

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

OA No.491/2020

This the 11th day of January, 2021

**Corman : Hon'ble Shri J.V.Bhairavia, Member (J)
Hon'ble Shri A.K.Dubey, Member (A)**

Kuldeep N.Sharma I.P.S (Redt.)

Male, Aged about 68 years

Residing at :

1, Amanvilla Bungalows
Opp. Thaltej Fire Station
Thaltej – Hebatpur Road,
Ahmedabad- 380 059. Applicant

(By Advocate : Shri Prithu Parimal)

VERSUS

State of Gujarat

Notice to be served through

The Chief Secretary

Govt. of Gujarat,

5th Floor, Block No.1,
Gandhinagar – 382 011..... Respondent

(Advocate : Shri M.J.Patel)

O R D E R – ORAL

Per : Hon'ble Shri J.V. Bhairavia, Member (J)

In the present OA, the applicant has sought for the following reliefs :

(A). This Hon'ble Tribunal be pleased to admit and allow the present Application;

(B). This Hon'ble Tribunal be pleased to quash and set aside the impugned notice dated 14.09.2020, issued by the Inquiry Authority, bearing No.IA/KNS/09/20/04, and subsequent notices dated 01.10.2020, 28.10.2020, 29.11.2020, 09.11.2020, 10.11.2020, 20.11.2020 and 01.12.2020 issued to the Applicant herein, and further be pleased to direct the

Respondents to keep the Inquiry initiated pursuant to the Charge Memo dated 15.09.2012, in abeyance until conclusion of the COVID-19 pandemic;

(C). This Hon'ble Tribunal be pleased to grant such other and further reliefs as the nature and circumstances of the present case may require in the interest of justice.

2. The short facts of the case are as under :-

2.1. The applicant, IPS Officer of 1976 batch (Gujarat Cadre) retired from the post of Director General, BPR&D, Government of India on 31.12.2012 on attaining the age of superannuation.

2.2. While serving as DG, BPR&D, the applicant was served with Charge Memorandum No.ENQ/252012/860/G dated 15.09.2012 under Rule 8 of All India Services (Discipline & Appeal) Rules, 1969. The said Memo contained the Articles of Charge, Statement of Imputations, List of Documentary Evidences and List of Witnesses (Annexure A/3 Colly.).

2.3. For one or the other reasons, the said inquiry has not concluded so far.

2.4. Eventually, vide order of even No. Dated 30.7.2020, Government of Gujarat has appointed Dr. Avinash Kumar, IAS (Retired) (RR-GJ-1972) as Inquiry Authority to hold an inquiry into the charges leveled against the applicant. Through the same order, Government had further directed that Shri T.S.Bisht, IPS (RR-GJ-1985), presently working as DG, Civil Defense & CG Home Guards would continue as Presenting Officer. Finally, this order also specifies

that the inquiry should be completed in accordance with the procedure laid down in the All India Service (Discipline & Appeal) Rules, 1969 and submits its report (Annexure A/3 Colly.).

2.5. Accordingly, the Inquiry Authority had written the letter dated 14.9.2020 to the applicant whereby he was requested to communicate the date on which he would like to join the inquiry. To this, the applicant replied vide his letter dated 20.9.2020 that because of he being 65 plus in age, he was most vulnerable and in view of this risk of getting infected with COVID-19, requested the Inquiry Authority to keep the inquiry proceedings in abeyance till the vaccine was found or a drug was developed to effectively deal with the virus.

2.6. In response to the applicant's letter referred above, the Inquiry Authority issued another letter dated 01.10.2020 informing him that Government has been functioning throughout the pandemic period and progressively relaxing pandemic related restrictions. This letter also informed that even judiciary had been functioning and pandemic concerns are to be addressed through digital devices on virtual platforms. The letter finally suggested that in order to protect the applicant from infection, it could conduct the inquiry process through ZOOM software. This letter again requested for date to conduct the inquiry from the applicant.

2.7. Replying to Inquiry Authority's communication dated 01.10.2020 suggesting to conduct departmental inquiry process

through ZOOM meeting, the applicant responded vide his letter dated 06.10.2020 that there is no provision in the All India Service Rules for such a procedure to be followed and hence, such move would be ultra virus the rule position. In his reply, the applicant also reiterated that 'Online' conduct of business was confined only to urgent and emergent issues. Further, he emphasized that he is a person above 65 years of age and as per the COVID-19 advisory, he was advised to stay at home. In addition to this, the applicant also said that his papers were lying in Delhi to which he had no access at the moment since at present he resides at Ahmedabad. Finally, he has expressed his unwillingness to be part of the proceedings and request to keep the proceedings in abeyance.

2.8. Responding to this letter of the applicant, the Inquiry Authority again issued letter dated 28.10.2020 reiterating its earlier stand that even judicial courts were conducted on virtual platforms and Government Offices were operating in full strength; and informed the applicant that the UNLOCK guidelines nowhere suggest that one should not attend the statutory obligations when mandated, regardless of age. This communication, however, informed the applicant that all the papers relevant to the inquiry had been provided and in case, the applicant did not have some of them, he could request for the same, as provided in the AIS (Conduct) Rules. Finally, this communication also mentioned that since the applicant was not comfortable with

ZOOM or any such virtual platform, he would prefer his personal presence as mandated in AIS (Conduct) Rules since Rule 8(8) of said Rules specifically stipulates its. This communication from the Inquiry Authority made is very clear that the applicant's request to keep the inquiry in abeyance could not be accepted. This letter assured that the venue of inquiry was sanitized every day and sanitizers were available on the spot and further requested the applicant to make himself available for hearing. The series of correspondences continued and every apprehension express by the applicant in his further letters dated 05.11.2020 and 25.11.2020 were replied by the Inquiry Authority vide his letter dated 29.10.2020, 09.11.2020, 10.11.2020, 20.11.2020 and 01.12.2020 (Annexure A/1 Colly. and Annexure A/5 Colly.)

2.9. The applicant had also submitted an application before the Additional Chief Secretary (Home) on 17.11.2020 (Annexure A-6) whereby he reiterated his various grounds taken before the Inquiry Authority and further stated that the vaccine of COVID-19 was not likely to be available till 2022 and there is no certainty how long the vaccine would remain effective in the body and therefore he would not like to expose himself to any risk whatsoever. He requested the Home Department being Disciplinary Authority to direct the Inquiry Authority to suspend the inquiry for a period of six months or earlier subject to the pandemic situation improving.

2.10. It is the contention of the applicant that *in spite* of his various requests, the departmental inquiry has not been suspended. Hence, this OA.

3. The learned Senior Counsel Shri I.H.Syed appearing with Shri Prithu Parimal for the applicant mainly submitted that the request of the applicant was on the ground of apprehension of COVID-19 and his discomfort in appearing on virtual platform, as also his difficulties in accessing relevant documents for his defense, which were kept in Delhi. He further submits that the departmental inquiry is required to be conducted as per the procedures stipulated in AIS (D&A) Rules, 1969. He also argued that proceeding through Video Conferencing was not in accordance with the Rule 8(8) of the above mentioned Rules. Therefore, the departmental inquiry must be proceeded strictly in accordance with the said Rules, which mandates personal appearance of the Member of the service in course of inquiry. Counsel also submits that because of COVID-19 pandemic situation, in which the senior citizens were advised to remain at home, he could not risk his health by personally appearing before the Inquiry Authority. In this regard, he placed reliance on the pandemic guidelines issued by MHA on 25.11.2020.

4. It is further argued that through Video Conferencing applicant will not get just and proper opportunity to examine and cross examine the witnesses. Since the charge leveled against the applicant relates to

the incident taken place at Delhi, it is difficult for him to travel and bring the defense witnesses to establish his innocence. Further, the Inquiry Authority being a quasi judicial authority is required to maintain principles of natural justice during the inquiry process. If the inquiry is not kept in abeyance and it continues, the same will cause great prejudice and injustice to the applicant. The counsel for the applicant also submitted that the Charge Memorandum was issued in the year 2012 and the Disciplinary Authority had waited for more than eight years to conclude the inquiry, no prejudice will cause to the Inquiry Authority, if the same is suspended for some more time.

5. Lastly, the counsel for the applicant submits that the applicant has filed Additional Affidavit, wherein it is also stated that the OM dated 05.08.2020 issued by the DoPT with regard to completion of inquiry proceedings through Video conferencing was as such not applicable in the case of the applicant as the Cadre Controlling Authority of IPS was MHA. Further, it is contended that with respect to applicant's representation / application dated 17.11.2020, the respondents vide its communication dated 19.12.2020 (Annexure A/7) informed that earlier, necessary reply was given to him by the concerned authority including the Inquiry Authority. The said reply is required to be taken in consideration by him and the State Government had appointed Senior Retired IAS Officer (1972 batch) as Inquiry Authority and thereby he was requested to cooperate him in

the inquiry. Therefore, the request to keep inquiry in abeyance has not been accepted by the respondents. It is further stated that so far AIS (D&A) Rules, 1969 is concerned, the said rules cannot be bypassed by the respondents herein. Therefore, he prays to grant the reliefs as sought for in this OA.

6. Per contra; Senior Counsel, Ms. Manisha LuvKumar appears with Shri M.J.Patel, counsel for the respondent and opposed the contentions of the applicant. The learned Senior Counsel mainly submitted as under :

6.1. Regarding the point of natural justice, she contended that Inquiry Authority itself had offered to the applicant to come on virtual platform for the purpose of inquiry and also gave an option to appear in person. In one of its communication, the Inquiry Authority assured that venue of the inquiry was daily sanitized and further sanitizers would be available at the venue. She clarified that there was no intention to put anyone's life in danger and all possible safety measures in views of COVIOD-19 pandemic will be taken. At the same time, it is statutory duty of the Charged Officer i.e. the delinquent officer, to cooperate with the Inquiry Authority to complete the inquiry at the earliest.

6.2. It is also submitted by the Senior Counsel that OM dated 05.08.2020 of DoPT, which was brought to the knowledge of counsel of both the parties, also mandated use of digital platform/ video

conferencing in the inquiry proceedings and this OM itself reiterated that the authority concerned should conduct the disciplinary proceedings, subject to adhering to the principle of natural justice, while conducting the inquiry proceedings through “Digital mode”.

It is further submitted that there is no reason to presume that the Inquiry Authority being quasi judicial authority will not ensure adhering to the principles of natural justice. Therefore, apprehension of not adhering to the principles of natural justice in conducting the inquiry was unfounded.

6.3. Learned Senior counsel submitted that the Hon’ble Supreme Court, Hon’ble High Court, the Tribunal and various Government agencies by utilizing virtual platforms during COVID-19 have progressed a lot and one has to proceed further. Since the Inquiry Authority has offered requisite precaution as well as options for video conference or personal appearance for early conclusion of pending departmental inquiry, the applicant is required to participate in the proceedings.

6.4. The applicant has shifted his residential house two years back. Therefore, it is not appropriate on the part of the applicant to mention any difficult on this account.

6.5. Regarding availability of documents, the counsel assured that the documents relied upon in the Charge Memorandum have already

been given and if needs arises, the same will be again provided to the delinquent.

6.6. Lastly, it is submitted that the Inquiry Authority had decided the mode of inquiry which is in consonance with the rules as well as extant instructions/ guidelines for conducting departmental inquiry during the pandemic period. The departmental inquiry cannot be kept in abeyance in the era of ‘Online’ conduct of business. Now, the vaccine for COVID-19 is invented and the Government has announced to start vaccination programme. The applicant is under statutory obligation to participate in the pending departmental inquiry. Accordingly, the counsel for the respondents submits that applicant is not entitled for the prayer sought in this OA.

7. The learned counsel Shri I.H.Syed for the applicant submits that the vaccination programme for COVID-19 would start from 16.01.2021 and it may take some time to complete it; till then, the inquiry proceedings could wait. He further submits that since the applicant is a retired IPS Officer, the instructions/ guidelines issued by the DoPT OM dated 05.08.2020 would not apply to him on the ground that it is not the DoPT, but MHA which is Cadre Controlling Authority of IPS Officers.

8. Heard the learned Senior Counsel for both the partiers and perused the materials available on record.

9. The short issue needs to be answered in the present case is whether the department inquiry instituted against the Government Officer i.e. applicant herein can be allowed to be suspended or wait indefinitely during the COVID-19 pandemic period, as also whether continuation of departmental inquiry in such period could cause prejudice or would amount to violation of natural justice.

10. The record before us reveals that departmental inquiry was instituted against the applicant by the respondents under the AIS (D&A) Rules, 1969. The said departmental inquiry was initiated before the applicant superannuated. It is noticed that for one or the other reasons, the said inquiry could not be completed so far. It is noticed that Inquiry Authority was appointed, but they expressed their inability to proceed with conduct the inquiry on personal grounds. Eventually, vide order dated 30.7.2020, the Disciplinary Authority appointed Dr. Avinash Kumar, IAS (Retired) as Inquiry Authority. It is not in dispute that said Inquiry Authority vide its various communications informed the delinquent to participate in the pending inquiry through Video Conferencing or in person. The options, duly mandated, were offered due to the unprecedented COVID-19 pandemic situation. The Inquiry Authority has assured to maintain the statutory obligation as well as safety measures in view of COVID-19. It is also noticed that the Disciplinary Authority wants to complete the pending departmental inquiry, which has not yet started. The Inquiry

Authority informed the applicant that age factor cannot be ground to avoid or delay the statutory requirement for completing the inquiry proceedings. Accordingly, time and again, the applicant has been called upon to participate in the inquiry proceeding.

However, the applicant has expressed that during the departmental inquiry, there may be non adherence of principles of natural justice, and more particularly, he could be compelled to participate in the said inquiry proceedings during COVID-19 period even when he has apprehension that he may not be able to access relevant documents and he may have to run the risk of exposing himself to COVID-19 infection. Therefore, he wants the inquiry proceedings to be suspended or kept in abeyance till vaccine of COVID-19 is declared successful in fighting the risk of COVID-19 infection.

11. The applicant has contended before this Tribunal that his complaint about non adherence to the principles of natural justice by the Inquiry Authority will cause prejudice to him. On this point, it will be appropriate to refer to the observations of Constitution Bench of Hon'ble Apex Court in the case of ***A.K.Kraipak v/s. Union of India*** reported in **AIR 1970 (1) SC 150** in para 20:

“.....wherever the complaint is made before a court, that some principles of natural justice had been contravened, the court has to decide whether the observance of that rule was necessary for a just decision on the fact of that case”.

We would like to refer to the recent judgment passed by the Hon'ble Apex Court in ***Union of India V/s. Ram Lakhan Sharma*** reported in **2018 (7) SCC 670** wherein the Hon'ble Apex Court elaborately referred to the judgment passed by the Constitution Bench in the case of ***A.K.Kraipak (Supra)*** and reiterated that “the principles of natural justice are not embodied rules. The question whether the requirement of natural justice has been met by the procedure adopted in the given case, must depend to a great extend on the facts and circumstances of the case in point”. Taking into consideration the aforesaid principles laid down by the Hon'ble Apex Court, in the present case, we are constrained to observe that although record before us show that the Inquiry Authority has been trying to assure fairplay and proper procedure, the conduct of inquiry has actually not started and still, apprehension of violation of the principles of natural justice has been expressed by the applicant. In our considered opinion, such an apprehension of the applicant against the inquiry proceedings is both premature and unfounded. Further, on the issue of applicability of DoPT OM dated 05.08.2020, it has to be borne in mind that even though MHA is Cadre Controlling Authority of IPS Officers, the said OM pertains to AIS (D&A) Rules, 1969 which is administered by DoPT. Further, this OM has been marked to all the Ministries / Departments of Govt. of India which obviously includes MHA.

12. Thus, taking holistic view of the entire matter, we have no hesitation to conclude that the completion of pending departmental inquiry is itself a statutory requirement and hence, must be completed by taking all possible precautions during COVID-19 pandemic situation such as Video Conferencing, sanitization etc. and also by adhering to the principles of natural justice. The age factor cannot be a ground to avoid or delay the statutory requirement for completing the inquiry proceedings. The Inquiry Authority performs a quasi judicial function and adhering to the principles of natural justice is *sine qua non* for every inquiry or proceedings. As stated herein above, it is premature and unfounded apprehension of the applicant about violation of principles of natural justice in the method and manner of conduct of the departmental inquiry during this pandemic period by the Inquiry Authority.

13. In view of the aforesaid discussions, particularly, in view of repeated assurance given by the respondents to adhere to principle of natural justice to conduct the inquiry against the applicant as well as precautions of COVID-19, we do not find any reason to interfere with the decision of the Inquiry Authority. The OA is accordingly disposed of at the admission stage itself.

14. Registry is directed to send copy of this order to learned counsel for both the parties through email.

(A.K.Dubey)
Member (A)

(J.V.Bhairavia)
Member (J)

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