THE INSTITUTE OF COST ACCOUNTANTS OF INDIA
(STATUTORY BODY UNDER AN ACT OF PARLIAMENT)
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ORDER

Complaint No. Com/21-CA(18)/2014 – Shri Balwinder Singh (M/19898) Vs Shri Anil Sharma (M/15091)

Shri Balwinder Singh (M/19898)----------Complainant

Vs

Shri Anil Sharma (M/15091).....Respondent

1. The Disciplinary Directorate received a complaint dated 25th August 2014 in triplicate in Form I from Shri Balwinder Singh (bearing membership number 19898), against Shri Anil Sharma (bearing membership number 15091). The content of the complaint relates to withdrawal of money in violation of Clause 25(1) of the Chapter Bye laws and Regulation 132 of the Cost and Works Accountants Regulations, 1959.

2. As per the said complaint, the respondent was a member of the Managing Committee of Chandigarh-Panchkula Chapter in the following capacity:

Year	Position Held
2009-10	Secretary
2010-11	Secretary
2011-12	Executive Member

During the above mentioned periods, Shri Anil Sharma, respondent acted as Faculty Member at the Chandigarh-Panchkula Chapter of Cost Accountants and has drawn remuneration of Rs 1,14,750/-.

3. The allegation of Shri Balwinder Singh, complainant is that by drawing remuneration as a Faculty member of Chandigarh-Panchkula Chapter of Cost Accountants, Shri Anil Sharma, respondent has violated Clause 25(1) of the Chapter Bye-laws. The Complainant has quoted an extract of Clause 25(1) of the Chapter Bye-laws which read as follows;

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"Provided that no funds of the Chapter shall be applied either directly or indirectly for payment to the members of the Managing Committee of the Chapter except for reimbursing them for any expenses incurred by them in connection with the business of the Chapter"

Similar provision also exists in regulation 132 of the Cost and Works Accountants Regulations, 1959 and the Complainant has, in his complaint, cited the relevant portion of the provision which states as follows:

"Provided that no funds thereof shall be applied, either directly or indirectly, for payment to the members of the Regional Council except for reimbursing them for any expenses incurred by them in connection with the business of the Regional Council in the region concerned."

4. The complainant also alleged that the Chapters are regulated by the concerned Regional Council and thus Regulation 132 is equally applicable to the Managing Committee members of the Chapter. Shri Anil Sharma, therefore, was guilty of violation of this Regulation as well. The complainant has also provided year-wise details of remuneration drawn by the Complainant during the period 2009-10, 2010-11, 2011-12 and 2012-13 aggregating to Rs 1,14,750/-.

5. The above complaint of Shri Balwinder Singh was forwarded to the respondent vide letter No G/DD(M-15091)/Com-C-18/1)/9/2014 dated 15th September 2014 requesting the respondent to submit his response through a written statement in his defence within 21 days from the date of service of the letter.

6. The respondent, by his letter dated 4th October 2014, submitted his written statement stating about his close association with Chandigarh-Panchkula Chapter of Cost Accountants since 2007-08 and also highlighting about the positions held by him in the said Chapter during the period 2007-08 to 2012-13. He stated that the complaint filed by Shri Balwinder Singh was politically motivated and was baseless because expenses reimbursed to faculty had been approved by the respective Chairmen and Managing committee of Chandigarh-Panchkula Chapter. He further submitted that:

(i) Chapter byelaws do not prohibit anyone to take classes at the chapter.

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(ii) It also allows reimbursement of expenses to be claimed by faculty members. It is an old and common practice adopted by Chapter to reimburse expenses to faculty members.

(iii) The expenses reimbursed to the faculty members are with the approval and consent of respective Chairmen as well as the Managing Committee.

(iv) Faculty expenses have been shown in the Chapter's Annual income and Expenditure Account and the Balance Sheets.

(v) These are also being approved by the members of the Chapter in the AGM.

(vi) No objection was being raised by the auditor or any management committee member regarding reimbursements to the faculties. In addition, no Council Member (CCM) or Regional Council Member (RCM) those who have attended the meetings at the Chapter during that period ever objected to such reimbursements being claimed at that time.

(vii) The amount is usually reimbursed to faculty members for his or her travelling.

(viii) No Letter of Intent (LoI) or work order was issued to the respondent.

(ix) The complainant who himself was a Central council member during the period 2007-11 (Ex-Officio member of Chandigarh-Panchkula Chapter) was present in the Committee meetings and was aware of these facts regarding reimbursements to faculty members but no objection was raised by him.

(x) It has been learnt that during the tenure of the complainant as the Chairman of the chapter, such expenses have been reimbursed to faculties whosoever had taken classes.

7. The respondent had, along with his written statement dated 4th October 2014, enclosed a copy of the complaint dated 14th June 2014 filed by some members against the Managing Committee of the Chapter regarding perfunctory adoption of incomplete accounts and Balance Sheet at the AGM but no action was taken by the Chapter.

8. The said written statement of the respondent was sent to the complainant vide letter No G/DD(M-19898)/CA(18)/2/10/2014 dated 16th October 2014 with a request to send the rejoinder within 21 days from the receipt of the letter.

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9. The complainant vide his letter dated 12th November 2014 denied and refuted the contentions of the respondent as under:

   - The Chapter Bye-laws prohibits application of funds directly or indirectly to the members of the Managing Committee – Clause 25(1) contravened.

   - There is no practice of any payment as 'Faculty Remuneration' or 'Honorarium' to members of the Managing Committee who act as faculty (the only exception being that of Shri Anil Sharma, respondent) - Clause 25(1) therefore, contravened.

   - The respondent, while holding the position of Secretary acted as Faculty Member of Chandigarh-Panchkula Chapter of Cost Accountants and received an amount of Rs 1,14,750/- as remuneration for taking classes - Clause 25(1) therefore, contravened.

   - While the part-time faculty members are paid fixed remuneration per lecture, the Respondent has received the amount based on number of lectures as also being paid to outside faculty.

   - Also, the contention of the respondent that the complainant or anybody did not raise the issue was factually incorrect as the issue was raised a number of times but the respondent as secretary of the Chapter failed to implement the same.

10. As part of inquiry, the Disciplinary Directorate during the course of investigation had vide letter No G/DD/CPCCA/Com-CA(18)/1/12/2014 dated 1st December 2014 sought the following information from Chandigarh-Panchkula Chapter of Cost Accountants :

    (i) Whether Shri Anil Sharma, bearing membership number 15091 was a member of the Managing Committee of Chandigarh-Panchkula Chapter of Cost Accountants (CPCCA),

    (ii) If so, then the period during which he was a member of the Managing Committee and the posts held during such period.

    (iii) Whether Shri Anil Sharma was a faculty member of CPCCA at any time.

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(iv) If so, whether Shri Anil Sharma was remunerated for the assignment taken up by him.

(v) If the answer to the above was in affirmative, then the total remuneration drawn by Shri Anil Sharma from teaching assignment as a faculty member.

(vi) The basis of remuneration provided to Shri Anil Sharma in case, he was remunerated by CPCCA.

(vii) The basis of remuneration for all other faculty members who have taught at CPCCA or currently teaching at CPCCA.

11. The Chapter vide their letter No CPCCA/2014-15/DD-1 dated 8th December 2014 replied that:

(i) Shri Anil Sharma (M/15091) was a member of the Managing Committee of CPCCA during the period 2007 to 2013.

(ii) The period during which the respondent was a member of the Managing Committee of CPCCA and in the capacities was also stated which indicated that he had held a post of office bearer from 2007-08 onwards till 2012-13.

(iii) Shri Anil Sharma was a faculty member of CPCCA during the period from 2009-10 till 2011-12.

(iv) Shri Anil Sharma was remunerated for the assignment as a faculty member.

(v) The remuneration drawn by Shri Anil Sharma from teaching assignment as a faculty member was as follows:

Period	Amount (Rs)
2009-10	34,925.00
2010-11	41,800.00
2011-12	38,025.00
Total	**1,14,750.00**

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This figure of Rs 1,14,750/- tallied with the amount stated by the complainant in his complaint dated 25th August 2014.

12. The rejoinder dated 12th November 2014 of the complainant was forwarded to the respondent who, by his letter 26th December 2014, refuted the facts stated by the complainant in his rejoinder. The respondent, *inter alia,* stated that –

- It was an old practice at Chapter to reimburse such expenses
- Such expenses were reimbursed with the prior approval of the respective Chairmen and the managing committee of the Chapter.
- If the Complainant had raised this issue a number of times as claimed in his rejoinder dated 12th November 2014, he should produce documentary evidence to this effect.
- Also, knowing all facts, why did the complainant raise the issue after a gap of 3-4 years.

The respondent requested the Director (Discipline) to depute personnel from Headquarters and verify facts from the Chapter records.

13. Chandigarh-Panchkula Chapter of Cost Accountants (CPCCA) vide their letter dated 3rd March 2016 in response to the letter of the Disciplinary Committee dated 17th February 2016 categorically mentioned that:

    - Members of the Managing Committee of Chandigarh-Panchkula Chapter of Cost Accountants (CPCCA) are not entitled to remuneration for taking classes in the Chapter.
    - Chandigarh-Panchkula Chapter of Cost Accountants has been following Clause 25(10 of the Chapter bye-laws which forbid members of Managing Committee from claiming remuneration for taking classes.

14. The Disciplinary Directorate vide letter No G/DD(M-15091)/CA(18)/3/02/2016 dated 17th February 2015 addressed to the respondent wanted to know whether he was

being paid money out of the funds of the Chapter for undertaking classes at the Chandigarh-Panchkula Chapter. The reply of the respondent dated 11th March 2016 received by the Disciplinary Directorate on 17th March 2016 clearly indicated that he had received remuneration as a member of the Managing Committee for taking classes.

15. After conducting inquiry and studying the complaint, with reference to the provisions of the Chapter Bye-laws and the Cost and Works Accountants Act, 1959 and the Cost and Works Accountants Regulations, 1959 was of the view that the funds of the Chandigarh-Panchkula Chapter had been applied for making payment to the respondent which is not only in contravention of the aforesaid clause but also under the first proviso to Regulation 132 (2) of the Cost and Works Accountants Regulations, 1959 which read as under –

Provided that no funds thereof shall be applied, either directly or indirectly, for payment to the members of the Regional Council except for reimbursing them for any expenses incurred by them in connection with the business of the Regional Council in the region concerned."

The act of accepting remuneration by the respondent therefore, was in contravention with the Chapter Bye-laws and regulation 132 of the Cost and Works Accountants Regulations, 1959.

16. The prima facie opinion in terms of Rule 9(2)(a)(ii) formed by the Director (Discipline) was placed before the Disciplinary Committee in the 24th meeting of the Committee held at Kolkata on 19th March 2016. The Committee noted the fact that the respondent, as Faculty Member of the Chandigarh-Panchkula Chapter of Cost Accountants had drawn remuneration of Rs 1,14,750/- and in doing so, he has violated Clause 25(1) of the Chapter Bye-laws. The Committee also noted the comments of the Disciplinary Committee that the funds of the Chandigarh-Panchkula Chapter has been applied for making payment to the Respondent which is not only in contravention of the aforesaid clause but also contravenes the first proviso to Regulation 132(2) of the Cost and Works Accountants Regulations, 1959. The prima facie opinion was, however, not accepted by the Committee. The Committee members directed the Secretary to write to the Chandigarh-Panchkula Chapter of Cost Accountants for making available to the Disciplinary Directorate copies of vouchers evidencing payment made to Shri Anil

17. Sharma, duly authenticated by a responsible official of the Chapter for placing the same in the next meeting of the Committee.

18. Accordingly, letters No G/DD//CPCCA/Com-CA(18)/4/02/2016 and G/DD/CPCCA/Com-CA(18)/5/04/2016 dated 28th March 2016 and 11th April 2016 respectively, were issued to Chandigarh Panchkula Chapter of Cost Accountants (CPCCA) seeking copies of vouchers evidencing honorarium payment of Rs 1,14,750/- to the Respondent as well as ledger Accounts in respect of honorarium payments made for the periods 2009-10, 2010-11 and 2011-12, duly authenticated by a responsible official of the Chapter.

19. The Chairman of CPCCA by his letter dated 9th May 2016 enclosed copies of vouchers as well as ledger accounts towards honorarium payments made to faculty members. The copies of vouchers as well as ledger accounts towards honorarium payments made to faculty members including payment made to the respondent were placed before the Disciplinary Committee by the Secretary of the Disciplinary Committee in the 25th meeting of the Disciplinary Committee held at Kolkata on 20th May 2016. On perusing all the vouchers which have been duly authenticated by the Chairman of CPCCA, it was evident that an amount of Rs 1,14,750/- had been paid to the respondent.

20. In the 26th meeting of the Disciplinary Committee held at the Delhi office of the Institute on 28th June 2016, the Secretary placed on table copies of Chapter Bye-laws that were in vogue prior to 2009 and drew the attention of the learned members to Clause 25 of the Bye-laws which was on similar lines. The Committee noted that there was a contravention of Regulation 132 of the Cost and Works Accountants Regulations, 1959 by the respondent and perused and accepted the prima facie opinion framed by the Director (Discipline) in terms of Rule 9(2)(a)(ii) of the Rules holding the respondent prima facie guilty for contravening clause (1) of Part II of Second schedule to the CWA, Act, 1959. The Secretary was directed to ensure compliance of Rule 18(2)/18(3) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

21. Accordingly, the prima facie opinion was sent to the respondent vide letter No G/DD(M-15091)/CA(18)/4/07/2016 dated 26th July 2016 requesting Shri Anil Sharma to file a written statement along with supporting documents and list of witnesses with a copy to the complainant in terms of Rule 18(3)/18(4) of Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of

Cases) Rules, 2007. The said prima facie opinion was also sent to the complaint by letter dated 26th July 2016.

22. The respondent filed a written statement dated 31st August 2016 challenging the prima facie opinion of the Director (Discipline). In the 27th meeting of the Disciplinary Committee held at Kolkata on 23rd December 2016, the Secretary of the Committee informed the members of the Committee that a very detailed reply has been received from the respondent denying all the allegations of the complainant.

23. The respondent in his written statement dated 31st August 2016 submitted, pursuant to Rule 18(4) of Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, stated *inter alia*:

    a. No evidence has been produced by the complainant so far to prove that alleged amount has been paid as remuneration to the undersigned. The opinion formed by the authority seems to be incorrect as the same is not based on any documentary evidence. He also stated that till date the complainant has failed to submit authentic evidence of payment made to undersigned as remuneration. A complaint on piece of paper cannot be a valid complaint unless supported by authentic documents.

    b. The respondent was in receipt of an information from the Chairman of Chandigarh Chapter in response to his application under RTI Act dated 25.02.2016 whereby Chairman, Chandigarh Chapter in his reply dated 30.03.2016 stated that "Details of faculty wise expenses paid were not maintained by the Chapter at that time and hence could not be supplied, however, the copy of Income and expenditure which depicts the amount of faculty expenses attached."

    c. As per the copy of ledger provided by the Institute/Chandigarh chapter after the orders of Appellate Authority, it does not indicate the name of faculty members to whom amount has been paid.

    d. If faculty wise detail was not maintained by the chapter, than how the alleged figure of Rs. 114750/- has been worked out by the complainant? Further, how Shri Mukesh Kr. Gupta past Chairman Chandigarh Chapter has verified the said

amount whereas, as per the information provided by the Chandigarh Chapter vide letter dated 30.03.2016 has intimated that no such faculty wise record is maintained by the Chapter.

e. In another RTI application dated 25.02.2016 request was made to Institute/Chandigarh-Pkl. Chapter to provide him with copies of Bank Statements for respective periods to identify the name and to work out amount paid to faculty members. The same was denied by the Institute/Chandigarh Chapter.

f. Having being discouraged with the orders passed by Appellate Authority in first Appeal, the respondent has now filed Second appeal dated 17.08.2016 to Centre Information Commission (CIC), New Delhi seeking banks statements for respective years.

g. Amount paid to Faculty member whosoever take classes at Chapter is re-imbursement towards travelling cost by the Chapter which is evident from the fact that it has been booked under the Head **'Faculty Expenses'** in Income and Expenditure statement of the Chandigarh-Panchkula Chapter for the respective years.

h. In this regard the respondent submitted that it was an old practice in Chandigarh Chapter to reimburse such expenses travelling expenses to the members whosoever had taken the classes at Chapter.

i. Moreover, as per accounting manual of the Institute all Expenses paid to faculty as Honorarium are booked under the head "Honorarium of Faculty" which is evident from the Income & Expenditure statements of NIRC and Jodhpur Chapter whereas in case of Chandigrah-Panchkula Chapter, the chapter is not paying any Honorarium to Faculty but it is reimbursement of travelling, hence booked under the head 'Faculty Expenses'. Moreover, the reimbursement of travelling expenses to faculty has been approved by the managing committees of the Chapter of respective years.

24. In the 29th meeting of the Disciplinary Committee held on 3rd March 2017 the learned members advised the Secretary of the Committee to seek Auditors Report from the Finance Directorate to see whether the auditor has given any adverse comment on

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remuneration paid to the Faculty in violation of the Chapter Bye laws. Accordingly, letter No. G/DD/SD(F)/05/04/2017 dated 3rd April 2017 was sent to Director (Finance) seeking information from him in order to ascertain whether the Auditor has given any adverse comment in the Auditor's Report on remuneration paid to the Faculty Member concerned in violation of the prevailing Chapter Byelaws. This was followed up by another letter No G/DD/D(F)/06/04/2017 dated 28th April 2017.

25. The Director (Finance) vide his letter dated 2nd May 2017 stated that as per the audited annual accounts of Chandigarh-Panchkula Chapter for the FY 2009-10, 2010-11 and 2011-12 sent to HQ for the purpose of consolidation of accounts of the Institute, faculty fee has been mentioned under the Head 'coaching expenses' in the Income & Expenditure Account in all the three years and there is no such mention of any individual faculty drawing any specific amount in those years in the audited annual accounts of Chandigarh-Panchkula Chapter. This letter was placed before the Disciplinary committee at its 31st meeting held on 5th May 2017.

26. On perusal of the second written statement, one may be inclined to assume that the amount received by the respondent was towards conveyance expenses but the fact remains that the amount of Rs 1,14,750/- was actually received by the respondent as an honorarium for taking classes. It may be called by whatever name but going by the letter No CPCCA/2014-15/DD-1 dated 8th December 2014, of Chandigarh-Panchkula Chapter it is clear that payment received by the respondent was for taking classes and it was in the nature of honorarium.

27. In the 31st meeting of the Disciplinary Committee held on 5th May 2017, the Committee noted that though there was no adverse comment from the auditors, it was not desirable that a member of the Managing Committee should gain pecuniary benefits by taking oral classes, by whatever name it may be called. The matter was discussed at length and after discussion, the Committee decided that the respondent is to be cautioned and all members of the Managing Committee during the period 2009-10, 2010-11 and 2011-12 be cautioned.

5th May 2017

(Manas Kumar Thakur)
Presiding Officer