

**Central Administrative Tribunal  
Principal Bench**

**OA No.4124/2015**

New Delhi, this the 9<sup>th</sup> day of January, 2020

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman  
Hon'ble Ms. Aradhana Johri, Member (A)**



Vivek Kumar,  
Aged about 45 years,  
S/o Mr. Sat Pal,  
Presently posted as Assistant accounts Officer,  
In Delhi Agricultural Marketing Board,  
Government of NCT Delhi,  
R/o 1431, Delhi Administration Flats,  
Gulabi Bagh, Delhi-110007.

...Applicant

(By Advocate : Shri Pardeep Kumar)

**Versus**

1. The Chief Secretary,  
Government of NCT Delhi,  
[Through/service to be effected upon its : Director,  
At: Directorate of Vigilance,  
Government of NCT Delhi,  
4<sup>th</sup> Level, C-Wing, Delhi Secretariat,  
I.P. Estate, New Delhi-110002.
2. The Director,  
Directorate of Family Welfare,  
Government of NCT Delhi,  
B&C Wing, 7<sup>th</sup> Floor,  
Vikas Bhawan-II,  
Near Metcalf House,  
Civil Lines, Delhi-110054.
3. The Secretary (Finance),  
Finance (A/cs) Department,  
Government of N.C.T. Delhi,  
A-Wing, 4<sup>th</sup> level, Delhi Secretariat,  
I.P. Estate, New Delhi-110002.
4. The Secretary,  
Delhi Agricultural Marketing Board,

Government of NCT Delhi,  
9, Institutional Area, Pankha Road,  
Janakpuri,  
New Delhi-110058.



...Respondents

(By Advocate : Ms.Esha Mazumdar)

### **ORDER (ORAL)**

**Justice L. Narasimha Reddy, Chairman :-**

When the applicant was working as Statistical Investigator, Group 'C', in GNCTD, he and another, were required by the CBI to act as witnesses, for recovery; in a criminal case, being investigated by them. Later on, the applicant was promoted to the post of JAO, which, was later designated as AAO; on ad hoc basis, in the year 2006. He became entitled to be considered for regular promotion as AAO, and the DPC met on 12.01.2011. However, the sealed cover procedure was adopted in his case, since the disciplinary proceedings were contemplated. Ultimately, on 07.01.2011, a charge memo was issued by the Directorate of Family Welfare (DFW), to which office, the applicant was attached.

2. It was alleged that the applicant turned hostile in the trial of the criminal case and that the same constituted an act of misconduct. The applicant denied the charge by submitting his explanation. An Inquiry



Officer was appointed and through his report dated 22.03.2011, he recorded the finding, that the charge framed against the applicant is not proved. Later on, the applicant is said to have been issued a Show Cause Notice by the Chief Secretary on 03.10.2013, requiring him to explain as to why action be not initiated against him for his collusion with the authorities of the DFW. The applicant submitted his explanation, and ultimately, the Chief Secretary issued a charge memo dated 29.09.2015. The same is challenged in this OA.

3. The applicant contends that the DFW was very much competent to issue the charge memo and there was no basis for the Chief Secretary to initiate another set of proceedings on that very allegation. Other contentions are also raised.

4. The respondents filed counter affidavit opposing the OA. They state that it was on account of the collusion of the applicant with authorities of the DFW, that a report emerged, exonerating him of the charge and whole exercise was invalid. It is stated that on noticing these developments, the Chief Secretary issued a Show Cause Notice, and thereafter the charge memo. It is also stated

that truth or otherwise of the charge against the applicant, needs to be examined, only in the departmental inquiry.



5. The OA was allowed on 15.02.2017, mainly on the ground that the initiation of the proceedings by the DFW was perfectly legal and once the inquiry resulted in exoneration of the applicant, there was no occasion or basis for the Chief Secretary, to issue another charge memo. Aggrieved by the order passed by the Tribunal, respondents filed WP(C) No.6383/2017 before the Hon'ble High Court of Delhi. During the course of the arguments in the Writ Petition, the applicant conceded that it was not competent for the DFW to issue the charge memo and that he may be permitted to urge other grounds, raised in challenge to the impugned charge memo. The Writ Petition was disposed of on 15.04.2019, remanding the OA to this Tribunal for fresh consideration.

6. After remand, we heard Shri Pardeep Kumar, learned counsel for applicant and Ms. Esha Mazumdar, learned counsel for respondents.



7. The principal ground urged in the OA is that the charge memo dated 17.01.2011 was, in accordance with law, and once it has resulted in exoneration of the applicant, there was no basis for the Chief Secretary to issue the charge memo dated 29.05.2015. In fact, that plea has already been given up by the applicant before the Hon'ble High Court. Once the lack of competence on the part of the DFW is conceded by the applicant, the charge memo dated 29.09.2015, cannot be treated as the one of repetition of an earlier charge memo.

8. Other plea raised by the applicant is that, there was delay in issuing the charge memo and stale matters are sought to be inquired into. The record discloses that the DFW did not keep the parent department of the applicant informed about the complaint made by the CBI and since the facts came to notice, the proceedings were initiated. Therefore, the plea of delay cannot be accepted.

9. Another plea raised by the applicant is that it is competent for any authority who is superior in the organisation to initiate disciplinary proceedings for minor penalties under Rule 11 of the CCS (CCA) Rules, 1965, and at a later stage, even if it becomes necessary to



impose major penalty, it can be done by the authority who is conferred with that power. It is not the case of the applicant that the DFW is prescribed as an authority to impose minor penalty against him. Therefore, the plea raised by the applicant cannot be accepted.

10. Though arguments are advanced as to the very basis of the charge, we are of the view that the same needs to be examined in the inquiry and not by us.

11. We do not find any merit in the OA and the same is, accordingly, dismissed.

There shall be no orders as to costs.

(Aradhana Johri)  
Member (A)

(Justice L. Narasimha Redddy)  
Chairman

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