

(2010) 09 DEL CK 0114

In the Delhi High Court

Case No : Writ Petition (C) 13106 of 2009

Indian Council for Agricultural Research and Others

APPELLANT

Vs

Vipul Raj

RESPONDENT

Date of Decision : 13-09-2010

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 15, 3(1)

Constitution of India, 1950 — Article 320(3)

Council of Agricultural Research Rules, 1977 — Rule 18

Citation : (2010) 09 DEL CK 0114

Hon'ble Judges : Pradeep Nandrajog, J; Mool Chand Garg, J

Bench : Division Bench

Advocate : Keshav Dayal, Sanjay Kr. Singh and Gagan Mathur, for the Appellant; Atul Kumar, for the Respondent

Judgement

Mool Chand Garg, J.—The respondent who was proceeded departmentally on corruption charges was held guilty by the enquiry officer and was removed from service in terms of the order passed by the disciplinary authority dated 08.08.2006. His appeal filed before the appellate authority was rejected vide order dated 03.01.2007. Thereafter the respondent approached the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the "Tribunal") vide OA No. 237/2008 which was allowed by the Tribunal vide order dated 20.04.2009 whereby while setting aside both the orders dated 08.08.2006 and 03.01.2007 the Tribunal directed reinstatement of the respondent in service without back wages with further directions in para 12 of the order passed by the Tribunal which reads as under:

12. In the light of the above discussion, the OA succeeds. The order dated 08.08.2006 of the disciplinary authority and the order dated 03.01.2007 of the appellate authority are quashed and set aside. The Applicant shall be reinstated in the service forthwith. However, since we are quashing the impugned orders on technical grounds and since there is a charge of corruption against the Applicant, we are not giving any direction about consequential benefits, which shall abide

by the result of fresh proceedings by the Respondents, which they are at liberty to continue, if so advised. However, the second respondent is directed to approach the CVC and ask for furnishing detailed reasons for its advice, which may then be communicated to the Applicant in full, with opportunity to give representation in his defence. The disciplinary authority will pass final order after considering all aspects of the case. These directions will be complied with within six months from the date of passing of this order.

2. It may be observed here that the respondent was proceeded departmentally on corruption charges as per memorandum dated 25.05.2004 which read as under:

STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST SHRI VIPUL RAJ, ADMINISTRATIVE OFFICER, NATIONAL INSTITUTE OF RESEARCH ON JUTE AND ALLIED FIBRE TECHNOLOGY (NIRJAF), KOLKATA

Shri Vipul Raj while functioning as Administrative Officer, NIRJAF, Kolkata demanded ` 8000/- as bribe from Shri Arunava Sanyal, Proprietor, M/s Globe Trading Corporation Dhankuni, Hooghly on 12.12.2002 for showing favour for issuing an delivering cheque towards his bill dated 25.10.2002 for repairing the Laminar flow Cabinet. ON the complaint of Shri Sanyal, Shri Vipul Raj was caught red handed by the CBI while demanding and accepting the bribe of ` 8000/- on 16.12.2002.

By the aforesaid acts, Shri Vipul Raj has failed to maintain absolute integrity and acted in a manner unbecoming of a Government servant and thereby, contravened rule 3(1)(i) and (iii) of the CCS (Conduct) Rules, 1964 as applicable to the ICAR employees.

3. Before the Tribunal the two grounds which were pressed in service by the respondents were that:

- i. the first stage and the second stage advice of the Central Vigilance Commission (CVC) were not given to the Applicant before passing the order of punishment by the disciplinary authority; and
- ii. the order of the disciplinary authority is not valid as it has not been signed by the Director General of ICAR and has been wrongly authenticated by the Under Secretary (Vigilance).

4. Vide impugned order passed by the Tribunal, the second ground pressed in service by the respondent has been rejected taking into consideration Bye-Law 42 of the Rules and Bye-Laws of the ICAR by observing that:

the Bye-Law 42 of the ICAR provides that orders of the President, Vice-President (i.e. President and Vice-President of ICAR) and Director General of ICAR would be authenticated by an officer authorized in this behalf. There is no challenge to the Bye-Law 42 of the ICAR in the OA. There is no illegality in the authentication of Director General's order qua Disciplinary Authority, by the Under Secretary

(Vigilance). There is nothing in Rule 15, cited by the learned Counsel for the Applicant specifically to prohibit the provision for authentication of the order of the Director General by any other officer. It is not the Applicants case that the Under Secretary (Vigilance) has not been delegated the power of authentication of Director Generals orders. We concur.

5. However, the Tribunal has allowed the Original Application by accepting the first ground pressed by the respondent. In this regard:

the Tribunal on the basis of a circular issued by the CVC dated 28.09.2000 also relying upon a judgment delivered in the case of State Bank of India and others Vs. D.C. Aggarwal and another, holding that the non-supply of CVC recommendation which are prepared behind the back of the respondent without his participation and one does not know on what material it was not only sent to the disciplinary authority and was examined and relied upon by the disciplinary authority and was certainly violative of procedural safeguard and contrary to fair and just inquiry and the OA has to succeed on the ground that the second stage advice of the CVC has not been communicated to the Applicant. We, however, note with dismay that although the CVC itself has issued a circular that its second stage advice should be communicated to the Charged Officer, yet communication of a non-speaking and laconic advice robs it of any meaning. The advice communicated by the CVC in the instant case to the first Respondent, as quoted in the order of the disciplinary authority, reads thus:

The Commission has perused the inquiry report, alongwith its relevant records and comments of the administrative authorities thereon. It has been noted that the charges levelled against Shri Vipul Raj are serious in nature and have been duly proved in the court of inquiry. The Commission would advise stiff major penalty against Shri Vipul Raj, A.O, NIRJAFT.

This is only the concluding part of the analysis, which, we are sure, the CVC would have undertaken. Unless that part of the CVCs consideration of the matter, where it has analysed all the aspects of the case for or against the Applicant is supplied to the latter, the Applicant would hardly be in a position to defend himself. In the judicial precedent of State Bank of India v. D.C. Aggarwal and Anr. (supra), the report of CVC contained fifty pages, in which all aspects of the case were discussed. The communication of the CVCs advice to the charged officer would be meaningful only if it is detailed and speaking advice. We have observed in several cases that the Union Public Service Commissions advice is always detailed and gives reasons for its particular advice. There is no reason why CVC should give such non-speaking advice.

6. The Tribunal has accepted the first ground as quoted above and has allowed the Original Application only on the ground that the copy of the CVC advice was not furnished by the petitioner to the respondent. In this regard the respondents have relied upon the case of Union of India (UOI) Vs. L.K. Puri and Another, where after discussing the judgment of Supreme Court in D.C. Aggarwal's case

(supra) as well as the judgment delivered in the case of Union of India (UOI) and Another Vs. T.V. Patel, a Coordinate Bench of this Court held:

6. We may note that the case of D.C. Aggarwal (supra) regarding supply of CVC advice came up for consideration before the Supreme Court in a recent judgment in the case of Union of India (UOI) and Another Vs. T.V. Patel, According to the petitioner, in view of the legal position explained in T.V. Patel (supra), there is no longer any requirement to supply a copy of the CVC advice. On the other hand, plea of learned Counsel for the respondent No. 1 was that T.V. Patel (supra) does not water down the principle laid down in D.C. Aggarwal (supra). However, it is not even necessary to go into this issue in detail in the present case inasmuch as it is not in dispute that the respondent No. 1 was supplied the copy of CVC advice. However, reference to the aforesaid two judgments would be made in the context of the issue raised, namely, whether there is any further requirement on the part of the department to supply the copy of its comments also which it sent to the CVC. Before we come to this core issue, we deal with the question as to whether T.V. Patel (supra) departs from D.C. Aggarwal (supra).

9. In T.V. Patel (ibid), on the charge that the respondent was found to have been involved in providing telephone connection in contravention of the P&T Manual thereby causing huge avoidable financial loss to the department. Article of Charges was framed against him. The Inquiry Officer held that the charges were not proved. The disciplinary authority disagreed with the said report and issued a notice to the respondent therein providing its reasons for disagreement and calling upon him to make representation, if any. He made the representation, which was rejected. Thereafter, the disciplinary authority sought the advice of the UPSC and after consideration of the said advice imposed a penalty. A copy of the advice tendered by the UPSC was sent to the respondent along with the copy of final order imposing penalty. The respondent challenged the order before the Tribunal. The Tribunal quashed the penalty order on the ground that UPSC advice was not made available to the respondent before passing the order and was sent along with the penalty order. The High Court also affirmed the order of the Tribunal. Union of India preferred appeal before the Supreme Court. The Supreme Court allowed the appeal. It was held that where the disciplinary authority sought advice of the UPSC before imposition of penalty on the delinquent, it was not necessary for the disciplinary authority to make available a copy of the advice tendered by the UPSC to the charge sheeted officer so as to enable him to make an effective representation to the punishment proposed. In this behalf, provisions of Article 320(3)(c) of the Constitution of India were referred to hold that they are not mandatory and do not confer any right on the public servant. Thus, the absence of consultation or any irregularity in the consultation process or in furnishing a copy of the advice tendered by the UPSC, if any, does not afford the delinquent government servant a cause of action in a court of law.

7. The judgment in T.V. Patel's case (supra) deals with non-supply of UPSC

advise which is not the case here. Coming to the facts of this case, the office memorandum dated 31.07.2006 whereby the advice of the CVC has been conveyed to the disciplinary authority as required under Rule 18 of ICAR Rules reads as under:

Sub: Departmental inquiry against Sh. Vipul Raj, Administrative Officer, NIRJAFT, Kolkata (now at CMFRI, Cochin)

ICAR may refer to their letter No. 11-1/2003-Vig. Dated 28/6/2006 on the subject cited above.

2. The Commission has perused the inquiry report, alongwith its relevant records, and the comments of the administrative authorities thereon. It has been noted that the charges leveled against Sh. Vipul Raj are serious in nature and have been duly proved in the court of inquiry. The Commission would advise stiff major penalty against Sh. Vipul Raj, AO, NIRJAFT.

3. Action taken in pursuance of the Commission's advice may be intimated.

4. All related files/documents of the case are returned herewith.

8. According to the petitioners this memorandum had been supplied to the respondent which has been denied by the respondent. According to the petitioner the disciplinary authority i.e. the Director General, ICAR after considering the charges framed against the respondent, finding of the inquiry officer, submission of the respondent, advice of the CVC, relevant rules, position of other relevant facts has imposed the penalty of removal from service on the respondent vide order dated 08.08.2006. It has been submitted that the CVC has given advice which is based upon the finding of the I.O., records produced during the course of inquiry and these documents were available to the respondent before passing of the impugned order and since the charges against the respondent were grave and they were proved in the inquiry so it is apparent that all the documents on the basis of which the CVC has advised imposition of strict major penalty against the respondent were provided to him. It is thus, submitted that no prejudice has been caused to the respondent by non-supply of CVC advice. However, the issue is not of causing prejudice to the respondent.

9. We are afraid that in view of the judgment delivered by the Apex Court in the case of D.C. Aggarwal (supra) and the office memorandum issued by the CVC it is necessary for the disciplinary authority to supply a copy of the CVC's advise along with the report of the inquiry officer so as to give him an opportunity to make representations against the findings of the investigating officer as also the advice of the CVCs if he desires to do so. This is also the requirement of Rule 18 of the ICAR Rules which mandates consultation with the CVC in respect of disciplinary matters pertaining to corruption charges. The said Rule for the sake of reference is reproduced hereunder:

18. ICAR comes under the jurisdiction of Central Vigilance Commission. The Commission is required to be consulted before passing the final order where the

official concerned comes under the purview of the Commission. Only such of the cases are to be referred to be Commission which involve the allegations of corruption, improper motive or malafide. Such cases where disciplinary proceedings have been initiated or proposed to be initiated for lapses like late attendance, unpunctuality, refusal to carry out orders or technical breach of rules without any malafide etc. are not required to be referred to the Commission.

10. However, the CVC advise has not been supplied.

11. In view of the aforesaid, we find that the order passed by the Tribunal needs to be sustained with a small modification that it would not be necessary to send the matter again to CVC as directed by the Tribunal but what would be necessary would be to supply a copy of the CVC advice to the respondent and after receiving his comment, pass a fresh order regarding the penalty to be imposed, if any upon the respondent by the disciplinary authority. In view of the aforesaid, the order passed by the disciplinary authority as well as by the appellate authority are set aside while the order passed by the Tribunal in OA No. 237/2008 is modified to the extent as stated above.

12. No costs.

13. Interim orders stand vacated.