

(2021) 06 CAT CK 0002

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00016 Of 2018

Dr. Arun Anirudhan V

APPELLANT

Vs

Sree Chitra Tirunal Institute for Medical Sciences And
Technology & Others

RESPONDENT

Date of Decision : 01-06-2021

Acts Referred:

Administrative Tribunals Act, 1985 — Section 20
Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 16(1),
16(1A)
Central Civil Services Conduct Rules, 1964 — Rule 13

Citation : (2021) 06 CAT CK 0002

Hon'ble Judges : P. Madhavan, Member (J); K.V .Eapen, Member (A)

Bench : Division Bench

Advocate : P.G. Jayashankar, V. Sajithkumar

Final Decision : Disposed Of

Judgement

P. Madhavan, Member J

1. The applicant has filed this Original Application seeking the following reliefs:

- i. Call for the records leading to the issuance of Annexure A35, and quash the same;
- ii. Declare that the imposition of penalty by the 4 th respondent resulting in withholding of promotion for three years is arbitrary, illegal and void;
- iii. Direct the 1st and 2nd respondents to take appropriate action on Annexure A13 representation relating to the grievance pointed out by the applicant;
- iv. Grant such other and incidental reliefs as this Hon'ble Tribunal may deem just and necessary on the facts and circumstances of this case; and v.

Allow this Original Application with costs to the applicant.

2. The applicant's case in short is as follows:-

The applicant is working as Engineer-D in the Bio Medical Technology Wing of Sree Chitra Tirunal Institute for Medical Sciences and Technology

(SCTIMST), Trivandrum. He joined the service on 17.5.2004 as an Engineer-B and thereafter he was promoted as Engineer-C on 17.5.2008.

Thereafter he was posted as Engineer-D in 2015. His promotion is due and he has completed his residency period for the promotion as Engineer-E.

But the respondents had denied his promotion arbitrarily and he had to file an OA before this Tribunal as OA No. 180/86/2017 which is still pending.

According to him the 2nd respondent had issued a notification calling for applications to various posts including Engineer-D as Annexure A3. As per

the decision of the Institute produced as Annexure A2 only Engineers having PhD can be appointed as Engineer-D but the Director of the Institute

has diluted the said eligibility clause and permitted even B.Tech. graduates for applying to the post. The applicant has questioned the above dilution of

standards by the 2nd respondent in various quarters and it happened to be discussed in front of the electronic media. When the issue came up,

Annexure A2 decision was reviewed by Governing Body and they issued a fresh order dated 18.9.2015 which is produced as Annexure A4. The

applicant had pointed out these aspects before the various authorities including the Government of India and Chief Vigilance Officer. His

representations are produced as Annexures A8 and A9. In the meanwhile the 2nd respondent had called for applications for promotion to the next

higher post and applicant also applied for the same. The Senior Staff Selection Committee interviewed him but the applicant was not selected. He filed

an appeal before the Governing Body but it was also turned down. On 20.9.2016 he was informed that the 3rd respondent is visiting the Bio- Medical

Technology wing and she wants to meet him to discuss the issues. When he was called to the room he narrated all these facts but the 3rd respondent

Director intimidated the applicant in front of the superior officers and openly addressed the applicant as a "paranoid". Even though he gave

representations to his superior officers nobody helped him. Thereupon, he filed a grievance application before the Employees Grievance Committee of

the Bio-Medical Wing. Since all remedies failed, he filed OA No. 180/86/2017

challenging the decision not to give promotion to him. To his utter shock and dismay the applicant was issued with a notice by the 5th respondent alleging that he had committed misconduct on 22.9.2016 by speaking to the 3rd respondent Director in an intimidating tone and also alleging the sending of unsolicited emails to faculty members making allegations against respondent No. 3. The applicant was directed to furnish his explanation on the above incident. The applicant denied the allegations and submitted that he has not met respondent No. 3 on 22.9.2016. Thereupon a clarification was issued stating that the incident took place on 20.9.2016 instead of 22.09.2016 as stated in the earlier letter. He gave a detailed written representation. In the meanwhile the respondents had appointed an adhoc disciplinary authority and adhoc disciplinary authority had issued charge memo to him as Annexure A27 dated 19.6.2019 alleging misconduct etc. violating the provisions of clauses (5), (9), (14) and (19) of Rule 6(A) of Chapter VII of the Service and Personnel Conduct Rules of the SCTIMST. He gave a detailed reply denying all the allegations and misconduct as alleged and he also wanted to examine his witnesses for proving his innocence. But the adhoc disciplinary authority without conducting an inquiry and without hearing him had issued Annexure A35 order withholding his promotion for three years. The said order is impugned in this OA. According to the applicant the above order is arbitrary and against the principles of natural justice. He was not given an opportunity to be heard and no inquiry was conducted even though he had demanded for inquiry. He was penalized by the respondents without conducting an inquiry. The principles of natural justice was not complied with. According to him withholding of promotion for three years has serious consequence to him and it cannot be considered as a minor penalty. The respondents had conducted gross irregularities in the procedure and the order imposing penalty Annexure A35 is liable to be set aside.

3. Respondents entered appearance and filed a detailed reply statement submitting that the applicant is an Engineer-D. They also admitted that the applicant became eligible for promotion in the year 2015 but he was not selected by the Senior Staff Selection Committee. There is no merit in the allegation of dilution of entry standards as alleged in the OA. Annexure A2 clearly shows that all future appointments beginning from 1.3.2010 for faculty post of Scientist/Engineer-D, PhD will be mandatory requirement. The

above decision was reviewed by the Governing Body in its meeting dated 1.7.2010 and the said decision was changed. The applicant had completed PhD only in the year 2015. The applicant was appointed as Engineer on the basis of his B.Tech qualification. Applicant is benefited out of the said decision. According to the respondents as per the existing recruitment requirements and promotion criteria, PhD was not mandatory and only desirable. Annexure A35 order was issued in the capacity of disciplinary authority as the complainant in this case was the appointing authority i.e. Director of the Institute. Accordingly, the respondents had obtained the permission of Department of Science and Technology for appointing an adhoc disciplinary authority and accordingly an officer of the said status and grade was appointed as disciplinary authority. The disciplinary authority considered all aspects of the case and had imposed the minor penalty of withholding of increment. There is no violation of procedure. They also admitted that if the Service & Personnel Conduct Rules is silent, then the respondents followed the principles enunciated by the Central Government in CCS (CCA) Rules, 1965 and the circulars issued by the Government. There is no illegality or arbitrariness in the order in this case. According to the respondents the applicant has not exhausted the remedy before filing the OA. He had not filed any appeal before the appellate authority within 30 days. So he has not exhausted all remedies before approaching the Tribunal and therefore, the OA is liable to be dismissed.

4. We have heard the counsel appearing for the applicant as well as the respondents in this case. According to the counsel for the applicant, the adhoc disciplinary authority had not conducted any inquiry into the allegations made in Annexure A27 charge memo and he had not given an opportunity of being heard to the applicant in this case. According to the counsel for the applicant the applicant has denied all the allegations made against him and he had also cited his witnesses for examination in the written reply submitted by him. The Government of India has taken a decision for holding an inquiry when requested by the delinquent vide Department of Personnel & Training OM No. 11012/18/85-Estt(A), dated the 28th October, 1985. It reads thus:

The Staff Side of the committee of the National Council (JCM) set up to consider revision of CCS (CCA) Rules, 1965, had suggested that Rule 16(1)

should be amended so as to provide for holding an inquiry even for imposition of minor penalty, if the accused employee requested for such an inquiry.

2. The above suggestion has been given a detailed consideration. Rule 16(1-A) of the CCS (CCA) Rules, 1965, provides for the holding of an inquiry

even when a minor penalty is to be imposed in the circumstances indicated therein. 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 a 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 an 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.

5. If we go through the above OM issued by the DoP&T it can be seen that if the delinquent officer has sought for an inspection of certain documents

and cross-examination of 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. In this case the disciplinary authority has not considered the request of the

applicant for cross-examination of the witnesses and also for examining his witnesses before imposing a penalty. The same issue was examined by the

Government of India and the DoP&T as per the above OM directed all authorities to give due consideration for such request and if the authority

denies such request it should say so in writing indicating its reasons in detail in order to see that whether the authority applied its mind to such request.

Denial of request without applying the mind will amount to denial of natural justice.

6. But the counsel for the respondents would contend that the disciplinary authority has considered all aspects and passed a speaking order as

Annexure A35 and it cannot be considered as an arbitrary or illegal order. They also mainly object the OA stating that the applicant has not exhausted

all remedies. As per Rule 13 of the Service and Personnel Conduct Rules of the SCTIMST there is a provision for giving an appeal to the appellate

authority within a period of 30 days of the passing of Annexure A35. We find that the applicant has not approached the appellate authority before

approaching this Tribunal. The appellate authority is duty bound to consider any violation of procedure and various decisions of the Government of

India on this point regarding the procedure to be followed when a minor penalty proceedings is initiated. So the failure of the applicant to approach the

appellate authority, compels this Tribunal to come to a decision to direct the applicant to file an appeal (Section 20 of the Administrative Tribunals Act,

1985) as the applicant has not exhausted his available remedies before approaching this Tribunal.

7. In view of the above situation, we hereby direct the applicant to file a detailed appeal before the appellate authority within a period of 30 days from

the date of receipt a copy of this order and the appellate authority shall consider the appeal in all its aspects i.e. regarding the procedure to be followed

when minor penalty proceedings are initiated, decisions of the Government of India when the rules are silent and pass a speaking order within a period

of three months from the date of receipt of such an appeal from the applicant.

8. The Original Application is disposed of as above. No order as to costs.

APPLICANT'S ANNEXURES

Annexure A1 - True copy of the certificate of PhD issued by the National

Institute of Technology, Kozhikode to the applicant. Annexure A2 - True copy of the institute order bearing No. P & A.I/X/15/SCTIMST, dated

27.2.2010 issued by the 1st respondent.

Annexure A3 - True copy of the notification bearing No. P&A.II/40/SSSC/SCTIMST/2015, dated 26.8.2015 issued by the 1st respondent.

Annexure A4 - True copy of the order bearing No. P&A.I/X/52/SCTIMST/2015 dated 18.9.2015 issued by the 2nd respondent.

Annexure A5 - True copy of the extract of the minutes of the GB held on 1.7.2010 as obtained under the RTI Act by the applicant. Annexure A6 -

True copy of the relevant extract of the report of the 7th Central Pay Commission, November, 2015.

Annexure A7 - True copy of the relevant extract of the advertisement No. VSSC-290 dated 8.8.2015.

Annexure A8 - True copy of the email communication dated 29.9.2015 addressed to the Chief Vigilance Officer of the Union of India.

Annexure A9 - True copy of the email communication dated 29.9.2015 sent by the Applicant to the Vigilance Officer of the 1st respondent.

Annexure A10 - True copy of the appeal filed by the applicant before the GB on 7.9.2016 challenging the decision of the Senior Staff Selection

Committee.

Annexure A11 - True copy of the email communication dated 21.9.2016 addressed by the applicant to the Head BMT Wing of the 1st respondent.

Annexure A12 - True copy of the email communication dated 21.9.2016 addressed by the applicant to the 5th respondent. Annexure A13 - True copy of the complaint dated 22.9.2016 sent by the applicant to the Employees Grievance Committee (BMT Wing).

Annexure A14 - True copy of the letter bearing No. P&A Division/GB-2016/appeal-SSSC dated 29.11.2016 issued by the 5th respondent to the applicant along with the extract of the minutes of the 97th GB.

Annexure A15 - True copy of the email communication dated 19.12.2016 along with a reminder email dated 31.12.2016 sent by the applicant.

Annexure A16 - True copy of the office memorandum dated 20.1.2017 issued by the Ministry of Finance.

Annexure A17 - True copy of the email communication dated 7.10.2016 addressed to the Chairperson of the grievance committee by the applicant.

Annexure A18 - True copy of a letter bearing No. P&A.I/SCTIMST/2016 dated 9.1.2017 issued by the 5th respondent to the applicant.

Annexure A19 - True copy of the letter dated 12.10.2016 issued by the 3rd respondent to the 5th respondent.

Annexure A20 - True copy of the reply obtained by the applicant under RTI Act, bearing No. PPIO/RTIA/916/SCTIMST/2017 dated 13.2.2017 along with the enclosure.

Annexure A21 - True copy of the email dated 14.1.2017 addressed by the applicant to the 5th respondent.

Annexure A22 - True copy of the letter bearing No. P&A.I/SCTIMST/2016 dated 18.1.2017 issued by the 5th respondent to the applicant.

Annexure A23 - True copy of the letter dated 18.1.2017 addressed by the 3rd respondent to the 5th respondent.

Annexure A24 - True copy of the reply dated 4.2.2017 furnished by the applicant to the 5th respondent.

Annexure A25 - True copy of the application filed by the applicant before the Public Information Officer of the Department of Science and

Technology, New Delhi.

Annexure A26 - True copy of the information obtained by the applicant under the RTI Act dated 7.6.2017.

Annexure A27 - True copy of the memorandum bearing No. P&A.I/PF- 1904/SCTIMS/2017 dated 19.6.2017 issued by the 4th respondent to the

applicant along with Annexure I and II. Annexure A28 - True copy of the letter bearing No. AI/1/4/SCT/2014 dated 10.3.2017 issued by the

Department of Science and Technology.

Annexure A29 - True copy of the email communication dated 30.6.2017 and 4.7.2017 between the applicant and the 4th respondent.

Annexure A30 - True copy of the letter bearing No. P&A.I/PF- 1758/SCTIMST/2017 dated 6.7.2017 along with the enclosures issued by the 5th

respondent to the applicant.

Annexure A31 - True copy of the email dated 14.7.2017 issued by the applicant to the 4th respondent.

Annexure A32 - True copy of the letter bearing No. P&A.I/Disciplinary Proceedings/SCTIMST/2017 dated 18.7.2017 by the applicant (without enclosures).

Annexure A33 - True copy of the reply dated 2.8.2017 filed by the applicant to the 4th respondent.

Annexure A34 - True copy of the letter bearing No. P&A.I/PF- 1094/SCTIMST/complaint/2017 dated 7.9.2017 issued by the 5th respondent.

Annexure A35 - True copy of the order bearing No. P&A.I/PF- 1094/SCTIMST/2017 dated 28.8.2017 issued by the 4th respondent.

Annexure A36 - Service and Personnel Conduct Rules issued by the 1st

respondent.

RESPONDENTS' ANNEXURES Nil

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