

**(2018) 07 CAT CK 0142**

**In the Central Administrative Tribunal**

**Case No :** Original Application No. 2723 Of 2014

Dr. Mohammed Saleem

APPELLANT

Vs

Union Of India And Ors.

RESPONDENT

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**Date of Decision :** 03-07-2018

**Acts Referred:**

Administrative Tribunals Act, 1985 — Section 19

Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)(i), 3(1)(ii), 3(1)(iii), 3(2)(i)

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 14

**Citation :** (2018) 07 CAT CK 0142

**Hon'ble Judges :** L. Narasimha Reddy, J;K.N. Shrivastava, Member (A)

**Bench :** Division Bench

**Advocate :** M.K. Bhardwaj, A.K. Singh

**Final Decision :** Partly Allowed

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## **Judgement**

K.N. Shrivastava, Member (A)

1. Through the medium of this Original Application (OA) (3526/2017) filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants have prayed for the following reliefs:

"(i) To declare the action of respondents in initiating disciplinary action against the applicant vide charge memo dated 06.07.2011 as illegal, arbitrary and unjustified.

(ii) To quash and set aside the disagreement note dated 18.01.2013 and impugned punishment order dated 19.05.2014 and direct the respondents to restore the reduced pay with all consequential benefits including arrears of pay with 12%."

2. The factual matrix of the case, as noticed from the records, is as under:

2.1 The applicant joined under respondent no.2 as a Technical Assistant (Bio) on 20.08.1981 and was later promoted to the post of Senior Technical Assistant

(STA) (Bio) which was rechristened as Plant Protection Officer (PPO) (Bio Efficacy). Thereafter he was promoted to the post of Assistant Director (Plant Protection) and was posted at National Plant Quarantine Station (NPQS) Rangpuri, New Delhi on 28.04.2018.

2.2 On 26.05.2010, Central Bureau of Investigation (CBI) conducted a raid in the premises of NPQS, Rangpuri. As a consequence thereof, the following four officials of NPQS, Rangpuri were issued memorandum of charges dated 06.07.2011 vide Annexure A-4 order dated 12.07.2011:

- i) Dr. Mohd. Salim, Assistant Director - applicant
- ii) Shri Mahavir Sharma, Senior Scientific Assistant
- iii) Shri Janaki Saran Sharma, Senior Scientific Assistant
- iv) Shri Vijay Kumar, Mali.

2.2 The memorandum of charges dated 06.07.2011 qua the applicant reads as under:

"On the basis the complaint received by the CBI, New Delhi and after its verification, a joint surprise check was conducted by a team of ACB, CBI, New Delhi in the office of NPQS, New Delhi on 26.05.2010.

At the time of joint surprise check conducted by CBI, the said Dr. Mohd. Salim, Asstt. Director (PP) while functioning as Asstt. Director, NPQS, Rangpuri, New Delhi was present in the office on 26.05.2010. Dr. Salim was present in the room of Shri Mahavir Sharma, SSA-III at the time of surprise check, wherefrom unclaimed cash for Rs.28,750/- (Rupees Twenty eight thousand seven hundred and fifty) and suspicious handwritten papers were recovered from the room of Shri Mahavir Sharma, SSA-III. Further, eleven sheets having handwritten date-wise details, name of some persons were recovered from the carry bag of Shri Mahavir Sharma, SSA-III.

Moreover, Shri Vijay Kumar, Mali who was attached with Shri Mahavir Sharma to assist him in processing the files, was present in the Office room of Shri Mahavir Sharma at the time of Joint Surprise Check, wherefrom unclaimed cash for Rs.5,350/- (Rupees Five thousand three hundred and fifty only) and some handwritten papers were recovered from the office carry bag of Shri Mahavir Sharma. Dr. Mohd. Salim failed to properly supervise the scrutiny of documents and deployment of Inspectors for inspection etc which led to corruption and malpractices in issue of Phytosanitary Certificates in NPQS, New Delhi.

By the above act the said Dr. Mohd. Salim, Asstt Director (PP) failed to maintain absolute integrity, failed to ensure the integrity and devotion to duty of his subordinates, failed to supervise effectively and also failed to prevent malpractices in issue of Phytosanitary Certificates in NPQS, New Delhi and acted in the manner which was unbecoming of a Government servant and thereby, violated Rule 3 (1) (i), 3 (1) (iii) and 3 (2)(i) of the Central Civil Services

(Conduct) Rules, 1964."

(Emphasis supplied)

2.3 A statement of imputation of misconduct or misbehaviour in support of the articles of charge, list of documents and list of witnesses were also furnished along with the memorandum of charges. In the statement of imputation, the alleged failure of the applicant in the discharge of his supervisory function has been elaborated in the following terms:

"A detailed report was submitted by CBI reveals that Dr. Salim was present in the Office room of Shri Mahavir Sharma, SSA-III at the time of joint surprise check, wherefrom unclaimed cash and suspicious handwritten papers were recovered by CBI. This above act revealed that he failed to properly supervise the scrutiny of documents and deployment of inspectors for inspection etc which led to corruption in the PQS, New Delhi. It was also revealed during the CBI inquiry that Inspectors seldom visit the sites for the purpose of inspection of agricultural commodities. Instead they demand and receive bribe and then, prepare/submit inspection reports without visiting the sites. It was also learnt that the rates of every object are almost fixed. It was revealed during inquiry by CBI that some regular exporters/importers/clearing agents pay bribe to the officials/officers of NPQS on fortnightly/monthly basis also. It was revealed that corruption exists in the Office of NPQS since unclaimed cash of Rs.28,750/- was recovered from dustbin lying in the room of Shri Mahavir Sharma, SSA-III and unclaimed cash of Rs.5350/- and some suspicious handwritten papers were also recovered from the office carry bag of Shri Vijay Kumar, Mali, who used to deliver the Certificates to the concerned representative of the firm.

By the above act the said Dr. Mohd. Slaim, Asstt Director (PP) failed to maintain absolute integrity, failed to ensure the integrity and devotion to duty of his subordinates, failed to supervise effectively and also failed to prevent malpractices in issue of Phytosanitary Certificates in NPQS, New Delhi and acted in the manner which was unbecoming of a Government servant and thereby violated Rule 3 (1)(i), 3 (1)(iii) and 3 (2)(i) of the Central Civil Services (Conduct) Rules, 1964."

2.4 The applicant submitted his reply to the memorandum of charges vide his Annexure A-5 letter dated 28.07.2011. Not satisfied with explanation of the applicant, the Disciplinary Authority (DA) decided to order inquiry and accordingly set the Disciplinary Enquiry (DE) proceedings in motion. An Inquiry Officer (IO) was appointed. The applicant participated in the inquiry. The IO finally submitted his report to the DA concluding therein that the charges against the applicant are not sustained. The analysis and findings of the IO is extracted below from the IO's report:

"Analysis and finding:

While carefully examining the records available on the file, self-contained note of

CBI, examination of witnesses, reply to CVO, brief provided by the Presenting Officer and the reply provided by Defence Assistant, I found that the officer was not carrying extra ordinarily excess amount with him. No incriminating or objectionable document was received from him or was found in his room searched by the CBI team on 26.5.2010. It is a fact that he was present in the cabin of Shri Mahavir Sharma at the time of search where Rs.28,750/- was found. This is a general habit if not practice, that in offices Government officials do visit rooms of their subordinates while leaving offices to talk or to exchange pleasantries or to enquire about one's well being, etc. Being present in the room of his subordinate at the time of search is not leading me to draw inference that his integrity is under cloud. Therefore, violation of Rule 3 (1)(i) & 3(i)(iii) of CCS (Conduct) Rules are not observed.

As per the CCS (Conduct) Rules, 1964 every Government servant holding a supervisory post is required to take all possible steps to ensure the integrity and devotion to duty of all Government servants for the time being under his control and authority. On this account also Dr. Mohd Salim has been charged to have failed to observe this Rule. In the instant case, it has not been brought out before the IO that what could have been done to ensure devotion to duty and maintaining integrity of the subordinates in which Dr. Mohd. Salim failed, whether there were any checks and balances existing in the office for the purpose. It has also not been pointed out that how the above could have been executed which CO has failed to perform. It is indeed a rule to be observed and followed by every officer but is difficult also to ensure about integrity, devotion to duty of every subordinate. In our day to day work in the Government set up it is observed that maintaining absolute integrity and devotion to duty has become a personal choice and decision and the superior officer is not in a position to ensure absolute integrity of the subordinates. There is lack of conclusive evidence to sustain this charge, therefore, violation of Rule 3 (2)(i) by Dr. Mohd. Salim is not proved.

Based on the above, facts available on the file and circumstantial evidences gathered during the inquiry, the charges against Dr. Mohd. Salim are not sustained."

2.5 The DA did not agree with the findings of the IO and issued Annexure A-11disagreement note dated 18.01.2013. The grounds indicated in the disagreement note for not agreeing with the IO's report are as under:

"(i) NPQS, Rangpuri, New Delhi is a very small office having a very limited number of staff. Hence, any supervisory officer, if duty vigilance and willing to enforce discipline in such a small organization, can do it. The officer concerned should have devised or formulated certain ethics/culture to enforce the rule.

(ii) Nowhere any proof has been given as to how the CO tried at his level to follow/enforce the provisions of Rule 3(1)(i), 3 (1)(iii) and 3 (2)(i) of CCS (Conduct) Rules, 1964.

(iii) C.O. was physically present in the room from where cash was recovered from the dust bin and in which Shri Mahavir Sharma, though not on duty, was still conducting business transactions. As such it is difficult to accept that C.O. was unaware of the happenings in that room and was not involved or associated with the same."

2.6 The Annexure A-11 disagreement note, togetherwith a copy of the IO's report, was sent to the applicant for his comments/representation. The applicant vide his Annexure3 A-12 letter of reply dated 25.02.2013 comprehensively rebutted the grounds mentioned in the disagreement note. The DA, however, did not agree with the reply of the applicant and decided to seek UPSC's advice in the matter. The UPSC vide its letter dated 24.01.2014 advised for imposition of penalty of "reduction of pay by three stages in the time scale of pay for a period of three years". The relevant portion of the UPSC's advice is extracted below:

"4. In the light of the observations and findings as discussed above and after taking into account all facts and circumstances relevant to the case, the Commission consider that the charge is proved against the CO and the ends of justice would be met if the penalty of "reduction of pay by three stages in the time scale of pay for a period of three years with directions that during this period of penalty he will not earn any increment of pay and that on the expiry of the period of penalty the said reduction will not have the effect of postponing the future increments of pay" is imposed on the CO, Dr. Mohd. Salim. They advise accordingly."

2.7 The DA, i.e., President of India vide its impugned Annexure A-1 order dated 19.05.2014 imposed the penalty, as recommended by the UPSC. The operative part of this order reads as under:

"NOW THEREFORE, after considering the records of the inquiry and the facts and circumstances of the case, the DA has come to the conclusion that Dr. Mohd. Salim, Asstt. Director, failed to ensure the integrity and devotion of duty of his subordinates, failed to supervise effectively and also failed to prevent malpractices in issue of Phytosanitary Certificates in NPQS, New Delhi and acted in the manner which was unbecoming of a Government Servant. The President as DA is of the view that ends of justice would be met if the penalty of reduction of pay by three stages in the time scale of pay for a period of three years with directions that during the period of penalty Dr. Mohd. Salim will not earn any increment of pay and that on the expiry of the period of penalty the said reduction will not have the effect of postponing the future increments of pay, is imposed on Dr. Mohd. Salim, Assistant Director (PP), Accordingly, the abovesaid penalty is hereby imposed on Dr. Mohd. Salim, AD (PP)."

2.8 The order of the DA was communicated to the applicant vide OM dated 28.05.2014 by the Vigilance Officer of the Directorate of Plant Protection, Quarantine & Storage, Department of Agriculture and Cooperation.

2.9 Aggrieved by the impugned order, the applicant has approached this Tribunal

in the instant OA, praying for the reliefs as indicated in para-1 supra.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply in which they have broadly averred as under:

3.1 The Central Vigilance Commission (CVC) had received a complaint dated 05.03.2009 from one Shri Mahesh Gupta, which was forwarded by CVC to CBI, based on which the CBI conducted a surprise check in the officer of Central Vigilance Commission (CVC), Rangpuri, New Delhi on 26.05.2010 and recovered unclaimed cash and some handwritten sheets of paper having suspicious entries from the room of Shri Mahavir Sharma, SSA-III. The applicant was also present there alongwith Shri Mahavir Sharma and two others.

3.2 The CBI vide its letter dated 19.07.2010 (Annexure R-2) based on the findings of the surprise check, recommended Regular Departmental Action (RDA) for minor penalty against Dr. P.S. Nain, Deputy Director and for major penalty against four other officials, including the applicant.

3.3 1st stage advice was sought from the CVC in the matter, who too advised starting of major penalty proceedings under Rule 14 of the CCS (CCA) Rules, 1965 against the applicant and three others and accordingly memorandum of charges dated 06.07.2011 was issued to him. After the completion of the inquiry, the UPSC's advice was obtained. The 2nd required, as the original order passed by the President of India.

3.4 The charges against the applicant in the inquiry were not proved. The DA, however, did not agree with the findings of the IO and decided to issue disagreement note on valid grounds. Finally, after considering the representation of the applicant against the disagreement note and also taking into account the advice of the UPSC in the matter, the DA has passed the impugned Annexure A-1 order against the applicant.

4. The applicant has filed rejoinder to the reply filed on behalf of the respondents in which more or less the averments made in the OA have been reiterated.

5. On completion of the pleadings, the case was taken up for hearing the argument of the learned counsel for the parties today. Arguments of Shri M.K. Bhardwaj and that of Shri A.K. Singh, learned counsel for the respondents were heard.

6. We have considered the arguments of the learned counsel for the parties and have also perused the pleadings. Admittedly, the applicant has been subjected to disciplinary proceedings for his alleged failure in the performance of his supervisory duties. This charge, however, has not been proved in the inquiry. It is very surprising that the DA simply went ahead, on the basis of the recommendations of CBI, to institute RDA against the applicant, as is evident from the memorandum of charges itself. Needless to say the DA is required to apply its own independent mind before starting disciplinary proceedings against its officials. Even the grounds mentioned in the disagreement note for

disagreeing with the findings of the IO are based on assumptions and presumptions and not on any substantive evidence. Since the scope of judicial review in the matter of disciplinary proceedings is limited, we would not like to comment much in regard to the grounds mentioned in the disagreement note.

7. The penalty imposed vide impugned Annexure A-1 order definitely appears to be excessive and disproportionate to the alleged misconduct/misdemeanour of the applicant particularly in view of the fact that the charges against the applicant in the inquiry have not been proved. As per the dictum of the Hon'ble Apex Court in *Ranjit Thakur v. Union of India & Others*, [(1987) 4 SCC 611], we are of the view that the punishment imposed is highly disproportionate. The Hon'ble Apex Court in *Ranjit Thakur* (supra) has held as under:

"The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review."

8. Keeping in view the aforementioned dicta of the Hon'ble Apex Court, we are of the view that ends of justice would meet if the penalty of reduction in the pay of the applicant by one stage instead of three stages in the time scale of pay and for a period of one year instead of three years is imposed upon applicant. Accordingly, we order modification in the Annexure A-1 penalty order passed by the DA.

9. The OA is partly allowed in the aforesaid terms.

10. There shall be no order as to costs.