
(2020) 08 CAT CK 0078

In the Central Administrative Tribunal

Case No : Original Application No. 2051 Of 2019, Miscellaneous Application No. 452 Of 2020

D S Shankar

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 24-08-2020

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 3A, 3(1)(ii), 3(1)(iii)

Citation : (2020) 08 CAT CK 0078

Hon'ble Judges : L. Narasimha Reddy, J; Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : Azhar Alam, K M Singh

Final Decision : Dismissed

Judgement

Narasimha Reddy, J

1. The applicant is working as Senior Assistant Professor Group -A, in the National Council of Educational Research and Training. - 3rd respondent herein. Disciplinary proceedings were initiated against him by issuing charge memo dated 11.02.2018. 8 articles of charges were framed. The applicant submitted his defence reply on 23.04.2018. Not satisfied with the same, the Disciplinary Authority appointed an Enquiry Officer.

2. In his report dated 06.09.2018, the Enquiry Officer held the charges as proved. The applicant was furnished a copy of the report, to enable him to make a representation. On a consideration of the representation dated 10.10.2018 submitted by the applicant, the Disciplinary Authority imposed the punishment of removal from service of the applicant, by order dated 27.08.2018.

3. Aggrieved by the order of removal, the applicant availed the remedy of appeal. The Appellate Authority rejected the same, through order dated 25.02.2019. This OA is filed challenging the (a) charge memo dated 11.04.2018, (b) the enquiry report dated 26.09.2018 (c) the order of penalty dated

27.11.2018 ; and (d) the order of Appellate Authority dated 25.09.2019.

4. The applicant contends that the charges framed against him are factually incorrect and are motivated. He submits that he discharged his duties with utmost devotion and the charge memo is vindictive in nature. According to him, the enquiry was not conducted properly and adequate opportunity was not given to him. It is also stated that the findings recorded by the Enquiry Officer are perverse. The applicant asserts that the punishment of removal from service is highly disproportionate and arbitrary. It is also his case that the Appellate Authority has rejected the appeal mechanically, without appreciating the grounds raised by him.

5. The respondents filed a reply opposing the OA. It is stated that the charges framed against the applicants are grave in nature and most of them are borne out by record. It is also stated that the applicant was given adequate opportunity at every stage of the proceedings and the findings are based upon the evidence on record. They contend that the applicant has resorted to serious acts of indiscipline and keeping in view the interest of the organization, the Disciplinary Authority has imposed the punishment of removal from service. It is stated that the Appellate Authority has examined the matter with reference to the record and rejected the appeal.

6. We heard Shri. Azar Alam, learned counsel for the applicant and Shri K.M.Singh, learned counsel for the respondents.

7. The applicant joined the service of the 3rd respondent organization as Lecturer in Zoology on 27.07.2007. The post has since been redesignated as Assistant Professor. Initially he was posted at Ajmer. Thereafter, he was transferred to Bhopal on 25.02.2010. He was promoted as Senior Assistant Professor at that place and functioned as in charge of Zoology section. It is stated that the applicant received several complaints against non-availability of the books in library, and accordingly he filed an application under the Right To Information Act to know the facts, and that in turn gave rise to serious acrimony between him and other employees. A criminal case is said to have been registered in relation to an incident and that the applicant was discharged from the case. He further submits that one Mr.Senapathi was posted as Principal at Bhopal, and he started pressurising him to withdraw the complaint filed against him and when he did not heed to that, the Principal threatened him with rare consequences. Various other incidents are also mentioned in detail.

8. A charge memo was issued to the applicant on 07.04.2018. As many as 8 articles of charges were framed. They read as under :

"Statement of Imputation of misconduct or misbehavior in support of the articles of charges framed against Dr. D.S. of Shankar, Assistant Professor

Article - I

That the said Dr. D.S. Shankar while functioning as Assistant Professor in NERIE,

Shillong was issued Show Cause Notice vide letter dated 08.02.2018 for not adhering Bio matric Attendance System and not marking his bio matric attendance in system. Instead of giving a reply, Dr. D.S. Shankar tore the memo dated 8/2/2018 in pieces and threw the bunch of pieces on Principal's table on 09.02.2018 and told the Principal, NERIE, Shillong that here is the reply to your memo. This type of attitude of Dr. Shankar shows that he does not care for superior's orders and does not care for any rules and regulations issued by GOI/ Council. This act of Dr. D.S. Shankar shows that acted in a manner of unbecoming of a Government Servant.

By his aforesaid act, Dr. D.S. Shankar, Assistant Professor, NERIE, Shillong has exhibited lack of devotion to duty and acted in a manner unbecoming of Council's employee; thereby contravening Rule 3 (1) (ii) & (iii) of CCS Conduct Rules, 1964 as applicable to the employees of the Council. He has also acted in a discourteous manner while performance of his official duties thereby contravening Rule 3-A of CCS Conduct Rules, 1964.

Article - II

That while functioning in NERIE Shillong, Dr. Shankar is in the habit of using derogative language while making official communication to Council Authorities. While deputing I.O. for conducting independent inquiry vide letter dated 12.12.2017 issued by Under Secretary (RIEFA), HQ, NCERT, Delhi, in reply Dr. Shankar vide email dated 19.12.2017 informed that IO is not a higher grade officer as compared to his designation so that I will this order as my foot. It shows that he does not care for official decorum and other official's dignity. Consequently, Deputy Secretary, RIEFA vide letter dated 03.01.2018 addressed to A.O., NERIE & Dr. D.S. Shankar informed that I.O is drawing higher grade pay than that of the grade pay of Dr. D.S. Shankar, hence the Council's Order dated 12.12.2017 will remain operative. The I.O. before proceeding to NERIE informed Dr. D.S. Shankar vide e-mail dated 06.02.2018 to be available during the course of enquiry i.e. from 12-15.02.2018. In response to this e-mail Dr. Shankar has replied vide e-mail dated 06.02.2018 that "Sorry I am not available on this dates. In this connection I requested to Secretary, NCERT, New Delhi to set up fair 5 member academic grade officers committee in Secretary's Office at New Delhi. Also requested not less than my below rank of Non-Academic faculty." In response to this, Inquiry Officer once again advised Dr. D.S. Shankar vide e-mail dated 07.02.2018 to be available during course of enquiry and co-operate. Dr. D.S. Shankar vide e-mail dated 07.02.2018 informed that "Sorry I regret your request and I am not available on this date and no further correspondence". In spite of repeated requests made, Dr. D.S. Shankar did not appear before the Inquiry Officer.

By his aforesaid act, Dr. D.S. Shankar, Assistant Professor, NERIE, Shillong has exhibited lack of devotion to duty and acted in a manner unbecoming of Council's employee; thereby contravening Rule 3 (1) (ii) & (iii) of CCS Conduct Rules, 1964 as applicable to the employees of the Council. He has also acted in a

discourteous manner while performance of his official duties thereby contravening Rule 3-A of CCS Conduct Rules, 1964.

Article - III

As per status report of the Biometric Machine for the month of January, 2018, Dr. D.S. Shankar was absent from the duty w.e.f. 1st to 31st January, 2018 without any permission. A memorandum vide No.F.12-44/2017- NERIE/PF/DSS dated 5/2/2018 was issued to him for submitting the reasons for his absence without permission. He was also given opportunity to apply the leave due and admissible in the prescribed proforma for the period of absence. He failed to respond to memo within stipulated time of 03 days. Another opportunity was given to him vide memo dated 8/02/2018 delivered to him on 09/02/2018 by Sh. J.S. Nongkhlaw, MTS (Messenger) at 11.25 a.m. the receipt of which was not acknowledged by Dr. D.S. Shankar. Instead of giving a reply, Dr. D. S. Shankar tore the memo dated 08/02/2018 in pieces and threw the bunch of pieces on Principal's table at around 11.30 a.m. on 09/02/2018 and told that here is the reply to your memo. Thus, Dr. D. S. Shankar did not follow the instructions of DOP&T, Government of India in accordance of which the Principal, NEIRE, Shillong has introduced Bio-Matric Attendance System for all-academic/non - academic officials with effect from 01.01.2018 in the Institute. It shows that he does not care for rules and regulations issued by Council/Institute/GOI. In this connection attention is invited to Rule 3 (1)(ii) of CCS Conduct Rules, 1964 which stipulates that every Government servant shall at all times maintain devotion to duty. Habitual late attendance is viewed as conduct unbecoming of a Government servant and disciplinary action may be taken against such a Government servant. It is also added that punctuality in attendance is to be observed by Government servants at all levels and necessary directions may be issued to all employees to mark their attendance in BAS portal on regular basis.

By his aforesaid act, Dr. D.S. Shankar, Assistant Professor, NERIE, Shillong has exhibited lack of devotion to duty and acted in a manner unbecoming of Council's employee; thereby contravening Rule 3 (1) (ii) & (iii) of CCS Conduct Rules, 1964 as applicable to the employees of the Council. He has also acted in a discourteous manner while performance of his official duties thereby contravening Rule 3-A of CCS Conduct Rules, 1964.

Article - IV

That while functioning in NERIE Shillong, Dr. D. S. Shankar has downgraded the image and reputation of NCERT as well as NERIE. It is evident from the records that NERIE, Shillong has organized 2 days national seminar on mathematics education from 21-22.12.2017 and requested all the participants to submit paper for the seminar vide email dated 04.10.2017. Dr. Shankar vide his email dated 22.10.2017 has used NERIE unparliamentarily language towards his colleague convenor and co-convenor (Lady Faculty) and raised the question of authenticity of seminar. Dr. Shankar informed to other participant vide his above email dated

"how badly, DAB & IAB had approved this programme and it is a shame on both the committee members as well as the Principal, NERIE given the approval to conduct this programme. It is very funny and sham on administration and indicates that how NCERT is functioning". The above communication from Dr. Shankar's end to other participants using abusive language for his own institution and institute authorities shows that he does not care official decorum as well as the prestige of institute.

By his aforesaid act, Dr. D.S. Shankar, Assistant Professor, NERIE, Shillong has exhibited lack of devotion to duty and acted in a manner unbecoming of Council's employee; thereby contravening Rule 3 (1) (ii) & (iii) of CCS Conduct Rules, 1964 as applicable to the employees of the Council. He has also acted in a discourteous manner while performance of his official duties thereby contravening Rule 3-A of CCS Conduct Rules, 1964.

Article - V

That while functioning in NERIE Shillong, Dr. D. S. Shankar is indulged himself in attempt of abusing, threatening and trying physical assault on the colleagues/officials of NERIE Shillong as well as lodging false complaints in the local Police Stations. It is evident from the findings of the three member committee report dated 01.11.2017 constituted by Principal, NERIE, Shillong to investigate the complaints of Shri Madan Singh Yadav, AO, NERIE, Shillong. Dr. Shankar many times misbehaved with the ICT staff i.e. Mr. Vijay Kumar Rai, System Analyst cum Programmer, ICT and Mr. Krymlenlang, MTS, ICT when they went for fixing printer, laptop, internal etc. on his request. Dr. D.S. Shankar had also misbehaved and used foul language with Sh. Arnab Sen, Assistant Professor in a meeting chaired by I/C Principal Prof. S.C. Roy in October, 2017. He had also written an email against Sh. Arnab Sen and Dr. Tulika Dey, Asstt. Professor for being Convener and Co-convener respectively of the National Seminar on Mathematics Education (held on 21-22.12.2017 at NERIE) using foul language in that email.

By his aforesaid act, Dr. D.S. Shankar, Assistant Professor, NERIE, Shillong has exhibited lack of devotion to duty and acted in a manner unbecoming of Council's employee; thereby contravening Rule 3 (1) (ii) & (iii) of CCS Conduct Rules, 1964 as applicable to the employees of the Council. He has also acted in a discourteous manner while performance of his official duties thereby contravening Rule 3-A of CCS Conduct Rules, 1964.

Article - VI

That while functioning in NERIE Shillong, Dr. D. S. Shankar has the habit of making false and frivolous complaints against the academic, non-academic as well as contractual and outsourcing staff engaged in the Institute. He is alleged to make false corruption charges against the Principal Administrative Officer and Senior Accountant, NERIE, Shillong by name. He often disturbed the regular activities of ICT by falsely alleging that Sh. Arnab Sen, Assistant Professor and

Sh. Vijay Kumar Rai, System Analyst cum Programmer, ICT have hacked his laptop and erased the data by wi-fi connection and Bluetooth.

By his aforesaid act, Dr. D.S. Shankar, Assistant Professor, NERIE, Shillong has acted in a manner unbecoming of Council's employee; thereby contravening Rule 3 (1) (iii) of CCS Conduct Rules, 1964 as applicable to the employees of the Council. He has also acted in a discourteous manner while performance of his official duties thereby contravening Rule 3-A of CCS Conduct Rules, 1964.

Article VII

That while functioning in NERIE Shillong, Dr. Shankar used foul/ derogatory languages through his e-mail dated 12.03.2018 addressed to Secretary, NCERT. The mail has been sent to Secretary, NCERT with reference to North East Regional Institute of Education Show Cause notice dated 12.03.2018 issued to Dr. D.S. Shankar for making attendance before or around 8.00 a.m. during the period 15th to 22nd February 2018 and leaving the office immediately after making attendance and again coming to office after more than one hour on the above said days. Further, an opportunity was given to him to explain his stand on the issue, but instead of submitting the explanation to the Institute, Dr. D.S. Shankar made complaint to the Secretary by sur-passing the proper channel and wherein he is using the foul and derogatory language. This is gross violation of instructions contained in DoPT O.M. 11013/08/2013-Estt. (A-III) dated 06.06.2013.

By his aforesaid act, Dr. D.S. Shankar, Assistant Professor, NERIE, Shillong has acted in a manner unbecoming of Council's employee; thereby contravening Rule 3 (1) (ii) (iii) of CCS Conduct Rules, 1964 as applicable to the employees of the Council. He has also acted in a discourteous manner while performance of his official duties thereby contravening Rule 3-A of CCS Conduct Rules, 1964 besides violating directions issued vide DoPT O.M. 11013/08/2013-Estt. (A-III) dated 06.06.2013.

Article - VIII

That while functioning in NERIE Shillong, Dr. Shankar was instigated to exaggerate and to make complaint by one of the participant, named Dr. Vijayshri M.M. Mahila College, East Ramna Road, Old Police Line, Arrah Bihar, invited to attend a seminar organized in the Institute during 08th& 09th February, 2018 against Dr. Prachi Ghildayal, Convenor of the Seminar as well as Principal, NERIE, Shillong on a minor issue of providing of seminar certificates for paper presentation. Besides, this Dr. Shankar forwarded the mail of Dr. Vijayshri against Dr. Prachi Ghildoyal, Co-ordinator of the Seminar and Principal, NERIE, Shillong by giving wide publicity not only within the institute but also at Council Hqrs.

By his aforesaid act, Dr. D.S. Shankar, Assistant Professor, NERIE, Shillong has acted in a manner unbecoming of Council's employee; thereby contravening Rule

3 (1) (ii) (iii) of CCS Conduct Rules, 1964 as applicable to the employees of the Council. He has also acted in a discourteous manner while performance of his official duties thereby contravening Rule 3-A of CCS Conduct Rules, 1964."

9. The applicant submitted his representation against the charge memo and thereafter an enquiry officer was appointed to enquire into the matter. In his report, the enquiry officer held that all the charges are proved. Copy of the enquiry report was made available to the applicant and on a consideration of the reply submitted by him, the Disciplinary Authority passed an order dated 22.11.2018 imposing the punishment of removal from service. Appeal preferred against that was rejected. In this OA, the applicant has challenged the charge memo, report of the enquiry officer, the order of punishment and the order of Appellate Authority.

10. The contents of the charges are extracted in the preceding paragraphs. The occasion for a Court or a Tribunal to interfere with the charge memo would arise if only it was issued by an authority not vested with the power or it is violative of any specific provision of law. None of these grounds are urged by the applicant. His effort is to demonstrate that the charges are factually incorrect. The very purpose of holding the departmental enquiry is to see whether there is any truth in the allegations contained in the charge memo. We are not inclined to interfere with the charge memo, particularly at this stage.

11. Coming to the report of the enquiry officer, except stating that enquiry officer did not given him adequate opportunity, the applicant did not furnish any specific instance. In the OA, which runs into 73 pages, the applicant made an effort to analyse his defence and tried to demonstrate that the findings of the enquiry as not correct. Nowhere it is mentioned either in the body or in the grounds that he was not given opportunity. For example, in ground number (mmm) he extracted the principle enunciated by the Hon'ble Supreme Court reported in Central Bank of India Vs. P.C.Jain AIR 1969 (SC) 983, but did not mention as to how that principle applies to his case.

12. An enquiry officer can be found fault with, generally if (a) he did not permit the delinquent official to cross examine the witnesses examined by the department and (b) did not permit the delinquent employee to educe his evidence. It is not the case of the applicant that either he was denied opportunity to cross examine the departmental witnesses or that he was not permitted to educe his evidence.

13. So far as the findings recorded by the enquiry officer are concerned, it is evident that a thorough discussion was undertaken with reference to every article. As a matter of fact, certain articles of charge are matters of record. For example, the applicant did not dispute that he has not adhered to the biometric attendance system and has torn a memo issued to him, into pieces, instead of giving reply. The second charge is about making official communication in derogatory language. The communications are matters of record, he did not

cooperate in the enquiry ordered in this behalf. The third article was also about the non-cooperation of the applicant to follow the biometric system of attendance. The fourth article presents an instance of outrageous conduct on part of the applicant. A two days National Seminar on Mathematics was conducted in Shillong in December 2012. In case the applicant had any reservations about it, he could have abstained from attending it. However, he sent emails by using unparliamentary and derogatory language and abused the members of the Committee as well as the Principal of the Institution. The text of the email is contained in article 4. The applicant did not disown it.

14. Article five is about his indulging in physical assault of the colleagues at Shillong and lodging false complaint to the local police. His background, while functioning at Bhopal did not surprise anyone, when he repeated the same at Shillong. He is alleged to have made allegations of corruption against the Principal Administrative Officer, Senior Accountant at Shillong. Making such allegations would certainly affect the functioning of the institution and its reputation. If in fact, there existed any material to substantiate charge, he could have made it available to the superiors. He is also said to have been irregular in attending to the duties. It is stated that having marked the attendance at around 8.00 a.m., he used to leave the office immediately and thereby not attending to duties at all. The allegation contained in Article 8 is about his instigating of some participants to make complaints against the organization of seminar at Shillong.

15. An analysis of charge and the imputation indicates that most of the facts are borne on by record and hardly had they needed any independent evidence. All the same, the enquiry was conducted in a fair and transparent manner and findings were recorded. The applicant is not able to show that the finding on any of the charges is perverse or is not based upon evidence. Added to that, the Tribunal cannot sit as an Appellate Authority on the findings. Therefore, we do not find any basis on the report of the enquiry officer.

16. Coming to the order of punishment, once the findings in the departmental enquiry stare at the applicant, he cannot escape from the consequences. If one takes into account, the nature and purport of the charges and the finding thereon, it cannot be said that the punishment of removal is either arbitrary or disproportionate.

17. The NCERT is an organization which decides the contours of education and research. It is supposed to train the teachers and guide the educational policy. Indiscipline of the type and nature, resorted to by the applicant would certainly, be a matter of serious concern for institution on that nature. Further, it was not an occasional impulse or response from the applicant. There is a pattern and consistency in the acts of indiscipline of the applicant. Such instances occurred wherever the applicant worked. He did not spare the colleagues or even the heads of the institution. We are of the view, the order of punishment does not suffer from any legal or factual infirmity.

18. The Appellate Authority which gave his findings. Except that the views of the Appellate Authority are communicated, one cannot expect a detailed discussion with reference to each ground.

19. We do not any merit in the OA and accordingly it is dismissed. There shall be no order as to costs.