

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A. No. 970/1999 (PB)
T.A. No.

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DATE OF DECISION 12-1-2001

Sh.S.P.Pandey, IPS ... Petitioner

None present ... Advocate for the
Petition(s)

Versus

UOI & Ors ... Respondents

Sh.V.S.R. Krishna ... Advocate for the
Respondents

CORAM

The Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman(J)
The Hon'ble Shri Govindan S.Tampi, Member (A)

1. To be referred to the Reporter or not.? Yes
2. Whether it needs to be circula-ted to
other Benches of the Tribunal? No

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan),
Vice Chairman(J)

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

OA No. 970/1999 (PB)

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New Delhi, this the 12th day of January, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Sh. Govindan S. Tamai, Member (A)

Shri S.P.Pandey, I.P.S.
aged about 49 years
S/o Shri R.N.Pandey
P.H.Q. - Bhopal
R/o 13-Vaishali Kotra
Sultanabad
BHOPAL.

(None present)

V E R S U S

1. Union of India

Through Secretary
Ministry of Home Affairs
North Block
NEW DELHI.

2. State of Madhya Pradesh
Through Secretary
Ministry of Home
Police Department,
BHOPAL.

... Respondents.

(By Advocate Shri V.S.R.Krishna)

O R D E R (ORAL)

Smt. Lakshmi Swaminathan, Vice-Chairman (J)

The applicant had filed this application in the Tribunal (Jabalpur Bench) impugning the validity of the orders, proposing an enquiry to be held against him under Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969 (Annexure A-1).

2. Later the case has been transferred from the Jabalpur Bench to the Principal Bench. By Tribunal's order dated 28-7-99, the respondents were directed not to pass any final order in the aforesaid enquiry. By order dated 6-9-2000, the Tribunal

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(Principal Bench) had rejected MA 1484/99, noting that similar prayers in the interim order had already been rejected by the Jabalpur Bench of the Tribunal. 25

3. None has appeared for the applicant today or on the previous date when the case was listed on 11-1-2001. This case was listed at Serial No. 5 under 'Regular Matters' under the heading that Matters will be taken up serially and no adjournment will be granted. In the circumstances, we have carefully perused the documents on record and heard Shri V.S.R.Krishna, learned counsel for the respondents.

4. The brief relevant facts of the case are that the applicant is an officer belonging to the Indian Police Services (IPS). He was posted on deputation to the Border Security Force (BSF) as D.I.G. w.e.f. 6-4-1992 till he was repatriated on 17-7-96 to his parent cadre. He has relied on the provisions of the Border Security Force Act, 1968 and has submitted that as he was appointed to the BSF in 1992 and continued there till 1996, he was subject to the provisions of the BSF Act and the Rules made under it and is not governed by the provisions of the All India Services (Discipline and Appeal) Rules, 1969. He has referred to the fact that he was on duty as D.I.G. in the BSF, Ferozpur, when he was charged for committing certain lapses. This was enquired into by the BSF Authorities, by the Special Court of Enquiry under the provisions of Chapter XIV of the BSF Rules, 1969. He has submitted that the competent authority, namely, the BSF authorities had

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already punished him under the provisions of the BSF Act and Rules for the lapses while he was working with them. (26)

5. Later, the applicant was repatriated to the State Cadre and according to him, he was once again charge-sheeted on the same facts and allegations, namely, for accepting illegal gratification from one Shri Satya Bir Singh, a Class-IV employee, amounting to Rs.17000/- for his appointment and also for having accepted illegal gratification from another person Shri Ram Karan, a Class IV employee amounting to Rs. 10,000/- for his appointment.

6. One of the main grounds taken by the applicant in the OA is that as he was subject to the provisions of the BSF Act and rules made thereunder, the respondents cannot proceed against him for the aforesaid alleged mis-conduct under the provisions of the All India Services (Discipline & Appeal) Rules, just for the purpose of re-opening the enquiry. He has submitted that the charges cannot be re-opened on similar charges and on this ground also he has prayed that the departmental enquiry should be quashed and set aside. He has relied on a number of judgments which have been referred to in the OA, wherein it has been held that when a proper enquiry has been held and a finding given in that enquiry, there is no power left with the Government to hold a second enquiry on the same charges. He has, ¹⁸ ~~otherwise~~, contended that as there is no provision under law to hold a second enquiry on the same charges and as the

BSF authorities have already held an enquiry according to their Act and Rules on the alleged mis-conduct, the respondents cannot issue another chargesheet to him based on the same facts or hold another enquiry. In the circumstances, the applicant has prayed that the chargesheet dated 16-1-1998 issued to him by the respondents for holding a departmental enquiry may be quashed and set aside with costs of the application.

(27)

7. In the reply filed by the respondents, they have submitted that the applicant while on deputation with the BSF, was subject to the provisions of the BSF Act and Rules. However, it has been clarified by Shri V.S.R.Krishna, learned counsel that with regard to discipline and conduct, as the applicant belongs to the All India Services (IPS cadre), he is equally subject to departmental action under the provisions of the All India Services (Discipline & Appeal) Rules. They have further clarified that as per the provisions of Rule-I, Chapter-IV of the BSF Rules, 1969, it is not applicable to persons belonging to the All India Services and other Government services who are on deputation with BSF. Shri Krishna, learned counsel has submitted that the earlier Special Court of Enquiry held by the BSF authorities was not by the competent disciplinary authority and, therefore, the action of the respondents does not amount to double jeopardy, as contended by the applicant. The respondents have also stated that the earlier departmental action could not also be completed and on this ground also there is no fault in taking the

Yours,

departmental action, as initiated against the applicant under the provisions of the applicable rules, namely, the All India Services (Discipline & Appeal) Rules. Learned counsel has submitted that the judgements relied upon by the applicant cannot assist him. In the present case, the applicant had been repatriated to his parent cadre, namely, the I.P.S., under the Cadre Controlling Authority of the Government of India, Ministry of Home Affairs. He has submitted that on this ground also, the competent disciplinary authority can take appropriate action under the provisions of All India Service (Discipline & Appeal) Rules.

(28)

8. Another submission made by the learned counsel for the respondents is that what the applicant has sought in the present OA is for quashing of the Memorandum of Charges issued to him by letter dated 16-1-98. He has relied on the judgements of the Supreme Court in Upendra Singh Vs. Union of India (JT 1994 (1) SC 658) and Sh. B.C. Chaturvedi Vs. Union of India, (1995 (6) SCC 749) and has submitted that in the facts and circumstances of the case, the Tribunal ought not to interfere with the departmental proceedings at the initial stage of the chargesheet. He has, therefore, prayed that as there is no merit in this application, the same may be dismissed.

9. We have carefully considered the averments of the applicant in the OA, including the rejoinder, the records and the submissions made by the learned counsel for the respondents.

Yours

10. We note from the letter dated 30-5-96, (29) which has been given by the Inspector General BSF, Punjab on the SCOI proceedings regarding the allegations against the applicant that recommendations had been made for awarding him "severe displeasure for the said impropriety by the applicant". Learned counsel for the respondents has submitted that on this recommendation, no final order has been passed by the BSF authorities, who are not the competent authority to pass any order against the applicant.

11. Proviso 1 of Rule-1 of the Border Security Force Rules, 1969, provides that the provision of Chapter-IV does not apply to the persons belonging to the All India Services and other Government servants who are on deputation with the BSF. This Rule, therefore, clearly shows that whatever action has been taken by the BSF authorities while the applicant was on deputation with them as DIG for the period between 1992-96 is de hors the Rules. Therefore, in the circumstances of the case, it cannot be considered that any proper departmental action in accordance with the relevant rules has been taken by the BSF authorities against the applicant, when they held the Court of Enquiry.

12. The applicant himself states that he is an IPS officer and during the relevant period from 6-4-92 to 17-7-96, he was on deputation to BSF from the State of Madhya Pradesh/Respondent No.2. As the applicant was only on deputation to BSF during the

relevant period when the alleged misconduct had occurred for which the impugned memorandum dated 16-1-98 has been issued, we see no legal infirmity in the order passed by the respondents. The mere fact that the BSF authorities had held a Court of Enquiry on the same facts will not have the effect of altering the situation because they were not the competent authority to take departmental action against the applicant, who admittedly belongs to the All India Services. He will be governed by the provisions of the All India Services (Discipline & Appeal) Rules, 1969 as an IPS cadre officer. In this view of the matter, we are unable to agree with the contentions of the applicant that a second departmental enquiry has been initiated on the same facts because the departmental enquiry has been started by the respondents who are the competent authority only by the order dated 16-1-98. In the facts and circumstances of the case, the judgements relied upon by the applicant will not assist him and his contentions are rejected.

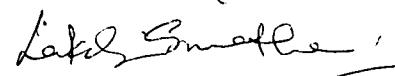
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13. As mentioned above, the Tribunal had vide its interim order dated 28-7-99 directed the respondents not to pass a final order on the enquiry. However, in the light of what has been stated above and also having regard to the judgments of the Supreme Court in Upendra Singh's case (supra) and B.C.Chaturvedi's case (supra) that order is vacated. The respondents may proceed with the departmental proceedings initiated against the applicant in accordance with the relevant law, rules and instructions.

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14. In the result, for the reasons given above, we find no merit in this application, OA fails and is accordingly dismissed. No order as to costs. (31)


(Govindan S. Tampi)
Member (A)


(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)

/vikas/