IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

Original Application No.21/569/2017

Reserved on: 06.12.2018
Order pronounced on: 10.12.2018

Between:

V. Suresh Babu, S/o. A. Venkata Chalapathi,
Aged about 48 years, Occ: Associated Professor,
CCC & DM, National Institute of Rural Development
And Panchayati Raj, Rajendranagar, Hyderabad,
R/o. D/14, NIRD Campus, Rajendranagar,
Hyderabad – 500 030.

…Applicant

And

1. Union of India, Rep. by its Secretary,
Ministry of Rural Development,
Central Secretariat, New Delhi – 110 001.

2. The Director General,
National Institute of Rural Development & Panchayati Raj,
(Govt. of India) cum Disciplinary Authority, Rajendranagar,
Hyderabad – 500 030.

3. National Institute of Rural Development &
Panchayati Raj, (Govt. of India),
Rep. by its Registrar & Director (Admn),
Rajendranagar, Hyderabad – 500 030.

…Respondents

Counsel for the Applicant … Mr.S. Lakshminarayna Reddy
Counsel for the Respondents … Mrs.K. Rajitha, Sr. CGSC

CORAM:
Hon'ble Mr. B.V. Sudhakar ... Member (Admn.)

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

The OA is filed challenging the order of the 2nd respondent imposing the penalty of censure on the applicant vide impugned order dated 18.8.2016 and confirmed by the 1st respondent vide order dated 17.5.2017.

2. Brief facts of the case are that the applicant and another candidate by name Dr G.Valentina applied for the post of Associate professor notified in 2014 by the respondents' organisation and the applicant got selected for the said post. As per the version of the applicant Dr Valentina nurtured a grudge against him for not being selected, which led to the husband of Dr Valentina threatening the applicant on 26.3.2015. Immediately, the very same day, applicant filed a complaint before the 3rd respondent but no action was taken. In response Dr Valentina made a counter complaint against the applicant on 13.4.2015 and another colleague Dr T.Vijay Kumar. The 3rd respondent constituted an Internal Complaints Committee (ICC) to inquire into the complaint made by Dr Valentina which held the charges of sexual harassment as proved and recommended certain penalties on which the respondents acted. Thereafter the complaint of the applicant dated 26.3.2015 was referred by the 2nd respondent to a committee to inquire. While the inquiry was in progress Dr G.Valentina made another complaint on 6.10.2015. The respondents felt that the comments made by the applicant in his complaint tantamount to sexual harassment. Accordingly the 3rd respondent issued a memorandum dated 15.6.2016 alleging misconduct. The applicant replied on 23.6.2016 and the disciplinary authority awarded the penalty of censure on 18.8.2016. Aggrieved over the same the present OA has been filed.

3. The contentions of the applicant are that for having lodged a complaint against Dr Valentina, punishing him is unfair. His defence has not been considered and the 2nd respondent came to a wrong conclusion stating that the applicant has accepted the charges albeit the applicant has denied the same vide his lr dated 23.6.2016. The alleged complaint made by Dr Valentina was not furnished to the applicant to submit his defence. The applicant was already

punished earlier based on the complaint of Dr Valentina on 13.4.2015. Therefore punishing him once again is double jeoapardy. Even on appeal the appellate authority has rejected his appeal without application of mind.

4. The contentions of the Respondents are that the applicant was penalised thrice after the ICC found the allegations made against him and another colleague Dr T.Vijay Kumar, were found to be true. That they have also acted on the complaint made by him and that the present OA is an outcome of such action. In regard to the complaint made by the applicant, preliminary enquiry revealed that there were no witnesses to confirm the same. However, in the said complaint the applicant has made a mention about Dr Valentina's husband as " so called husband" which is not only in poor taste but is a debasing connotation amounting to sexual harassment. After duly considering the defence of the applicant penalty was awarded, which is evident from unnumbered para 3 of the order dated 18.8.2016. In fact the applicant has not denied the incidence and events preceding such incidence and therefore they would stand proved. Further the appellate authority after examining the fact has issued a reasoned decision. The order dated 18.8.2016 was passed after following the Principles of Natural Justice.

5. Heard the learned counsel and went through the documents submitted in detail. The learned counsel for the applicant has submitted that penalising the applicant based on his complaint is illegal. Principles of Natural Justice were not followed. The learned counsel for the respondents has argued that the applicant was punished for disparaging comment against Dr Valentina in his complaint. There is no injustice done in doing so.

6. Facts of the case indicate that the applicant and Dr Valentina belong to the teaching fraternity at the level of Associate Professor and Assistant Professor respectively. The applicant has been penalised for making the comment "so called husband of Dr Valentina" in the complaint lodged by him against Dr.Valentina. The respondents could not proceed on the applicant's complaint as there were no witnesses to prove the allegations made in the complaint. The facts being so, an unequivocal analysis of the same would enable this Tribunal to do Justice.

7. As seen from the complaint made by the applicant on 26.3.2015 he did use the words "so called husband" which is derogatory. The Respondents consequently took action and penalised him with censure. The argument of the learned counsel that he should not be penalised on his own complaint is incorrect. While making a complaint, it should be framed within the ambit of decency and the allegations are to be proved. The applicant did cross the Laxman Rekha by using the words cited. Being an Associate Professor, it is expected of him to responsibly state what he wants to in the complaint with decency and decorum. The applicant made a wild allegation which is not only hurting but could be construed as character assassination of Dr. Valentina. This Tribunal is surprised to note that at the level of an Associate Professor such a language is used while complaining against a female colleague. The respondents are well within their right for taking due notice of the same and initiating against the applicant. However, when it comes to processing of the disciplinary case, it is seen that the respondents stated that there was no witness to the incident of the husband of Dr. Valentina threatening the applicant. This is not true as the complaint of the applicant does refer to Mr.Murali of Administrative A- section being available for some

time when the incident was occurring. The respondents have not stated as to whether they have enquired with this official and if so what was the outcome. Therefore their conclusion is bereft of procedural adequacy. The copy of the ICC report dated 5.10.2015 was not given to the applicant to submit a proper defence. One another distinct aspect found is that the imputations do not refer to the disrespectful words cited, though the respondents have heavily banked on this in their reply statement while justifying the imposition of penalty of censure. A specific inclusion of the same along with the reason as to why they should not be treated as misconduct/ breach of discipline would have made the imputations clear and specific. It is exactly on this ground the learned counsel for the applicant has taken objection stating that the imputations are vague and not understandable. The objection has to be sustained as the imputations are indeed ambiguous. The appellate authority order dated 17.5.2017 is neither a speaking nor a reasoned order. It just says that it was placed before the Executive council on 12.4.2017 and that the Executive council has rejected it. The applicant has raised many pertinent issues in his appeal which have to be necessarily addressed while disposing it. Such an attempt or effort was not made. In fact, a speaking order is essential to as to why a penalty is imposed. More so, in view of the fact that penalty would have a demoralising impact on the psyche of a charged employee. Therefore before punishing an employee the main elements of a speaking order are to be adhered to which are expounded below:

(a) Context: The order should narrate the back ground of the case. As has been laid down in a catena of decisions, law is not to be applied in vacuum. The circumstances that have caused the issue of the orders have to be brought out clearly in the introductory portion of the order.

(b) Contentions: Rival submissions, where applicable, must be brought out in the order. For example the evidence led by the presenting officer in support of the charges and by the charged officer for refuting the charges. Needless to add that there may be cases wherein submissions may be unilateral as is the case of stepping up of pay, etc. Even in the course of disciplinary proceedings, there may be some instances where in the concept of rival submission may not apply as in the case of representation for change of Inquiring Authority or for engagement of legal practitioner as defence assistant.

(c) Consideration: The order should explicitly evaluate the submissions made by the parties vis-à-vis each other and in the light of the relevant statutory provisions. Each submission by the parties must be considered with a view to decide about its acceptability or otherwise.

(d) Conclusions: Outcome of the consideration is the ultimate purpose of the order. It must be ensured that each conclusion arrived at in the order must rest on facts and law.

Telescoping requirements of a speaking order on to the order issued by the appellate authority, it is unmistakably obvious that the order is neither speaking nor reasoned.

Honourable Apex Court has summarised the deficiency, if the order is not a speaking one and what its impact would be in the case of **Markand C. Gandhi Vs. Rohini M. Dandekar Civil Appeal No. 4168 of 2008** decided on 17.07.2008

"4. The impugned order runs into 23 pages. Upto the middle of Page 10, the Committee has referred to cases of the parties; from middle of Page 10 to middle of Page 11, issues have been mentioned; from middle of Page 11 to the top of Page 22, the Committee has referred to the evidence, oral and documentary, adduced on behalf of the parties without discussing the same and recording any finding whatsoever in relation to the veracity or otherwise of the evidence; and thereafter disposed of the proceeding which may be usefully quoted hereunder: We have gone through the records. The issues were framed on 18-8-1990. Issue No. 1 relates to a threat given by the Respondent to the complainant on 8-6-1977. This issue is not related to the professional misconduct and in this regard the complainant has not submitted any documentary evidence to prove her stand. As far as the issue No. 2 is concerned, this is a very important issue. The complainant has submitted document in support of her contention and proved the issue. This fact cannot be denied by oral version, as there is documentary record. As far as the issue No. 3 is concerned, this is also proved by the complainant by her evidence. Issue No. 4 relates to the certificate issued by the Respondent. This has also been proved by the complainant by documentary proof which is on record. Likewise Issue No. 6 is also proved by documentary proof. Issues Nos. 6 to 7 relate to one Mr. Vora, architect and builder and Mr. B.S. Jain and the Respondent. The main issue in this controversy is issue No. 8 i.e., whether the Respondent is guilty of professional misconduct or other misconduct. In this respect it is the admitted position before the Committee that some documents were already on record and retained by the Respondent and the certificate issued by the Respondent with regard to the property in question. It is also an admitted position that in this matter a compromise letter was filed by the parties earlier. We have heard the arguments and we have also perused the documents. The complainant has proved her allegations made in the complaint against the Respondent. The allegations made are very serious. We are of the opinion that the Respondent has committed professional misconduct and thus we hold him guilty of professional misconduct and suspend him from practice as an advocate before any Court or authority in India for a period of five years and we also impose a cost of Rs. 5,000/- to be paid by him to the Bar Council of India which on deposit will go to the Advocates Welfare Fund of the Bar Council of India. If the amount of cost is not paid within one month from the date of receipt of this order, the suspension will be extended for six months more. 5. From a bare perusal of the order, it would appear that, virtually, there is no discussion of oral or documentary evidence adduced by the parties. The Committee has not recorded any reason whatsoever for accepting or rejecting the evidence adduced on behalf of the parties and recorded finding in relation to the misconduct by a rule of thumb and not rule of law. Such an order is not expected from a Committee constituted by a statutory body like B.C.I. 6. We are clearly of the opinion that the finding in relation to misconduct being in colossal ignorance of the doctrine of audi alteram partem

> is arbitrary and consequently in infraction of the principle enshrined in Article 14 of the Constitution of India, which make the order wholly unwarranted and liable to be set aside. This case is a glaring example of complete betrayal of confidence reposed by the Legislature in such a body consisting exclusively of the members of legal profession which is considered to be one of the most noble profession if not the most. 7. Accordingly, the appeal is allowed, impugned order rendered by the Disciplinary Committee of the B.C.I, is set aside and the matter is remitted, for fresh consideration and decision on merits in accordance with law. Chairman of the B.C.I, will see that this case is not heard by the Disciplinary Committee which had disposed of the complaint by the impugned order and an altogether different Committee shall be constituted for dealing with this case."

8. Therefore, the order of the appellate authority is not in order in the context of the Honourable Supreme Court orders cited. Besides, the observation of the Honourable Supreme Court as under summarises the role and responsibility of an appellate authority.

> (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**

The appellate order issued by the 1st respondent is nowhere near the prescribed standards set by the Honourable Supreme Court. Hence it has to be termed as illegal.

9. Thus, as is evident from the aforesaid facts, the applicant has not been given reasonable opportunity to defend himself. Documents required have not been furnished. The Principles of Natural Justice have been violated. The learned counsel for the respondents has argued that it is a minor punishment and hence elaborate procedural requirements need not be gone through. The question is not as to whether penalty is minor or major but it is the blot on the

career of an employee which is critical to the career of an employee. Therefore procedural requirements as per law have to be followed. There can't be any escape from this. By stating so, the Tribunal would not mean that the applicant should not be proceeded against for derogatory remarks made, but the process laid down as per law has to be necessarily followed. Therefore to conclude the Tribunal finds the action of the respondents in imposing the penalty of censure as arbitrary, illegal and against Principles of Natural justice. Hence the impugned orders issued by the 2nd and 1st respondents awarding and confirming the penalty of censure dated 18.8.2016 and 17.5.2017 respectively, are quashed. It is open to the respondents to take action against the applicant by lucidly following the norms laid down for taking disciplinary action.

10. Accordingly the OA is allowed with the above direction.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 10th day of December, 2018

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