

Central Administrative Tribunal
Principal Bench, New Delhi

(6)

Regn. No. OA-1730/88

Date: 10-02-1989.

Shri P.C. Misra Applicant

Versus

Delhi Administration & Respondents
Another

For the Applicant The applicant in person

For the Respondents Shri M.M. Sudan, Advocate.

CORAM: Hon'ble Shri B.N. Jayasimha, Vice-Chairman(Admn.)
Hon'ble Shri P.K. Kartha, Vice-Chairman(Judl.).

1. Whether Reporters of local papers may be allowed to
see the Judgement? *Yes*

2. To be referred to the Reporter or not? *Yes*

(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman)

The applicant, who is working as Joint Director
in the Directorate of Agricultural Marketing, Delhi
Administration, filed the present application under
Section 19 of the Administrative Tribunals Act, 1985
praying that the impugned order dated 23.3.1988 along
with the impugned memorandum of charges dated 20.3.1984
(vide Annexure V, p.37 of the paper-book) be quashed.
The impugned memorandum dated 20.3.1984 was issued by
the Chief Secretary, Delhi Administration, proposing to
hold an inquiry against the applicant who was at that
point of time working as Deputy Director (Training) in
the Delhi Administration, under Rule 14 of the Central
Civil Services (Classification, Control and Appeal)
Rules, 1965. The statement of Articles of Charge
framed against the applicant referred to in the aforesaid
memorandum reads as follows:-

"Article - I

That the said Shri P.C. Misra while functioning
as Land Acquisition Collector (DS), Deputy
Commissioner's Office Delhi during the period

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1978-79 with ulterior motive and mala fide intention entertained the petition of Shri Sudershan Kumar Jain for enhancement of compensation allowed vide Award No.1478 dated 28.1.1963, on an application moved by said Shri Jain and forwarded the same to the Additional District Judge, Delhi for necessary action, whereas the claim so made had become time-barred, resulting in huge financial loss to the Government.

Article - II

That said Shri P.C. Misra in discharge of his duties as Land Acquisition Collector (DS) acted erroneously in making a reference for enhanced compensation to the Additional District Judge, Delhi on the basis of an ex parte order passed by the court of Shri Bhola Dutt, Sub-Judge, Delhi in suit No.52/78 filed by Shri Sudershan Kumar Jain on 23.1.1978, although he was not impleaded as a party to the said suit by said Shri Jain. Not only this, he failed to prefer an appeal against the ex parte order dated 29.3.79 passed by the Court of Shri Bhola Dutt, Sub-Judge, Delhi in the above suit.

Article - III

That said Shri P.C. Misra in his capacity as Land Acquisition Collector (DS) Allowed enhanced compensation to a number of persons, although they had already been awarded compensation due and admissible to them, resulting in double payment to them.

Article - IV

That said Shri P.C. Misra in his capacity as Land Acquisition Collector (DS) erroneously allowed payment of compensation to Shri Sudershan Kumar Jain at a higher rate of Rs.3.15 per sq. yd. in award No.1478 in the absence of any specific order of the Court whereas the rate of compensation should have been calculated of Rs.2.50 per sq. yd.

Thus said Shri P.C. Misra in his capacity as Land Acquisition Collector (DS) acted in a manner which is highly unbecoming of his being a Government servant and is in contravention of rule 3 of the CCS (Conduct) Rules, 1964. Hence the present proceedings."

2. By the impugned order dated 23.3.1988 (vide Annexure X, p.58 of the paper-book), the Chief Secretary, Delhi Administration, passed an order in exercise of the

powers conferred by Sub-rule (2) of Rule 14 of the C.C.S.(CCA) Rules, 1965, appointing Shri S.P.K. Naidu, Commissioner for Departmental Inquiries, Central Vigilance Commission, New Delhi, as the inquiring authority to inquire into the charges framed against the applicant. By the time this order was issued, the applicant had been promoted as Joint Director (Agricultural Marketing) and the applicant has been referred to therein as Joint Director. The order of promotion was passed by the Delhi Administration by an order dated 2.2.1988 (vide Annexure IX, p.57 of the paper-book). ^{2A} The application came up for admission on 7.2.1989. The applicant, who appeared in person, contended that he belongs to the Delhi and Andaman & Nicobar Island Civil Service and holds selection grade of the service w.e.f. 16.7.1984. As per Rule 12 of the C.C.S.(CCA) Rules read with Part I of the schedule thereto, the President of India is his disciplinary authority. Under Rule 13 of the C.C.S.(CCA) Rules, the President or any other authority empowered by him by general or special order, may institute disciplinary proceedings against any Government servant. The applicant has contended that there is no mention in the impugned orders as to whether the Chief Secretary has received any special order as envisaged in this rule. The impugned orders also do not state whether they are issued in concurrence/under approval of the Government of India.

3. The respondents have filed their counter-affidavit, wherein they have admitted that from 16.7.1984, the applicant got the selection grade and the President of India became the disciplinary authority from the said date. However, the proceedings against him had been started w.e.f. 20.3.1984 vide the impugned memorandum already

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mentioned above. The impugned memorandum was served upon the applicant when he was a Class II Gazetted officer and the same proceedings have been continued since then. Further, after his becoming a Selection Grade Officer w.e.f. 16.7.1984, the Delhi Administration had requested the Government of India, Ministry of Home Affairs, to furnish the necessary advice in the matter, who had, vide their letter dated 26.2.1988, informed that the inquiry may be continued to a logical conclusion and de novo proceedings are not necessary. They had further stated that the case of the applicant, along with the Inquiry Report, should be sent to them for passing the final orders. In view of this, the respondents have contended that the impugned memorandum dated 20.3.1984 and the impugned order dated 23.3.1988, did not, in any way, suffer from any legal infirmity. As the matter is still under inquiry and final orders regarding imposition of major penalty, if any, shall be passed by the President of India, the contention raised by the applicant is not legally tenable.

4. Shri M.M. Sudan, the learned counsel for the respondents, has relied upon the provisions of Sub-rule(2) of Rule 13 of the C.C.S.(CCA) Rules, 1965 which provides that "A Disciplinary Authority competent under these rules to impose any of the penalties specified in clauses (i) to (iv) of Rule 11, may institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified in clause (v) to (ix) of Rule 11 notwithstanding that such Disciplinary Authority is not competent under these rules to impose any of the latter penalties."

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of the schedule to the C.C.S.(CCA) Rules deals with the authorities competent to impose penalties in respect of various services, including the service to which the applicant belongs. In the case of the Delhi and Andaman & Nicobar Islands Civil Service Grade II, Chief Secretary, Delhi Administration has been mentioned as the authority competent to impose penalties mentioned in (i) to (iv) of Rule 11. Therefore, according to the learned counsel for the respondents, the Chief Secretary, Delhi Administration, was competent to institute disciplinary proceedings for minor penalty against the applicant when the impugned memorandum was issued to him on 20.3.1984, notwithstanding that he is not competent under these rules to impose any major penalty on him.

5. The position that emerges from the above is that the Chief Secretary was competent to institute disciplinary proceedings against the applicant in 1984 for imposition of a minor penalty. Rule 14 of the C.C.S.(CCA) Rules expressly provides for the conduct of such an inquiry. Sub-rule (21), which is relevant in this regard, reads as follows:-

"(21)(a) Where a disciplinary authority competent to impose any of the penalties specified in clauses (i) to (iv) of Rule 11 but not competent to impose any of penalties specified in clauses (v) to (ix) of Rule 11, has itself inquired into or caused to be inquired into the articles of any charge and that authority, having regard to its own findings or having regard to its decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose the last mentioned penalties.

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(b) The disciplinary authority to which the records are so forwarded may act on the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, recall the witness and examine, cross-examine and re-examine the witness and may impose on the Government servant such penalty as it may deem fit in accordance with these rules."

6. In our opinion, there is merit in the contention raised by the learned counsel for the respondents. In our view, the applicant has filed the present application prematurely, as the disciplinary proceedings instituted against him vide the impugned memorandum dated 20.3.1984 has not yet been concluded. The impugned order dated 23.3.1988 deals with only the appointment of an Inquiry Officer. No final order has been passed.

7. In the circumstances, the law should be allowed to have its own course and the departmental inquiry instituted against the applicant should be concluded in accordance with the provisions of the C.C.S.(CCA) Rules, 1965. In view of this conclusion reached by us, it is unnecessary to go into the other contentions raised by the applicant in the present application and we refrain from expressing any opinion on their merits.

8. There are instructions issued by the Government that departmental proceedings should be concluded expeditiously. In the present case, the proceedings were instituted in March, 1984 and they have not been concluded even though more than 4 years have elapsed. While we reject the present application at the admission stage itself on the ground that the applicant has approached the Tribunal prematurely during the pendency of the disciplinary proceedings, we direct the respondents to

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conclude the disciplinary proceedings as expeditiously as possible but not later than six months from the date of communication of this order. In case the applicant is aggrieved by the final order passed by the disciplinary authority, he will be at liberty to move this Tribunal with a fresh application after he has exhausted the departmental remedies available to him by way of appeal, revision, etc., in accordance with the relevant service rules.

9. The application is dismissed in limine with the above directions. There will be no order as to costs.

Omni. B
(P. K. Kartha)
Vice-Chairman(Judl.)

B.N. Jayasimha
(B. N. Jayasimha)
Vice-Chairman(Admn.)