

Before Hemant Gupta and Mohinder Pal, JJ

DR. D. S. CHAWLA,—Petitioner

versus

**INDIAN COUNCIL OF AGRICULTURAL
RESEARCH AND OTHERS,—Respondents**

C.W.P. 6101/C of 2003

24th April, 2008

Constitution of India, 1950—Art. 226—Indian Council of Agricultural Research Regulations—Bye Law 39.4—Petitioner charge-sheeted—Inquiry Officer finding charges against petitioner not proved—Disciplinary authority disagreeing with inquiry officer—Reasons of disagreement communicated to petitioner—Disciplinary authority after considering representation of petitioner ordering punishment of compulsory retirement—President of ICAR is disciplinary authority in terms of Bye Law 39.4—Reasons of disagreement recorded by Secretary never put up to and agreed to by Disciplinary authority—Inquiry proceedings from stage of communication of reasons of disagreement held to be vitiated—Petition allowed while granting liberty to respondents to take appropriate decision from stage of recording of reasons of disagreement if they chose to do so and proceed in accordance with law.

Held, that may be the reasons of disagreement are recorded. But such reasons of disagreement were never agreed to by the Disciplinary Authority as the same were never put up to the Disciplinary Authority before the same were communicated to the petitioner. The competent authority has imposed the punishment, even though the reasons of disagreement were not agreed to by the Disciplinary Authority before the communication of the reasons. Thus, the order of punishment passed by the Disciplinary Authority violates the principles of natural justice. Thus, the inquiry proceedings from the stage of communication of the reasons of disagreement stand vitiated.

(Para 10 and 14)

HEMANT GUPTA, J.

(1) The challenge in the present writ petition is to an order passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short 'the Tribunal') on 11th February, 2003 (Annexure P.17), whereby the original application filed by the petitioner under Section 19 of the Administrative Tribunals Act, 1985 (for short 'the Act'), challenging the order of compulsory retirement dated 6th June, 2002 (Annexure P.13) was dismissed.

(2) The brief facts out of which the present petition has arisen are that the petitioner was appointed as demonstrator with Indian Council of Agricultural Research (hereinafter referred to as 'ICAR') and posted at Karnal on 21st April 1967. He was promoted as Principal Scientist on 19th March, 1988. On 21st December, 1999 (Annexure P.2), the petitioner was charge-sheeted for various acts of misconduct. The Inquiry Officer has given his report on 18th September, 2001 (Annexure P.5), whereby the charges levelled against the petitioner were not found to be proved. In the meantime, the post of Director, National Bureau of Animal Genetic Resources, Karnal (Haryana) was advertised on 30th June, 2001. Since the disciplinary proceedings were pending against the petitioner, which were not being finalised, which could affect the credentials of the petitioner for consideration of his appointment to the post of Director, the petitioner filed an Original Application before the Tribunal to seek finality to the disciplinary proceedings.

(3) The learned Tribunal directed the respondents to finalise the disciplinary proceedings. Since the proceedings were still not finalised, the petitioner filed a contempt petition and during the pendency thereof on 14th April, 2002 (Annexure P.11), reasons of disagreement, disagreeing with the findings of the Inquiry Officer were communicated to the petitioner. The petitioner submitted his representation on the said reasons of disagreement and after considering such representation on the basis of the recommendations of the Central Vigilance Commission, an order of punishment of compulsory retirement was passed on 6th

June, 2002 (Annexure P.13). It is the said order, which was made subject matter of challenge before the learned Tribunal.

(4) One of the grounds which was taken by the petitioner was that in terms of bye-law 39.4 of the ICAR Regulations, the President of ICAR is the Disciplinary Authority in respect of the petitioner, whereas the reasons of disagreement have not been recorded by such Disciplinary Authority. The learned Tribunal while considering the said argument noticed that the disagreement note (Annexure A.11) is though signed by the Deputy Secretary, P. K. Murgan, but he was directed to do so by the Disciplinary Authority. The Tribunal also relied upon the last para of the disagreement note wherein, it was stipulated that the Disciplinary Authority will take the suitable decision after 15 days of the receipt of the said memorandum. Thus, the Tribunal found that the disagreement note was issued by the competent authority.

(5) Learned counsel for the petitioner before this Court has vehemently argued that the findings recorded by the Tribunal are incorrect and as a matter of fact, the reasons of disagreement were never recorded by the Disciplinary Authority. It is argued that even the note prepared by the office was never put up to the Disciplinary Authority i.e. the President of the ICAR, who happens to be the Union Minister of Agriculture for his perusal or approval and therefore, the reasons recorded by the Office cannot be treated as reasons recorded by the Disciplinary Authority. Since the above question of recording of reasons was factual in nature, Shri Ashok Chaudhary, learned counsel representing the respondents has produced the office file containing the notings of the reasons of disagreement and the action taken thereon. A perusal of the record shows that Ms. Shashi Misra, Additional Secretary (DARE) and Secretary (ICAR) has recorded detailed reasons of not accepting the Inquiry Report on 27th March, 2002. The operative part of the said noting, reads as under :—

“.....Therefore, the inquiry report submitted by the Inquiry Officer including that of 3 charges as not proved, need not be accepted.

The Charged Officer, therefore, may be asked to give his comments in response to disagreement made with the findings of the Inquiring Officer as above.

S.O. (Vig.)

(Sd/-) . . . ,

SHASHI MISRA,
Additional Secretary, (DARE) and
Secretary (ICAR)
27th March, 2002.”

(6) The Section Officer (Vigilance) has recorded his note on 3rd April, 2002. The said note was marked to the Deputy Secretary (Vigilance), who has noted that it should be issued today itself. The said part of the noting reads as under :—

“Draft Memo to charged officer, asking his comments/representation in response to disagreement made with the findings of Inquiring Officer, is placed below for approval please.

Simultaneously, Law Section had informed that Hon’ble CAT Chandigarh has extended the time for completion of inquiry in the case of Dr. D. S. Chawla up to 30th April, 2002. However, it would not be practically possible to complete the whole process up to 30th April, 2002, as after receiving the representation from Dr. Chawla, after detailed analysis, case is required to be referred to CVC for second stage advice, which will take its own time. Accordingly, further extension of at least three months will be essentially required to complete the lengthy process.

DS (Vig.) may please see.

(Sd/-) . . . ,

3rd April, 2002.

DS (Vig.)- Please issue by today itself.

(Sd/-) . . . ,

4th April, 2002”

(7) In pursuance of such notings, the reasons of disagreement were communicated to the petitioner,—*vide* Annexure P.11. The petitioner submitted his representation on 22nd April, 2002 (Annexure P.12), which was considered by the Section Officer (Vigilance) on 8th May, 2002 and put up for consideration of Director (Vigilance). The Director (Vigilance) on 9th May, 2002 recorded that there is a procedural slip up in this case and that could create a piquant situation in future. It is recorded that reasons of disagreement should have been communicated to the charged officer along with the Inquiry Report at the first instance, but the principles of natural justice are adequately met when the reasons of disagreement were communicated to the charged officer on 4th April, 2002. Thereafter, after examining the advice of the Central Vigilance Commission, the Director (Vigilance) proposed on 27th May, 2002 to the following effect :—

“.....

8. In view of the facts and circumstances stated above, the Law Section suggested that it would be desirable to pass the final orders with regard to finalisation of disciplinary proceedings against Dr. D. S. Chawla, positively before 7th June, 2002.

Accordingly, Hon'ble A.M. and President ICAR who is the Disciplinary Authority in respect of Principal Scientists, may consider the advice of the CVC and decide to impose one of the penalties envisaged under Rule 11 of the CCS (CCA) Rules, 1965 or Dr. D. S. Chawla, Principal Scientist, CIRB, Hissar, as deemed appropriate. A list of the penalties as specified under Rule 11 of CCS (CCA) Rules, 1965 is placed below for perusal. Dr. D.S. Chawla is retiring from the Council's service on 31st January, 2004 on attaining the age of superannuation.

CVO, ICAR

(Sd/-)

(K. N. KUMAR),
Director (Vig.)
27th May, 2002.

(8) On such proposal, the Hon'ble Agriculture Minister had put his remarks "may be compulsorily retired" on 29th May, 2002.

(9) A perusal of the notes reproduced above shows that reasons of disagreement as recorded by the Secretary, ICAR on 27th March, 2002 were never put up for consideration by the Disciplinary Authority on or before 4th April, 2002, when the reasons of disagreement were communicated to the petitioner. The argument raised by the learned counsel for the respondents that since the reasons of disagreement and the subsequent consideration of the representation of the petitioner have been approved by the Agriculture Minister, therefore, the reasons of disagreement shall be deemed to be approved by the Disciplinary Authority.

(10) Having heard learned counsel for the parties at some length, we do not find any merit in the stand of the respondents. May be the reasons of disagreement are recorded. But such reasons of disagreement were never agreed to by the Disciplinary Authority as the same were never put up to the Disciplinary Authority before the same were communicated to the petitioner. The competent authority has imposed the punishment, even though the reasons of disagreement were not agreed to by the Disciplinary Authority before the communication of the reasons. Thus, we are of the opinion that the order of punishment passed by the Disciplinary Authority violates the principles of natural justice.

(11) Learned counsel for the petitioner relies upon **Punjab National Bank and others *versus* Kunj Behari Misra, (1)** and **Yoginath D. Bagde *versus* State of Maharashtra and another, (2)** to contend that if the Inquiry Officer has exonerated the delinquent official and the Competent Authority does not agree with the findings recorded, the Disciplinary Authority is required to communicate the reasons of disagreement to the delinquent and thereafter provide an opportunity to show cause against such reasons recorded. The final decision in

(1) (1998)7 S.C.C. 84

(2) (1999)7 S.C.C. 739

respect to the charge-sheet served upon the delinquent is required to be taken after considering the reply filed, if any.

(12) In Kunj Behari Misra's case (*supra*), the Hon'ble Supreme Court held that whenever the Disciplinary Authority disagrees with the Inquiry Authority on any article of charge, it must record its tentative reasons for such disagreement and give delinquent officer an opportunity to represent before it records its finding. The principles of natural justice require the authority which has to take a final decision to give an opportunity to the officer charged before it takes a final decision. It was held to the following effect :—

“19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its finding. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

(13) Following the aforesaid judgment, the Hon'ble Supreme Court in **State Bank of India and others versus K.P. Narayanan Kutty (3)** did not accept the argument that in cases where the reasons of

disagreement are not communicated, the delinquent employee has to show the prejudice caused. It was held to the following effect :—

“In Para 19 of the judgment in **Punjab National Bank and others versus Kunj Behari Misra, (1998) 7 Supreme Court Cases 84**, extracted above, when it is clearly stated that the principles of natural justice have to be read into Regulation 7(2) [Rule 50(3)(ii) of the State Bank of India (Supervising Staff) Service Rules, is identical in terms applicable to the present case] and the delinquent officer will have to be given an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer, we find it difficult to accept the contention advanced on behalf of the appellants that unless it is shown that some prejudice was caused to the respondent, the order of dismissal could not be set aside by the High Court.”

(14) Thus, we are of the opinion that the inquiry proceedings from the stage of communication of the reasons of disagreement stand vitiated. Though, the learned counsel for the petitioner has sought to challenge the order of punishment on other grounds, but since we have found that the order of punishment stands vitiated on account of non recording of the reasons of disagreement by the competent authority, therefore, we are not examining the other arguments.

(15) Consequently, we allow the present writ petition and set aside the impugned order dated 11th February, 2003 (Annexure P-17) passed by the learned Tribunal. As a consequence thereof, the order of punishment (Annexure P-13) is quashed. However, it shall be open to the respondents to take appropriate decision from the stage of recording of reasons of disagreement, if they chose to do so and proceed in accordance with law.

R.N.R.