

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

**O.A No. 2204/2016 With
M.A No. 1834/2019 and
M.A No. 455/2019**

With

**O.A No. 1939/2016 With
M.A No. 1835/2019 and
M.A No. 472/2019**

New Delhi, this the 1st day of August, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

(1) O.A No. 2204/2016

Dr. Namrata Agrawal
W/o. Shri Sanjay Kumar,
Faculty Member, NIFM,
Sector-48, Pali Road,
Faridabad-121 001,
Haryana. ...Applicant

(By Advocate : Mr. Vivek Singh with Mr. Swastik Dalai)

Versus

1. National Institute of Financial Management (NIFM),
(A Government of India Society)
Through its Director,
Sector-48, Pali Road,
Faridabad-121 001,
Haryana.
2. Mr. Harsh Kumar
(In personal Capacity)
Director,
National Institute of Financial Management
Sector-48, Pali Road, Faridabad-121 001,
Haryana.
3. Union of India
Through, Secretary, Ministry of Finance,

Department of Expenditure,
North Block, New Delhi-110 001. ...Respondents

(By Advocate : Ms. Deepa Rai for respondent no. 1, Mr. Rajesh Katyal for respondent no. 3 and Dr. Ch. Shamsuddin Khan)

(2) O.A No. 1939/2016

Dr. A. K. Sharan,
Aged 53
S/o. Sh. S. S. Srivastava,
Faculty Member, NIFM,
Sector-48, Pali Road,
Faridabad-121 001,
Haryana. ...Applicant

(By Advocate : Mr. Sagar Saxena with Ms. Sukriti Sinha)

Versus

1. National Institute of Financial Management (NIFM),
(A Government of India Society)
Sector-48, Pali Road,
Faridabad-121 001,
Haryana.
2. Mr. Harsh Kumar
Director,
National Institute of Financial Management (NIFM)
Sector-48, Pali Road, Faridabad-121 001,
Haryana.
3. Union of India
Through
Secretary, Ministry of Finance,
Department of Expenditure,
North Block, New Delhi-110 001. ...Respondents

(By Advocate : Mr. Rajinder Nischal for respondent no. 1, Mr. Rajesh Katyal for respondent no. 3 and Dr. CH. Shamsuddin Khan)

O R D E R (ORAL)**Justice L. Narasimha Reddy, Chairman:**

In these two O.As similar questions of facts and law are involved. Hence, they are disposed of with a common order.

2. The applicants in the O.As are appointed as Professor in the National Institute of Financial Management, Faridabad, a society under the department of Expenditure.

3. The Director of the Institute issued one major penalty charge memo and one minor penalty charge memo to the applicant in the O.A 2204/2016. The O.A is filed challenging the same. During the pendency of the O.A, the minor penalty proceedings are said to have been dropped. The applicant in O.A. No. 1939/2016 was issued major penalty. In both the cases, the charge memo is issued by the Director of the Institute.

4. The applicants contend that the affairs of the institute were administered by the Board of Governors (BoG) and orders of appointment for the post of Professors are issued with the approval of the BoG. They contend

that the BoG is conferred with the powers to delegate the functions to various authorities including Director or any officer; and to their knowledge, the Board did not delegate its power to take disciplinary action against the Professors to any other authority. They submit that in the absence of any specific stipulation the appointing authority happens to be the disciplinary authority for entire staff of the Institute; and that the Director does not figure anywhere in the context of the disciplinary action against the Professors.

5. The respondents filed separate counter affidavits opposing the O.As. According to them, the appointing authority has empowered the Director and he can act as a disciplinary authority against the Professors also. It is not necessary to refer to the other contentions raised by the applicants and replies given by the respondents, having regard to the scope of these O.As.

6. We heard Mr. Vivek Singh and Mr. Sagar Saxena, learned counsel for applicants, Mr. Rajinder Nischal and Ms. Deepa Rai for respondent no. 1, Mr. Rajesh Katyal for respondent no. 3 and Dr. Ch. Shamsuddin Khan, learned counsel for respondents.

7. The Institute, is a Society registered under the Society Registration Act. Its Memorandum of Association

provides for its constitution and method of functioning. The Memorandum does not contain any specific provision delineating the powers of appointing authority and disciplinary authority, in respect of the various categories of employees. In the instant case, it is not in dispute that the applicants were appointed with the approval of the BoG.

8. The Institute has also framed Rules and regulations. The constitution of BoG is provided under Rule 5 and its powers are defined under Rule 5.3. The overall control of the entire institution is vested in it. It is also conferred with the powers to delegate any of its powers to Director or any other official of the Institute under Clause (S). So far as the post of Director is concerned, his powers are defined under Rule 6. There is nothing to indicate that he is the Appointing Authority or Disciplinary Authority for any employee, much less, for the post of Professor. The broad power conferred upon him is mentioned in clause 6.5 which reads as under :-

“6.5 Subject to the rules and regulations of the Institute, the Director shall be responsible for :-

- (1) Implementing the directions of the Board;
- (2) The proper administration of the affairs and funds of the Institute ;
- (3) Exercising supervision and disciplinary control over the work and conduct of all employees of the Institute.
- (4) Coordinating and exercising general supervision over all the activities of the Institute ; and

(5) Executing all contracts, deeds and other instruments on benefits on behalf of the society, if so authorized by the Board.”

9. It is too difficult to infer from such a general provision, the conferment of the powers of disciplinary authority vis-a-vis an important position like Professor.

10. We are of the view that the post of Professor is pivotal in the respondent-organisation and cannot be subjected to an uncertain state of affairs. It would be better if the matter is dealt with by the BoG at its next meeting. It may take a view, on two issues namely :-

- (a) to identify the disciplinary authority for the post of Professors; and
- (b) to decide whether or not to initiate disciplinary proceedings against the applicants herein, having regard to the relevant facts.

11. We do not intend to express our view in the allegations made in the charge memos or on other aspects.

12. We, therefore, allow these O.As and set aside the impugned charge memos and leave it open to the BoG to decide :

a) as to who shall be the disciplinary authority to initiate proceedings against the Professors of their Institute as and when situation arises, and

(b) whether or not to initiate proceedings against the applicants;

within a period of two months.

There shall be no orders as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/Mbt/