexure-R15: Copy of the letter dated 15.10.2013

Annexure-R16: Copy of the letter dated 24.10.2013

Annexure-R17: Copy of the letter dated 02.01.2014

Annexure-R18: Copy of the charge memo dated 20.01.2014

Annexure-R19: Copy of the letter dated 28.02.2014

Annexure-R20: Copy of the OM dated 12.03.2014

Annexure-R21: Copy of the order dated 17.04.2014

Annexure-R22: Copy of the order dated 19.09.2016

Annexure-R23: Copy of the notice dated 04.09.2017

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