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

+ **Date of Decision : 12.11.2018**

% **W.P.(C) 12036/2018**

DR. PARTHASARATHI BANERJEE Petitioner

Through: Mr. R. Gopal, Advocate.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Arun Bhardwaj, CGSC for UOI
with Mr.Nikhil Bhardwaj,
Ms.Gauraan and Mr.Shashwat
Sharma, Advocates.
Mr. Jayesh K. Unnikrishnan,
Advocate for R-2 & 4.
Mr. Ravinder Agarwal, Advocate for
R-3.

% **W.P.(C) 12062/2018**

DR. PARTHASARTHI BANERJEE Petitioner

Through: Mr. R. Gopal, Advocate.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Arun Bhardwaj, CGSC for UOI
with Mr.Nikhil Bhardwaj,
Ms.Gauraan and Mr.Shashwat
Sharma, Advocates.
Mr. Jayesh K. Unnikrishnan,
Advocate for R-2 to R-5.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE A. K. CHAWLA

VIPIN SANGHI, J. (ORAL)

1. The petitioner has preferred the present petitions to assail the common order dated 16.08.2018 passed by the Central Administrative Tribunal ('the Tribunal') in OA No.1775/2014, 2483/2014 and 1705/2018.

2. O.A. No. 1775/2014 was preferred by the petitioner to assail the memorandum dated 30.09.2013 whereby disciplinary proceedings were initiated against the petitioner. From the impugned order, it appears that O.A. No. 2483/2014 was preferred by the petitioner assailing the rejection of his request by the inquiry officer denying him the right to appoint a legal practitioner to defend him in the inquiry proceedings. O.A. No. 1705/2018 had been preferred by the petitioner to seek a declaration that he retired as Scientist "H" with upward revision of his pay band and grade pay he received as the Director, NISTADS with consequential reliefs. He sought several other reliefs in this O.A. in relation to his monetary benefits.

3. The Tribunal held – in respect of the challenge to the initiation of the disciplinary proceedings, that it was the prerogative of the Disciplinary Authority to initiate the same and that the petitioner could not claim that his rights were violated on account of any alleged irregularity in the manner in which the 1st stage advice of the CVC was obtained. So far as the petitioner's grievance that certain documents had not been furnished to him is concerned, the Tribunal observed that Disciplinary Authority would be

under obligation to furnish the list of documents and the list of witnesses. If the Disciplinary Authority has not provided any document to the delinquent employee, it would not be in a position to rely upon the same. Consequently, O.A. No. 1775/2014 was dismissed.

4. The Tribunal also held that the denial of permission to engage a legal practitioner in disciplinary proceedings was well founded in view of the letter issued by the CSIR bearing No. 1(60) – 81 Vig.

5. In relation to O.A. No. 1705/2018, the Tribunal has held that the nature of retirement benefits to be extended to the petitioner would depend on the outcome of the on-going disciplinary proceedings. A direction was issued that if benefits such as gratuity have not been paid, the petitioner shall be paid the same forthwith.

6. The background in which the petitioner had approached the Tribunal may be taken note of at this stage. The petitioner was functioning as Director in the Council of Scientific & Industrial Research (CSIR). He was issued a Charge Memorandum dated 30.09.2013 in relation to certain irregularities said to have been committed by him pertaining to appointment of Scientists in the organisation. He submitted his explanation on 28.10.2013. At that stage, he preferred OA No.1775/2014 challenging the issuance of the Charge Memo to him.

7. The petitioner submitted his application to request permission to avail the services of a legal practitioner in the departmental proceedings. Vide letter dated 03.06.2014, the Inquiry Officer expressed his inability to accede to the said request in view of the internal communication of CSIR bearing

No.1(60)/81-Vig., and clarified that only a servant of the CSIR could be nominated as a defence assistant, and not a legal practitioner. This communication was challenged before the Tribunal by preferring OA No.2483/2015. We may observe that the order passed in O.A. No. 2483/2015 is not the subject matter of the two writ petitions presently preferred by the petitioner.

8. In the first Original Application i.e. O.A. No. 1775/2014, the petitioner obtained an order staying the disciplinary proceedings while that stay was operating, the petitioner retired on superannuation on 31.12.2015. He preferred OA No.1705/2018 claiming the relief to declare that he retired as Scientist 'H', and he also sought revision of pay-band and grade-pay which he enjoyed as Director, NISTADS. In OA No.1705/2018, the petitioner also challenged the non-extension of his contractual appointment as Director- NISTADS, or his absorption in the Director levels post.

9. The submission of learned counsel for the petitioner, firstly, is that the charge-sheet has been issued to him without complying with the procedure prescribed for consultation with the Central Vigilance Commission (CVC) at the 1st stage. In this regard, learned counsel for the petitioner has drawn our attention to the Circular dated 13.03.2006 issued by the CVC, laying down the procedure to be followed at the time of seeking the 1st stage advice i.e. on the issue whether the departmental proceedings should be initiated against the officer, or not. The Tribunal has dealt with this issue in para 8 of the impugned order by observing that it is the prerogative of the disciplinary authority to initiate proceedings against an employee if any act of irregularity is noticed; the advice of CVC is not a step determining the rights

of the employee, and; it cannot be said that the rights of the petitioner-applicant were violated at the time of seeking the advice of the CVC.

10. The CVC was approached to seek the 1st stage advice and vide Office Memorandum dated 28.05.2013 the CVC responded by stating that the matter had been examined in the Commission. In agreement in the CDA, the Commission advised initiation of major penalty proceedings, *inter alia*, against the petitioner. Pertinently, the said advice of the CVC related to seven officers, including the petitioner. In respect of four of them, major penalty proceedings were advised to be initiated, and in respect of the remaining three, minor penalty proceedings were advised to be undertaken. We are informed by learned counsel for the respondents that in respect of all the others, the disciplinary proceedings were undertaken and concluded. Only in respect of the petitioner, the same have not progressed in view of the interim stay obtained by the petitioner from the Tribunal. It is equally pertinent to note that the CVC did not get back to the respondent – CSIR to express its inability to render its first-stage advice due to any short coming in the brief submitted by the respondent CSIR. In our view, it does not lie in the mouth of the petitioner to claim that the CVC was not provided the requisite information by the CSIR to enable it to form its advice. Had the information provided by the CSIR to the CVC been lacking, the CVC would have asked for it on its own.

11. Even if for the sake of argument it were to be assumed that the guidelines laid down by the CVC with regard to the procedure to be adopted for seeking the 1st stage advice was not strictly complied with, in our view the same would not vitiate the inquiry proceedings. Such procedural

requirements are to be viewed as guidelines only, which cannot be interpreted as mandatory, such that, lack of strict adherence to them would vitiate the 1st stage advice of the CVC. Ultimately, it is in the departmental proceedings that the innocence or guilt of the delinquent officer would be determined; the said proceedings have to be conducted in accordance with the Disciplinary Rules and in compliance of principles of natural justice. The petitioner would have all the opportunity, under the Rules, to defend himself in respect of the charge levelled against him. Thus, the petitioner cannot claim to have suffered any prejudice to his rights or interests, by claiming that the CVC was not provided with the requisite information or documents to enable it to render its first-stage advice.

12. Ld. Counsel for the petitioner further submits that there is no authority in the ex-officio Vice President, CSIR- to whom disciplinary powers have been delegated by the President, CSIR, to proceed against the petitioner by issuing a charge sheet and to order a disciplinary inquiry. He further submits that the further sub-delegation of the delegated powers by the ex-officio vice president, CSIR, to the inquiry officer is invalid. In this regard, Ld. Counsel for petitioner firstly relies on Rule 50 of the Rules & Regulation and Bye-Laws of Council of scientific and Industrial Research. The rule reads as under:

“Powers of the President and Vice President-

The president may, in writing, delegate such of his powers as may be necessary to the Vice President or Director General.”

13. Ld. Counsel for petitioner also relies on the order dated 22.03.1958, whereby powers of the President have been delegated to the Vice- President.

He further submits that under Rule 14 (5) of CCS/CCA Rules, it is the power of the Disciplinary Authority to appoint an inquiring authority. He submits that the Vice President has no authority to appoint the inquiring authority. He relies on the judgment of the Supreme Court in ***Union of India v. BV Gopinath***, (2014) 1 SCC 351, wherein the Supreme Court has pounded upon the rule against delegation of discretionary power.

14. We do not find merit in this submission of the petitioner. Rule 50 of Rules and Regulations and Bye Laws of the CSIR specifically provides that the President may, in writing, delegate such of his power, as may be necessary, to the Vice President or the Director General. The President, accordingly, authorized the Vice President of the Council to exercise all or any of his powers as President of the Council vide order dated 22.03.1958. It is in exercise of the said power that the Vice President issued the memorandum dated 30.09.2013. While issuing the charge memorandum and acting under Rule 14 (5) of the CCS/CCA Rules, the Vice President has acted for and on behalf of the President who is the Disciplinary Authority. That being the position, in our view, there is no infirmity in the initiation of the Disciplinary proceedings against the petitioner. There is no question of the appointment of the inquiring authority as a further sub-delegation. The enquiring authority only acts as the fact finding authority – who is obliged to follow the procedure prescribed. He is not the decision making authority. His findings are not conclusive or binding on the Disciplinary Authority. He does not function as a sub-delegate of the Disciplinary Authority.

15. So far as the grievance of the petitioner with regard to denial of inspection of documents is concerned, we find that the respondents have-

while issuing the communication dated 24.10.2013, taken the stand that the statement of defence should be limited to admitting or denying the charges communicated and for such admission or denial, inspection of documents is not necessary. It has been stated that the petitioner has been provided the list of documents in Annexure 3 to the memorandum, which is the list of documents relied upon by the Department.

16. The delinquent officer would, no doubt, be entitled to receive the documents relied upon by the department in the inquiry. It appears that the documents relied upon by the Department, in the present case, have been provided to the petitioner. In case any of those documents have not been supplied, the department would not be in a position to rely upon without first supplying them to the delinquent officer. However, the delinquent may require other documents to prepare his defence and may, therefore, ask for inspection of such documents by providing justification for the same. In case, the department finds that the delinquent is seeking inspection or copies of documents which are not relevant to its germane, or which the department would not grant inspection or copies of for any other valid reason, the same should be done by an order which should briefly record the reasons for denial of inspection/ copies of documents.

17. We, therefore, direct that the respondents should examine the request made by the petitioner for specific documents, and deal with each of his requests in an appropriate manner.

18. Ld. Counsel for petitioner further submits that the reversion of petitioner from the post of Director, CSIR-NISTADS to the post of Chief

Scientist on 23.02.2015 was illegal and has affected his pay and post retirement pension. In this regard, he has firstly relied on OM no. 7(81)/46/2009-PD dated 24.02.2009 by which the petitioner was appointed as Director, CSIR-NISTADS. He further relied on OM no. 3(124)/82/E-II dated 23.02.2015, whereby the petitioner was reverted back to the post of Chief Scientist. He argues that he has been discriminated, since other fellow Directors have been provided the opportunity to apply for extension till superannuation.

19. We may here itself extract the relevant portion of the terms and conditions annexed along with the aforesaid OM dated 24.02.2009 by which the petitioner was appointed.

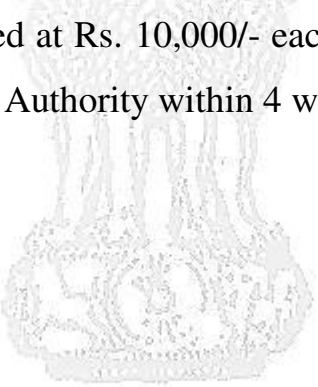
“2. The appointment as Director, National Institute of Science and Technology and Development Studies will be for the tenure of six years or till superannuation, whichever is earlier.”

20. Therefore it is clear that the tenure of the petitioner as Director was of 6 years, or till superannuation, whichever is earlier. The appointment of the petitioner as Director was purely contractual and since the tenure of the contract expired, he had no vested right to seek the renewal thereof. The tenure of the petitioner as director ended on 23.02.2015, while he still continued in service. The petitioner had no vested right to seek reappointment as Director or extension of his tenure as Director. In fact, in the background of the present case – when he had been issued a major penalty charge sheet with the advice of the CVC on 30.09.2013, the continuation of the petitioner in the sensitive post of Director was not called for. The decision of the respondents not to extend the petitioner’s tenure as

Director, therefore, cannot be faulted.

21. It appears to us that the petitioner has been dodging the disciplinary proceedings and even though the memorandum of charge was issued to him as early as on 30.09.2013, he has managed to successfully stall the inquiry proceedings by raising one or the other frivolous pleas. In our view, the present petitions are calculated to delay the departmental proceedings.

22. It is high time that the petitioner joins the disciplinary proceedings and the same are concluded. The Tribunal has directed the completion of the inquiry proceedings within one year and we reiterate the said direction. Since we find no merit in almost all the pleas of the petitioner, we dismiss the same with costs quantified at Rs. 10,000/- each. The costs be deposited with the Delhi Legal Service Authority within 4 weeks.



VIPIN SANGHI, J

A. K. CHAWLA, J

NOVEMBER 12, 2018

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