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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.530/2001

New Delhi this the 12th day of July, 2002.

HON'BLE MR. S.A.T. RIZVI, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

S.B. Sinha,
Dy. Supdt. of Police,
Central Bureau of Investigation,
Special Crime Branch-II,
Block No.4,
C.G.O. Complex,
Lodhi Road,
New Delhi-110 003.

-Applicant

(By Advocate Shri C. Hari Shanker)

-Versus-

1. Union of India through the
Secretary,
Department of Personnel & Training,
Ministry of Personnel, Public Grievances
and Pensions, North Block,
New Delhi-110 001.
2. Central Bureau of Investigation,
through the Director,
Block No.3, CGO Complex,
Lodhi Road,
New Delhi-110 003.
3. Central Vigilance Commission,
through the Secretary,
Satarkta Bhawan,
I.N.A., New Delhi.
4. Sh. M.S. Bali,
Joint Director,
Central Bureau of Investigation
(Anti-Corruption Branch),
Block No.4,
C.G.O. Complex,
New Delhi-110 003.

-Respondents

(By Advocate Shri M.M. Sudan)

O R D E R

By Mr. Shanker Raju, Member (J):

In this OA applicant impugns chargesheet issued through memorandum dated 22.7.99 and has sought for quashing of the same alongwith all proceedings initiated thereupon.

2. The brief facts of the case are enumerated as

under. Applicant joined Anti Corruption Branch (ACB) of the Central Bureau of Investigation (CBI) on 28.2.89. Thereafter, although not relieved from ACB he was transferred to Special Crime Branch-II (SCB) where he was entrusted with several important assignments, which he successfully completed. While in SCB applicant was entrusted with the PE in case of one Rashid Jilani, Chairman-cum-Managing Director of the Punjab National Bank, who is alleged to have caused a wrongful loss to the tune of Rs.25 crores to the PNB. Applicant after investigating the matter thoroughly prepared and submitted a conversion report for registration of RC.

3. On 15.5.96, Superintendent of Police issued orders relieving the applicant to SCB-II and requiring him to hand over the charge to Deputy Superintendent of Police Shri R. Shivaji. Applicant proceeded on leave on 23.5.96 on the belief that the leave has been recommended to him and returned back on 9.6.96.

4. A show cause notice was issued to the applicant alleging unauthorized absence and directing him to join duties. Consequent upon it on 25.6.90 applicant handed over the charge to Sh. Shivaji and joined SCB. He was further informed that in this regard SCB was directed by the ACP not to disburse the salary to the applicant for the absence period. Sh. Shivaji took charge from the applicant and the case of Jilani was re-opened by SP Anil Kumar for further enquiry and to submit a fresh report. Shivaji recommended an action deemed fit. Instead the report was submitted by N.N. Singh who was not connected with the enquiry.

5. Applicant was communicated adverse remarks entered by Joint Director, M.S. Bali as reviewing officer, incorporating various warnings given to the applicant though the ACRs were incomplete but M.S. Bali refused to complete the same. On representation by the applicant the same was not entertained.

6. R-4 issued memorandum to the applicant alleging misconduct on remaining absent and not handing over the complete charge and cases to Shivaji as well as delaying investigation in 11 cases.

7. R-4 further forwarded adverse remarks to the applicant in his ACR for the year 1996.

8. Impugned memo under Rule 14 of the CCS (CCA) Rules was served upon the applicant, alleging the following charges:

"Article-I"

Shri S.B. Sinha, while posted and functioning as Dy.SP, CBI, ACB, New Delhi during the period from March, 1989 - 1996 failed to maintain absolute devotion to duty and did unbecoming acts and thereby committed gross misconduct in as much as he, despite clear and specific orders of the superiors to hand over complete charge of the cases to his successor Shri R. Shivaji, Dy. S.P. did not hand over the complete charge to Shri R. Shivaji, Dy.SP and left the office without giving intimation and remained absent from official duty from 23/5/96 to 16/6/96 and thereby contravened the provisions of Rule 3 (ii) & (iii) of CCS (Conduct) Rules, 1964.

Article-II

Shri S.B. Sinha, while posted and functioning in the aforesaid capacity at the aforesaid date, time and place failed to maintain

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absolute devotion to duty and did unbecoming acts and thereby committed gross misconduct in as much as he did not perform the duty assigned to him as per CBI Manual in the matter of investigation of cases entrusted to him and willfully delayed the investigation of the cases and did not submit Case Diaries inspite of repeated instructions and orders of his superior officers and willfully neglected the instructions of his superior officers passed on in the file in respect to those cases marked to him for investigation and he thereby violated the provisions of Rule 3 (ii) & (iii) of CCS (Conduct) Rules, 1964."

9. Applicant requested for inspection of documents on 22.7.99 but he was not shown the relevant files. Subsequently, Pramod Kumar, SP was appointed as enquiry officer. As the representation against the memorandum was already pending with the competent authority the applicant through his letter dated 16.8.2000 prayed for keeping the disciplinary proceedings in abeyance. No reply has come forth in this regard. Thereafter enquiry proceeded on the basis of an order dated 5.9.2000, directing the enquiry officer to conclude the enquiry. Although the applicant has also filed a review on rejection of his representation and finally through letter dated 11.1.2001 DOP&T's observation to continue the enquiry was conveyed.

10. Shri C. Hari Shanker, learned counsel, appearing for the applicant impugns the memorandum on the following legal grounds:

i) By placing reliance on a decision of the Apex Court in Delhi Development Authority v. H.C. Khurana, 1993 (3) SCC 196 it is contended that the disciplinary proceedings are vitiated as the decision to initiate disciplinary proceedings precedes the actual initiation thereof, which commences with the issuance of a

charge-sheet. As the chargesheet was issued in the name of the President of India, the decision to initiate proceedings was not taken by the President of India but by R-4. It is in this backdrop stated that the memorandum dated 5.11.97 issued by R-4 to show cause as to the initiation of the disciplinary proceedings it is apparent that R-4 who decided that the disciplinary proceedings be initiated against the applicant has acted malafidely. If the decision itself is not legally tenable the consequent disciplinary proceedings initiated through memo would also stand vitiated.

It is stated that the service of the chargesheet on the Government servant follows the decision to initiate disciplinary proceedings. Moreover, it is stated that from the perusal of the show cause notice dated 6.11.97 and the chargesheet dated 2.7.97 it is clear that two documents are replica of each other, which shows that the charges have been mechanically acted upon without any independent application of mind. Mere reproduction of the proposal in the memorandum issued under Rule 14 of the CCS (CCA) Rules, 1965 proves the malafides.

ii) It is stated that R-4 has been impleaded as a respondent in person. His default in filing any counter-reply and not controverting the allegations certainly shows that the malafides have been admitted by him and adverse inference shall have to be drawn against him, treating the allegations of malafides of the applicant taken in his OA as proved. He placed reliance on a

decision of the Apex Court in Express Newspapers Pvt. Ltd. v. Union of India, (1986) 1 SCC 133 as well as N.K. Singh v. Union of India, (1994) 6 SCC 98.

iii) Shri Hari Shanker contended that the adverse remarks entered in the ACR of the applicant by R-4 for the year 1995 and allegation of proceeding leave unauthorisedly does not pertain to the year 1995 but of the period between 23/5/96 to 16/6/96. According to him absence period has been accepted by the department as EL as apparent from the ACR proforma for the year 1996. Reference of countless warnings and remonstration mentioned by R-4 in the ACR existing on various files are belied as not even a single warning was given to the applicant by R-4. It is further stated that in the adverse remarks R-4 has referred to an enquiry held into the work and conduct of the applicant proving his inefficiency and carelessness but no such enquiry was ever held, except the impugned one. The language used by R-4 in the ACR is sufficient to show his malafides.

iv) Sh. Hari Shanker also pointed out towards the malafides of R-4 by referring to the ACR of the applicant for the year 1996 as despite recording that details of charge regarding non-prosecution of cases entrusted to the applicant were listed out in the PE report by Sh. Anil Kumar, SP no such report was furnished to the applicant, despite his request. It is stated that as the applicant has not succumbed to the illegal designs of R-4 not to order for regular RC against Rashid Jalani the chargesheet has been issued arbitrarily to teach the applicant a lesson. In 1995 the applicant despite

transferred to SCB-II was retained in ACB and was asked to prepare a favourable report in Jilani's case, which has not been denied by R-4. Shri Shivaji who took over from the applicant, was also placed, not under Sh. R.K. Prasad, but under Shri Anil Kumar, SP, where the file of Jalani was re-opened for fresh enquiry and report filed by Sh. N.N. Singh who was not connected with the earlier enquiry clearly shows that this has been done to make Anil Kumar enquire into the charges against the applicant. The closure of the case of Jalani is an ample proof of bias and malafide on the part of R-4.

v) Lastly, applicant has stated about his excellent record and his consistent performance which was suitably rewarded by commendations etc. He denied the allegations and stated that a chargesheet can be interfered with at an interlocutory stage if it is found that if no misconduct or irregularities alleged and is being found in the chargesheet and the charges framed are contrary to law. As the ground of malice in law and fact vitiates the enquiry which is to be deemed to be contrary to law and the applicant should not be allowed to undergo the audile of proceeding which would mar his service benefits.

11. Sh. M.M. Sudan, appearing for the respondents denied the contentions and took a preliminary objection as to the maintainability of the OA against the chargesheet at an interlocutory stage by referring to the decision of the Apex Court in Union of India & Ors. v. Upendra Singh, 1994 (27) ATC 200, where the following observations have been made:

"In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The Tribunal cannot take over the function of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into, Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be."

12. As regards issuance of chargesheet is concerned, it is stated that being a Group 'A' officer the disciplinary authority of applicant is the President of India, whereas the applicant has alleged malafide against R-4 but under the Allocation of Business Rules and Transaction of Business Rules of Government of India the chargesheet was issued with the approval of the competent authority, i.e, the Minister concerned in the Department of Personnel and Training. This belies the apprehension of the applicant of non-application of mind before issuing chargesheet and malafide of R-4 as the chargesheet has been issued after due application of mind by an independent authority and in absence of any material to establish that the decision is vitiated by any extraneous consideration the enquiry cannot be interfered at this stage. Applicant shall be afforded a reasonable opportunity in accordance with rules and if he is aggrieved after the completion of the proceedings of final order passed it is open for him to approach this Tribunal.

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13. On facts it is stated that on 28.12.95 an order was received in CBI, Anti Corruption Branch, directing transfer of the applicant to SCB-II a note was put for a decision with regard to the date of relieving of the applicant which has been put before R.K. Prasad, S.P. orders have been passed to relieve him after the substitute joins. R-4 directed the applicant to wind up and now new work was assigned to facilitate his immediate relief. Sh. Shivaji who has to take charge from the applicant joined Anti Corruption Branch on 30.5.91 and a note for handing over the charge was prepared on the same date. Applicant instead of handing over charged moved an application for EL from 23.5.96 to 6.6.96 though purportedly signed on 14.5.96 was submitted on 15.5.96, which was put before R.K. Prasad. A decision was taken by R-4 on 17.5.96 but not offered the charge to Shivaji at the earliest and to apply for leave after he joined his new place of posting. Though the applicant had time from 15.5.96 to 21.5.96 to handing over charge, but he failed to do so. A note was received in the crime section on the same date that completes filed have not been handed over which has been explained on the ground of sickness by the applicant and a not was placed before R-4, though the branch was willing to relieve the applicant w.e.f. 21.5.96 but as he has not handed over the complete file to Sh. Shivaji his relieving orders have been withheld. As such the applicant left office on 21.5.96 without handing over the complete charge, despite his leave was refused by the DIG. On enquiring about the absence of the applicant it was stated by his son that all his family members have gone to Patna. As without intimation applicant has remained absent on 12.6.96 DIG

directed the applicant to resume duty and hand over the charge. Accordingly, applicant joined back on 17.6.96 and requested for more leave on some urgent personal work.

14. It is though not disputed that the applicant submitted conversion report recommending registration of FIR against Jilani the file was taken up by Anil Kumar, SP who took over charge from R.K. Prasad, SP, ordered a further enquiry and on assuming charge by Sh. R. Shivaji from applicant Sh. Shivaji recommended to take action. As deemed fit as S.P. Anil Kumar was on casual leave the work was looked after by N.N. Singh he agreed with R. Shivaji on which SP Anil Kumar submitted his comments and the enquiry was closed on 20.10.96 by R-4. Ministry of Finance vide its communication dated 2.6.97 declared to give concurrence for a conversion report, as such in these circumstances the case has been closed against Jilani with the final orders passed by Director CBI on 10.7.97.

15. In so far as recording of adverse remarks in the ACR and reference to warnings and remonstrations are concerned, no enquiry is required to bring out the inefficiency or indiscipline on the part of the applicant as the performance of the applicant is a matter of record. ACR for the year 1985 and the representation of the applicant was referred to DOPT. It has been informed that the remarks of the reporting officer are not required to be communicated. Officers superior to the reporting officer did not concur to his assessment which was duly communicated to the applicant.

16. As the relevant documents have been served upon the applicant mentioned in Annexure-4 of the charge memo the additional documents having been found not relevant to the charge, were not furnished. In this regard decision of the disciplinary authority was conveyed to the enquiry officer on 5.9.2000.

17. Shri Sudan further stated that reply filed by the respondents includes R-4 as well and Prime Minister being the incharge of the Department has approved the chargesheet issued to the applicant and DIG, R-4 being the immediate boss a chargesheet was issued by the Director. No malafide of disciplinary authority has been alleged who has to take a final decision in the matter. Neither legal nor factual malafides have been proved by the applicant. On mere non application of mind in issuing chargesheet would not be sufficient to interfere in a disciplinary proceeding at an inter locutory stage.

18. In the result, it is stated that the contentions of the applicant are unfounded and the OA be dismissed and the stay vacated to facilitate holding of the enquiry against the applicant in accordance with rules expeditiously.

19. In the rejoinder, applicant has reiterated all his contentions in the OA.

20. We have carefully considered the rival contentions of the parties and perused the material on record. Before we proceed to examine the contentions of the applicant as to his challenge to the chargesheet before

conclusion of the proceeding at an inter locutory stage it is relevant to reproduce the observations of the Apex Court in The Deputy Inspector General of Police v. K.S. Swaminathan, 1997 (1) SLR 176 SC, as follows:

"It is settled law by catena of decisions of this Court that if the charge memo is totally vague and does not disclose any misconduct for which the charges have been framed, the Tribunal or the Court would not be justified at that stage to go into whether the charges are true and could be gone into, for it would be a matter on production of the evidence for consideration in the enquiry by the enquiry officer. At the stage of framing of the charge, the statement of fact and the chargesheet supplied are required to be looked into by the Court or the Tribunal as to the nature of the charges, i.e., whether the statement of fact and material in support thereof supplied to the delinquent officer would disclose the alleged misconduct. The Tribunal, therefore, was totally unjustified in going into the charges at that stage. It is not the case that the charge memo and the statement of facts do not disclose any misconduct alleged against the delinquent officer. Therefore, the Tribunal was totally wrong in quashing the charge memo."

21. Moreover the Apex Court in Upendra Singh (supra) has also ruled that truth or otherwise of the charge being an exclusive domain of the disciplinary authority at an inter locutory stage if from the perusal of imputation and particulars of charges no misconduct or other irregularity has been established and the charges framed are not contrary to law this court has no jurisdiction to look into the truth or otherwise of the charges to go into the correctness of finding as well.

22. If one has regard to the aforesaid rulings in order to bring the case within the ambit of judicial review and to warrant interference of this court it has to

be established that the charges do not make out any misconduct and there exists irregularity and the charges framed are contrary to law.

23. In so far as contention of the applicant and his resort to the decision of the Apex Court in Khurana's case (supra) to contend that the decision to initiate disciplinary proceedings precedes the actual initiation with the issuance of the actual chargesheet and as the decision to initiate proceedings has been taken by R-4 on the basis of his memo proposing disciplinary proceedings the same vitiates on the malafides of R-3, does not hold water. In our considered view being a Group 'A' officer President is the disciplinary authority of the applicant. What has been proposed through a show cause notice by R-4 is not a final decision to initiate proceedings against the applicant. As per the Allocation of Business Rules as well as Transaction of Business Rules the chargesheet has been issued by the competent authority which in the instant case is the Minister concerned in the Department of Personnel & Training. The chargehseet was approved by the Prime Minister as such the Prime Minister with an independent application of mind and as nothing has been brought to establish that the aforesaid decision was on extraneous consideration or was actuated by R-4 the same cannot be interfered in a judicial review. Moreover, R-4 who is the immediate Boss of the applicant has not issued the chargesheet the same has been issued by the Director. What has been alleged in the show cause notice is the brief imputation proposing a disciplinary proceeding but in the memorandum issued to the applicant under Rule 14 the articles of charge have been further elaborated in the

statement of imputations and are well supported by documents and the list of witnesses through whom the charges are to be proved. It cannot be held that merely because the two documents read verbatim and replica of each other the chargesheet has been issued with closed mind mechanically. The contention of the applicant is only a figment of imagination without having any real substance in it. The aforesaid contention of the applicant is liable to be rejected.

24. In so far as the contention that malafides vitiates the action and chargesheet actuated with malafides of R-4 is contrary to law and in that event is liable to be interfered with and set aside even at the interlocutory stage, is not well founded and is liable to be rejected. Though the applicant has initially taken a plea that in absence of a specific reply of R-4 controverting the allegations of malafide alleged against him and as he has not chosen to file any affidavit the allegations are deemed to be admitted by R-4, consequently drawl of adverse inference is not correct. The written statement has been filed on behalf of respondents No.1-4 with specific denial of all the allegations of malafides alleged against R-4. The decision of Express Newspaper (supra) would have no application in the facts and circumstances of the present case.

25. Applicant has alleged several instances to establish the malafides of R-4 where on few occasions ACR was made adverse without communicating the reasons and incorporation of warnings etc. in the ACR as well as sequence of events wherein it is alleged that initially the

case of Jilani was referred for conversion into regular RC but R-4 managed to get the same enquiry closed clearly shows that he was instrumental and in conspiracy with Jilani and due to ulterior motives gave him a clean chit by manipulating of cases and entrustment of cases. The same have been denied by R-4 with reasonable explanation and defence. The stand taken by respondents, including R-4 is justifiable. All the proceedings have been taken in accordance with law and as Ministry of Finance has declined to give concurrence to the conversion report the matter was closed. This would not be sufficient to indicate or establish malafide of R-4.

26. In so far as the vindictive manner and malafides of R-4 the warnings and remonstrations are matter of record, as being the competent authority to review the working of the applicant R-4 entered adverse remarks in the ACR of the applicant which has been agreed upon and accepted by the authorities, if the applicant has any grievance in this regard he could have challenged those before the appropriate forum. Merely because the adverse remarks have been entered on the basis of the performance and conduct of the applicant would not establish his malafides. The other grounds of malafides taken by the applicant are unfounded and would not per se vitiate the proceedings which have been drawn up against him not as a personal vengeance or bias of R-4 but on his alleged misconduct for which the applicant has been accorded a reasonable opportunity to defend by following the procedure laid down. It cannot be presumed at this stage that the

charges which have been alleged against the applicant are contrary to law or any irregularity has cropped in to vitiate the proceedings.

27. From the perusal of the chargesheet, i.e., Article of charge and imputation as well as the Annexures with the chargesheet we are not convinced that no misconduct is made out against the applicant from the charges. Absence of the applicant and alleged act of not handing over the complete charge of the cases to R. Shivaji certainly falls within the ambit of rule 3 (ii) and (iii) of the CCS (Conduct) Rules.

28. It is not open for this Tribunal to go into the correctness of the charges. The disciplinary proceedings and the procedure laid down under Rule 14 of the CCS (CCA) Rules, 1965 it is the disciplinary authority and the enquiry officer who are competent to go into the truth or otherwise of the charges. The function of the disciplinary authority cannot be assumed by this Tribunal. This would encroach upon the domain of the disciplinary authority, which is not permissible in view of the decision of the Apex Court in Upendera Singh's case (supra).

29. However, it is not the end of the road. The enquiry is at the initial stages. Applicant has ample opportunity to assail any irregularity or illegality in the proceedings or truth or correctness of the charges before the disciplinary authority by producing his defence and other relevant material. The same would be gone into by the authorities and thereafter on conclusion of the proceedings and on a final order issued by the disciplinary

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authority after availing the statutory remedies it will be open for the applicant to challenge the same in accordance with rules and law. He would not be deprived of any opportunity or his remedy is not closed. By interfering at this stage, without any material to establish any irregularity of procedure or no misconduct would not be justified in law. If the applicant is confident of his contentions of his innocence and falsity of charges he should boldly face the proceedings with all impunitiess to prove his stand. It is not understandable as to why the applicant shirks from facing a disciplinary proceeding.

30. In the result and having regard to the reasons recorded above, as the case of the applicant does not fall within the purview of Upendra Singh's case (supra) we do not find any infirmity in the chargesheet issued to the applicant and decline to interfere with the disciplinary proceedings at this inter locutory stage. However, this will not preclude the applicant to challenge any final order passed in the disciplinary proceedings, in accordance with law, if so advised. Finding the OA bereft of the merit the same is dismissed. No costs.



(Shanker Raju)
Member (J)

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(S.A.T. Rizvi)
Member (A)