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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A.No. 680/97

DATE OF DECISION 11/199

Dr.R.K.Nayak

..... Petitioner

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(Shri M.P. Raju)

..... Advocate for the
Petitioner(s)

VERSUS

Union of India

..... Respondent

(Shri VSR Krishna &
Shri Arun Bhardwaj)

..... Advocate for the
Respondents

CORAM

The Hon'ble Shri T.N.Bhat, Member (J)
The Hon'ble Shri S.P.Biswas, Member (A)

1. To be referred to the Reporter or not? *yes*
2. Whether it needs to be circulated to other
Benches of the Tribunal? *No*

T.N.Bhat
(T. N. BHAT)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 680/97

New Delhi, this the 1st day of January, 1998

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HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P.BISWAS, MEMBER (A)

In the matter of:

Dr. R.K. Nayak, IAS
Ex-Secretary,
Govt. of India
r/o C-1/10, Pandara Park,
New Delhi.Applicant

(By Advocate: Shri M.P. Raju)

Vs.

Union of India through

1. Secretary,
Ministry of Personnel, Public
Grievances & Pension,
Department of Personnel & Training,
North Block, New Delhi.
2. Shri K.S. Rao, IAS,
Managing Director,
TRIFED, N.C.U.I. Bldg, 2nd Floor,
3, Siri Institutional Area,
Khel Gaon Marg, New Delhi.
3. Shri P.B. Mahishi, IAS,
Executive Director,
TRIFED, N.C.U.I. Bldg., 2nd Floor,
3, Siri Institutional Area,
Khel Gaon Marg, New Delhi.
4. Sh. T.S.R. Subramanian,
Cabinet Secretary,
Cabinet Secretariat,
South Block,
New Delhi.
5. Shri K.K. Bakshi,
Secretary,
Ministry of Welfare,
6th Floor, Shastri Bhawan,
New Delhi.

....Respondents

(By Advocates: Shri VSR Krishna & Shri Arun Bhardwaj)

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O R D E R

delivered by Hon'ble Shri T.N.Bhat, Member (J)

The applicant, who retired from service as a Secretary to the Govt. of India on 28.02.1997, has filed this O.A. aggrieved by the action of the respondents in initiating disciplinary proceedings against him by serving a charge-sheet on him on the last day of his service and that too, according to the applicant, at 1.20 p.m. when he had already relinquished his charge on his superannuation at 12.15 p.m. The applicant further alleges mala fides on the part of the second and third respondents, both of whom, according to the applicant, were biased against him. It is also averred that the charges are vague and the action of initiating the proceedings against the applicant is "ultra vires", arbitrary and without jurisdiction.

2. Briefly stated, the grounds taken in the O.A. by the applicant are as follows:

3. That the charge sheet could not have been served in the afternoon of 28.2.1997 after the relinquishment of the charge of his office by the applicant; that even through the relationship of master and servant had ended on the applicant's retirement and relinquishment of charge the respondents could have initiated disciplinary action but only under Rule 9 of the C.C.S. (Pension) Rules and the action of the respondents in the instant case is violative of the provisions contained in that Rule apart from infringing

the applicant's fundamental rights guaranteed under Articles 14, 15, 16 & 21 read with Article 311 of the Constitution; that the respondents did not have the jurisdiction to proceed against the applicant because the alleged misconduct occurred when the applicant was the Managing Director of TRIFED which is a Statutory Body created by an Act passed by the Parliament and, accordingly, any action initiated against the applicant should have conformed with the relevant statutory provisions of that Act; that the whole proceedings are mala fide and have been initiated with the sole purpose of harassing and victimising the applicant; that the charges are vague; and, that the action of the respondents is ultra vires for the reason that no sanction from the President of India was taken as required under the extant Rules.

4. The applicant has sought the following reliefs in para 8 of the O.A.: -

- "(i) Call for the records of the present matter under the respondents and quash and set aside the order initiating departmental enquiry against the applicant and the memo which were issued and served on the applicant in the afternoon of 28.2.97 after his retirement on superannuation even though the same was dated 26/27.2.97, with all consequential benefits to the applicant.
- (ii) declare the above said action of the respondents initiating disciplinary action against the applicant and the memo dated 26/27.2.97 vide Annexure-1, as null and void being violative of the fundamental rights of the applicant under Article 14, 16 and 21 of the Constitution of India and being without jurisdiction and ultra vires of the relevant provisions of the extant Rules, especially Rule 14, CCS(CCA) Rules or Rule 8 of AIS (D&A) Rules, 1969 and Rules 6 of CCS (CCA) Pension Rules.

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(iii) pass an order of permanent injunction restraining the respondents from proceeding with or initiating any enquiry based on the above mentioned memo or any allegations based on the said facts against the applicant.

(iv) award appropriate amount of compensation to the applicant for the violation of his fundamental rights by the respondents to the above said actions and orders and also for the harassment, mental agony and humiliation caused to the applicant by the respondents.

(v) award the cost of the case in favour of the applicant.

(vi) pass such other further order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case".

(39)

5. Respondent no. 1, namely, the Union of India have filed a detailed counter, in which a preliminary objection about maintainability of this O.A. has been taken. It appears that the applicant had earlier also filed an O.A., being O.A. 514/97, which was, however, later withdrawn by him after seeking permission for doing so on the ground that there had been some later developments. While permitting the applicant to withdraw that O.A. the Tribunal granted him the liberty to file a fresh O.A. The respondents have in their counter to the instant O.A. taken the plea that no such "subsequent developments" as alleged had taken place and that, therefore, this O.A. is liable to be dismissed, the same having been filed on the same cause of action and set of facts as the earlier O.A.

6. On facts, the plea taken by the respondents is that the last day in office being a working day for an officer belonging to the All India Service who is retiring on superannuation the charge sheet could have been served upon the applicant at any time during office

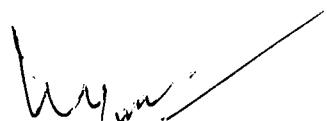
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hours and that there is no merit in the contention that the officer would retire immediately after 12.00 noon.

It is further averred that the respondents made all efforts to serve the charge sheet on the applicant on 27.02.1997 at his residence but he was not available. Similarly, on the next day in the forenoon also the applicant was not found in his seat and it was only at 13.20 hours that the concerned official was allowed into the room by the applicant to enable the official to serve the chargesheet.

7. It is emphatically denied by the respondents that the charges are vague or that the action of initiating the disciplinary enquiry is actuated by malice or mala fides. The respondents have further denied that the action is arbitrary. According to the respondents a bare reading of the Articles of charge in this case would reveal the specific instances of mis-conduct on the part of the applicant.

8. The respondents have also made a mention of the fact that before the actual initiation of the proceedings an opportunity was granted to the applicant to explain his position in pursuance to which the applicant had sent his reply and only thereafter was the decision taken to initiate regular disciplinary inquiry. According to the respondents the said preliminary inquiry was not a regular enquiry and, therefore, the applicant was not entitled to get the copies of any documents as claimed by him in his O.A.

A handwritten signature in black ink, appearing to read "W.W.W.", is written over a diagonal line.

9. It is further averred that the sanction/approval of the President of India is required to be obtained only if disciplinary action is sought to be initiated after the officer has already retired. In the instant case the applicant was still in service when the charge sheet was served, the respondents would contend. It is also emphatically denied by the respondents that the post of Managing Director of TRIFED which is a Co-operative Marketing Development Organisation is a statutory post. The respondents in this regard take the plea that the applicant being a member of the All India Services he is governed by the relevant All India Service Rules, in this case the All India Services (Discipline and Appeal) Rules, 1969, and that the competent authority, namely, the Ministry of Personnel, Public Grievances and Pension, after carefully examining the material placed before it including the explanation submitted by the applicant rightly came to the conclusion that this was a fit case for initiating major penalty proceedings.

10. The respondents have specifically denied that there were any mala fides on the part of any officer of the respondents or that the disciplinary action had been initiated for extraneous consideration, as alleged by the applicant. In this regard the respondents have pointed out that the allegations made by the applicant are vague, without substance and unsupported by any evidence. Respondents 2 and 3 have separately filed their personal affidavits vehemently denying the allegations of mala fides levelled by the applicant against them. In addition to that, respondent no.2 has

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In his affidavit specifically asserted that he took no part at any stage in the process of decision making by the Union of India for initiating the proceedings against the applicant. As regards respondent no. 3, he has also given some details relating to his tenure in the TRIFED as Executive Director and has denied that he had any role to play in the initiation of the disciplinary proceedings against the applicant and further states that the allegations made against him by the applicant are "false and frivolous".

(B2)

11. The applicant has also filed detailed rejoinders to the reply filed by respondent no. 1 and the affidavits filed by respondents no. 2 & 3. In those rejoinders the applicant has reiterated the contents of the O.A. The respondents have also filed replies to the rejoinders of the applicant. There are also on the file the additional affidavits filed by the respondents and the replies filed thereto by the applicant.

12. We notice that during the pendency of this O.A. the applicant has filed several Miscellaneous Applications (MAs). We may refer to just one of them. By MA 1569 of 1997 the applicant seeks permission to amend the O.A. so as to implead by name the then Cabinet Secretary Shri T.S.R. Subramanium and Shri K.K. Bakshi, Secretary, Ministry of Welfare. He further seeks to take some additional grounds such as mala fides on the part of both of them and their action in disregarding the views expressed by the then Minister of Welfare and of bypassing the Minister and instead, seeking the approval of the then Prime Minister for initiating the disciplinary

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proceedings against the applicant. By another M.A., being MA 1568/97 the applicant has sought direction to the respondents to produce some records mentioned in the MA. We find that both the officers sought to be impleaded have filed their separate affidavits denying the allegations of mala fides imputed against them. Although the respondents have claimed privilege in respect of the documents mentioned in MA 1568 the same have been made available to us and we have perused them.

(B3)

13. Arguments on MA 1569 have also been heard by us alongwith the main O.A. As a matter of fact the arguments advanced by the learned counsel for the applicant revolve round the contentions raised in the MA and the learned counsel has laid much emphasis on the point that even though the Welfare Minister had issued a specific direction that disciplinary proceedings should not be initiated without first holding a preliminary inquiry the then Cabinet Secretary Shri T.S.R. Subramanian and the Secretary, Ministry of Welfare, namely, Shri K.K. Bakshi disregarding that direction bypassed the Minister and directly approached the Prime Minister and obtained his approval. On the basis of this contention the learned counsel for the applicant wants us to infer that the said two officers exhibited their mala fides and, further, that the action of initiating disciplinary proceedings is itself vitiated and rendered illegal, or "ultra vires", as the applicant would like to describe it.

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14. There was no serious objection on the part of the learned counsel for the respondents to the additional grounds contained in the M.A. seeking the amendment of the O.A. being raised at the time of arguments. On the contrary, the learned counsel for the respondents took great pains to repel those contentions on merits.

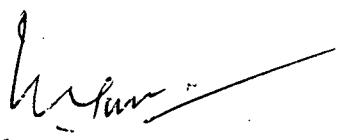
15. We accordingly propose to give our findings on the merits of those contentions based upon the additional grounds raised in M.A. 1659.

16. Having carefully perused the relevant notings in the departmental records furnished for our perusal by the learned counsel for the Union of India we find that the contentions relating to the alleged disregard of the Welfare Minister's directions is amply substantiated, though we would not go to the extent of agreeing with the applicant's counsel that the mala fides alleged either against respondents 2 and 3 or against respondents no. 4 and 5 are proved. The main thrust of the arguments put forth by the learned counsel is that there was "indecent" haste in issuing and serving the charge sheet on the applicant. From the notings on the relevant file we find that the direction/advice of the Minister for Welfare that before issuing the chargesheet a detailed preliminary enquiry should be held was disregarded mainly on the ground that if the Minister's advice is accepted the applicant would in the meanwhile retire and in that event it would not be possible to initiate proceedings without the prior approval of the UPSC. It was on this basis that the matter was processed

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and the charge sheet issued even though the Minister protested against the action. He wrote not only to the Minister of State in the Ministry of Personnel, which in this case is the cadre Controlling Ministry, but also to the Prime Minister that disciplinary proceedings against the applicant should not be initiated without first holding a preliminary inquiry. The Welfare Minister had earlier named one Shri P.S. Krishnan, retired Secretary, Ministry of Welfare for holding the preliminary inquiry. The retired IAS officer had been senior to the applicant and he was named to hold the inquiry when the officers in that Ministry had found it difficult to find an officer senior enough to hold the preliminary inquiry, as the applicant was a very senior IAS officer, even senior to the then Secretary, Ministry of Welfare which was the concerned Administrative Ministry.

17. It is true that the Ministry of Personnel was the Cadre Controlling Ministry in this case. But it is equally true that the alleged misconduct related to a period when the applicant was working in the TRIFED (Tribal Co-operative Marketing Development Federation) under the Ministry of Welfare which was the concerned Administrative Ministry. The question that arises is as to what procedure is required to be followed in such circumstances. The answer is provided by the instructions issued by the Department of Personnel and Training under Office Memorandum No. 11018/3/94-AIS-III dated 09.06.1995, which lays down the guidelines. It is provided that although the powers of the Central Government for initiating disciplinary proceedings against the officers of All India Services serving under



the Government of India and organisations under it, vest in the Department of Personnel & Training when the alleged acts constituting the misconduct relate to a period when the officer was on deputation, yet any proposal to initiate disciplinary proceedings should be forwarded to the Department of Personnel & Training only after a decision has been taken at the level of the Minister In-charge of the Department/Ministry and that this should be done after obtaining and considering the preliminary explanation of the officer concerned. It is further provided that in cases having a vigilance angle the Administrative Ministries/Departments should also consult the Central Vigilance Commission and obtain its first stage advice before submitting the papers to the Minister. In the instant case the C.V.C. appears to have been consulted but that Commission also suggested the holding of a preliminary inquiry. This was also the view taken by the Ministry of Personnel & Training. It was, therefore, necessary to obtain the approval of the Welfare Minister before the matter could go to the Ministry of Personnel & Training for issuance of the charge sheet. We may emphasize here the fact that both the Ministry of Personnel, and the Central Vigilance Commission had earlier expressed the view that the Administrative Ministry should hold a preliminary inquiry, preferably by another officer who is senior to the officer whose conduct is to be inquired into. But it appears that such a preliminary inquiry could not even start before the applicant's date of superannuation came very near. It also clearly appears that the concerned officers in both the Ministries viz., Ministry of Personnel & Training and Ministry of Welfare thought that

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if the disciplinary inquiry is not initiated before the applicant's retirement the respondents will later be compelled to seek the approval of the President of India for initiating such proceedings. The applicant also seems to be under the same impression. But it now transpires from the pleadings in the case that the relevant provision in the All India Services (Death-cum-Retirement Benefit) Rules provides that the sanction of only the Central Government (and not that of the President, as in the case of other Central Govt. employees) is required to be obtained before initiating such proceedings against a retired officer of All India Services, though this is to be done in consultation with the UPSC.

(A.F)

18. Be that as it may, the fact remains that according to the respondents own showing there is a requirement to obtain the approval of the concerned Minister in the Administrative Ministry before the Cadre Controlling Ministry can initiate disciplinary proceedings by issuing a regular charge sheet. This particular requirement has not been fulfilled in the instant case. The respondents cannot be heard to say that the guidelines issued on this question were not of a binding nature. It is a well recognised rule of administrative law that an executive authority must be vigorously held to the standard by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation thereof. (R.D. Shetty vs. International Airports Authority of India - [1979] 3 S.C.C. 489]. We are, therefore, not

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impressed by the argument that in such matters as the one before us the Administrative Ministry has only a limited role to play.

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19. However, by holding that the decision to initiate the proceedings against the applicant without obtaining the approval of the Welfare Minister was unsustainable we should not be taken to have agreed with the applicant so far his allegations of mala fides are concerned. Far from that, we are of the view that the allegations are too vague and general in nature. The allegations levelled against almost all the officers who had anything to do with processing of the applicant's case that they are biased against persons belonging to the Scheduled Caste/Scheduled Tribes appears to be the wildest of all charges and the same has not been substantiated. We do not know whether the applicant had any scores to settle with his erstwhile colleagues, superior officers, subordinates, successor-in-office or predecessors-in-office in impleading four of them as respondents by name. But we are convinced that the alleged but unsubstaniated bias did not play any role in the decision to initiate disciplinary proceedings. The only reason that seems to have persuaded the respondents to initiate the proceedings was their anxiety to serve the charge-sheet before the applicant had retired. But in our considered view this fact by itself renders the action of the respondents arbitrary, unfair and unsustainable, being in violation of the guidelines governing such matters.

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20. That leads us to the next question on which the counsel for both the parties have argued at length. The learned counsel for the applicant has strenuously urged before us that the applicant was not in service at 13:20 hours (1.20 P.M.) when the charge-sheet was served upon him as he had validly relinquished his charge at 12:15 P.M. just 15 minutes after 12:00 noon.

21. In reply, both the learned counsel for the respondents have contended that the applicant was supposed to work right upto the close of the office hours on the last day before he could be held to have retired on superannuation.

22. Rule 16 of the All India Services (Death-cum-Retirement Benefit) Rules 1958 provides as follows:-

"(i) A member of the Service shall be required compulsorily to retire from the service with effect from the afternoon of the last day of the month in which he attains the age of 58 years".

23. It is contended by the learned counsel that the applicant relinquished his charge immediately after 12:00 noon on 28.2.1997 and that, therefore, he could be deemed to have retired from that hour of the day. This factual position is not denied by the respondents. Their contention is that the actual hour of the time of his retirement would be the evening of that date. According to the dictionary the term "afternoon" means "time between mid day and evening" (The Concise English Dictionary published by Omega Books Limited, West Street, Ware, Hertfordshire, England). The word "mid day" according to the same dictionary, means "noon". Thus,

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the applicant could have validly relinquished his charge immediately after mid day (noon). It was not incumbent on him to continue in his office till the evening on the last day.

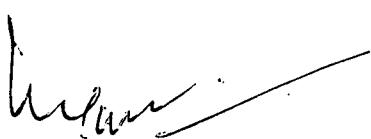
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24. Even assuming that the term 'evening' could be interpreted in both the ways, it is settled law that the interpretation which helps the delinquent official in disciplinary matters and an accused in a criminal case should be given preference, as held by the Apex Court in Glaxo Laboratory vs. Labour Court, reported in (1984) 1 SCR 230.

25. Learned counsel for the respondents have further taken the plea that since the chargesheet had been issued at a time prior to the date of retirement of the applicant the same should be deemed to be a valid chargesheet even if it is assumed that the chargesheet was served upon the applicant after he had relinquished his charge on his retirement. They have relied upon a judgement of the Bombay Bench of this Tribunal in K.K. Sharma vs. Union of India & Ors., reported in (1990) 13 ATC 939. It was held therein that where the departmental inquiry has been instituted prior to retirement of the delinquent official the same can continue subsequent to his retirement. More importantly, it has further been held that where statement of charges was issued prior to retirement the proceedings should be deemed to have commenced even though the same might have been received by the official after his retirement.

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26. We have gone through the aforesaid judgement of the New Bombay Bench and find that in that case the department inquiry was one under CCS (Pension)Rules, 1972 and not an inquiry under Rule 6 of the All India Services (Death-cum-Retirement) Rules. It was further held on facts that the chargesheet in that case had been issued several days before its service upon the delinquent official. In the instant case, as already indicated the chargesheet was prepared just one day prior to the date of retirement of the applicant. There is nothing on the file to indicate that it was also issued on the same day. There is no endorsement on the chargesheet which would show as to when was it actually despatched for being served upon the applicant. Thus, the possibility that the chargesheet was despatched on 28.2.97 itself in the afternoon and was served soon thereafter on the applicant, cannot be excluded. On somewhat identical facts the Madras Bench of the Tribunal in the judgement dated 6.3.1991, reported in 1991 (3) SLJ 220, held that the chargesheet had been issued subsequent to the date of retirement of the delinquent official in that case. The contention of the respondents in that OA was that the chargesheet had been signed on 25.5.1987, though it was served on 27.7.1987 and that the date of signature was the date of issue. The Tribunal held that although the chargesheet had been signed on 25.5.1987 it was sent to the person incharge for arranging service who further sent it on to the applicant only on 1.7.1987 when the applicant had already retired. It was held that the crucial date would be the date when the charge sheet was communicated, i.e., 1.7.1987.



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27. For the foregoing reasons we find that the impugned chargesheet is not valid and cannot be sustained. We accordingly quash the chargesheet by allowing the OA. However, we grant the liberty to the respondents to seek a fresh approval from the Minister concerned (Welfare Minister) for issuing a chargesheet under Rule 16 of the All India Services (Death-cum-Retirement) Rules and thereafter issue the chargesheet after following the procedure prescribed by Rule 6 of the said Rules. Needless to say that in the meantime the respondents shall pay to the applicant provisional pension and other pensionary benefits under the Rules. This shall be done within three months from the date of receipt of a copy of this order.

The parties are left to bear their own costs.

S. P. Biswas
(S. P. Biswas)
Member (A)

T. N. Bhat
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(T. N. Bhat)
Member (J)

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