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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.848 of 2003

New Delhi, this the 19<sup>th</sup> day of July, 2004

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)  
HON'BLE MR.S.A. SINGH, MEMBER (A)

Shri C.R. Raikwar  
Under Secretary (Dismissed)  
University Grants Commission  
R/o B-54 (Gali No.9) Shashi Garden,  
Patparganj,  
Delhi-110 091.

-APPLICANT

(By Advocate: Shri V.S.R. Krishna)

Versus

The University Grants Commission  
Through its Chairman,  
Bahadur Shah Zafar Marg,  
New Delhi.

-RESPONDENTS

(By Advocate: Shri A.K. Malhotra with Shri Rajesh  
Malhotra, Counsel)

O R D E R

By Hon'ble Mr.Kuldip Singh, Member(Judl)

The applicant has assailed an order dated 26.4.1999 vide which he has been imposed a punishment of dismissal from service. He has also challenged the order passed by the appellate authority rejecting his appeal.

2. Facts in brief are that the applicant was proceeded departmentally on the following charges:-

Articles of Charge

Certain acts of omission and commission involving abuse of authority have been reported against Shri C.R. Raikwar, during his tenure as Under Secretary, CPP (II). Details of various acts of commission and omission are shown in Statement of Allegations. Shri C.R. Raikwar is hereby informed that aforesaid acts on his part violate Regulation 3 of Conduct Rules and thus constitute following serious misconduct and based on the same, Shri C.R. Raikwar is hereby charged of the following misconduct:-

- (a) Doing acts prejudicial to the interest of UGC.
  - (b) Acting in a manner unbecoming of an officer.
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- (c) Failure to discharge his duties with utmost integrity, honesty and devotion.

Shri C.R. Raikwar is hereby called upon to submit his defence statement in writing as per clause 13 (4) of UGC Conduct Rules, within 15 days of receipt of statement of allegations and charges, failing which it shall be presumed that he has admitted the charges.

Shri C.R. Raikwar is hereby informed that it has been decided to proceed further in the matter with a departmental enquiry into the various charges levelled against him. The name of the Inquiring Authority, as well as date, venue and time of Enquiry will be intimated to him in due course by the Inquiring Authority".

3. An enquiry was held into it. The Inquiry Officer returned the findings holding the applicant guilty. Thereupon the applicant was given show cause vide which he was called upon to submit his reply as to why the proposed punishment of dismissal from service may not be imposed upon him. A copy of the enquiry report was also supplied to him along with show cause notice. The disciplinary authority considered the same and vide impugned order Annexure A-I imposed the punishment of dismissal from service from UGC.

4. The applicant has challenged the same on the grounds that the order passed by the disciplinary authority dated 26.4.99 is totally a non-speaking order passed in a totally arbitrary and capricious manner without any application of mind either to the evidence on record or the correctness of the conclusions drawn by the Inquiry Officer.

5. It is also stated that the impugned order has been passed with a clear mala fides as the same does not even take cognizance of the request made by the applicant on 16.4.1999 for grant of a very short extension of time

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for submission of his representation against the Inquiry Report on serious medical grounds and further not considering the detailed representation dated 23.4.1999. Thus it has violated the principles of natural justice and also in clear violation of the relevant rules.

6. It is further submitted that the order passed by the Appellate Authority also did not consider any of the points taken by the applicant in his appeal but has simply communicated the rejection of the appeal by the Appellate Authority and this is absolutely no application of mind on the part of the Appellate Authority.

7. It is further submitted that the impugned charge-sheet dated 22.8.1996 was vague, illegal and contained concocted charges which pertained to violation of guidelines duly approved by the UGC as also destroying the proposal submitted vide Registered post on 20.10.1995 by TKM College of Engineering, Kollam, University of Kerala. The applicant also submits that he had never violated any of the guidelines of the UGC nor any proposal dated 20.10.1995 was submitted by the said TKM College of Engineering.

8. It is further stated that the wording of the charge-sheet smacks of expression of definite opinion and that positive conclusions were already drawn as a policy and expediency.

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9. The applicant further emphasised that the UGC by notification in the official gazette has not made any so-called UGC Conduct Rules at any point of time and that further the source of power which empowered the disciplinary authority to issue the Article of Charge was not indicated in the charge-sheet as such issuance of the charge-sheet under the so called UGC Conduct Rules which do not exist at all is illegal.

10. It is further stated that appointment of Advocates as Inquiry Officers and that even two of them as Inquiring Authority in the departmental proceedings is not only unheard of but it amounted to converting a departmental enquiry into a judicial proceeding. The appointment of legal practitioners as Inquiring Authority was clearly illegal.

11. It is further stated that the report of the Inquiry Officer vide which it has been stated that the charges against the applicant have been proved are without an iota of evidence and without following the principles of natural justice.

12. It is further stated that the Inquiry Officer deliberately subverted the process of the inquiry by scuttling the defence of the applicant and closed the enquiry abruptly by observing that the defence evidence is closed and the enquiry stands concluded. It is also submitted that the advocates in question were paid hefty sum and conducted the enquiry in the manner, which suited the respondents.

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13. The next ground taken by the applicant that the show cause notice dated 19.3.99 is clearly illegal and is in express violation of the law laid down by the Apex Court as regards giving of effective opportunity to represent against the findings of the Inquiry Report.

14. It is further submitted that as the disciplinary authority first recorded his conclusion that he was in agreement with the findings of the Inquiring Authority that the charges against the applicant were proved and that in fact he had agreed with the findings of the inquiring authority holding the applicant guilty of the charges, he also recorded his decision to impose the penalty of dismissal on the applicant. Thus the show cause notice is bad as it is in violation of the Apex Court decision in Mohammed Ramzan Khan's case reported in 1991 (1) SLR 159 as well as in the case of Managing Director, ECIL, Hyderabad VS. B. Karunakar reported in JT 1993 (6) page 1. Thus it is submitted that the impugned orders are liable to be quashed and the OA be allowed.

15. Respondents are contesting the OA. The respondents have taken a preliminary objection that the present petition is totally misconceived and untenable and is based on frivolous grounds in as much as the petitioner who has challenged the inquiry proceedings and the punishment imposed upon pursuance to the charge-sheet, wants that this Tribunal should sit as an appellate authority over the findings of the inquiry officer and the subsequent punishment imposed by the

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disciplinary authority which is clearly prohibited by the law laid down by the Hon'ble Supreme Court in B.C. Chaturvedi Vs. U.O.I., 1995 (6) SCC 749.

16. It is further submitted that before passing the order of punishment petitioner was served with charge-sheet along with statement of allegations and as the reply was not found satisfactory the inquiry was ordered to be conducted by one Shri P.K. Sharma, Legal Officer with Punjab and Haryana Chambers against applicant in respect of charges against him. The Inquiry Authority conducted the enquiry as per the rules of natural justice and as per the procedure prescribed as per the Discipline and Appeal Regulations as applicable to UGC employees. The applicant was also represented by his defence representative who is a practising advocate. The inquiring authority submitted his findings which was accepted by the disciplinary authority. The disciplinary authority thereafter served a copy of the report along with the notice to show cause against the proposed punishment to the applicant and the applicant submitted his reply and after considering the reply the impugned order was passed.

17. The procedure as enshrined under the relevant rules under UGC Employees (Classification, Control and Appeal) Regulations, 1967 were fully complied with.

18. It is further stated that the petitioner is guilty of suppression of material facts as he had been given various penalties to lead evidence but the petitioner has deliberately concealed from this court

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despite number of opportunities given to him the applicant failed to lead any further evidence in defence to rebut the charges so now the petitioner is estopped to raise the plea of natural justice.

19. It is further submitted that during the entire proceedings the applicant was represented through his counsel and now since the findings have gone against him the same is being challenged in the present petition without any basis.

20. It is further submitted that the petitioner and three other officers/employees of CPP-II Section of the Commission were entrusted with the responsibility of scrutinising, processing and recommending the applications/proposals received from colleges/universities as per the guidelines settled by the Internal Committee in its meeting dated 1.12.1995. Under the Scheme the colleges/universities were entitled to a grant of Rs.7 lakhs, Rs.10 lakhs and Rs.15 lakhs for the construction of Womens's Hostel in their colleges/universities subject to fulfilling requirements/conditions. The petitioner was part of processing and recommending procedure of proposals and while working in the said branch for processing various applications the applicant committed certain acts/omissions on account of which the petitioner was charge-sheeted as he acted prejudicially to the interest of UGC and his acts were unbecoming of the officer and he failed to discharge the duty with utmost integrity, honesty and devotion. Thus the respondents were justified in passing the impugned order.

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21. We have heard the learned counsel for the parties and gone through the record.

22. The first and foremost ground taken by the applicant is that there does not appear any conduct Rules and Regulations which the applicant may be alleged to have violated.

23. The counsel for the applicant submitted that though the respondents have placed on record the regulations governing the procedure for conduct of enquiry which does not find mention about the UGC Employees (Conduct) Regulations, 1967 but in fact there are no conduct regulations nor the same have been approved nor the same have been adopted and this has been so categorically stated in the petition whereby the applicant has alleged that UGC has not made any UGC Conduct Rules at any point of time.

24. On the contrary the learned counsel for the respondents has placed on record the UGC Employees (Conduct) Regulations, 1967. The preamble of which reads that in exercise of powers clause (c) of sub Section (1) of Section 26 of the University Grants Commission Act, 1956 read with Rule 9 of the University Grants Commission (Terms and Conditions of Services of Employees) Rules, 1958, the UGC with the approval of the Central Government makes the following regulations:-

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(i) The short title and commencement provide that these regulations may be called the UGC Employees (Conduct) Regulations, 1967 and shall come into force w.e.f. 1.4.67. A perusal of the above indicates that the same has been approved by the Central Government and the date of coming of these regulations have also been given so this leaves no room for any doubt that the UGC Employees (Conduct) Regulations, 1967 has not been notified.

25. The Regulation 13 prescribes a detailed procedure as to how the employee can receive gifts and what are the limitations on receiving the gifts so the applicant has been charged to have violated Regulation 13 sub-clause (iv) which is a serious misconduct so the applicant cannot claim now that there are no conduct rules framed by the department so this contention of the learned counsel for the applicant has no merits at all.

26. The next contention taken by the applicant is that the applicant has not been afforded a fair and proper opportunity to make submissions in reply to the show cause notice given to him. The learned counsel for the applicant submitted that the applicant was served with a notice dated 19/24.3.99 which is reproduced hereinbelow for ready reference:-

" Whereas I have considered the report of Inquiring Authority as well as the record of the Enquiry proceedings along with all the relevant documents, and I concur with the findings of Inquiring Authority (emphasis supplied).

Now that, in view of the fact that I agree with the findings of the Inquiring Authority who has held you guilty of alleged the charges levelled against you

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and keeping in view the gravity of proved charges of misconduct, I propose to impose on you the punishment of dismissal from the services of UGC.

You are hereby called upon to show cause within 15 days of receipt of this letter, as to why the proposed punishment should not be imposed upon you".

27. The main objection of the applicant is that this show cause notice shows as if the disciplinary authority had agreed with the findings of the inquiring authority and it also proposed the punishment of dismissal so this is in violation of the law laid down by the Hon'ble Supreme Court in Mohd. Ramzan Khan's as well as the law laid down in the case of of Managing Director, ECIL (Supra).

28. The applicant further submits that the disciplinary authority had not supplied him the complete copy of the enquiry officer's report with the show cause notice so the applicant submitted application requesting the disciplinary authority to supply complete copy of the enquiry report but the disciplinary authority rejected his application and issued orders directing the applicant to submit his representation against the show cause notice and directed that the reply should be submitted by 16.4.99. However, in the reply submitted by the respondents it has been mentioned that he was supplied remaining pages which applicant has not mentioned in the OA. It may also be mentioned that the Regulation require that clear 30 days notice should be granted by the Inquiry Officer to the charged employee to submit his representation.



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29. The applicant being a heart patient has to be admitted to the hospital. Applicant prayed for extension of time on medical grounds and the applicant thereafter did submit a representation dated 23.4.99 against the enquiry report under proper acknowledgement but the same had not been taken into consideration and the disciplinary authority who knew it well that he was to retire on 29.4.99 did not consider the representation dated 23.4.99 and passed a non-speaking order imposing a penalty of dismissal from service.

30. In reply to this objection raised by the applicant the learned counsel for the respondents submitted that first of all the applicant is not covered under the CCS (CCA) Rules rather the applicant is governed by UGC Employees (Regulations) 1967 which have no provision for supplying copies in tune with Mohd. Ramzan Khan's case (Supra).

31. Rules which apply to the UGC employees envisage only a show cause notice of a second stage when there is a proposal for imposing a penalty.

32. In support of his contention the learned counsel for the applicant has also referred to a judgment of Hon'ble Supreme Court reported in 2001 (6) 392, i.e., State of U.P. Vs. Harendra Arora and Another wherein it has been held as follows:-

"A. Service Law - Departmental enquiry - Enquiry report - Necessity of - Provision in statutory rules (R.55A, Civil Services (CCA) Rules in this case) for furnishing copy of enquiry report - Nature of, and effect of non-compliance with - Such a rule, held, is procedural and mandatory - However, the delinquent seeking the order of his dismissal to be quashed on the

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ground of non-compliance with the said provision, held, must show that he was prejudiced thereby - Otherwise the said omission would not be fatal to the impugned order - Provisions in other statutes saving an order suffering from defect, error, irregularity or omission, from being set aside unless prejudice or failure of justice is shown, noticed - On facts, held, the delinquent failed to discharge that burden - Hence further held, Service Tribunal erred in quashing the dismissal order - Civil Services (Classification, Control and Appeal) Rules, 1930, R.55-A (as amended in U.P)".

33. The counsel for the respondents further submitted that supplying of the copy of the enquiry report is a matter of procedure rather than that of a fundamental nature, in such cases, the theory of substantial compliance would be available and in such cases objections on this score have to be judged on the touchstone of prejudice caused to applicant. The test would be whether the delinquent officer had or did not have a fair hearing.

34. The learned counsel for the respondents further submitted that in this case copy of the enquiry report was supplied to the applicant. The applicant did make a reply and had simply stated that he had not been supplied 4-5 pages out of the enquiry report which was supplied to him later on for which he failed to make comments in time. Though he had submitted it before the passing of the impugned order and since his reply was almost the same so it should be treated as if no prejudice has been caused to the applicant.

35. We have considered this aspect. In this case we may mention that when the enquiry report was supplied the applicant was called upon to submit his comments. He did submit his comments but simultaneously stated that he had not been supplied few pages out of the enquiry report

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so he was unable to submit his complete comments. Thereafter the applicant is stated to have fallen sick and was admitted in the hospital/nursing home for his illness, where he remained for about a week and after his discharge from the hospital, he did submit his comments as per the practice in the dak but the concerned official did not place the comments submitted by the applicant before the disciplinary authority in time and this fact is admitted by the respondents in their pleadings. So in these circumstances it is to be seen whether the respondents can be allowed to take shelter under the judgment of the Hon'ble Supreme Court in Harendra Arora (Supra). The respondents themselves have supplied a copy of the enquiry report inviting comments of the applicant thereon and when the applicant submitted that he had not received few pages, the department agreed to the same situation and supplied the remaining pages. But when the applicant went to submit his comments, since he was not allowed to meet disciplinary authority and as per practice had left the same in the dak in the dak counter because there is a specific letter on record which forbids the applicant to meet the staff in the office as such he left his papers only at the dak counter so in accordance with the directions of the respondents he had left his comments at the dak counter but the same did not reach the disciplinary authority in time as such the disciplinary authority has passed the order in question without considering his comments.

36. The order of the disciplinary authority does not speak about considering the comments submitted by the applicant. The disciplinary authority did consider the

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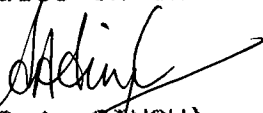
reply dated 16.4.99 only and not the specific reply and passed the order only in one line "as such the reply submitted by the applicant was not found satisfactory". The disciplinary authority brushed aside all the comments submitted by the applicant by passing a non-speaking order, so in view of the same we find that the imugned order Annexure A-1 cannot be sustained so the same has to be quashed because the comments submitted by the applicant subsequent to 16.4.99 has not been taken into consideration at all even as per the imugned order itself.

37. The plea of the respondents that they were not supposed to supply copy of the enquiry report to the applicant as per the rules governing the disciplinary proceedings being faulted by the respondents UGC. In this regard we may mention that since the respondents themselves has first supplied incomplete copy of the enquiry report inviting comments from the applicant and when the applicant asked for the few sheets which has not been supplied to him, the department agreed to his contention and supplied those sheets also but did not consider comments furnished by the applicant though the same were submitted well in time, so in these circumstances we find that a serious prejudice has been caused to the applicant as the comments submitted by the applicant has not been considered at all.

38. Thus we are of the considered opinion that the imugned order on this ground alone is liable to be quashed. Accordingly, we hereby quash the same. But at the same time we direct the disciplinary authority to pass a fresh order taking into consideration the entire



comments submitted by the applicant on the enquiry report and the same be passed within a period of 3 months. The intervening period may be dealt in accordance with the rules on the subject.

  
(S.A. SINGH)  
MEMBER (A)

  
( KULDIP SINGH )  
MEMBER(JUDL)

/Rakesh