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

+ **W.P.(C) 4968/2017**

SANJEEV KUMAR TYAGI ..... Petitioner  
Through: Mr. Pradeep Kumar Arya, Mr.  
Ashwin Kalra, Ms. Sanya Arora and  
Mr. Gaurav Chaudhary, Advocates  
versus

INDIAN COUNCIL OF AGRICULTURAL  
RESEARCH & ORS. .... Respondents  
Through Mr. B. K. Shahi, Advocate.

**CORAM:**  
**JUSTICE S. MURALIDHAR**  
**JUSTICE TALWANT SINGH**

**ORDER**  
% **30.01.2020**

**Dr. S. Muralidhar, J.:**

1. The challenge in the present petition is to the orders dated 7<sup>th</sup> October, 2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('CAT') in O.A. No.2671/2015 filed by the Petitioner, and 13<sup>th</sup> February, 2017 of the CAT dismissing the Petitioner's R.A. No.39/2017. By the first impugned order, it was held that the disciplinary proceedings conducted by the Respondents under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 ['CCS (CCA) Rules'] and the order dated 27<sup>th</sup> October, 2014 of the Disciplinary Authority ('DA') imposing a penalty of "reduction to a lower stage in the time scale of pay by one stage for a period of three years without cumulative effect and not adversely affecting his pension" suffered from no irregularity or illegality.

Challenges by the Petitioner to the aforesaid order dated 27<sup>th</sup> October, 2014 to the Appellate Authority ('AA') and the Revisional Authority ('RA') were dismissed on 3<sup>rd</sup> February, 2015 and 24<sup>th</sup> April, 2015 respectively. By the second impugned order of the CAT dated 13<sup>th</sup> February, 2017, the Petitioner's R.A. No. 39/2017 was dismissed by holding that there was no error apparent on the face of the record.

2. The Petitioner, who is presently posted as a Principal Scientist (Chemical Engineering) in the Central Institute of Post-Harvest Engineering and Technology, ('CIPHET') in Ludhiana, joined the Indian Council of Agricultural Research ('ICAR') as a Scientist. It is stated that the ICAR issued two Advisory Memoranda to the Petitioner dated 28<sup>th</sup> February, 2007 and 18<sup>th</sup> June, 2008 advising him "to disassociate himself completely" from the activities of a Ludhiana-based private institution named Aditya Institute of Vocational Studies owned by his wife. According to the ICAR, it transpired that the Petitioner ignored the said advice. Further, the records of the said Institute showed the Petitioner as its Educational Advisor, to act in which capacity no official permission has been obtained by him from the ICAR in terms of the Central Civil Services (Conduct) Rules, 1964.

3. It appears that apart from the aforesaid allegations, there were certain other allegations as regards the Petitioner, which led to the issuance of a memorandum dated 30<sup>th</sup> December, 2013 whereby the Petitioner was informed that action was proposed to be taken against him under Rule 16 of the CCS (CCA) Rules. The statement of imputation of misconduct was enclosed with the said memorandum.

4. On 16<sup>th</sup> January 2014, the Petitioner replied to the said memorandum, by pointing out, *inter alia*, that the holding of an inquiry was mandated, as per an Office Memorandum ('OM') dated 28<sup>th</sup> October, 1985 issued by the Department of Personnel & Training ('DoPT') as regards the allegations made against him in the said memorandum dated 30<sup>th</sup> December, 2013. He also asked to be provided with the material in terms of which the imputations against him had been made, including "complaints, statements and documents."

5. By its reply dated 6<sup>th</sup> February, 2014 addressed to the Petitioner, the ICAR informed him that the DA had observed that "a decision as to whether such an inquiry is required/warranted in the case can be taken by him only after receipt (and due examination thereof) of your representation vis-à-vis the impugned imputations of misconduct, as conveyed to you vide Memorandum of even number dated 30.12.13." He was informed that the DA had accordingly granted him ten days more time to file his reply to the said memorandum dated 30<sup>th</sup> December, 2013. Since, in the meanwhile, the Petitioner had been transferred to CIPHET, Ludhiana he sought time up to 21<sup>st</sup> April, 2014 to furnish a reply by way of a letter dated 31<sup>st</sup> March, 2014. Thereafter, he submitted a detailed reply to the memorandum dated 30<sup>th</sup> December, 2013 on 21<sup>st</sup> April, 2014.

6. It appears that, thereafter, on 6<sup>th</sup> August 2014, the ICAR addressed a letter to the Central Vigilance Commission ('CVC'), enclosing, *inter alia*, a Vigilance Report and stating that disciplinary proceedings to impose a minor penalty were "proposed to be initiated" against the Petitioner. Paragraph 7 of

this letter acknowledges that the charge-sheet dated 30<sup>th</sup> December, 2013 was issued to the Petitioner without obtaining the first stage advice of the CVC.

7. The Court has perused the original record produced by the Respondents. It is seen that in response to the above letter dated 6<sup>th</sup> August, 2014 of the ICAR, the CVC issued an OM dated 16<sup>th</sup> October, 2014, advising as under:

“Taking into account the facts of the case, the Commission would advise imposition of minor penalty, other than censure and warning on Dr. S.K. Tyagi, Principal Scientist, CIPHET Ludhiana.”

8. It is thus seen that apart from the failure to obtain the first stage advice of the CVC, no opinion had, till this point, been formed by the DA regarding dispensing with an inquiry mandatorily required in terms of Rule 16 of the CCS (CCA) Rules, which reads as under:

“16. Procedure for Imposing Minor Penalties:

(1) Subject to the provisions of sub-rule (5) of rule 15, no order imposing on a Government servant any of the penalties specified in clause (i) to (iv) of rule 11 shall be made except after-

(a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;

(b) holding an inquiry in the manner laid down in sub-rules (3) to (24) of rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;

(c) taking the representation, if any, submitted by the Government servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;

(d) consulting the Commission where such consultation is necessary. The Disciplinary Authority shall forward or cause to be forwarded a copy of the advice of the Commission to the Government servant, who shall be required to submit, if he so desires, his written representation or submission on the advice of the Commission, to the Disciplinary Authority within fifteen days; and

(e) recording a finding on each imputation or misconduct or misbehaviour.

(1-A) Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government servant under clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (24) of Rule 14, before making any order imposing on the Government servant any such penalty.

(2) The record of the proceedings in such cases shall include-

(i) a copy of the intimation to the Government servant of the proposal to take action against him;

(ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;

(iii) his representation, if any;

(iv) the evidence produced during the inquiry;

(v) the advice of the Commission, if any;

(vi) representation, if any, of the Government servant on the advice of the Commission;

(vii) the findings on each imputation of misconduct or misbehaviour; and

(viii) the orders on the case together with the reasons therefor.”

9. The DoPT OM dated 28<sup>th</sup> October, 1985 notes that under Rule 16 (1-A), the holding of an enquiry is envisaged even when a minor penalty is to be imposed in the circumstances indicated therein. It notes that:

“In other cases, where a minor penalty is to be imposed, Rule 16 (1) *ibid* leaves it to the discretion of disciplinary authority to decide whether an inquiry should be held or not. The implication of this rule is that on receipt of representation of Government servant concerned on the imputations of misconduct or misbehaviour communicated to him, the disciplinary authority should apply its mind to all facts and circumstances and the reasons urged in the representation for holding a detailed inquiry and form an opinion whether an inquiry is necessary or not. In case where a delinquent Government servant has asked for inspection of certain documents and cross examination of the prosecution witnesses, the disciplinary authority should naturally apply its mind more closely to the request and should not reject the request solely on the ground that inquiry is not mandatory. If the records indicate that, notwithstanding the points urged by the Government servant, the disciplinary authority could, after due consideration, come to the conclusion that an inquiry is not necessary, it should say so in writing indicating its reasons, instead of rejecting the request for holding inquiry summarily without any indication that it has applied its mind to the request, as such an action could be construed as denial of natural justice.”

10. The above position holds good even as on date. In other words, if the DA comes to a conclusion that an enquiry is not necessary, he should “say so in writing indicating its reasons, instead of rejecting the request for holding enquiry summarily without any indication that it has applied its mind to the request.”

11. In the present case, once the above advice of the CVC was received, the DA straightway took the decision to impose the penalty, as noted hereinbefore, by way of the impugned order dated 27<sup>th</sup> October, 2014. Therefore, there is no manner of doubt that the mandatory requirement of Rule 16 of the CCS (CCA) Rules was not complied with.

12. The Court notes that the CAT in the impugned order has termed the failure to not obtain the first stage advice of the CVC as “some technical lapses.” Further, it has observed that “since the CVC advice was a short advice, namely, for conducting minor penalty proceedings, it would not vitiate the proceedings.”

13. The Court holds the above conclusion to be erroneous in law. Even a minor penalty can have adverse and severe consequences for a government servant. It can mar his entire career, since it would come in the way of his future progress. It is not without reason that the CCS (CCA) Rules have been designed to require the holding of an enquiry even where the penalty proposed is a minor one. It is again not without reason that the DoPT through its OM dated 20<sup>th</sup> October, 1985 has required the DA to give reasons in writing if an enquiry is to be dispensed with.

14. The requirement of getting the first stage advice from the CVC even before issuing the charge-sheet, and a second stage advice after the enquiry but before the imposition of penalty, is to ensure that there is no arbitrariness in the exercise of disciplinary powers by superior officers. These cannot be treated as merely directory and dispensable. Violation of these procedural safeguards would undoubtedly vitiate any penalty that is inflicted on a government servant without following the procedure prescribed under the law.

15. Not only did the AA and the RA completely ignore the legal position, but the CAT erred in terming this to be a mere “technical lapse”, when, in fact, it constitutes a violation of a mandatory requirement of the law.

16. The CAT appears to have gone into the merits of the matter by examining the material vis-à-vis the individual articles of charge. This again was impermissible when the Petitioner had not even been given an opportunity to test in an inquiry the evidence gathered against him, purportedly in support of the charges.

17. If the CAT had asked for the original records, as we did in the present matter, it would have been plain that not only had the first stage advice of the CVC not been taken, but more importantly, no noting had been made in the file by the DA explaining the reasons why an inquiry should be dispensed with.

18. For all of the aforementioned reasons, the Court finds the impugned memorandum dated 30<sup>th</sup> December, 2013 issued to the Petitioner, the order

dated 27<sup>th</sup> October, 2014 of the DA imposing the penalty in question on the Petitioner, the further impugned orders of the AA and the RA affirming the said order to be unsustainable in law. They are hereby set aside.

19. Consequently, the impugned order dated 7<sup>th</sup> October, 2016 of the CAT in O.A. No.2671/2015 filed by the Petitioner, and the further order dated 13<sup>th</sup> February, 2017 of the CAT dismissing the Petitioner's R.A. No.39/2017 are also hereby set aside. The consequential orders by way of implementation of this judgment be issued by the Respondents not later than 12 weeks from today.

20. The petition is allowed in the above terms. No costs.

**S. MURALIDHAR, J.**

**TALWANT SINGH, J.**

**JANUARY 30, 2020**

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