



2024:DHC:6349-DB



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

% *Date of decision: 12th August, 2024*

+ W.P.(C) 11122/2024 & CM APPL. 45992-93/2024

COUNCIL OF SCIENTIFIC AND INDUSTRIAL RESEARCH &
ANR.Petitioners

Through: Mr. Rajeshkhar Rao, Senior
Advocate with Mr. Arun Sanwal,
Mr. Akshit Gupta, Mr. Ajay
Sabharwal, Mr. Namic Wasim
Nargal, Advocates

Versus

DR. RAKESH KUMARRespondent
Through: Mr. Arun Bhardwaj, Senior Advocate
with Mr. Naman Tandon, Mr. Harsh
and Mr. Abhishek Sharma, Advocates

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T (oral)

1. The present petition has been preferred by petitioners under Articles 226 and 227 of the Constitution of India seeking issuance of a writ of certiorari for setting aside/ quashing of order and judgment dated 07.05.2024 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No.3453/2023, whereby charge-sheet dated 20.10.2023 issued by the petitioners against the respondent has been quashed.



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2. Brief facts of the case are that the respondent, a Post Graduate in the discipline of Environment Science & Engineering from Indian Institute of Technology, Bombay, joined Council of Scientific & Industrial Research - National Environmental Engineering Research Institute (CSIR - NEERI) as a Scientist Fellow in the year 1987 and was thereafter, designated as Scientist in the year 1988. He was later promoted as Chief Scientist through departmental promotions.

3. In the year 2008, petitioner No.1 notified the Recruitment Rules for the post of Director of the Laboratory / Institute / Centre. In the year 2016, petitioner No. 1 issued an advertisement for appointment to the post of Director, CSIR-NEERI, Nagpur. The respondent being eligible applied for the said post and after following the due procedure, vide order dated 17.05.2016 he was selected by the Search-cum-Selection Committee and vide notification dated 23.05.2016, respondent was appointed as Director, CSIR NEERI, Nagpur for a tenure of six years.

4. The case of the respondent is that on assuming charge as Director, he started receiving complaints against one of the employees, namely, Mr. Sanjay Suman for his misconduct and wrongdoings. After taking cognizance of such complaints, the respondent issued Show Cause Notice dated 27.05.2019 to the said employee, who was subsequently transferred from CSIR, NEERI to CFTRI, Mysore on 27.06.2019.

5. In order to take revenge from the respondent, the said employee made a complaint dated 03.12.2019 to Central Vigilance Commission (CVC) under Public Interest Disclosure and Protection of Informer alleging corruption and misuse of the office by the respondent.



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6. The CVC vide OM dated 25.06.2020 directed petitioner no.2 to make investigation and enquire into the allegations made in the complaint and thereafter submit its investigation report.
7. Vide OM dated 14.08.2020, petitioner no.2 constituted a Fact Finding Committee (FFC) consisting of three persons below the rank of the respondent. The respondent submitted his objection to the petitioners against constitution of the FFC and also preferred WP(C) No.4322/2021 before this Court challenging the said order dated 14.08.2020. The said Writ Petition was withdrawn by the respondent with liberty to seek remedy in future as and when required.
8. Thereafter, the respondent was served with OM dated 09.04.2021 informing him that the competent authority had approved the proposal to divest him of his charge as Director, CSIR, NEERI with immediate effect and to transfer him to CSIR, Delhi. Vide another OM of even date, additional charge of the post in question had been entrusted to one Dr. C. Chandrashekhar.
9. Pursuant to OM dated 09.04.2021, the respondent joined and assumed the charge of the post of Director at CSIR, Delhi on 12.04.2021. However, notification qua respondent's joining was issued on 04.06.2021, i.e. after more than 50 days from the date of his joining.
10. Aggrieved of the action of the petitioners transferring the respondent to CSIR, Delhi, the respondent filed OA bearing Diary No.4169/2021, which was dismissed as infructuous vide order dated 02.08.2021.
11. Thereafter, on 17.04.2023, i.e., after a gap of almost 2.5 years, the respondent was served with a chargesheet dated 28.03.2023.



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12. Being aggrieved, again respondent approached the Tribunal by filing O.A. No.1735/2023, wherein, vide order dated 02.06.2023, the Tribunal directed the petitioners to not proceed with the disciplinary proceedings till the next date of hearing.

13. The petitioners submitted a copy of memorandum dated 29.08.2023 before the Tribunal informing that the chargesheet has been withdrawn without prejudice to the right of the disciplinary authority to proceed in the matter as per law.

14. Based on the said submission, the respondent withdrew O.A. No.1735/2023 on 29.08.2023.

15. Subsequently, another chargesheet dated 01.09.2023 was issued against the respondent on similar charges, as had been leveled in the previous charge sheet.

16. The respondent again in third round approached the Tribunal by instituting O.A. No.2801/2023., wherein the Tribunal vide order dated 14.09.2023 directed the petitioners not to proceed with the disciplinary proceedings till the next date of hearing.

17. On 27.09.2023, the petitioners once again submitted a copy of communication dated 24.09.2023 issued by the Chief Vigilance Officer, informing that the second charge sheet in question had been withdrawn without prejudice to the rights of the disciplinary authority to proceed in the matter as per law. Consequently, vide order dated 27.09.2023, the said O.A. was disposed of by the Tribunal as having been rendered infructuous.

18. It is pertinent to mention here that on 28.09.2023, the respondent submitted his resignation, which was withdrawn on 04.10.2023. He,



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however, submitted an application dated 28.09.2023 for voluntary retirement from service. Without there being any response to the same, the petitioners issued the third charge-sheet dated 20.10.2023 against the respondent and vide Memorandum dated 07.12.2023 informed the respondent that his request for voluntary retirement from service cannot be acceded, against which the respondent fourth time preferred O.A.No.128/2024 before the learned Tribunal.

19. Meanwhile, the respondent was put under suspension vide Office Memorandum dated 27.03.2024, against which the respondent in fifth round filed O.A.No.1548/2023 before the learned Tribunal.

20. In light of pleadings of both the sides, the issue before the learned Tribunal for consideration was that as to whether the CVC advice contained in OM dated 11.08.2022 addressed to the petitioners can be construed to be the 'First Stage Advice'?

21. The learned Tribunal vide impugned order observed that the advice of CVC would *inter alia* include vetting/ approval of the Articles of Charge, names of the staff/ officers to be taken up, the level of chargesheet (major penalty or minor penalty) to be issued for each of the delinquent staff/ officers etc. A mere direction to redraft the charges or to alter the language can at best be taken as an interim direction and not as an Advice *per se*.

22. The learned Tribunal vide order dated 07.05.2024 passed in O.A. No. 1548/2023 set aside the Memorandum dated 27.03.2024 suspending respondent's services. Also, vide order dated 07.05.2024, in O.A. No.3453/2023 quashed the charge sheet dated 20.10.2023 issued against the respondent.



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23. In the present petition, the petitioners have assailed the order dated 07.05.2024 passed in O.A. No. 3453/2023 passed by the learned Tribunal.

24. During the course of hearing, learned senior counsel for petitioners submits that though there are 41 grounds mentioned in the present petition, however, the relief sought in the present petition is confined to grounds B and C, which are reproduced as under:-

“B. BECAUSE the Hon'ble Tribunal in holding the CVC's letter dated 11.08.2022 as mere direction to amend the Articles of Charge, has failed to take a comprehensive note of the contents therein and has in turn failed to appreciate the true nature of the said letter. A bare perusal of the letter dated 11.08.2022 clearly indicates that the said letter was in the nature of first stage advice. The Petitioner has been categorically asked to initiate major penalty proceedings against the respondent and other officials in the second para of the CVC letter.

C. BECAUSE the Learned Tribunal in order dated 07.05.2024 under para 6.1, while perusing CVC OM dated 11.08.2022 addressed to the petitioners, has erred in observing that CVC has 'directed' the petitioners "only" to review the drafting of Article of Charge in more specific and simplified language. Furthermore, the Learned Tribunal has not considered the advice as 'First Stage Advice' per se of CVC and considered it simply a direction to mould the language of the Article of Charge.”

25. Learned senior counsel appearing on behalf of petitioners has submitted that the third charge-sheet has been served upon the respondent as per advice of CVC and it does not suffer from any lacuna or infirmity.



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Reliance is placed upon decision of **this Court in *Parthasarathi Banerjee (Dr.) Vs. Union of India 2018*** SCC OnLine Del 12489 wherein it is held that even if the CVC advice was not obtained as per prescribed procedure, it would not vitiate the enquiry proceedings, as the guilt of the officer has to be ascertained in the departmental proceedings. Learned senior counsel submitted that the learned Tribunal has not considered Para 3 of OM dated 11.08.2022 of CVC in respect of the respondent.

26. Learned senior counsel for petitioners further submitted that the learned Tribunal did not appreciate that the advices rendered by the CVC are not binding upon disciplinary proceedings and that vetting of charge sheet is not mandated as per CVC and thus, the learned Tribunal has only directed to review the Articles of Charge to be more specific and in simplified language. However, thereafter the re-drafted chargesheet was sent on 03.01.2023 to CVC, seeking a 'clear first stage advice', which was tendered vide communication dated 16.02.2023.

27. Learned counsel for respondent submitted that the petitioners were bent upon harassing him as is evident from the fact that the third chargesheet was issued on the same charges even though the earlier chargesheets were found to be suffering from various lacunae and, therefore, the petitioners had been withdrawing the same repeatedly.

28. To the contrary, the petitioners pleaded before the learned Tribunal that that instead of exhausting available remedies in the form of submitting their defense statement, the respondent approached the Tribunal in violation of Section 20 of the Administrative Tribunals Act, 1985. Had he filed his defense statement, he would have got full opportunity in the enquiry



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proceedings. Further, provisions of filing Appeal, Revision and Review against the order of Disciplinary Authority have also been provided under CCS (CCA) Rules, 1965.

29. Upon hearing learned counsel for the parties and on perusal of the impugned order and other material placed on record, we find that petitioners have relied upon the decision of this Court in the case of **Parthasarathi Banerjee (Dr.) Vs. Union of India** 2018 SCC OnLine Del 12489, which reads as under:-

“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."

30. Let us now examine the case in hand in light of decision on ***Parthasarathi Banerjee (Dr.) (supra)***.

31. In the present case, the advice given by the CVC reads as under:-

"4. The articles of charge in the draft chargesheet prepared by CSIR are not specific and contain long description of facts which can be part of statement of imputations. The drafting of articles of charge may be reviewed by CSIR to be more specific and in simplified language. Further, the articles of charge which are similar in nature may be clubbed together."

32. Also, the petitioners reviewed and re-drafted the chargesheet and sent the same again to the CVC on 03.01.2023 seeking a '**clear first stage advice**' and in response to the same, CVC tendered its advice vide communication dated 16.01.2023 in the following manner:-

"2. The Commission after considering all facts of the case has given clear advice vide OM dated 11.08.2022 including advice to review the drafting of Chargesheet by CSIR. No further clarification from Commission is necessary at this stage."

33. The learned Tribunal observed in the impugned judgment that the CVC's letter dated 11.08.2022 cannot be taken to be the First Stage Advice of the CVC. Consequently, the chargesheet dated 20.10.2023 containing the CVC's aforementioned First Stage Advice, which was merely a direction to



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amend the Articles of Charge, was quashed and set aside by learned Tribunal.

34. Pertinently, the second chargesheet was also withdrawn and the petitioners again relied upon the advice dated 11.08.2022. Thereafter, the CVC has not given any advice. But on similar such grounds, the third chargesheet was served upon the respondent without getting the advice from CVC.

35. Moreover, during the course of hearing, learned senior counsel appearing on behalf of the petitioner was unable to satisfy this Court as to how issuance of third chargesheet on similar allegations and grounds is distinct and is required to be considered. In our considered opinion this is a clear cut and apparent case demonstrating *mala fide* intentions of the petitioners to harass an official without any basis, who has been compelled to approach the learned Tribunal fifth time and once this Court earlier and now in seventh round of litigation, the respondent was compelled to defend the present petition.

36. In view of above, finding no illegality or perversity in the impugned order dated 07.05.2024 passed by the learned Tribunal, the present petition is thus dismissed.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

AUGUST 12, 2024
rk/r