CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 686/2020

New Delhi, this the 11th day of March, 2020

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)

E. Nagachandran,
Aged 45 years, Group 'A',
S/o Shri P. Eeaswaran,
Deputy Director,
Ministry of Corporate Affairs,
Fourth Floor, Hindustan Times House,
Kasturba Gandhi Marg,
New Delhi-110001.

Resident of:

P-5, Andrews Ganj Extension,
New Delhi-110049.

.. Applicant

(By Advocate: Shri Tushar Ranjan Mohanty)

Versus

Union of India through
its Secretary,
Ministry of Statistics and
Programme Implementation,
Fourth Floor, Sardar Patel Bhawan,
Parliament Street, New Delhi-110001.

.. Respondent

(By Advocates: Shri R.V. Sinha with Shri C. Bheemanna
and Shri Amit Sinha)

O R D E R (ORAL)

Justice L. Narasimha Reddy, Chairman

One should indeed admire the Administration, that it is able to function normally, despite the hurdles created and challenges thrown by officers like the applicant.

2. The applicant is working as Deputy Director in the Ministry of Corporate Affairs. The Department initiated steps for framing charges against him. At that stage, it appears that he had access to the note dated 17.03.2011, that was submitted in this behalf. The applicant submitted a private complaint before a Criminal Court, against the officers who handled the file, i.e. the then Secretary, Joint Secretary, former Director and Under Secretary, alleging offences under Sections 120-A, 120-B, 166, 167, 177, 182, 218, 415 and 418 of Indian Penal Code. It was alleged that they tried to harass him and in that process hatched a conspiracy. Even the steps, taken at the 2nd stage of advice from CVC were also made subject matter of the complaint. Since the sanction of the Government was necessary for this purpose, he submitted a representation to the Hon'ble Minister, with detailed allegations against the Officers.

3. Taking note of the contents of the complaint made by the applicant and the relevant aspects, the Disciplinary

Authority (DA) issued a minor penalty Charge Memorandum, dated 16.06.2016, under Rule 16 of CCS (CCA) Rules, 1965. In the article of charge, a detailed account of the contents of the criminal complaint and the other relevant details were furnished. The applicant submitted his reply on 15.07.2016. The DA took the same into account and proposed minor penalty of withholding of increments of pay for a period of two years without cumulative effect, and solicited the advice of the UPSC. A copy of the advice tendered by the UPSC was made available to the applicant. Taking note of the representation made by the applicant in that behalf, the DA passed an order dated 24.01.2018 imposing the minor penalty of 'withholding of increments of pay for a period of two years without cumulative effect'. A revision filed against the order of punishment was dismissed on 01.03.2019. An application for review of the penalty order was also rejected on 10.07.2019. This O.A. is filed challenging the Charge Memorandum, the order of punishment, the order of revision and the order rejecting the review.

4. The applicant contends that the charge framed against him was factually incorrect, and though he made a specific request to conduct an inquiry, the same was not acceded to.

He has also stated that though Rule 16 enables the DA to impose the punishment upto withholding of two increments without cumulative effect, without conducting an inquiry, the directives issued from time to time mandate that inquiry must be held when demanded by the employee or at least reasons for refusal of the request must be recorded. Reliance is placed upon the following judgments rendered by this Tribunal, Hon'ble High Court of Madras and Hon'ble High Court of Delhi, wherein certain judgments of the Hon'ble Supreme Court were also referred:

(i) Order dated 06.11.1989 in OA No.597 of 1988, P.M. Durai Raj v. G.M. Ordnance Factory, CAT, Madras Bench

(ii) Shreedharan Kallat v. Union of India, (1995) 4 SCC 207

(iii) Shanti Devi v. State of U.P., (1997) 8 SCC 22

(iv) State of West Bengal v. Tapan Kumar Saha, (1999) 2 CHN 519 : 1999 SCC Online Cal 337 [DB Calcutta High Court]

(v) O.K. Bhardwaj v. Union of India, (2001) 9 SCC 180

(vi) Order dated 13.09.2002 in OA No.33 of 2002, Shrishail Bhajantari v. Principal Kendriya Vidyalaya, CAT, Bangalore Bench

(vii) Gajendra Kumar v. Union of India, (2004) 110 DLT 591 [Division Bench of High Court of Delhi]

(viii) M.V. Bijlani v. Union of India, (2006) 5 SCC 88

(ix) Order dated 02.02.2006, Rashik Behari Goswami v. Union of India, CAT, Principal Bench

(x) Order dated 12.11.2006, Ramesh Chander-I v. Govt. of NCT of Delhi, CAT, Principal Bench

(xi) Order dated 18.07.2008 in OA No. 4 of 2008, B.D. Lakhan Pal v. Union of India, CAT, Principal Bench

(xii) Order dated 25.03.2008 in OA No. 2370 of 2007, B.D. Lakhan Pal v. Union of India, CAT, Principal Bench

(xiii) Judgment dated 07.02.2009 in M.A. Rahim v. Union of India, (2009) 6 MLJ 263 [Division Bench of Madras High Court]

(xiv) Judgment dated 01.04.2009, N. Subramanian v. Group Commandant Central Industrial Security Force, W.P. No.34587 of 2005 [DB of Madras High Court]

(xv) Swaran Singh Chand v. Punjab State Electricity Board, (2009) 13 SCC 758

(xvi) Frost International Limited v. Union of India, (2010) 15 SCC 241

(xvii) Order dated 11.10.2012 in OA No.1 of 2012, Rishi Pal v. Union of India, CAT, Principal Bench

(xviii) Order dated 11.12.2013 in OA No.2837 of 2013, T.R. Mohanty v. Union of India, CAT, Principal Bench

(xix) Judgment/Order dated 18.09.2017 in T.R. Mohanty v. Union of India, in OA No.2999 of 2016, CAT, Principal Bench

(xx) Order dated 20.08.2019 in Union of India v. T.R. Mohanty, Writ Petition (Civil) No.8322 of 2019

(xxi) Raghubir Singh v. General Manager, Haryana Roadways, (2014) 10 SCC 301.

5. We heard Shri Tushar Ranjan Mohanty, learned counsel for the applicant and Shri R.V. Sinha with Shri C. Bheemanna and Shri Amit Sinha, learned counsel for the respondents, at the stage of admission itself, at length.

6. As observed earlier, an effort was being made to frame charges against the applicant, alleging certain acts of misconduct. It is not known as to how the applicant accessed the file, even before any memorandum of charge was issued. The applicant targeted the senior officials of the Department and filed a private complaint before the Criminal Court. The sections of IPC, invoked by him are indeed startling. The gist of his complaint is that the officials have conspired against him and attempted to frame charges against him. He alleged several criminal acts against those officials, only because they handled the file relating to framing of charges. It is indeed shocking that an attempt, made by the Department to frame charges against an employee, has given rise to filing a complaint against all the officials. It is nothing but an attempt to threaten, hoodwink and blackmail the entire administration.

7. The DA did not want to leave any scope for error, in framing of the charges in the present set of proceedings. The narration of the events runs into 15 pages. Much of it is the

reproduction of the parts of the complaint and the orders passed by the Criminal Court.

8. During the course of the hearing, we wanted to verify from the learned counsel for the applicant as to whether the present Memorandum of Charge was issued before or after the criminal complaint was dismissed. He emphatically stated that the criminal complaint was not dismissed, by the time the Charge Memorandum was issued. However, in the Charge Memorandum itself, there is a clear reference to the factum of the dismissal of the complaint by the Criminal Court on 24.01.2014. Learned counsel could have made an effort to state the correct facts.

9. Inspite of the dismissal of the criminal complaint, the applicant went on repeating the same allegation. He proceeded to state as under, in his explanation:

> "Thus the irresistible conclusion is that the allegation made in the complaint filed before the jurisdictional criminal court, if unrebutted, make out the offence and the accused persons (respectively) are liable to be convicted of such offences."

10. One would be at loss to understand as to what would bring the applicant, who is holding such a senior post, to a semblance of discipline. His utter contempt against the senior officials of the Department is reflected in his complaint,as well

as his explanation. In a way, he proceeded on the assumption that the dismissal of the criminal complaint was of no legal consequence.

11. Rule 16 prescribes the procedure for imposition of the minor penalties. The Rule contemplates that in case the punishment is of stoppage of two increments without cumulative effect, the inquiry need not be held, and if the proposed punishment is higher than that, conducting of an inquiry becomes mandatory. The DA proposed to impose the punishment of withholding of two increments without cumulative effect and, obviously, for that reason, he did not hold the inquiry.

12. Rule 16(2) of CCS (CCA) Rules is as under:

> "(2) The record of the proceedings in such cases shall include-
> (i) a copy of the intimation to the Government servant of the proposal to take action against him;
> (ii) a copy of the statement of imputations of misconduct or misbehavior delivered to him;
> (iii) his representation, if any;
> (iv) the evidence produced during the inquiry;
> (v) the advice of the Commission, if any;
> (vi) representation, if any, of the Government servant on the advice of the Commission:
> (vii) the findings on each imputation of misconduct or misbehavior; and
> (viii) the orders on the case together with the reasons therefor;"

13. Hardly there exists any doubt as to the understanding of the provision. The authority is accorded the discretion,

whether or not to conduct the inquiry in case, the punishment of the nature of withholding of not more than two increments without cumulative effect is proposed.

14. The applicant has made an effort to rely upon a Govt. of India's decision contained in O.M. dated 28.10.1985 issued by the DoP&T. It reads as under:

> "The Staff Side of the Committee of the National Council (JCM) set up to consider revision of CCS (CCA) Rules, 1965 had suggested that Rule 16 (1) should be amended so as to provide for holding an inquiry even for imposition of minor penalty, if the accused employee requested for such an inquiry.
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> 2. The above suggestion has been given a detailed consideration. Rule 16 (1-A) of the CCS (CCA) Rules, 1965 provide for the holding of an inquiry even when a minor penalty is to be imposed in the circumstances indicated therein. In other cases, where a minor penalty is to be imposed, Rule 16 (1) ibid leaves it to the discretion of disciplinary authority to decide whether an inquiry should be held or not. The implication of this rule is that on receipt of representation of Government servant concerned on the imputations of misconduct or misbehavior communicated to him, the disciplinary authority should apply its mind to all facts and circumstances and the reasons urged in the representation for holding a detailed inquiry and form an opinion whether an inquiry is necessary or not. In case where a delinquent Government servant has asked for inspection of certain documents and cross examination of the prosecution witnesses, the disciplinary authority should naturally apply its mind more closely to the request and should not reject the request solely on the ground that in inquiry is not mandatory. If the records indicate that, notwithstanding the points urged by the Government servant, the disciplinary authority could, after due consideration, come to the conclusion that an inquiry is not necessary, it should say so in writing indicating its reasons, instead of rejecting the request for holding inquiry summarily without any indication that it has applied its mind to the request, as such an action could be construed as denial of natural justice."

15. It is to the effect that in case the Govt. servant wants inspection of certain documents and cross examination of the prosecution witnesses, the DA should apply its mind and should not reject the request solely on the ground that inquiry is not mandatory.

16. Firstly, in the instant case, there was no request for perusal of the record. Everything was borne out by the record. The content of the charge is nothing but the content of the complaint of the applicant in the Criminal Court and the factum of dismissal of the same. There was no request for cross-examination of the prosecution witnesses. Secondly, when the Rule is specific, the administrative instructions cannot override that.

17. Reliance is placed upon the precedents listed in para 4. While in some cases, the interpretation was of a different set of rules, in two of them, the learned counsel for the applicant herein was an applicant. There again, the Tribunal took the view where the serious dispute as to the facts exists, even in a minor penalty proceedings, the feasibility of conducting of the inquiry must be considered. We have already observed that there is no dispute about the fact, since

the charge was nothing but reproduction of the complaint submitted by the applicant. It appears that the DA has chosen to invoke Rule 16, just to avoid harassment to the officials of the department, in case a charge memo is issued under Rule 14, if their past experience is any indicator.

18. We do not find any merit in the O.A. and the same is accordingly dismissed. There shall be no order as to costs.

(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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