

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 30th April, 2015

+ CHAT.A.REF. No.1/2014 & CM No.3363/2014 (for condonation of delay in re-filing).

**COUNCIL OF THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA**

..... Petitioner

Through: Mr. Rakesh Agarwal with Mr. Pulkit
Agarwal, Advs.

Versus

SHRI GYAN PRAKASH AGARWAL & ANR. Respondents

Through: Nemo.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. Chartered Accountant (CA) Shri Gyan Prakash Agarwal, a Member of the petitioner Institute of Chartered Accountants of India and having Membership No.086296, respondent no.1 herein (respondent no.2 is Union of India, a proforma party) having been found guilty of "Other Misconduct" falling under Section 22 read with Section 21 of the Chartered Accountants Act, 1949 as it stood prior to the amendment w.e.f. 17th November, 2006, in pursuance to the complaint dated 6th February, 2002 of the Office of the Comptroller & Auditor General of India (CAG), the petitioner Institute has made this Reference under Section 21(5) of the Act, forwarding the case to this

Court with its recommendation of removal of name of the respondent no.1 from the Register of Members for a period of one month.

2. Notice of this petition was issued. The respondent no.1 is reported to be served with a *dasti* notice on 1st September, 2014; however none appeared on his behalf on 10th November, 2014, 2nd March, 2015 and 6th April, 2015. We as such, on 6th April, 2015, heard the counsel for the petitioner and reserved judgment.

3. The CAG in its letter dated 6th February, 2002 to the petitioner had made certain allegations against the respondent no.1's firm M/s. Mega & Associates. The said firm M/s Mega & Associates was the Joint Statutory Auditor of Cotton Corporation of India (CCI) for the year 2000-2001. It was *inter alia* the case of the CAG that the respondent no.1 had claimed inflated amount(s) towards expenses incurred in performance of his duty during the course of audit of CCI for the year 2000-2001.

4. The Council of the petitioner Institute having formed a *prima facie* opinion that the said letter of the CAG disclosed professional and/or other misconduct on the part of the respondent No.1, in the meeting held on 28th

and 29th August, 2008, referred the matter to the Disciplinary Committee for enquiry.

5. It was *inter alia* the case of the respondent no.1 in his response to the allegations of the CAG that the complaint against him was a retaliation to the adverse comments made by him as a Statutory Auditor in his report with respect to CCI.

6. The Disciplinary Committee, in its Report dated 1st August, 2011 of the enquiry conducted, found, (i) that there was no element of adverse professional act / behaviour on the part of the respondent no.1 with respect to the first charge of raising exorbitant claim of Travelling Expenses, Daily Allowances and Reimbursement of out of pocket expenses without providing any documentary evidence; (ii) that there was no element of misconduct on the part of the respondent no.1 with respect to the second charge of claiming Rs.15,000/- towards Consultancy Charges paid to one Dr. Kamal Gupta, without prior consent of CCI; and, (iii) as far as the third charge relating to claim by the respondent no.1 of AC first class rail fare for travel, while actually travelling in a lower class during the return journey was concerned, though there was a casualness in filing claim, however there was an ingredient of wrongly justifying the mistake committed by claiming

an unentitled amount and which conduct of the respondent no.1 was not *bona fide*; the Disciplinary Committee thus held the respondent no.1 guilty of 'other misconduct' as aforesaid on the said charge

7. The respondent no.1 represented against the aforesaid report of the Disciplinary Committee, claiming that there was no intention to deceive CCI and he had in fact incurred expenses more than that claimed.

8. The report of the Disciplinary Committee and the representation of the respondent no.1 were considered in the meeting of the Council of the petitioner Institute held on 18th & 19th June, 2012 when the recommendation for removal of the name of the respondent no.1 from the Register of Members for one month was made.

9. We have perused the records and are satisfied of the proceedings aforesaid having been held in accordance with the prescribed procedure and the principles of natural justice having been followed. We are further satisfied with the reasoning recorded by the Disciplinary Committee of the petitioner Institute, for holding the respondent no.1 guilty as aforesaid. We however find that the Council of the petitioner Institute in the meeting held on 18th and 19th June, 2012 has recommended removal of the name of the

respondent no.1 from the Register of Members for a period of one month, without giving any reason whatsoever. The Council of the petitioner Institute did not consider that even the Disciplinary Committee whose report was accepted by the Council had reported that though the respondent no.1 was entitled to first AC fare but had travelled in second AC owing to non-availability of seat in first AC and the first AC fare was claimed due to “casualness” and was unintentional but the misconduct on the part of the respondent no.1 was in justifying the said casual and unintentional mistake. The Council also did not consider the representation dated 19th June, 2012 of the respondent no.1 that such act too was not intentional and there was no intention to deceive CCI and in fact much more amount than the fare of first AC was spent by him in travel and that the complaint in this regard against him was revengeful and vindictive on account of adverse comment made by him in the Audit Report. The proceedings of the Council of the petitioner Institute in which the recommendation for removal of name of respondent No.1 from Register of members for one month does not give us any inkling as to why the lesser punishments of reprimand or removal of name for say one day or one week, were not deemed appropriate.

10. We also find that neither the Disciplinary Committee nor the Council went into the question of the complaint being revengeful. The Council, while making the recommendation also did not consider that the CAG/CCI had complained against the respondent No.1 on two other aspects also and qua which the Disciplinary Committee found no case of professional misconduct being made out and/or no element to act dishonestly was made out and/or that the expenses claimed appeared to have been assessed reasonably and in the urgency of the matter. Therefrom it is clear that two of the three charges against the respondent No.1 were indeed baseless, exaggerated. The same lends credence to the plea of the respondent No.1, of the complaint against him being revengeful. Similarly, there is no finding of the Disciplinary Committee on the plea of the respondent No.1 of his having infact incurred expenditure on travel more than even the first AC fare. The Disciplinary Committee though noted that the travel was at short notice, in rush season and that the respondent No.1 had procured rail tickets through an agent, but did not consider the charges of the travel agent or the premium at which rail tickets are sold in rush season.

11. We, in the circumstances, have two options; either to ourselves reduce the punishment from that of removal of name from the Register of Members

for a period of one month to that of reprimand or to remand the matter to Council to consider the recommendation in the light of the report of the Disciplinary Committee and the representation of the respondent no.1 thereagainst. We choose the former simply for the reason that the matter has already been pending for the last more than ten years and we feel that it need not be prolonged any further.

12. We accordingly dispose of this Reference by modifying the punishment for the misconduct of which the respondent no.1 has been found guilty from that of removal of name from the Register of Members for a period of one month as recommended by the Council of the petitioner institute to that of reprimand. The requisite reprimand be issued in accordance with law.

The Reference is disposed of.

No costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

APRIL 30, 2015

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