



CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA NO. 1417/2003

New Delhi, this the 29th day of October, 2009

Hon'ble Mr. Justice V.K. Bali, Chairman
Hon'ble Mr. L.K.Joshi, Vice Chairman (A)

S.N.Rai
S/o Sh. Babu G. Rai
Resident of: B-303,
Paarijat, Sector 4/28, Dwarka,
New Delhi-110045.

And Retired as:
Deputy Secretary from
Council of Scientific & Industrial Research,
New Delhi.

...Applicant

(By Advocate: Ms. S.Janani)

V E R S U S

Council of Scientific & Industrial Research (C.S.I.R.),
Through its Director General,
2, Rafi Marg,
New Delhi-110001.

...Respondent

(By Advocate: Sh. Parveen Swarup with Sh. Ankit Srivastava)

ORDER (ORAL)

Justice V.K. Bali, Chairman

This order be read in continuation of order dated 21.07.2009. Applicant was punished with a penalty of 10% cut in pension for a period of three years on 29.10.2002 against which he filed an appeal, which was dismissed on 30.04.2003. These orders are under challenge in this Original Application.

2. The applicant superannuated on 31.08.2000. Ms. Janani, counsel for applicant has only raised those points which were not earlier a subject matter of decision by this Tribunal. One of the points raised for consideration of this Tribunal is that all the relevant documents that were relied upon by the department in bringing home the charge against the applicant were not supplied to him and it prejudiced the case of the

applicant. In this context, our attention is drawn to the list of documents referred at page 161 of the paper book. Vide order dated 11.05.2000, the enquiry officer while dealing with the demand of the applicant for documents, ordered thus:

"A list for defence documents have been received in the above mentioned case and all the documents have been found relevant by the undersigned.

2. You are directed to supply the photocopies of all the documents found relevant so that the inquiry could be held as per the schedule."

3. Despite the orders, as mentioned above, some of the documents demanded by the applicant, were not given to him. That being so, the applicant at the stage of final hearing raised the objection with regard to non-supply of relevant documents. The enquiry officer, in his report, recorded thus (at 327 of the paper book) with regard to the objection raised by the applicant:

"17.8 In this connection, it is stated that the fact of non-supply of the above listed documents have been duly taken into consideration and full benefit of doubt have been granted to the CO. This has been analysed vide para 5.7 & 5.8 with reference to Article of Charge 4 para 13.3 with reference to Article of Charge 12 and Para 14.3 with reference to Article of Charge 13. With regard to the statement of witnesses recorded during the one man fact finding committee, it is staged that the Articles of Charge and the statement of imputation in support of the charge does not mention any of these statement of witnesses. This also does not form one of the listed documents enclosed with the charge sheet. The prosecution did not rely upon these recorded statements, if any, during the course of the inquiry. The recorded statement of witness if any, was not used by the prosecution as evidence during the inquiry to arrive at conclusions. Hence, non-availability of these statements with the CO does not materially affect the case as these had no evidentiary value."

4. It is pertinent to mention that out of the charges framed against the applicant, charges number 5, 6, 7 & 14 were held fully proved whereas charges 1, 4, 9, 12 & 13 were held to be partly proved. With

regard to other charges applicant has been exonerated. It is urged by the counsel for the applicant that documents listed at Serial No.11 in the application of the applicant, as referred to above, were very relevant for the purpose of defending Charge Number 5, 6 & 7, which were held to be proved. It is also urged that document listed at Serial Number 15 of the aforesaid application was relevant for the purpose of defending Charge No.14 which was also fully proved. Document listed at Serial Number 1 was relevant for the purpose of charge No.3 and document No.7 was relevant for charge No.4.

5. There does not appear to be any dispute on the factual aspect of the case. The position being, as mentioned above, it may have been a case to remit to the enquiry officer with the direction to supply to the applicant the documents referred to above, take the defence of the applicant based on the documents supplied and to pass a fresh order. But to adopt that course does not appear to be justifiable at this distance of time particularly when we find another major flaw in the procedure adopted by the respondents. It is seen that the enquiry officer has made an observation in his report (page 203 of the paper book) that there was no evidence to suggest that there was violation of Rule 3 (1) (i) of CCS (Conduct) Rules, 1964. The said rule pertains to lack of integrity. We may reproduce the observation made by enquiry officer in para 17.1 of the enquiry report. The same reads thus:-

“17.1 The officer in this case has been charged with violation of Rule 3 (I) (i) and (ii) of CCS Conduct Rules, 1964, as applicable to CSIR employees. It is observed from the analysis of evidence of all the articles of charges that there is no evidence to suggest that there is a violation of Rule 3 (I) (i) in as much as in the actions of the CO, there is no hint of any absolute lack of integrity. CO has not acted with a deliberate intention of causing any dishonest motive of the CO while discharging his duties. CO may have taken the path of least resistance in certain instances however this would not amount to violation of Conduct Rule 3 (I) (i) i.e. lack of integrity.”

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6. Disciplinary authority, on the other hand, held that the proved and partly proved charges reflect grave misconduct on the part of the applicant as they are very sensitive in nature (page 62 of the paper book). This finding could not be arrived at unless disciplinary authority was to differ with the finding of the enquiry officer, as quoted above.

7. Concededly, there is no dissenting note recorded and naturally, therefore, no copy of the same was made available to the applicant. This is a major flaw in the conduct of the inquiry. Once the findings with regard to integrity of the applicant by the enquiry officer are such, as mentioned above, and by no process of reasoning the disciplinary authority differed with the enquiry officer, the proper course may be to remit the matter to the concerned authorities for fresh enquiry from the stage the fault was committed. We may reiterate that for coming to the conclusion, as mentioned above, the disciplinary authority did not by a process of reasoning differ with the enquiry officer before passing the final order of punishment. The applicant retired way back in 2000. Recourse to remand may entail another bout of litigation which may also take several years to end. Under these circumstances, in view of ratio laid down in **State of Punjab and others vs. Dr. Harbhajan Singh Greasy**, 1996 (9) SCS 322, we do not think it appropriate to remand the case at this stage.

8. Before we part with this order, we may mention that the point with regard to charges being of grave misconduct and grave negligence was raised before the Tribunal and was repelled, but that was on the basis of finding of the disciplinary authority. There was no argument that if the disciplinary authority was only to be of the view that it was a case of misconduct covered under rule 3 (1) (i) of CCS (Conduct) Rules, 1964, it had to differ with the view expressed by enquiry officer that there was no evidence to suggest that there was any violation of Rule 3 (1) (i) of the

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Rules. The argument, as mentioned above, was only that once it is not a case of grave misconduct, no order of cut in pension could be made and, as mentioned above, this argument was repelled on the basis of findings recorded to the contrary by the disciplinary authority.

9. For the reasons mentioned above, this Original Application is allowed. Orders dated 29.10.2002 and 30.04.2003 are quashed and set aside. There is no need to pass an order with regard to payment to the applicant, as counsel for parties are ad idem that after the High Court passed the order, applicant was given whole of the arrears and full pension.



(L.K. JOSHI)
Vice Chairman (A)


(V.K. BALI)
Chairman

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