

**Central Administrative Tribunal
Principal Bench**

**OA No.138/2019
MA No.1324/2019**

New Delhi, this the 17th day of July, 2019

**Hon'ble Justice L. Narasimha Reddy, Chairman
Hon'ble Mohd. Jamshed, Member (A)**

Dr. Anil Kumar Tyagi
S/o Sh. RamSwaroop Tyagi
Aged about 57 years, Group 'A'
Scientist 'G', IRDE
Raipur Road, Dehradun-248008.
R/o A-24, Kewal Vihar, Sahashtradhara Road
Dehradun-248001. ...Applicant

(By Advocate: Shri Prakash Kumar Singh)

Vs.

1. Union of India
Through Secretary, Deptt. of Defence R&D
And Chairman, DRDO
DRDO Bhawan, Rajaji Marg, New Delhi-110011.
2. Chief Vigilance Officer
198-A, South Block
Ministry of Defence, New Delhi-1100
3. Director, DESIDOC
Metcalf House, Delhi-10054.
4. Director, IRDE
Raipur Road, Dehradun-248008. ...Respondents

(By Advocate: Shri Rajeev Kumar)

ORDER (ORAL)**Justice L. Narasimha Reddy:-**

The applicant is working as Scientist 'G' in the Defence Research and Development Organisation (DRDO). In the year 2006-2007 he worked as Officer in charge of Information Centre & Library, in Defence Institute of Advance Technology (DIAT), Pune a deemed University, under the Ministry of Defence. He worked there for five years and during that period he was promoted to the next higher grade and was transferred to the parent organisation i.e. DRDO.

2. On 04.10.2013, the applicant was issued a charge memo alleging that he did not follow the prescribed procedure, in the context of procuring the books for the Library. Four Articles of charge were incorporated. The applicant submitted his reply to the same denying the allegations. Not satisfied with the same, the Disciplinary Authority appointed the Inquiry Officer. Through his report dated 07.09.2015, the Inquiry Officer held the articles of charge as partly proved. The copy thereof was furnished to the applicant and after taking his comments into account, the Disciplinary

Authority passed an order dated 11.04.2018 imposing the punishment of reduction to a lower stage in the time scale of pay by two stages till the date of his superannuation. It was also directed that he will earn increments of pay during the period of such reduction and on expiry of the period, and the reduction will not have the effect of postponing his future increments. The same is challenged in this OA.

3. The applicant contends that he was specifically chosen for the digitalization of the library of DIAT and on observing the nature of work done by him, he was also promoted to the next higher grade. He contends that the charge memo was issued several years thereafter with malafide intention and to adversely affect his career. He contends that though the Inquiry Officer held almost every charge as not proved, he hyphenated the same by making some observations and the charge was treated as partly proved. He submits that the observation made by the Inquiry Officer after holding the main article as not proved, is without any basis. The applicant further contends that the Disciplinary Authority has not applied its mind and imposed the punishment without any basis.

4. A detailed counter affidavit is filed by the respondents. An article wise analysis undertaken and it is stated that the fact that the Inquiry Officer held the charges as partly proved was taken into account by the Disciplinary Authority. It is stated that the punishment is very minor in nature and it is commensurate with the charges that are held as partly proved.

5. We heard Shri Prakash Kumar Singh, learned counsel for the applicant and Shri Rajeev Kumar, learned counsel for the respondents in detail.

6. The applicant was assigned the duty of officer in charge of the library of DIAT at Pune. In that capacity, he procured books and journals for the Library. With reference to the procurement of books and the journals in the year 2006-2007, a charge memo was issued seven years later i.e. on 04.10.2013. The Article of charge read as under:-

“WHEREAS, a disciplinary proceeding was initiated under Rule 14 of CCS (CCA) Rules, 1965 against Dr. A.K. Tyagi, Scientist ‘F’ (now Sc ‘G’) of DRDO vide Charge Memorandum No. 203/D(Vig.II)/2011 dated 04.10.2013 with the approval of the Disciplinary Authority, and whereas Dr. A.K. Tyagi, Scientist ‘F’ (now Sc ‘G’) was called

upon to submit his reply on the following articles of charges:

Article I:

That Dr. A.K. Tyagi, Sc 'F' (now Sc 'G') while working as OI/C (Officer in charge) IC&L (Information, Centre & Library) and Finance Officer, in Defence Institute of Advance Technology (DIAT) (Deemed University), Pune during the years 2006 & 2007, procured a number of books at a much higher price over the ordered/catalogue price. After obtaining approval from the Purchase Committee for the purchase of books at catalogue price, they were procured by Dr. A.K. tyagi at much higher price, sometimes to the extent of 13 times of catalogue, thereby causing substantial loss to the public exchequer. By this aforesaid act or conduct that is prejudicial to the interests of his employer and which is inconsistent or incompatible with the due discharge of his duty, the said Dr. A.K. tyagi has failed to maintain absolute integrity, devotion to duty and conducted in a manner that is unbecoming of a Government servant. The said Dr. A.K.tyagi, thus violated Rule 3(1)(i), Rule 3(i)(ii) and Rule 3(1)(iii) of the CCS (Conduct) Rules, 1964.

Article II

That the said Dr. A.K. Tyagi, Sc 'F' (now Sc 'G') while working as OI/C (Officer in charge) IC&L (Information, Centre & Library) and Finance Officer, in DIAT (Deemed University), Pune during the years 2006 & 2007 placed orders without bidding/negotiations directly to vendors and on a single tender basis after approval of Library Committee. Dr. A.K. Tyagi has not

followed any procedure of quotation/negotiation in the instant case. Dr. A.K. Tyagi placed orders on unregistered vendors, whereas as per purchase procedure (DRDO Manual procedures for Management of Libraries and Technical Information Centres, 1999), orders of only upto Rs. 5000/- can be placed with unregistered vendors. This act of Dr. A.K. Tyagi was in gross violation of the established rules of purchase procedure. The said Dr. A.K. Tyagi, thus violated Rule 3(1)(i), Rule 3(i)(ii) and Rule 3(1)(iii) of the CCS (Conduct) Rules, 1964.

Article III

That the said Dr. A.K. Tyagi, Sc 'F' (now Sc 'G') while working as OI/C (Officer in charge) IC&L (Information, Centre & Library) and Finance Officer, in DIAT (Deemed University), Pune during the years 2006 & 2007 approved the over payment in the purchase of books without bringing to the notice/approval of Competent Authority when he was not vested with any power to clear such over payment cases, thereby exceeding his authority. DIAT, Pune vide their letter dated 22.01.2013 accepted the fact that while releasing the payment to the vendor, no specific approval was taken by the then Librarian from any higher authority. Dr. A.K. Tyagi approved the said payment to the vendors as Finance Officer, DIAT, while he was in charge of Library at the same time. As per para No. 10.1.1 of purchase procedure (DRDO Manual of procedures for Management of Libraries and Technical Information Centres, 1999), before payment to vendors, pre-auditing is mandatory. However no such pre-auditing mechanism

was followed by Dr. A.K. Tyagi resulting in escapement of over-payment cases from scrutiny and corrective action. It is, therefore, evident that Dr. A.K. Tyagi flouted the guiding principles of FR-21 (Standards of Financial Propriety) and Fr-26 (Responsibility of Controlling Officer in respect of Budget Allocation) of General Financial Rules resulting in loss to the public exchequer. The said Dr. A.K. Tyagi, thus violated Rule 3(1)(i), Rule 3(i)(ii) and Rule 3(1)(iii) of the CCS (Conduct) Rules, 1964.

Article IV

That the said Dr. A.K. Tyagi, Sc 'F' (now Sc 'G') while working as OI/C (Officer in charge) IC&L (Information, Centre & Library) and Finance Officer, in DIAT (Deemed University), Pune during the years 2006 & 2008 subscribed the Nature Journal, an online journal at a cost of Rs. 26,39,433/- which included the payment of Rs. 1,80,455/- for the year 2006, Rs. 1,81,038/- for the year 2007, and 100 years back file for Rs. 22,77,940/- in the year 2008. Dr. A.K. Tyagi placed procurement order of such a costly online journal "Nature Journal" without any justifiable demand for its users. Dr. A.K. Tyagi purchased this online Journal (Nature Journal) through a dealer whereas it should have been purchased from publisher directly. The dealer raised the said bills on DIAT, Pune after charging 5% to 20% commission over and above the subscription charges of the Nature Journal (Nature Journal) from 2006-2008 paid by him to the publisher. Whereas, if the journal would have been subscribed directly from the publisher, it would have led to huge savings. The said Dr. A.K. Tyagi, thus violated Rule 3(1)(i), Rule 3(i)(ii) and

Rule 3(1)(iii) of the CCS (Conduct) Rules, 1964.

7. The applicant flatly denied the charges. His plea was that every purchase of books was on the basis of the decision taken by the Executive Committee and with the approval of the Vice Chancellor and that no illegality has taken place. It was also stated that certain foreign publications were procured through the dealers in India and naturally the price is bound to differ. Not satisfied with the explanation submitted by the applicant, the Disciplinary Authority appointed Shri S.N. Gupta as Inquiry Officer. He submitted a report which runs into 31 pages.

8. The Inquiry Officer has undertaken extensive analysis of each and every charge. One surprising aspect about the report is that though the IO was convinced that the charge was not proved and the applicant is not guilty of any misconduct, he did not want to let off the applicant just like that. He

hyphenated every finding with a “however” or “but”.

He summed up his conclusion as under:

- (i) “The issue as mentioned in para 6.1:
Partly proved to the extent as mentioned in
para 7.1.3.(f)

Thus, the Article-I of Charge is held as
Partly Proved

- (ii) The issue as mentioned in para 6.2: Partly
Proved to the extent as mentioned in para
7.2.3 (g)

Thus, the Article-II of Charge is held as
Partly Proved

- (iii) The issues as mentioned in para 6.3:
Partly Proved to the extent as mentioned in
para 7.3.3(a)

- (iv) The issue as mentioned in Para 6.4:
Partly Proved to the extent as mentioned in
Para 7.4.3(d).

Thus, the Article-IV of Charge is held as
Partly Proved.”

9. The discussion on Article-1 was undertaken in para 7.1. The conclusions themselves were summed up in sub paragraphs (a) to (f) of para 7.1.3. There again he underlined the ultimate conclusions. The highlighted part of sub para (f) of para 7.1.3 reads as under:-

“Therefore, the charge as mentioned in para 6.1 that the CO purchased books at much higher prices than the catalogue prices as

approved by the Library committee is not found substantiated. However, since the SO was placed at the different rate than the rate approved by the Library committee (due the so called clerical error), the CO must have brought this error to the notice of the competent authority but he failed to bring this so called clerical error on record and to the notice of the competent authority.”

10. One rarely comes across such equivocal approach on the part of an Inquiry Officer. The extracted portion contains two sentences. The first sentence clearly mentions that the allegations made against the applicant “is not found substantiated”. The discussion ought to have ended there. It is not a case where the IO divided the charge into various facets and recorded the finding on each of them. When he found that the allegations contained in Article-1 is not found substantiated, there was no necessity for him to make the observation in the second sentence.

11. About Article-2, the discussion was undertaken in para 7.2 and the conclusion was drawn in 7.2.3. Here also he summed up the conclusion in sub para (g) which reads as under:-

“(g) In view of above analysis and discussion and based on the available

documentary/oral evidences, the issue that the CO has not followed any procedure of quotation/negotiation in the instant case is not found established, however, the issue that the CO placed orders on unregistered vendors against the provision of procurement manual is found partly established."

12. As regards this Article also, he made a clear observation that the allegation "is not found established", but, he added something more, by using the adverb 'however'. Whatever observations we have made in respect of Article-1, would hold good for Article-2 also.

13. On Article-3, the discussion was undertaken in para 7.3.3. The finding was indicated at the threshold of that sub paragraph itself. Though he indicated that the conclusions are in sub para (a), we find them in the highlighted portion of sub para (e) which reads as under:-

"Based on the available evidences on record the flouting of the aforesaid guiding principles of FR-21 & FR-26 of GFR neither can be established nor can be said to be Not Established."

This clearly shows that the IO was in an utter confused state of mind. The benefit of this equivocal finding, if at all, has to be extended to the applicant.

14. Coming to the last Article of charge, the allegation against the applicant was that the journal by name "Nature" published by M/s Macmillan India Ltd. was procured through M/s Murugan and M/s Murugan, in turn, paid lesser amount to M/s Macmillan than what was collected from the organisation. The details are furnished as under:-

"(c)...*The dealer M/s Murugan paid GBP 27,399 (Ex.P-5 page 29) to M/s Macmillan India Ltd located at Gurgaon, while he was reimbursed GBP 28,841(Ex.P-5 page 24)

* The dealer M/s Murugan paid GBP 1,760 (Ex.P-5 page 20) to M/s Macmillan India Ltd located at Gurgaon, while he was reimbursed GBP 2,200 (Ex. P-5 page 15)

* The dealer M/s Murugan paid GBP 1,645 (Ex. P-5 page 10) to Nature Publishing Group, while he was reimbursed GBP 2,056 (Ex.P-5 page 5).

On perusal of Ex. P-5, the above contention of PO is found substantiated."

15. After discussing the matter at length, the IO observed in paragraph 7.4.3 (b) as under:-

“Based on above evidences it is concluded that procurement of ‘Nature Journal’ with its back volume was approved by the Executive Council, chaired by the VC. However, as such, the financial implication of this procurement was not placed before the executive council and as confirmed by DW-2, in any case the procedure of procurement well established in the Institute was to be followed. Therefore, the contention of the CO that he as OIC, IC&L put up the proposal to Chairman, LC, informing him that the proposal has been approved by the EC after discussion with other members, is found substantiated. Though, further CO has also contended that he sought opinion of other HODs on 15/12/2007, but CO has not produced any evidence in this regard. When the approval of EC was taken in its meeting held on 12/12/2007, then seeking opinion of other HODs without producing the letter as evidence and their responses is not understood. However, the approval of EC for procurement of ‘Nature’ journal with back volumes can be considered as sufficient basis for the aforesaid procurement and therefore the part of the charge that the CO procured ‘Nature Journal’ without any justifiable demand is not found established.”

16. He observed that the allegation that there was no justifiable demand for the Journal, is found not established. However, by referring to the price paid to the supplier on the one hand, and the one received by

the publisher from the supplier on the other, it was opined that it would have been better, had the journal been procured from the publisher. Howsoever, advisable that may be, it was not alleged that the applicant had malafide intention in procuring it from M/s Murugan. Added to that, the price was paid in British pounds and to procure any material from a foreign publisher, the permission from the Reserve Bank of India was necessary. The procurement of the Journal and payment of price was not a decision taken by the applicant on his own accord. It was the collective decision of the Council as approved by the Executive Committee. The I.O. was totally wavering in his approach and even in that process, did not hold that the charge is proved.

17. The applicant was chosen on account of his outstanding and merit, to improve a library of a prestigious organisation. The merit of his service was recognised and he was even promoted. He was also selected for Full Bright Scholarship to work with Digital Library Research Laboratory (DLRL) Department Computer Science and Engineering, Virginia, USA. There are several such accomplishments for the

applicant. Finding fault with him, on small aspects, that too seven years after the alleged acts, which in fact were held not proved by the IO and imposing punishment, does not augur well for the institutions of such higher repute.

18. We, therefore, allow the OA and set aside the impugned order dated 11.04.2018. There shall be no order as to costs.

All the pending MAs shall stand disposed of.

(Mohd. Jamshed)
Member(A)

(Justice L. Narasimha Reddy)
Chairman

/vb/