



Order

In the matter of -

**Complaint No. Com/21-CA(16)/2014 – Shri Rakesh Singh (M/10111) Vs.
Shri A. Krishna Dasan (M/25115).**

Shri Rakesh Singh.....Complainant

Vs.

Shri Krishna Dasan.....Respondent

1. Shri Rakesh Singh (M/10111) former President of the Institute and member of the Council for the term 2011-2015, filed a complaint dated 28.08.14 against Shri A. Krishna Dasan, (M/25115) in Form I along with requisite fee of Rs.2500/- alleging circulation of a number of e-mails in various platforms and members of the Council including Government nominees throughout India via electronic media with intention to defame members of the Council and damage the image of the profession, Institute and the members thereof. The Disciplinary Directorate having scrutinized the complaint and finding the same in order and on being satisfied that it is a fit case to be dealt with in the manner as prescribed in Chapter III of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, proceeded to register the complaint vide Complaint No. Com/21-CA(16)/2014.
2. A copy of the complaint filed by Shri Rakesh Singh, complainant was sent to Shri A. Krishna Dasan, respondent under the cover of letter Ref No. G/DD(M-25115)/Com-C-16/1)/9/2014 dated 3rd September 2014 pursuant to Rule 8(1) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.
3. The respondent was requested to submit a written statement in defence within 21 days from the date of service of letter No. G/DD(M-25115)/Com-C-16/1)/9/2014 dated 3rd September 2014.



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4. Even after the expiry of 21 days from the date of service of the letter Ref No. G/DD(M-25115)/Com-C-16/1)/9/2014 dated 3rd September 2014, no written statement was received from the respondent by the Disciplinary Directorate. Neither did the respondent pray for grant of additional time for submission of written statement in terms of Rule 8(3) of the said Rules.
5. Accordingly, it was presumed that the respondent has nothing to add or supplement and the complaint was perused according to law.
6. The Director (Discipline) on perusal of the complaint and on non-receipt of written statement from the respondent and on the basis of documents relied upon in formulation of prima facie opinion, formed the prima facie opinion dated 18th November 2014, a copy of which was duly served on the complainant and the respondent in terms of Rule 18(2) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.
7. The respondent was asked vide letter Ref No. G/DD(M-25115)/Com-C-16/2)/11/2014 dated 18th November 2014 to file a written statement along with supporting document and list of witnesses with a copy thereof to the complainant in accordance with Rules 18 (3) & 18 (4) of Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 within 21 days of service of this notice.
8. In the meantime, the complainant submitted a supplementary complaint dated 20th November 2014 wherein he had referred to another e-mail of Shri A. Krishna Dasan, respondent addressed to the Complaint with captioned subject as "Hijada Leadership and a Redundant Institute". The said supplementary complaint was forwarded to the respondent under the cover of letter Re No. G/DD(M-25115)/Com-C-16/3)/11/2014 dated 25th November 2014.
9. An undated written statement from the respondent was received by the Institute on 16th December 2014 denying all allegations levelled against him and challenging the prima facie opinion of the Director (Discipline) to be against all canons of law emphasizing on freedom of speech and expression in a free country of India.
10. Letters Ref No. G/DD(Gen-1)/Com-C-16/4)/12/2014 and Ref No. G/DD(M-25115)/Com-C-16/3)12/2014 both dated 22nd December 2014 were sent both to the complainant and the respondent for their personal appearance before the Disciplinary Committee in terms of



Rule 18(6) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 at Delhi office of the Institute on 6th January 2015 to make oral submissions, if any.

11. On the appointed date and time, the complainant appeared for hearing before the Disciplinary Committee. The respondent also, appeared for hearing before the Disciplinary Committee. The charges that were framed in terms of sub-rule (7) of Rule 18 of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 were read out in the presence of the respondent who, though was physically present for the oral submissions refrained from making oral submissions and handed to the Committee members a four page letter (together with annexure) stating *inter alia* that information has been sought under RTI by him in respect of three members of the Disciplinary Committee who cannot act fairly and in an unprejudiced manner against the respondent while hearing the complaint. He also requested for the re-constitution of the Disciplinary Committee so as to include members from the Council who should be independent, fair, unbiased and unprejudiced. He did not plead guilty and did not participate in the hearing process.
12. The Disciplinary Committee in their 19th meeting held on 6th February 2015 at Kolkata decided that since the respondent has refrained from making oral submissions in the 18th meeting of the Disciplinary Committee held at Delhi on 6th January 2015, it was presumed that he has nothing to state and the Committee opined that under the circumstances, there were reasons to believe that the respondent is guilty. The Secretary to the Disciplinary Committee was directed that the respondent be given an opportunity to be heard in terms of Rule 19(1) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 in a meeting of the Committee before passing any order under sub-section (3) of Section 21B of the CWA Act, 1959.
13. Another hearing was fixed at Delhi office of the Institute on 9th July 2015. But the respondent expressed his inability to attend the said hearing owing to his wife's hospitalization. The Committee members decided that the respondent be given another opportunity to be heard in terms of Rule 19(1) of the Cost and Works Accountants



(Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 in a meeting of the Committee before passing any order under sub-section (3) of Section 21B of the CWA Act, 1959.

14. In the said meeting of 9th July 2015, the Director (Discipline) produced cogent evidence before the Committee which were the e-mails dated 22.08.14 and 25.08.14 wherein Shri A. Krishna Dasan has cast aspersions on the Complainant stating that:

- (a) When MCA came out with the Draft Rules, members advised the complainant to approach Court but the same was not done since the Complainant felt that the Institute's money cannot be spent unnecessarily but now the Institute money is being spent for protecting the leaders of the Institute in a land scam case.
- (b) A complaint has been filed against the Complainant by a past president of the Institute in a case relating to the Institute.

15. The Committee noted the fact that the mail was not based on merit and based upon hearsay from undisclosed sources as he tried to defame the complainant.

16. In the 25th meeting of the Disciplinary Committee held at Kolkata on 20th May 2016, Shri Rakesh Tyagi, Government Nominee who was attending the present meeting of the Disciplinary Committee for the first time as a Member, after perusing the details relating to the complaint, proposed that the may be called again in the next meeting of the Disciplinary Committee in terms of Rule 18(6) of the said Rules for making oral submissions as the present Disciplinary Committee is a new committee altogether with three new members of the Council. Shri Debasish Bandopadhyay, Government Nominee also opined that the principles of natural justice demand that one final opportunity needs to be given to the Respondent for making oral submissions in terms of Rule 18(6) which he did not do at the 18th meeting of the Disciplinary Committee that was held on 6th January 2015 at Delhi. This was agreed to by all the other members of the Committee.

17. Accordingly, letter Ref No. G/DD/(M-25115)/CA(16)/7/06/2016 dated 17th June was sent to the Respondent requesting him to be present before the Disciplinary Committee at the Delhi office of the Institute on Tuesday, the 28th June 2016 for making oral submission in terms of Rule 18(6) of the said Rules.

18. The respondent appeared at the appointed time and place. The charges framed against the Respondent were again read out along with the summary of prima facie opinion as required



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under Rule 18(7) of the Cost and Works Accountants (Procedure of Investigations of professional and Other Misconduct and Conduct of Cases) Rules, 2007 which was not denied by the respondent on this occasion too. In fact, he had agreed to the charges framed against him arising out of the complaint filed by the Complainant. He, however, stated in his submissions that the alleged e-mail of August 2014 were sent only to members to make them aware of the Institute activities and for protecting the image of the Institute and the members. Further, the respondent stated that he had sent the e-mails based on a news item published in the Economic Times and a complaint filed by a former President of the Institute in a Court in Pune. However, the respondent did not plead guilty.

19. In the 27th meeting of the Disciplinary Committee held at Kolkata, the Committee members advised the Secretary to call both the complainant and the respondent at the next meeting of the Committee when held at Delhi for the purpose of complying with the provisions of Rule 18(9)/18(10) of the said Rules.
20. Accordingly, letters No. G/DD/(M-10111)/CA(16)/5/01/2017 and G/DD/(M-25115)/CA(16)/8/01/2017 dated 5th January 2017 were sent both to the complainant and the respondent requiring their presence as required by Rule 18(9)/18(10) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 on 18th January 2017 at the Delhi office of the Institute.
21. The complainant did not attend the said hearing nor did he produce any witness. The respondent also failed to make appearance at such meeting and did not produce any witness or material evidence.
22. At the 28th meeting of the Disciplinary Committee held at the Delhi office of the Institute on 18th January 2017, the Disciplinary Committee directed the Secretary to issue, one last time, notice to the respondent requesting him to appear before the Disciplinary Committee on 3rd March 2017 at WIRC, Mumbai to enable him an opportunity to be heard in terms of Rule 19(1) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 before any order is passed against her under sub-section (3) of Section 21B of the Cost and Works Accountants Act, 1959.



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23. The respondent, however, did not make himself available at the said meeting held at WIRC premises on 3rd March 2017.
24. The Disciplinary Committee having considered the written submission and perusing the documents on record is of the opinion that Shri Krishna Dasan, respondent is guilty of professional and other misconduct under the First Schedule and Second Schedule to the Cost and Works Accountants Act, 1959.
25. The Disciplinary Committee reprimands the member in terms of clause (a) of Section 21B (3) the Cost and Works Accountants Act, 1959 read with Rule 19(1) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

5th May 2017

(Manas Kumar Thakur)
Presiding Officer