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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

1. OA No.1465/2002
MA No.2012/2002

2. OA No.1009/2002

New Delhi this the 17th day of September, 2002.

Hon'ble Mr. M.P. Singh, Member (Admnv)

Hon'ble Mr. Shanker Raju, Member (Judl.)

OA No.1465/2002.

N.D. Sharma,
S/o Sh. Om Prakash Gaur,
R/o R-236, Sector-31,
Noida (UP).

-Applicant

(By Advocate Shri Shyam Moorjanai)
with Sh. A.P. Dhamija)

OA No.1009/2002

N.D. Sharma,
S/o Sh. Om Parkash Gaur,
R/o R-236, Sector-31,
Noida (UP).

-Applicant

(By Advocate Shri Shyam Moorjani)
with Sh. A.P. Dhamija)

-Versus-

1. Union of India,
through the Secretary,
Ministry of Home Affairs,
North Block, New Delhi.

2. Joint Secretary,
Ministry of Home Affairs,
(Government of India),
North Block,
New Delhi.

3. The Director,
Directorate of Co-Ordination Police,
Wireless (DCPW),
Ministry of Home Affairs,
(Government of India),
9, CGO Complex, Lodi Road,
New Delhi-110003.

-Respondents

(By Advocate - None)

O R D E R

Mr. Shanker Raju, Member (J):

MA-2012/2002 has been filed by one Kanwar Singh
Sen in person to get himself impleaded in the OA and

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for a direction to the CVC to produce the relevant records and also C.P. Delhi to produce enquiry report conducted against N.D. Sharma and also various other directions and also to bring on record the real truthful version of the episode which has been suppressed by the official respondents.

2. Shri N.D. Sharma, applicant in the present OA-1465/2002 has made certain remarks against Sh. K.S. Sain. According to him he is an affected party and his intervention would facilitate adjudication of this case and also would be in the interest of justice.

3. On careful consideration of his MA and in view of the decision of the Apex Court in Gopa Bandhu Biswal v. Krishan Chand Mohanty, 1998 (4) SCC 447 only a person who is likely to be affected by the outcome of the present OA can be impleaded under the provisions of the Administrative Tribunals Act, 1985 and the Rules thereunder. As the final outcome of this OA is not to affect Sh. K.S. Sain he has no locus standi to be impleaded as a necessary party in the present OA. In this view of the matter MA is dismissed. However, applicant in MA is at liberty to approach the appropriate forum for redressal of his grievance.

4. As these OAs involve common question of facts and law, they are being disposed of by this common order.

5. In OA-1009/02 applicant has challenged respondents' memorandum dated 6.3.2002, whereby the President has ordered a disciplinary proceeding against the applicant on several counts of charges under Rule 14 of the CCS (CCA), 1965.

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6. In OA-1465/02 applicant has challenged respondents' memorandum dated 3.5.2002 as well as Addendum dated 7.5.2002 whereby his promotion to the grade of Deputy Director has been kept in sealed cover. Applicant who was recruited as Extra Assistant direct through U PSC in 1983 has remained on deputation to Delhi Police As ACP (Communication) from September, 1986 to 1992. On proforma basis applicant was promoted as Assistant Director in 1998 while on deputation. He was also selected for the post of PRD, Deputy Commissioner of Police (Communication) on deputation through UPSC on 18.8.97 and took over the charge on 20.8.97. Though the deputation was initially for a period of one year but was extended year to year basis and lastly upto 15.11.2004.

7. While on deputation a DPC was held for the four posts of Deputy Director, DCP (W). 4th post was left vacant due to non-availability of ACR. Accordingly second DPC had met on 8.9.2001 where the name of the applicant was recommended and his appointment was subsequently approved. Applicant was offered the post by a letter dated 31.10.2001 which was consented to by the applicant through his letter of the even date. Applicant could not get the promotion on proforma basis and a raid was conducted by the CBI at his residence/office. Applicant was relieved from Delhi Police on 27.11.2001 and reported at DCP (W), where he was not allowed to join.

8. In the meantime, in view of an order passed by the Delhi High Court in a PIL on 20.8.2001 matter was investigated into by the DCP (Vigilance) where allegations could not be substantiated against the applicant.

9. Being aggrieved by his non-promotion applicant preferred OA-399/02 which was disposed of on 14.2.2002, directing the

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respondents to pass a detailed and speaking order in pursuance of the representation of the applicant. The copy was served upon the respondents. Subsequently, the matter was referred to the CVC and by their OM dated 30.10.2001 Commission has advised initiation of a major penalty proceedings against the applicant, resulting in the memorandum dated 6.3.2002, giving rise to the present OA.

10. Shri Shyam Moarjani, learned counsel for the applicant has assailed the chargesheet on the ground of malafides and abuse of powers by the respondents. According to him in Writ Petition No.888/2001 after the PIL filed against the applicant has been dismissed and as per the report of the DCP (Vig.) dated 4.7.2001 applicant was exonerated of all the charges. The respondents instead of passing a detailed and speaking order has issued memorandum dated 6.7.2001 on the allegations on which the applicant stood exonerated and this according to the learned counsel amounts to double jeopardy and is not sustainable in view of Article 20 (2) of the Constitution of India a person shall not be prosecuted and punished for the same offence more than once. According to him the allegations enquired into by Anti Corruption Branch and Vigilance were identical and once the applicant has been exonerated by meticulously going into the allegations the chargesheet issued is vitiated by malafides and is not sustainable. It is further stated that by an order dated 15.4.2002 on a Writ Petition filed through PIL in CW-2337/02 this court has, after anxious consideration, dismissed the case as res judicata and also on merits. This according the applicant is nothing but exoneration from the charges as alleged, which could not be substantiated by the Vigilance Branch.

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11. Another leg of his argument is that respondents have initiated the action on the advice of CVC dated 30.10.2001 but they have suppressed and withheld the relevant information regarding the order passed by the High Court in PIL as well as the report submitted by Vigilance Delhi Police exonerated the applicant with the result CVC could not apply its mind to the material produced and in ignorance of the material have recommended the action against the applicant. It is further stated that the complaint made by Kanwar Singh and his resort to get the applicant harassed aborted on dismissal of the CWP and closing the case even on merits as well. It is stated that the enquiry by vigilance has been initiated in pursuance of the directions of the High Court and his exoneration clearly shows that he was not guilty of the charge but in colourable exercise of the powers respondents malafidely initiated the proceedings and the advice of the CVC is vitiated by non application of mind. It is stated that though personal malafides are alleged but the chargesheet is vitiated by legal malice, as the respondents have suppressed and held back the facts from CVC.

12. In OA-1465/2002 contention of Sh. Moorjani is that in pursuance of the directions of the Court orders passed by the respondents on 3.5.2002 deeming the promotion of the applicant in sealed cover as per sub para (2) of para 2 of OM dated 3.5.2002 is arbitrary. According to him chargesheet was issued on 6.7.92. Applicant whose promotion was approved earlier on 31.10.2001 when he had given his consent and the same would be deemed to be his actual promotion and as such at that time applicant was not facing any disciplinary proceeding and no circumstances existed as per OM of 1992, applicant should have been given promotion on resort to sealed cover whereby the

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respondents have deliberately delayed ~~the~~ giving effect to the promotion order is vitiated by malafides and cannot be countenanced. Learned counsel has placed reliance on a decision of the High Court in S.K.Verma v. Chairman, International Airports Authority of India, 98 (2002) DLT 199 to substantiate his plea that none of the conditions were available for keeping the result of the applicant in sealed cover as he has already been given promotion, the same cannot be placed in a sealed cover.

13. In so far as the decision of the Apex Court in Union of India v. R.S. Sharma, 2000 (4) SCC 394 it is stated that the decision is distinguishable ~~and~~ as the issue was ~~in~~ of 1998 and the DPC has already placed the respondent therein in sealed cover and the issue of actual promotion has not been dealt with by the Apex Court. It is further stated that the post is still existing and the respondents are proposing to upgrade the same and in that event the right of the applicant would be seriously prejudiced.

14. Though despite opportunities neither the respondents nor the departmental representative were present, as the matter has been listed for Possible Final Hearing, we proceed to dispose the OAs on the basis of the available pleadings in the counter reply in terms of Rule 16 of the Central Administrative Tribunal (Procedure) Rules, 1987.

15. Respondents in their reply contended that the applicant has suppressed the fact of enquiry conducted by Anti Corruption Branch of Delhi which is subsequent to the enquiry conducted by the Vigilance. This was on the basis of a complainat made by K.S. Sain. This finding was against the applicant which was sent to the CVC on the basis of which recommendation was made to initiate major proceedings against the applicant. It is further stated that the present OA at this stage is not maintainable at this inter-locutory stage. Respondents deny

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any malafide in issuance of chargesheet against the applicant and stated that he shall be given all due opportunity in accordance with rules during the course of disciplinary proceedings to prove his innocence. As the enquiry of ACB was accepted by the CVC on different and independent charges a major penalty chargesheet was issued against the applicant.

16. In OA-1465/2001 respondents denied the contentions and stated that as a criminal case has been registered against the applicant and a disciplinary proceeding was ordered under Rule 14 of the CCS (CCA) Rules, in accordance with OM of 1992 as the applicant was involved in a criminal case before he was promoted the promotion was placed in a sealed cover and would be acted upon after the final outcome of the enquiry proceedings. Reports of ACB and CVC were not available when the DPC had met but before the order of the competent authority on the recommendations of the DPC could be acted upon applicant was chargesheeted and as per para 7, vires of which was upheld in R.S. Sharma's case (supra) by the Apex Court the action of the respondents is legally sustainable and does not suffer from any infirmity.

17. In both the OAs applicant has re-iterated the contentions taken in his OAs and has shown through comparative chart the charges enquired into by the vigilance and charges filed before the High Court. It is stated that the applicant has not committed any misconduct and has acted in discharge of his duties and the allegations do not amount to any misconduct, necessitating a disciplinary proceeding.

18. We have carefully considered the rival contentions of the parties and perused the material on record. In a judicial

review this Court is precluded from interfering at an inter-locutory stage in a disciplinary proceeding as held by the Apex Court in Union of India v. Upendra Singh, 1994(2) SLJ 77 unless the chargesheet is vitiated on account of malafides or no misconduct is attributable to the delinquent official. Truthfulness or correctness of the charge cannot be gone into by this court. If one has regard to the aforesaid ratio in the conspectus of the present case the contention of the applicant that the CVC was kept in dark by the respondents as neither the vigilance enquiry report by Delhi Police nor the decision of the High Court in PIL were communicated, which led to non-application of mind by the CVC due to non-availability of the material in recommending a major proceeding against the applicant is concerned, we find that apart from these findings the ACB report and the fact that the applicant was involved in a criminal case for disproportionate assets registered by OBI the ACB report was agreed upon by the Additional Commissioner of Police and thereafter on independent application of mind the CVC recommended action for major penalty against the applicant which has culminated into a chargesheet against the applicant under Rule 14 of the CCS (CCA) Rules, 1965. Even if the finding of the vigilance and the court order was made applicable to the CVC would not have made any difference in the recommendation which was independent of it and on different charges and in a different context, on the basis of the report of the ACB. However, mere issue of chargesheet would not prejudice the applicant as he is given an opportunity to prove his innocence after being accorded reasonable opportunity as per rules during the conduct of the proceedings. Merely because the chargesheet has been issued on the recommendations of the CVC would not constitute that the disciplinary authority with a closed⁶ mind only acting with the advice of CVC issued this memorandum. Keeping in view

the gravity of the charge and the fact that a clear cut malafide has not been established by the applicant and moreover from the perusal of the memorandum and annexures we do not find this to be a case of no misconduct; the proceedings at this inter-locutory stage cannot be interfered with.

19. In so far as the claim of the applicant contained in OA-1465/02 for opening the sealed cover and giving effect to his promotion as approved by the respondents, having regard to clause 7 of OM of 1992, which envisages that if before actual promotion if any of the conditions for requiring the promotion to be kept under sealed cover exists, i.e., chargesheet has been issued and the disciplinary proceedings are pending the matter is to be placed under sealed cover and the promotion shall not be given effect to unless he is exonerated of the charges. This OM has been relied upon by the Apex Court in R.S.Sharma's case (supra) and having regard to the fact that the person who has been recommended for promotion by the DPC but before he is actually promoted which is to be construed as actual promotion, mere approval by the competent authority would not amount to actual promotion and as on the date of the advice of the CVC a disciplinary proceeding has been initiated against the applicant on 6.7.2002, the action of the respondents placing applicant's promotion in sealed cover and rejection of representation in pursuance of the direction of the court cannot be found fault with, and which is legally tenable. Moreover, the contention of the applicant that the ratio in R.S. Sharma's case (supra) would apply to his case and the facts are distinguishable the same has no legs to stand as in that case also as the applicant was not actually promoted by that time recommendation has already been made, in view of the circumstances existed the sealed cover procedure was

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resorted to was held to be legally tenable. The contention of the applicant is rejected. The decision of the High Court was also not applied in view of the decision of the Apex Court in R.S. Sharma's case (supra).

20. In the result and having regard to the reasons recorded above the DAs are found bereft of merit and are accordingly dismissed. However, it goes without saying that the applicant, if aggrieved by any final order to be passed by the respondents in the disciplinary proceedings is at liberty to assail the same as well as his grievance of promotion, in accordance with law, in an appropriate proceedings. No costs.

21. Let a copy of this order be placed in the case file of each case.

(Shanker Raju)
Member (J)

(M.P. Singh)
Member (A)

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