

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2243/2003

New Delhi, this the 14th day of January, 2004

HON BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON BLE SHRI R.K.UPADHYAYA, MEMBER (A)

Shri Biman Basu
s/o Late B.B. Basu
r/o C-203, Hindon Apartments
25, Vasundhara Enclave
New Delhi - 110 096. ... Applicant

(By Advocate: Shri Avijit Bhattacharjee)

Versus

1. The Council of Scientific & Industrial Research
Ministry of Science & Technology,
Govt. of India
Anusandhan Bhawan, Rafi Marg
New Delhi - 110 001.
2. Mr. V.K.Gupta
The Director
NISCOM (now known as NISCAIR)
& Disciplinary Authority, NISCAIR
CSIR, Ministry of Science & Technology
Govt. of India,
Dr. K.S.Krishnan Marg
PUSA, New Delhi - 110 012.
3. Mr. Prithvi Shah
Administrative Officer
NISCOM (now known as NISCAIR)
CSIR, Ministry of Science & Technology
Govt. of India, Dr. K.S.Krishnan Marg
PUSA, New Delhi - 110 012. ... Respondents

(By Advocate: Shri Hari Shanker)

O R D E R (Oral)

Justice V.S. Aggarwal:-

The present order is by and large a supplementary order to the order passed by this Tribunal on 25.4.2003 in OA 582/2002 between the parties.

2. Still to set the controversy at right way, we deem it necessary to mention some of the facts. The applicant had been served with the following eight articles of charge:

18 Ag

"Article-I"

That Sh. Biman Basu while functioning as Scientist in the erstwhile Publications & Information Directorate (presently known as National Institute of Science Communication) during the year 1996 committed misconduct inasmuch as, in his capacity as Chairman of the EB Committee constituted for considering the case of Sh. LK Chopra, TO's EB crossing, by not pointing out that Part II (c) of APAR should be written only in case of dispute between the Reporting and the Reviewing Officer, and by not recommending the crossing of EB of said Sh. Chopra, in who's APAR for the year ending 31.3.94, part II (c) was wrongly filled up by the then Director, PID thereby awarding Sh. Chopra a grading adverse to the one given by the Reporting and Reviewing Officer, he thwarted Sh. Chopra's EB crossing at the stage of Rs.2300 in the scale of Rs.2000-60-2300-EB-75-3200-100-3500. Thus by his above acts Sh. Biman Basu failed to maintain devotion to duty and contravened thereby Rule 3 (1) (ii) of CCS (Conduct) Rules, 1964 as made applicable to Council employees.

Article-II

That the aforesaid Sh. Biman Basu while functioning as Scientist in the erstwhile Publications & . Information Directorate (presently known as National Institute of Science Communication) during the period January 1994 and onwards committed misconduct inasmuch as, he, as member of SPC-II's sub-Committee, while deliberately sidelining the offers of M/s. Roto Print and M/s. HMT, recommended on 14.2.94 purchase of Two-colour Offset printing machine from M/s. J. Mahabeer & Co. (P) Ltd. leading thereby to irregular recommendations by Standing Purchase Committee (SPC)-II for placement of order on the said firm for Rs.26,74,787-50 (Rupees Twentysix lakhs seventyfour thousand seven hundred eightyseven and paise fifty only) resulting in purchase of costlier machine, and thereby contributed to incurrence of avoidable expenditure of Council funds and perpetuation of the monopoly of machines of the above firm at PID. Thus by his above acts Sh. Biman Basu failed to maintain absolute integrity and devotion to duty and contravened the rule 3 (1) (i) and (ii) of CCS (Conduct) Rules as made applicable to Council employees.

Article-III

That the aforesaid Sh. Basu while functioning as Scientist in PID (NISCOM) during the year 1994 and onwards committed misconduct inasmuch as, i) inspite of the order dt.14.2.95 having been placed on

18 Ag

"repeat order basis" on M/s. Vyapar Sadan, New Delhi, he, as member of SPC-II proposed on 22.2.95 sanction for additional funds to meet the increase in price of Printing Paper as proposed by the said firm vide its letter dt.20.2.95, resulting thereby into delivery of supplies at increased prices and ii) also further proposed in April 1995 for more funds to meet yet another enhancement of rates put forth by the firm for the items supplies of which had been deferred till April 1995 and the rates for which had already been enhanced in October 1994, leading thereby to placement of revised order at increased rates on a sister concern of M/s. Vyapar Sadan, New Delhi, - the firm, M/s. ABM Agencies, who had, in fact, never quoted any rates and from which the enhanced rates had also not been got confirmed before placing the order on it.

Thus, Sh. Biman Basu failed to maintain absolute integrity and devotion to duty and contravened thereby Rule 3 (1) (i) and (ii) of CCS (Conduct) Rules, 1964 as made applicable to Council employees.

Article-IV

That the aforesaid Sh. Basu while functioning as Scientist in PID (NISCOM) during the period 1994 and onwards committed misconduct inasmuch as, he, as member of Standing Purchase Committee-II, instead of negotiating with M/s. Vyapar Sadan for lowering their rates, recommended on 16.3.95 to place order with the said firm at enhanced rate of Rs.40.61/Kg. for purchase of printing paper which the firm had not been able to supply within the delivery schedule earlier agreed to. Thus, Sh. Biman Basu contributed to incurrence of excess expenditure of Council funds and extension of undue benefit to the firm and thereby failed to maintain absolute integrity and devotion to duty contravening Rule 3 (1) (i) and (ii) of CCS (Conduct) Rules, 1964 as made applicable to Council employees.

Article-V

That the aforesaid Sh. Basu while functioning as Scientist in PID (NISCOM) during the year 1995 and onwards committed misconduct inasmuch as, he, as member of SPC-II, recommended on 24.4.95 the purchase of Printing Paper at the rate of Rs.43.50 per Kg from M/s. ABM Agencies, New Delhi as against the revised order placed earlier on 11.4.95 on the same firm at the rate of Rs.41.05 less 1% discount for the same item, which led to placement of order on 26.4.95 on the firm at enhanced rates. Thus, Sh. Biman Basu contributed to incurrence of excess expenditure of Council funds and extension of undue benefit to the firm and thereby failed to maintain absolute integrity and devotion

18 Ag

to duty contravening Rule 3 (1) (i) and (ii) of CCS (Conduct) Rules, 1964 as made applicable to Council employees.

Article-VI

That the aforesaid Sh. Basu while functioning as Director in PID (NISCOM) during the year 1995 and onwards committed misconduct inasmuch as, he, as member of Standing Purchase Committee-II, wrongfully recommended purchase of 3000 reams of Sunshine Super Printing Paper as Proprietary article of M/s. Ballarpur Inds. Ltd. thereby extending undue favour to the said manufacturer and its agency, M/s. ABM Agencies, New Delhi. Thus, Sh. Biman Basu failed to maintain absolute integrity and devotion to duty and contravened Rule 3 (1) (i) and (ii) of CCS (Conduct) Rules, 1964 as made applicable to Council employees.

Article-VII

That the aforesaid Sh. Basu while functioning as Scientist in PID (NISCOM) during the year 1995 and onwards committed misconduct inasmuch as, in his capacity as member of SPC-II, he, without pointing out that the quotations were obtained directly by the Indenter usurping the authority of SPC, violated the provisions laid out in CSIR Rationalised Purchase Procedure, which led to SPC-II recommending placement of order for computer designing and printing of stickers on M/s The Effects, New Delhi. In this way Shri Biman Basu caused expenditure of Council funds in an irregular manner and extended undue benefit to the firm and thereby failed to maintain absolute integrity and devotion to duty contravening Rule 3 (1) (i) and (ii) of CCS (Conduct) Rules, 1964 as made applicable to Council employees.

Article-VIII

That the aforesaid Sh. Basu while functioning as Scientist in PID (NISCOM) during the year 1989 and onwards committed misconduct inasmuch as, he, by firstly proposing on 4.10.89 to subscribe to the Chemical Abstracts in Micro film (Microfisch) from American Chemical Society and later on 15.10.90 to continue the same, when the microfisch reader-cum-printer was not available in the Institute even till February 1994, brought about incurrence of infructuous and wasteful expenditure of Council funds approximately to the tune of Rs.5,94,250/- (Rupees five lakhs ninetyfour thousand two hundred fifty only). Thus, Shri Biman Basu failed to maintain absolute integrity and devotion to duty and contravened thereby Rule 3 (1) (i) and (ii) of CCS (Conduct) Rules, 1964 as made applicable to Council employees."

G-Ag

3. The disciplinary authority held the articles of charge to have been proved except the article of charge No.VII which was stated to have been partly proved. The disciplinary authority imposed a penalty of compulsory retirement on the applicant and his appeal was dismissed. The applicant had preferred OA 582/2002. This Tribunal had considered the said controversy and recorded:

"It would appear that the applicant in the above decision was not guided by any personal profit motive or malafides. The worst scenario could be that of not following the prescribed procedure but the same could not be taken as a deliberate attempt to cause loss to the exchequer. It cannot also be taken as a gross misconduct. That being the case, while we do not call in question the procedure initiated by the respondents culminating in the imposition of penalty on the applicant, we feel that the penalty imposed was disproportionate to the charges shown as proved, more so keeping in mind the long years of service rendered by the applicant, a fact acknowledged by the respondents themselves. In the facts and circumstances of the case, a penalty less harsh than compulsory retirement awarded by the Disciplinary authority would have adequately met the requirement of justice."

4. Keeping in view the above said findings, we have quashed the orders that were passed and directed the disciplinary authority may impose any other penalty less harsh than the compulsory retirement.

5. In pursuance of the said decision of this Tribunal, the disciplinary authority passed a fresh order imposing the penalty of reduction to lower time scale of pay of Rs.14300-400-18300 as Scientist E.II which shall be a bar to the promotion of the applicant. His pay was fixed at Rs.14300/- per month. His appeal has been dismissed.

8 Ag

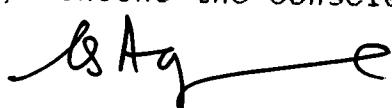
6. By virtue of the present application, he seeks setting aside of the said orders that have now been passed by the disciplinary as well as the appellate authority dated 23.5.2003 and 26.8.2003 respectively.

7. The learned counsel for the applicant contended that this Tribunal while disposing of the earlier OA had categorically held that the misconduct of the applicant pertaining to the charges that we have reproduced above, was not guided by any personal profit motive or mala fides but correct procedure has not been adopted. Thus, according to the learned counsel for the applicant, the penalty awarded is excessive.

8. On the contrary, the respondents' learned counsel had opposed the prayer and urged that it is not disproportionate to the alleged dereliction of duty, nor does it shocks the conscience of the Court.

9. We know from the decision rendered by the Supreme Court in the case of **B.C.Chaturvedi v. Union of India and Ors.**, JT 1995 (8) S.C.65 that this Tribunal can interfere only if the punishment imposed shocks the conscience of the Tribunal. In para 18, the principle of law laid was:-

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High

8 Ag 

Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to re-consider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

Same principle was also enunciated though differently by the Supreme Court in the case of State Bank of India (supra) and also in the case of **State of Karnataka and others v. H.Nagaraj, (1998) 9 SCC 671**. Relying upon a decision in the case of G.Ganayutham (supra), the Supreme Court held:-

"This Court has held that the principle of proportionality can be invoked regarding punishment only in a case where the punishment was totally irrational in the sense that it was in outrageous defiance of logic or moral standards. Such is not in the present case."

10. While disposing of the earlier OA it had been held that there was a dereliction of duty on the part of the applicant. Of course, it was held that the applicant was not guided by any personal profit motive or mala fides. He had not followed the procedure, which was not a case of gross misconduct. Keeping in view the facts, extreme penalty of compulsory retirement should not have been imposed. Presently, the impugned orders referred to above have been passed.

11. One fact that cannot be ignored is that there has been dereliction of duty on the part of the applicant. Once it is so and the impugned order has been passed, we find that it cannot be termed that the penalty awarded is disproportionate to the alleged dereliction of duty. Thus, we reject the said contention.

18 Aug

12. Controverting this position, it was held that the present penalty, in fact, is more ~~severe~~ ^{stringent} than that of compulsory retirement. In the view of the learned counsel, when penalty of reduction to a lower time scale has been imposed, the applicant who has just few years left for superannuation will be having less pension than he would have been drawing by virtue of the earlier order. Even on that count, we find that the plea necessarily must fail.

13. The penalty of compulsory retirement which comes by way of punishment is certainly harsher and is stigmatic in its own way. It cannot be stated that the penalty in question, therefore, would be harsher than the one already imposed. Different types of penalties have been contemplated in Rule 11 of the CCS (CCA) Rules and in the ~~consequence~~, it is mentioned. It is clear that the penalty of compulsory retirement, when imposed by way of punishment, would be harsher than the one imposed herein. Otherwise also this Tribunal had simply directed that the penalty should be other than compulsory retirement that has been complied with.

14. We find no ground to interfere.

15. For these reasons, the OA is without merit and is dismissed. No costs.


(R.K. Upadhyaya)
Member (A)


(V.S. Aggarwal)
Chairman

/NSN/