

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/172/2017
with
MISC. APPLICATION NO. 291/445/2017

Order reserved on 08.01.2021

DATE OF ORDER: 13.01.2021

CORAM

HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER

Mrs. Arushi Rai W/o Arani Guha Resident of Flat Number SA, Plot Number 32, Vrinda Apartment, Gopalpura, Jaipur-302015. Group A Officer presently posted at GSI, WR, Jaipur (Raj.).

Employment Details:
Employee ID: 121215
Group A Officer,
Designation: Geologist.
Place of Posting: Western Region, Rajasthan
Geological Survey of India
Khanij Bhawan,
15-16 Jhalana Institutional Area, Jaipur – 302015,
Rajasthan.

....Applicant

Shri Anil Khanna, counsel for applicant (through Video Conferencing).

VERSUS

Union of India through Director General (Acting),
Ministry of Mines, Geological Survey of India, 27, J.L.
Nehru Road, Kolkata – 700016 West Bengal.

....Respondent

Shri Kinshuk Jain, counsel for respondent (through Video Conferencing).

ORDER

Per: Hina P. Shah, Judicial Member

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

"In view of the above it is humbly and respectfully prayed that this original application may kindly be allowed and this Hon'ble Tribunal may please to Quash and Set aside the impugned Memorandum No. 10099/C-13013/16/AR/Admn.Vig/2007 dated 22-09-2016 issued by the Respondent as clearly illegal and arbitrary and to pass such other and further order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

2. The brief facts of the case, as stated by the applicant, are that she is serving in Western Region as Group 'A' officer since 2013. She was served with a Memorandum of charges dated 22.09.2016 under Rule 14 of the CCS (CCA) Rules, 1965 for the incidence which occurred in 2015 and January 2016. The said charge sheet consisted of 05 charges, which was issued malafidely by respondent on false and flimsy grounds to harass her. She denied all the charges vide her letter dated 13.10.2016 (Annexure A/5) as the same were baseless. Thereafter, respondent vide

order dated 14.02.2017 appointed Inquiry Officer, who is direct subordinate and reporting officer to Additional Director General and HoD of Western Region, Jaipur against whom applicant has made complaint. As the charges levelled against the applicant are not so grave, which warrant invocation of Rule 14 of the Rules, 1965 and as the charges do not show any instance of misconduct, therefore, the charges levelled against the applicant are illegal, unjustified and unsustainable in law and the same deserve to be quashed and set aside.

3. This Tribunal issued notice to respondent and vide its order dated 19.04.2017 passed interim orders wherein it was clearly stated that "In the interregnum, the inquiry and other proceedings against the applicant will be kept in abeyance until further orders". The said Interim Relief is continued till date.

4. The respondent after issue of notice has filed reply and stated that since the applicant was indulged in gross misconduct and dereliction of duties, a prima facie case was established against her and, accordingly, she was issued with a charge

memorandum under Rule 14 of CCS (CCA) Rules, 1965 containing 05 Articles of charges affording an opportunity to the applicant to submit her written say. As the charges were denied by the applicant vide her representation dated 13.10.2016, Inquiry Officer and Presenting Officer were appointed to enquire into the charges framed against the applicant. Without co-operating with the Inquiry Officer and getting the inquiry completed, the applicant approached the Tribunal. Since filing of the present O.A., it is premature, the said O.A. deserves to be dismissed and the interim orders passed by the Tribunal deserve to be vacated.

5. The respondent has filed an M.A No. 291/445/2017 for vacating the stay order dated 19.04.2017. In the said M.A., the respondent pointed out that the Tribunal was pleased to grant ex-parte interim orders staying the enquiry and other proceedings against the applicant and the same was to be kept in abeyance. As the Department is unable to proceed in the matter because of the stay, they prayed that as per the balance of convenience, which lies in their favour, they may be allowed to proceed further as per rules

otherwise they may face great difficulty to take step against those who have been levelled with charge of gross misconduct and dereliction of duty.

6. Heard learned counsels for the parties through Video Conferencing and perused the material available on record and also the judgments produced by the parties.

7. The learned counsel for the applicant vehemently argued that there are two main grounds for quashing and setting aside the charge memorandum. The first ground is that the charges are not grave in nature, which warrant invocation of Rule 14 of the CCS (CCA) Rules, 1965. As the charges do not show any instance of misconduct on the part of the applicant as alleged by the respondent as defined under Rule 3 of the Central Civil Services (Conduct), Rules, 1964 as well as Government of India orders published by GI, MHA, DP&AR 3rd Ed, 1980, in fact, it clearly shows the malafide intention of the respondent. The second ground raised is that the immediate superior cannot be appointed as an Inquiry Officer, only a disinterested person shall be appointed as an Inquiry

Officer. An Inquiry Officer has to be an independent person, free from all influences which may otherwise prejudice the case of a delinquent employee. Therefore, the two grounds raised are sufficient for the charge memorandum to be quashed as the same is clearly illegal and arbitrary.

8. On the other hand, the learned counsel for the respondent stated that the present O.A. is premature. The charges levelled against the applicant are necessary to be dealt in the inquiry proceedings as the applicant is indulged in grave misconduct, which is evident from Annexures of Memorandum dated 22.09.2016 which can be only decided in an Inquiry giving reasonable opportunity to the applicant to prove herself innocent and after following due procedure as per rules provided she co-operates in the inquiry. The charges are correctly dealt with as per Rule 14 of the CCS (CCA) Rules, 1965. Pertaining to the second ground, it is stated that as per rule, the Inquiry Officer should be in higher rank of the Geologist. As the applicant is holding the rank of Geologist, therefore, a person higher in rank i.e. Director (G) has been appointed as Inquiry Officer in

terms of sub rule (2) read with sub rule (16) & (17) of Rule 14 of the CCS (CCA) Rules, 1965 and the same is maintainable as the same is in consonance with the statutory provisions of corresponding rules. Mere raising a plea that the Director (Geologist) is a direct subordinate and reporting officer to ADG & HOD, WR, Jaipur cannot be a ground to state that he cannot be an Inquiry Officer. The applicant has to prove the malafides against him. Mere alleging that he is biased without enclosing any complaint cannot be a ground to state that the Inquiry Officer, Shri Bharat Singh Jodha cannot be appointed. The respondents stated that as their action is just and proper and in consonance with the relevant provisions, rules and instructions on the subject, the interim stay needs to be vacated at the earliest in the interest of justice and the impugned order passed by the respondents need no interference.

9. On careful consideration of the arguments of learned counsel for the parties and pleadings on record, we find that the applicant's main contention is that the 05 charges levelled against her as per the Memorandum of charges dated 22.09.2016 are not

that grave for which Rule 14 of CCS (CCA) Rules, 1965 have to be invoked. As seen the applicant after being served with the charge memorandum for 05 charges which include gross misconduct and dereliction of duties, a prima facie case was made against the applicant by the respondent. She was given an opportunity to submit her defence and was asked whether she desired to be heard in person. Though she submitted her defence but was silent on the issue of being heard in person. As the Disciplinary Authority found that the charges are grave, a Charge Memorandum under Rule 14 of CCS (CCA) Rules, 1965 was issued. Sub rule (1) Clause (ii) and (iii) of Rule 3 of CCS (Conduct) Rules, 1964 stipulates that "every Government Servant shall at all times maintain devotion to duty and do nothing which is unbecoming of a Government Servant." After going through the charge memorandum along with the annexures, prima facie case has rightly been made against the applicant and so she was rightly served with a charge memorandum as per rules. Therefore, the first ground raised by the applicant that she cannot be served with a charge memorandum under Rule 14 of CCS (CCA) Rules, 1965 cannot be accepted. Pertaining to the

second ground raised that Shri Bharat Singh Jodha, Director (Geologist) cannot be appointed as an Inquiry Officer, it is seen that the applicant is a Geologist and the Inquiry Officer as per rules has to be higher in rank than her. The allegation made by the applicant that Inquiry Officer is a direct subordinate and reporting officer to Shri A. Thiruvengadam, Additional Director General & HoD, Western Region, Jaipur against whom she has made a complaint, does not lay weight on her argument in absence of any material to prove the same as all the officers posted under ADG have to perform duties as assigned. Therefore, merely raising a plea that he is biased cannot be accepted. No complaint whatsoever stated to have been made by the applicant against the said Inquiry Officer is neither annexed to the OA nor submitted along with her defence to the charge memorandum. Therefore, the second ground raised by the applicant also does not call for any interference.

10. It is well established that there is a limited scope available to the Courts/Tribunal to assail the validity and correctness of the charge sheet. It is quite possible that after considering the reply to the show

cause notice or after holding the inquiry, the authority concerned may drop the proceedings and / or hold that the charges are not established. In the present case, no malafides on the part of the respondent can be seen as he has rightly followed the rules in this regard and has given the time to the applicant to put her defence to the charge memorandum along with a chance of being heard in person as per rules. It is seen that the applicant instead of allowing the Inquiry Officer to proceed further in the inquiry, has obtained ex-parte stay order over the inquiry. It is clear that the Courts/Tribunal cannot take over the functions of the Disciplinary Authority and it has no jurisdiction to go into the correctness of the charges. The Courts/Tribunal can interfere only if the charges framed against the delinquent employee show no misconduct or the charges framed are contrary to law or there is violation of principles of natural justice or to correct errors of law or procedure.

11. The issue involved in the present O.A. is no longer res integra as the Hon'ble Supreme Court in a catena of decisions have made it clear that the correctness or truth of the charge is the function of the Disciplinary

Authority and not that of the Courts. The Hon'ble Apex Court has even gone to the extent that Courts cannot interfere even at interlocutory stage as held in the case of **Air India Ltd. vs. M. Yogeshwar Raj** reported in 2001 (1) 45 SC AISLJ.

12. As held by the Hon'ble Apex Court in the case of **Union of India and Ors. vs. Upendra Singh** reported in 1994 SCC (L&S) 768, that examining the correctness of the charges particularly at the time of framing of charges, held, beyond the jurisdiction of the Courts. Also similar view was taken by the Hon'ble Apex Court in the case of **Karnataka Bank Ltd. vs. A.L. Mohan Rao** reported in 2006 SCC (L&S) 59. The Hon'ble Apex Court has gone one step further and held that normally the Courts should not interfere even with the punishment awarded by the Disciplinary Authority unless the punishment appears to be shockingly disproportionate as held in the case of **Deputy Commissioner, Kendriya Vidyalaya Sangathan & Ors. vs. J. Hussain** reported in (2013) 2 SCC (L&S) 833.

13. In the conspectus of the aforesaid factual position and legal principles laid down by the Hon'ble Apex Court from time to time, we are of the firm view that the present Original Application does not call for any interference as the impugned memorandum dated 22.09.2016 is just and fair. As the Original Application lacks any merit, the same is dismissed accordingly, leaving the parties to bear their own costs.

14. In view of the observations made above, the interim relief granted to the applicant as on 19.04.2017 is hereby vacated. The Misc. Application No. 291/445/2017 stands disposed of accordingly.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER

Kumawat