

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA 288 of 2019

Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)
Hon'ble Mr. Tarun Shridhar, Member (A)

Dr. Manas Shankar Ray, aged about 61 years, S/o Late Sudhansu Sekhar Ray, resident of Plot No. 695, Saheed Nagar, Bhubaneswar-751007, Odisha.

.....Applicant

VERSUS

1. Union of India, through Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.
2. Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.

.....Respondents

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.A.C.Deo, counsel

Heard & reserved on : 17.12.2020 Order on : 15.02.2021

ORDER

Per Mr.Swarup Kumar Mishra, J.M.

The applicant has filed the present OA under Section 19 of the Administrative Tribunals' Act, 1985 seeking the following reliefs :

- “(i) To call for the entire relevant records including reports and order sheet notings pertaining to the issuance of the charge memo in the instant case;
- (ii) And to quash/set aside the impugned charge memo dtd. 31.8.2018 (Ann. A/17);
- (iii) And to direct the respondents to release all consequential retirement and pension benefits with 12% interest for the delayed period of payment;
And pass any other order as this Hon’ble Tribunal deems fit and proper in the interest of justice;
And for which act of your kindness the applicant as in duty bound shall every pray.”

2. The facts of this case in brief are that the applicant joined as an officer of the Indian Revenue Service (IRS) in 1985. From 2003 to 2009 he was on deputation to CEBI as OSD/Executive Director. After repatriation on completion of deputation he joined back the Income Tax Department at New Delhi on 16.6.2009 and continued till 6.7.2015. On 31.1.2015 he was promoted as Principal Commissioner of Income Tax (PCIT) and on 6.7.2016 he

was transferred to Ahmedabad. On 14.7.2016 the applicant applied for the post of Whole Time Member (WTM in SEBI) and was selected on 17.10.2016 as Sl.No.1 in a panel of 2 candidates and the panel was approved by the Hon'ble Finance Minister, whereupon vigilance clearance from the Central Vigilance Commission (CVC) was sought for. CBDT issued cadre clearance for 5 years and vigilance clearance in respect of the applicant vide letter dated 21.10.2016 and 3.11.2016. Despite necessary clearance from CBDT, clearance from CVC was held up vide letter dated 24.11.2016 on the ground that certain matter was pending with CBDT in respect of the applicant and then declined to grant vigilance clearance in respect of the applicant, depriving him from being appointed as WTM, SEBI. Thereafter on 7.6.2017 the applicant received a letter dated 30.5.2017 (Annexure A/7) from Addl. DG (Vig), West, CBDT seeking his explanation in respect of certain alleged entries in a diary and computer data, seized during an Income Tax search conducted on 28.6.2011 in the case of one Sterling Biotech Group and the alleged entries pertained to cash received by the group from one "Mr.Ray IT". Further vide letter dated 15.6.2017 (Annexure A/8) it was stated that name and telephone number of the applicant was found in the contact list of one Mr.Dilip Anam, an executive of the searched group. On 19.6.2017 the applicant submitted a detailed reply (annexure A/9) inter alia explaining that 'Ray" is a common surname and there are large number of persons in the society and Income Tax Department and even in the IRS Civil List carrying that surname and acronym "IT" can have several meanings. The applicant also stated in the representation that during the period of the alleged entries in the diary in 2011, the applicant was posted in Delhi and requested that the matter be closed expeditiously. On 30.8.2017 an FIR was registered naming therein the applicant and some others for the alleged diary pertaining to the year 2011. On 15.9.2017 DGIT (Vig), CBDT issued vigilance clearance report. On 29.12.2017 respondent No.2 issued the order of promotion to the grade of CCIT excluding the applicant. The applicant approached this Tribunal in OA 1237/2018 which was disposed of on 11.7.2018 directing the appointing authority to implement the panel dated 30.11.2017 as approved by the ACC

(Annexure A/11). On 3.8.2018 the applicant requested respondent No.2 for expeditious completion of vigilance enquiry and on 31.8.2018 the applicant retired from service, on attaining the age of superannuation and relinquished his charge. On that date itself a Xerox copy of charge memorandum (Annexure A/17) was served on the applicant at the airport in Ahmedabad, after he had relinquished his charge on superannuation. Although he has submitted his reply on 7.9.2018 (Annexure A/18) no decision has been taken by the respondents and retirement benefits have not been disbursed to him.

3. The grounds taken by the applicant are as follows :

- i) Perusal of the First Stage Advice of the CVC shows that after detailed investigation and consideration of the applicant's letter, the respondents concluded that there were no issues which led to the initiation of RDA against the applicant and alleged transaction reported in the seized diary could not be linked with the applicant in the absence of any supporting evidences. The respondents accordingly recommended closure of the case in respect of the applicant. Therefore issuance of the impugned charge memo on the same date on receipt of the CVC's First Stage Advice on 31.8.2018 is without any basis and is liable to be quashed.
- ii) The charges leveled against the applicant are wild, imaginary and bereft of any logic and as such are liable to be quashed.
- iii) The assertion in the Articles of Charge that the name of the applicant was found recorded in the seized documents is false and without any evidence and the said Article of Charge is imaginary and mischievous.
- iv) In the instant case the basic material, on the basis of which departmental proceedings can be initiated, is clearly absent and consequently the impugned charge memo is absurd, vague, self-contradictory and devoid of merit. It is settled law that a mere diary entry, without any corroborative evidence cannot be made the basis for initialing any enquiry. Hence the charge memo is

liable to be quashed in view of the law laid down by Hon'ble Supreme Court in catena of cases.

- v) Since as per the policy of the Govt., no action should be taken on anonymous/pseudonymous complaints, irrespective of the nature of allegations and it is pertinent to mention that there is not a single complaint, at any point of time against the applicant, issuance of the impugned charge memo, that too for major penalty against the applicant needs to be set aside.
- vi) In the instant case the departmental proceeding having been initiated during the pendency of the CBI FIR on the very same issue, making it a case of double jeopardy, needs to be set aside.
- vii) The respondents have acted with malice and vindictiveness, with the sole motive of causing prejudice and harm to the applicant, particularly at the end of his service career and hence the action of the respondents is violative of the provisions of Art. 16 and 21 of the Constitution.
- viii) In the instant case despite the clear difference of opinion between the respondents and the CVC, it is learned that, the required procedure for consultation with DOP&T has not been followed by the respondents by citing lack of time. Consequently the charge memo is rendered to be illegal and is liable to be set aside.
- ix) In the instant case approval of Hon'ble finance Minister has been obtained by merely sending the scanned copy of last page of the order sheet electronically, which he initialed and mailed back and the entire materials were neither placed before nor considered by the disciplinary authority and there was no independent application of mind. As such the impugned charge memo is violative of Rule 14 and needs to be struck down.
- x) The charge memo, as received by the applicant shows that it is merely a printout of the scanned copy marked to the Pr.CCIT (CCA), Ahmedabad and sent to him by email and the original copy

of the charge memo addressed to the applicant and meant for him has not been served on him. The said copy of the charge memo neither bears the signature of the issuing officer nor the office seal. In view of the above flaws the impugned charge memo is non-est in law.

4. Learned counsel for the applicant has relied on the following judgments in support of his case :

- i) UOI –vs- K.K.Dhawan [(1993) 2 SCC 56]
- ii) Inspector Prem Chand –vs- Govt. of NCT of Delhi & Ors. [(2007) 4 SCC 566]
- iii) UOI –vs- P.Parameswaran [2008 (226) ELT 696 (Mad)] by Hon'ble Madras High Court.
- iv) Beni –vs- Bisan Dayal [AIR 1925 Nagpur 445]
- v) CBI –vs- V.C.Shukla & Ors. [1998 (3) SCC 410]
- vi) Common Cause –vs- UOI [(2017) 11 SCC 747]
- vii) UOI & Anr. –vs- Vineet Ohri [WP(C) No. 7914 of Hon'ble Delhi High Court]
- viii) P.M.Ramalingam –vs- The Director General of Police, CRPF [WP Nos. 11543-544/2000 of Hon'ble Madras High Court]
- ix) Man Singh –vs- State of Haryana & Ors. [(2008) 12 SCC 331]
- x) State of Punjab –vs- V.K.Khanna & Ors. [MANU/SC/0744/2000]
- xi) Bhikhubhai Vithlabhai Patel & Ors. –vs- State of Gujarat & Ors. [2008 (4) SCC 144].
- xii) Dr. Arun Kumar –vs- UOI [MACU/CA/0786/2012]
- xiii) UOI & Ors. –vs- B.V. Gopinath [(2014) 1 SCC 351]
- xiv) Nagaraj Shivarao Karjagi –vs- Syndicate Bank [(1991) 3 SCC 219]
- xv) A.N.D'Silva –vs- UOI [(1962) Suppl. 1 SCR 968]
- xvi) UP State Agro Industrial Corporation Ltd. –vs- Padam chand Jain [(1995) Supp (2) SCC 655]
- xvii) State of Madhya Pradesh –vs- Bani Singh & anr. [AIR 1990 SC 1308]

4. Respondents have filed their Counter mentioning that it is alleged by the applicant the charge memo dated 31.8.2018 is not as per law and the said charge memo has been served on him after his superannuation. Moreover it is

also alleged that the said charge memo does not bear the requisite documents as required under law for which it is to be quashed and retiral benefits be released in favour of the applicant. The allegations made by the applicant are denied by the respondents. The respondents have stated that the charge memo is as per law and has been served on the applicant on email mode on the date of his superannuation and within office hour along with all the requisites. Hence the charge memo in question holds good for proceeding in which the applicant has already participated by making his defence statement along with the representation to the authority. It is stated that the entries relating to the cash received from "Mr.Ray, IT" pertains to the period 29.1.2011 to 9.5.2011 in which "Mr.Ray, IT" had paid a sum of Rs.4,47,00,000/- on different dates and had received cash amounting to Rs.80,00,000/- on 9.5.2011 from the said Group. The said total transaction of Rs.5,27,00,000/- are not explained by his regular source of income and the cash received by him represents disproportionate assets to his known source of income. The vigilance file was initiated in 2014 in the said Income Tax search operation of 2011 and the name of the applicant emerged in vigilance file on 4.1.2017 and as such there is no inordinate delay in the departmental proceeding in question, as alleged by the applicant. The applicant left the office on the date of his retirement, before completion of office hour and reached the airport for boarding the flight with departure time 4 PM and the office of PCCIT served the said emailed charge sheet in the airport on the applicant and the said charge sheet with all enclosures was also sent to his email address. Thus it is said that computer generated documents without signature are valid and accepted under law. The respondents have also stated that the citations referred to by the applicant have no bearing to the present case except one of Karnataka High Court in WP No. 51898/2015 decided in the case of UOI –vs- Sabu Joseph. But in the said case charge memo was served on the applicant at 11.25 midnight having no sanction from the President or his delegate, whereas in the present case the charge memo was served well within the office hour before 4 PM having proper sanction of Finance Minister on the same day i.e. on 31.8.2018. The

respondents have therefore prayed for dismissal of the present OA being devoid of any merit.

5. The applicant has filed rejoinder and the respondents have filed reply to the rejoinder.

6. The charge memo dated 31.8.2018 reads as under :

“That the name of Sri Manas Shankar Ray (Civil code 85044), presently posted as Pr.CIT-1, Ahmedabad was found recorded in the documents seized from the premises of Sterling Biotech group in a Search & Seizure operation conducted by the Income Tax Department in June, 2011. The seized documents show that Shri Manas Shankar Ray was engaged in huge cash transactions with the group and had paid a total of Rs.4,47,00,000/- between the period 29/01/2011 to 03/05/2011 and had received cash amounting to Rs.80,00,000/- on 09/05/2011 from the group. The transactions show that the officer was in regular touch with the assessee group for handling his cash, which is not explained by his regular sources of income. The facts and circumstances of the case indicate that the cash given by Shri Manas Shankar Ray to the assessee group and the cash received by him from the group represents assets disproportionate to his known sources of income.

By the aforesaid acts, the officer, Shri Manas Shankar Ray (Civil Code 85044) failed to maintain absolute integrity, exhibited conduct unbecoming of a Government Servant, failed to maintain high ethical standards and honesty, misused his position as a Civil Servant by taking decisions in order to derive financial or material benefits for himself and/or his family or friends and thereby violated provisions of Rule 3(1)(i), 3(1)(iii), 3(1)(vi) and 3(1)(xv) of the CCS (Conduct) Rules, 1964.”

7. With regard to service of the charge memo on the applicant it is seen that the charge memo was served on him, when he was going to board flight at 4 PM. The circumstances in which the applicant left the office before completion of office hours, on the last day of his service and went to the airport to board the flight, which was scheduled for departure at 4 PM is not explained by the applicant. The mere plea taken by the applicant is that the signed charge memo was not served on him and copy of charge memo was served on the applicant at airport itself. The very conduct of the applicant in leaving the office before completion of office hour and going to the airport to board a flight at 4 PM might be the purpose of avoiding the service of charge memo on him by other mode. Therefore the plea taken by the applicant that copy of unsigned charge memo was served on him at the airport cannot be of much importance, when he had already filed show cause, after receiving the same. The respondents have also categorically pleaded that the charge memo is as per law

and have been served on the applicant on email mode, on the date of his superannuation and within office hours along with all the requisites. There was no alternative but to serve the charge memo through email. The conduct of the applicant to leave the office and go to the airport to board the flight scheduled for departure at 4 PM might have left no other option open for the respondents but to serve the same through email. Whether the serving of charge memo by email will be sufficient need not be decided at this stage. In view of the recent amendment to Indian Evidence act and in view of the enforcement of Information Technology Act, it cannot be said at this stage, that computer generated document without signatures are not valid and not acceptable under the law. The applicant will get sufficient opportunity to take such plea, if any available, before the competent authority including the disciplinary authority. We are not going to pass any final opinion on those aspects at this stage, as it may cause prejudice to either the applicant or the respondents. Therefore it is left open to be decided by the competent authority/respondents as and when raised by the applicant at the appropriate stage. The ground taken in show cause before the authority need not be looked into in detail by this Tribunal for the purpose of assessing the correctness or otherwise at this stage as it will be too premature to go into the said aspect by this Tribunal. It is better left open to the applicant to agitate the said points before the competent authority of the department at appropriate stage.

8. It was also urged on behalf of the applicant that the charge memo is too vague in nature and is self contradictory. After going through charge memo and the entire materials on record, this Tribunal does not find at this stage that the charge memo is either vague or self contradictory. On the other hand this Tribunal finds that there is *prima facie* material as revealed from the pleadings of the parties and as mentioned in the charge memo that the applicant has rightly been given the opportunity for show cause after the said charge memo was issued to him.

9. There are some materials revealed during the raid by the income tax department conducted on 28.6.2011 and subsequently for the purpose of

enabling the respondent department to issue the charge memo in question. Some of them are the diary entries seized during an Income Tax search wherein it has been mentioned "Mr.Ray IT". The income tax raid was conducted by income tax department on 28.6.2011 in the case of one Sterling Bio Tech Group and the said entries related to cash paid from the group to one Mr.Ray, IT. It has been mentioned in the Counter that Mr.Ray IT has received a sum of Rs.4,47,00,000/- on different dates and the said Mr.Ray IT has received a cash amounting to Rs.80 lakhs on 9.5.2011 from the said group. The total transaction of Rs.5 crore 27 lakhs are not explained from the regular source of income of the applicant. The said cash received by the applicant represents disproportionate assets to his known source of income. Vigilance file was initiated in the year 2014 in connection with the said income tax search operation of the year 2011. The name of the applicant emerged in vigilance file on 4.1.2017. It is specific averment made in the Counter by the respondents that as such there is no inordinate delay in initiating the departmental proceeding against the applicant.

10. The materials on record reveal that certain computer data along with entries made in diary was seized during the income tax search on 28.6.2011. Thereafter on 7.6.2017 the applicant received a letter dated 30.5.2017 vide Annexure A/7 from the Addl. DG (West) CBDT seeking his explanation in respect of said entries made in diary and computer data. Further in the letter dated 15.6.2017 vide Annexure A/8, it was mentioned that the name and telephone number of the applicant was found in the contact list of one Mr.Dilip Anam an executive of search group. The applicant had submitted detailed reply to that effect on 19.6.2017 vide Annexure A/9. It is also in the pleading of the applicant that on 30.8.2017 an FIR has been registered in which the applicant and some other persons have been named in connection with the alleged diary pertaining to the year 2011.

11. In the above circumstances, it cannot be at all said at this stage that the charge memo in question is too vague or contradictory. It also cannot be said that there has been any delay in initiating departmental proceeding. The details

of the fact can only be revealed and if necessary proved in the departmental inquiry and it will be premature to go into details of same at this stage. But prima facie it can be said that there are materials enabling the respondents to issue charge memo in question.

12. It is settled principle of law that CBI investigation and departmental inquiry can be simultaneously proceeded. In case the charge in CBI case is same as that of the charge memo issued against the applicant and in case the set of evidence and names of witnesses are the same in both the proceedings, then a situation may arise, where the applicant may take a stand that the departmental proceeding should not go ahead. But at this stage this Tribunal does not find that there is any legal bar in proceeding with departmental inquiry against the applicant although one CBI investigation is still pending against him on the basis of the FIR in question, where he has been named.

13. There is no material at this stage to show that respondents have acted with malice or vindictiveness against the applicant. In the absence of any material to that effect produced by the applicant, this Tribunal doesn't want to go into that aspect at this stage. Although learned counsel for the applicant submitted that not a single complaint was made against the applicant at any point of time during his service, this cannot be the sole ground to say that the charge memo issued against him is baseless. Registration of FIR in which he has been named is also another ground to say that there might be something against the applicant which requires to be gone into in the departmental inquiry in question. It would not be proper on the part of this Tribunal to intervene at this stage when besides registration of FIR, there are some documents to prima facie show that probably he has got disproportionate cash to the tune of Rs.5 crores 47 lakhs. The larger interest of the department, its reputation and the public interest in general cannot be ignored while dealing with such types of cases. It will be not proper in the interest of justice or society that the departmental proceeding should not go ahead and the applicant should be allowed to go scot free by giving any categorical finding at

this stage. It will be too premature to do so in the facts and circumstances of this case, as discussed earlier.

14. The citations relied upon by the applicant are not applicable to the facts and circumstances of this case.

15. The OA is accordingly dismissed. There will be no order as to costs.

(TARUN SHRIDHAR)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

I.Nath