

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00445/2018

Jabalpur, this Thursday, the 06th day of February, 2020

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Gaurav Rajput, S/o Shri Kamal Singh Rajput, aged about 37 years,
R/o 15th Battalion house, Marimata Chowraha, Airport Road,
Indore – 452005 – (M.P) **-Applicant**

**(By Advocate Shri Brian Disilva, Sr. Advocate
assisted by Shri V. Bhide)**

V e r s u s

1. Union of India Ministry of Home Affairs through its Secretary,
Central Secretariat, New Delhi – 110001.
2. Union Public Service Commission through its Chairman
Dholpur House, Shahjahan Road, New Delhi – 110069.
3. The State of Madhya Pradesh through its Principal Secretary,
Department of Home Affairs, Vallabh Bhawan, Bhopal (M.P.) –
462001.
4. The Director General of Police, Madhya Pradesh Police, Head
Quarters Jehangirabaad, Bhopal (M.P) 462008.
5. The Additional Director General of Police (Vigilance), Madhya
Pradesh Police Head Quarters Jehangirabaad, Bhopal (M.P.)
462008.
6. Shri Rishi Kumar Shukla, Director General of Police Head
Quarters Jehangirabaad, Bhopal (M.P.) 462008.
7. The Additional Director General of Police, Balaghat Range,
Balaghat - 481001 **- Respondents**

(By Advocate – Shri Akash Choudhary for State of M.P)

(Date of reserving order: 08.07.2019)

ORDER**By Navin Tandon, AM.**

The applicant, who is an Indian Police Service (IPS) officer of Madhya Pradesh cadre, is aggrieved that he is being subjected to repeated enquiries for the same complaint.

2. The applicant has made following submissions in the O.A:-

2.1 He is an officer of the IPS of the year 2004. He has rendered services in sensitive and important Districts of the State, such as, Anuppur, Dewas, Morena, Mandla, Katni, Indore and is currently holding the post of Incharge Deputy Inspector General of Police (DIG), Crime against Women Wing Indore. He has always enjoyed all service benefits including promotion on due dates.

2.2 The applicant was transferred as Superintendent of Police (SP) Katni on 12.11.2014 (Annexure A-1). During his tenure as SP Katni, an unfortunate incident of a suicide by Smt. Pratibha Bajaj, a politically affiliated individual, took place. Smt. Bajaj in her dying declaration had named some persons for committing suicide. Apprehending that he has been named in the dying declaration, one Dr. Lalwani approached the applicant. Subsequent investigations revealed that the apprehension was unfounded. However, Dr. Lalwani with ulterior motives, chose to make false allegations and

complaints against the applicant of misuse of position and power with the aim of extorting money from Dr. Lalwani.

2.3 The said Dr. Lalwani lodged complaint on 25.01.2016 with Inspector General of Police (IGP), Jabalpur, who, in turn, vide order dated 27.01.2016 (Annexure A-2), called upon the applicant to personally enquire and also to get the City Superintendent of Police (CSP) to enquire the complaint and submit the report. The CSP conducted a detailed enquiry and submitted his report vide order dated 17.02.2016 (Annexure A-4) holding the complaint made by Dr. Lalwani false and frivolous.

2.4 Pursuant to the above mentioned enquiry, an inter departmental fact finding enquiry was called upon by the Director General of Police (DGP) through IGP, Jabalpur to enquire into the allegation of extortion leveled by Dr. Lalwani. The enquiry was required to be conducted by Deputy Inspector General (DIG), Chhindwara Range, Chhindwara.

2.5 The applicant, on learning that an enquiry has been ordered to the alleged incidence, approached the DGP on 15.06.2016 (Annexure A-5) to appoint any officer other than DIG, Chhindwara. However, DGP ignored the request and DIG,

Chhindwara proceeded with the enquiry and submitted his report on 27.06.2016 (Annexure A-6), wherein it was found that allegation made by Dr. Lalwani was baseless.

2.6 On the same complaint of Dr. Lalwani, Additional DGP (Complaint) directed the Additional SP of Katni to enquire into the allegation leveled by Dr. Lalwani. Once again an inquiry was conducted by Additional Deputy Superintendent of Police (ADSP), Katni and vide report dated 02.07.2016 (Annexure A-7), it was found that the allegations are baseless and without merit.

2.7 The IGP Jabalpur, vide his letter dated 25.07.2016 (Annexure A-8), communicated to Additional DGP (Vigilance), had stated that he concurred with the finding of the DIG, Chhindwara. However, to the complete surprise of the applicant, respondent No.5 chose to take cognizance of the request of the applicant dated 15.06.2016 for change of Inquiry Officer after conclusion of the enquiry and acceptance of report vide note-sheet dated 01.08.2016 (Annexure A-9). Accordingly, DGP has ordered enquiry to be conducted by IGP Balaghat on 23.08.2016 (copy of the same has been filed as Annexure A-9).

2.8 The applicant was called to appear for enquiry on 19.04.2017 before IGP, Balaghat vide letter dated 12.04.2017 (Annexure A-11). He appeared on 19.04.2017 before the Inquiry Officer and raised an oral objection with regard to the second enquiry. The Inquiry Officer submitted his report on 20.06.2017 (Annexure A-12). The applicant submits that the Inquiry Officer has framed one and the same question, which was enquired in the first enquiry and the findings are also same of the first enquiry except to include the name of the applicant as guilty of alleged incidence.

2.9 Relying upon the impugned inquiry dated 20.06.2017, the respondent No.5 vide letter dated 27.12.2017 (Annexure A-20), has called upon the applicant to submit his explanation.

2.10 The applicant was due for promotion to the post of DIG Police w.e.f. 01.01.2018. In the DPC meeting held on 29.12.2017, he was singled out and not granted promotion. He approached this Tribunal in O.A.No.30/2018 where he was granted relief vide order dated 26.02.2018 (Annexure A-18).

2.11 Based on the newspaper reports, Lokayukt also conducted a detailed enquiry and found that the allegations leveled in the news are false and frivolous.

3. Aggrieved by the same, the applicant has sought for the following reliefs:

*“(8). **Relief sought:** The applicant, therefore, prays that this Hon’ble Court may kindly be pleased –*

(8-i). To call for the entire records pertaining to the case.

(8-ii). To issue directions quashing the impugned inquiry report dated 20.06.2017, holding it to be bad in law.

(8-iii). To issue directions quashing the impugned explanation dated 27.12.2017, holding it to be bad in law.

(8-iv). To issue directions/orders restraining the Respondents not to place reliance on the inquiry report dated 20.06.2017 in any proceedings either administrative or Judicial.

(8-v). To any other relief deemed fit and proper in the facts and circumstance of the case may also be granted.

(8-vi). Costs be awarded to the applicant.”

4. Respondents Nos.3, 4, 5 and 7 have filed their reply, wherein they have submitted as under:

“(3). That, the answering respondents submit that, one Bishambhar Lalwani made a complaint to the DGP alongwith an affidavit dated 07.04.16, that while the applicant was posted as Superintendent of Police, Katni, he black mailing the complainant and through one Gayatri Soni, Inspector of P.S. Madhav Nagar, taken the illegal gratification of Rs.10,00,000/- and further demand has been

made. Copy of the complaint dated 07.04.16 is being filed herewith as Annexure R-3/1.

(4). That, on 13.04.16, the complaint of Mr. Bishambhar Lalwani was sent for enquiry to the I.G., Jabalpur Shri D.Shrinivas Rao, who appointed Shri R.P. Singh, DIG Chhindwara vide its letter dated 27.04.16, it is submitted that during enquiry the applicant has submitted an application dated 17.06.16, making request for change of Inquiry Officer, responding on the request of the applicant by letter dated 23.08.16, the I.G Balaghat was appointed as Enquiry Officer and on 24.08.2016 the enquiry was transferred to I.G, Balaghat.

(5). That, during the enquiry the applicant was given an opportunity and his statements were recorded, the applicant stated that complainant Bishambhar Lalwani was present between 06:30 to 07:00 on 30.12.2015 alongwith Madhusudan Nayak, who was known to him, Madhu Sudan Nayak stated to him that complainant is upset due to his name in the dying declaration of Pratibha Bajaj. The applicant further stated that he talked to Gayatri Soni, but she was also not aware about the fact. Although the applicant has denied from any monetary transaction. The applicant further stated that the complaint given by Dr. Lalwani to I.G., Jabalpur dated 25.01.16, does not contain any allegation about harassment or monetary transaction. The applicant has also submitted the affidavit of Madhu Sudan Nayak.

(6). It is further submitted that during enquiry, the statement of Gayatri Soni, SHO of Madhav Nagar, were also taken, who stated that on 30.12.15 at 07:00 pm she was called at the residence of the applicant, where she finds that complainant Dr. Lalwani and Madhu Nayak were sitting, though denied from the allegation of monetary transaction. She also states that the complaint dated 25.01.16 made by Dr. Lalwani, does not contain the allegation of harassment or monetary transaction.

(7). It is further submitted that on 01.07.17, Gayatri Soni given one letter to DGP, that the enquiry may not be conducted by the I.G, Balaghat, Shri G. Janardan, because the enquiry was not being conducted impartially. She further

stated several other facts, which are not required to be mentioned here because several other facts has been mentioned therein in that letter in respect to her presence at the Hospital of Dr. Lalwani. It is pertinent to mention here that on 03.07.2017, the applicant has also given a letter for change of enquiry Officer Shri G. Janardan.

(8). It is further submitted that during enquiry, affidavit of one Sushil Kumar and Pramod Tiwari was also submitted before the Enquiry Officer, which were taken on record. After recording the statement of witnesses and the documents, gsm tower location, copy of Rojnamcha Sanha and the Inquiry Report of CSP, Katni, was taken into consideration by the Inquiry Officer.

(9). It is submitted that after completion of enquiry, the Inquiry Officer has submitted Inquiry Report to the I.G., Jabalpur on 21.06.17, the Inquiry Officer has find that there are substance in the allegations made by Dr.Bishambhar Lalwani and the conduct of the applicant found doubtful. Further he finds that the allegation of demand of illegal gratification reflects that the conduct of the applicant was corrupt, the Inquiry Officer further finds that due to publicity of the matter in the daily newspaper the reputation of the police department lower down. The Inquiry report is already on record as the same is filed by the applicant as Annexure A-12 along with the application.”

5. The applicant has submitted his rejoinder wherein the points of Original Application have been reiterated.

6. The complainant Dr.Vishambhar Prasad Lalwani had filed M.A.No.200/920/2018 to intervene in the O.A. However, the intervention application was rejected as he had no locus standi in the said case of service matter.

7. Heard the arguments of learned counsel of both the parties and pleadings available on record.

8. Learned counsel for the applicant submits that even though the applicant had made a request on 15.06.2016 about nominating any officer as Inquiry Officer other than DIG Chhindwara, the same was not considered by DGP. However, when the said enquiry report did not find anything against the applicant, respondent No.5 initiated a note in August, 2016 saying that the applicant had asked for change of Inquiry Officer and the same should be done. Respondent No.5 was fully aware that the enquiry by DIG Chhindwara has already been completed and no substance has been found against the applicant. However, still he sought another change of Inquiry Officer, because the applicant had earlier made a request. This action itself indicates that the applicant is victim of hostile discrimination. Further, even though the report by the second enquiry was submitted on 20.06.2017, respondent No.5 had issued a letter dated 27.12.2017 (Annexure A-20) just before the next DPC was to be conducted.

8.1 Learned counsel for the applicant highlighted the fact that the first complaint of Dr.Lalwani dated 25.01.2016 was preferred apprehending his arrest in connection with the dying declaration of

Smt.Pratibha Bajaj. In this complaint, no demand for illegal gratification was alleged against the applicant. The affidavit dated 07.04.2016 (Annexure R-3/1) by Dr.Lalwani was purely an after thought to circumvent the investigation into the demise of Smt.Pratibha Bajaj as her husband was making complaints against Dr.Lalwani. This was purely a self serving affidavit.

9. Learned counsel for the respondents submitted that this is only a preliminary enquiry and there is no cause of action. No charge-sheet has been issued so far. Therefore, it is premature on the part of the applicant to approach this Tribunal as show cause notice is not an order.

FINDINGS

10. In the instant case, the applicant has brought out in his application that a series of enquiry has taken place based on the complaint of one Dr. Lalwani. However, in all the inquiries, no substance was found in the enquiry.

11. When the enquiry was asked to be conducted by DIG Chhindwara, the applicant approached the DGP for change of Inquiry Officer. However, it is clear that no immediate action was taken on his request and nothing was communicated to the

applicant. The enquiry was proceeded by DIG, Chhindwara and the report was submitted on 27.06.2016 by him. The said report was considered by the IGP, Jabalpur. In his letter dated 25.07.2016 (Annexure A-8) to Addl.DGP/Vigilance, IGP Jabalpur has categorically stated that nothing was found against the applicant except the statement of complainant. Subsequently, a note was initiated in the month of August, 2016 that since the applicant has asked for change of Inquiry Officer, a new Inquiry Officer may be nominated. Consequently, IGP Balaghat was nominated to enquire into the complaint who submitted the impugned enquiry report dated 20.06.2017 (Annexure A-12).

12. In the instant case all the earlier enquiries did not find anything against the applicant. However, the respondents ordered yet another enquiry by IGP Balaghat, who found the applicant as blameworthy. It is relevant to mention that if the respondents were to consider the request of the applicant of not getting the enquiry done by DIG, Chhindwara, immediately orders should have been issued to stop the enquiry. However, that was not done. The new enquiry was ordered almost two months after submission of report on 27.06.2016. Since the subsequent enquiry has been ordered without finding any flaw in the previous inquiry by DIG, Chhindwara, in the considered opinion of the Tribunal, this action

on the part of the respondents does not reflect a sense fair play.

13. We are fortified in our view by the judgment of Hon'ble Apex Court in **Nand Kumar Verma Vs. State of Jharkhand**, (2012) 3 SCC 580 wherein it has been held as under:-

“(26). In our opinion, having accepted the explanations and having communicated the same to the appellant, the High Court could not have proceeded to pass the order of initiating departmental proceedings and reverting the appellant from the post of Chief Judicial Magistrate to the post of Munsif. On general principles, there can be only one enquiry in respect of a charge for a particular misconduct and that is also what the rules usually provide. If, for some technical or other good ground, procedural or otherwise, the first enquiry or punishment or exoneration is found bad in law, there is no principle that a second enquiry cannot be initiated. Therefore, when a completed enquiry proceedings is set aside by a competent forum on a technical or on the ground of procedural infirmity, fresh proceedings on the same charges is permissible”.

14. In the instant case, no technical or procedural infirmity has been demonstrated by the respondents to set aside the enquiry report prepared by DIG Chhindwara

15. We have considered the argument of learned counsel for the respondents that this is only a preliminary enquiry and there is no cause of action and no charge-sheet has been issued so far, therefore, no relief should be granted to the applicant. While we agree with the argument of learned counsel for the respondents that at present no charge-sheet has been issued to the applicant,

however, we find that the impugned show cause notice dated 27.12.2017 (Annexure A-20) arises out of the enquiry which has been concluded on 20.06.2017. As detailed in previous paragraphs, ordering of a fresh enquiry in August 2016 itself was not proper. Since the foundation itself is on a weak footing, the edifice built over it can not sustain.

16. In view of the above discussions, we quash and set aside the impugned show-cause notice dated 27.12.2017 (Annexure A-20) as well as the inquiry report dated 20.06.2017 (Annexure A-12). The Original Application is accordingly allowed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

rkv/am