

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1639/87.

DATE OF DECISION: 22-5-1992.

P.K. Biswas

....

Applicant.

V/s.

Union of India

....

Respondents.

CORAM:

Hon'ble Mr. P.C. Jain, Member (A).

Hon'ble Mr. J.P. Sharma, Member (J).

Shri Raj Panjwani, counsel for the applicant.

Shri P.H. Ramchandani, counsel for the respondents.

....

1. Whether Reporters of local papers may be allowed to see the judgment? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the judgment? *No*
4. To be circulated to all Benches of the Tribunal? *No*

J. P. Sharma
(J.P. SHARMA)
MEMBER (J)

P. C. Jain
(P.C. JAIN)
MEMBER (A)

31

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1639/1987. DATE OF DECISION: May 22, 1992—

Shri P.K. Biswas / Applicant.

V/s.

Union of India Respondent.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

Shri Raj Panjwani, counsel for the applicant.
Shri P.H. Ramchandani, Sr. counsel for the respondents.

JUDGMENT

(delivered by Hon'ble Mr. P.C. Jain, Member)

By this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who was Income Tax Officer Group 'B' posted at Calcutta, has assailed Memorandum of charge-sheet dated 15-9-86 (Annexure-I) issued to him under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, and has prayed that the aforesaid charge-sheet and the departmental proceedings be quashed.

2. The respondents have contested the O.A. by filing a reply, to which a rejoinder has been filed by the applicant. We have carefully perused the material on record and also heard the learned counsel for the parties. For facility of proper appreciation of the contentions of the rival parties, the Articles of Charge levelled against the applicant are reproduced below: —

" ARTICLE OF CHARGE- I.

Shri Prabhat Kumar Biswas, son of late Nil Ranjan Biswas, at present resident of Ichapur, District - 24 - Parganas, West Bengal while working as I.T.O. Addl. A-Ward, Sambalpur, Orissa was proceeded against under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules for which charge was framed against him

Ce

after preliminary enquiry. After framing of charges, the same was served on him. Shri Biswas neither denied nor admitted the charges. An inquiry Officer was duly appointed by the then Disciplinary Authority, namely, C.I.T. Orissa, Bhubaneswar to inquire into the charges and statements of imputation of misconduct relating to the charges. When Shri Biswas was specifically confronted with the charges he moved the Hon'ble Orissa High Court and the Hon'ble Orissa High Court directed that Shri Biswas shall be allowed inspection of the documents on the basis of which the charges were framed and proposed to be used as evidence to prove the charges against Shri Biswas subject to which the proceedings before the Inquiry Officer can continue. Meanwhile, Shri P.K. Biswas was transferred from Orissa Charge to Calcutta and he was relieved from Orissa Charge on 1.7.1983. Shri Biswas while posted as I.T.O., Judicial-VII, Calcutta was allowed inspection of the aforesaid documents at Bhubaneswar by Shri R.N. Dash, I.T.O., Head Qrs., (Administration on behalf of the C.I.T., Bhubaneswar, Orissa and the inspection was allowed in the presence of Shri T.L.N. Rao, Inspector as well as Shri R.N. Dash, I.T.O., Head Qrs., (Administration) himself. During the course of the said inspection starting from 3.2.86 on or around 6.2.86, Shri Biswas removed, in an unauthorised manner certain documents from the files containing documents on the basis of which the charges were framed against him. The documents removed by Shri Biswas in an unauthorised manner are as under: -

From -

(1) File marked (4) containing
IIT's reports.

p.13, p.83 and p.84.

Ce

- | | |
|----------------------------|--|
| (2) File marked "PKB-11" - | Page-3. |
| (3) File "PKB-2" - | Pages 1 to 15. |
| (4) File "PKB-9" | Page-9. |
| (5) File "PKB-8" - | Page - 72, page 114. |
| (6) File "PKB-1" | 6 (six) pages out of total number of 8(eight) pages. |

" In other words, Shri Biswas removed property of the Government from its lawful custody in an unauthorised manner, which fact he admitted in the preliminary enquiry. Accordingly, Shri Biswas displayed lack of absolute integrity and devotion to duty which amounted to a conduct unbecoming of a Government servant, particularly of a Government Officer employed in a responsible capacity as an Income Tax Officer.

" ARTICLE OF CHARGE-2.

The said Shri P.K. Biswas, in addition to the removal of the documents mentioned in Article of Charge- above, viz., "Items 1 to 6 in an unauthorised manner, in course of inspection allowed to him, also caused tampering of some of documents as under: -

On the cover of the file marked "PKB-1" 'B' pages were mentioned originally and the papers at pages '5' and '6' were stated within brackets, as incriminating papers. Shri P.K. Biswas interpolated Nos. '8' as No. '2' and re-numbered '5' and '6' as Nos. '1' and '2' respectively. Out of the '8' pages, '6' pages have been removed by him and the remaining '2' pages originally numbered as '7' and '8' have been re-numbered as '1' and '2', thus making it look as if the remaining '2' pages were originally the 1st and 2nd item in the file so that removal of the '6' pages by him cannot be normally noticed and detected. Accordingly, Shri

Ce

Biswas displayed by his above act of tampering with document, lack of absolute integrity and devotion to duty. As a result thereof, he displayed conduct unbecoming of a government servant - more particularly of a Government officer employed in a responsible capacity as an Income Tax Officer.

" ARTICLE OF CHARGE-3.

While Shri Biswas was confronted with the fact that he removed during the course of his inspection in an unauthorised manner, papers from the files containing the documents which he was allowed to inspect, he tried to prevent Shri T.L.N. Rao, Inspector, present there, in course of his inspection of files, from reporting the matter to the higher authorities by offering bribe to the said Inspector, Shri T.L.N. Rao. By such conduct on his part Shri Biswas displayed lack of absolute integrity, devotion to duty and thus displayed conduct unbecoming of a government officer employed in a responsible capacity as an Income Tax Officer.

" ARTICLE OF CHARGE-4.

Shri P.K. Biswas, ITO as above, in course of his inspection, after removal of the documents, in an unauthorised manner, from the lawful custody of the Government tried to destroy them and actually destroyed some of them out of the papers marked by Shri R.N. Dash, ITO., Head Qrs. (Administration) Orissa as 'RND-1' in the presence of Shri T.L.N. Rao, Inspector and other I.T. officials. Thus, Shri Biswas attempted to destroy evidence and actually destroyed, inter-alia, some evidence on the basis of which charges were framed against him. Accordingly, Shri Biswas displayed lack of absolute integrity and devotion to duty and behaved in a way which was unbecoming

cc.

of a government servant - more particularly of a government officer employed in a responsible capacity as an Income Tax Officer.

" ARTICLE OF CHARGE-5.

Shri Biswas, ITO displayed a culpable guilty mind in the course of his act of unauthorised removal of documents from the lawful custody of the Government and destruction of some of the evidence, as it is seen from preliminary enquiries. This conduct on the part of Shri Biswas clearly constitutes moral turpitude and hence a conduct unbecoming of a Government Servant - more so of a Government Officer who was holding a responsible post, as an Income Tax Officer. "

2. The brief background in which the impugned Memorandum of charge-sheet was issued is narrated in Article of Charge No.1 itself. Very briefly put, the applicant has been charged for misconduct by way of tampering removal, destruction etc. of Government records and for attempting to bribe the departmental officials, who was entrusted with the responsibility of allowing inspection of record to the applicant, with a view to persuading him not to report the matter to the higher authorities. The respondents had lodged a complaint with the police, who registered a case of theft under Section 380 I.P.C. The applicant was arrested but next day he was released on bail. The Investigating Officer submitted his final report under Section 173 of the Code of Criminal Procedure with the following conclusion: -

" As such, this is a case u/s 380 I.P.C. having no sufficient evidence for charge sheet and I returned the case as F.R.I. (Insufficient evidence for charge sheet) and submitted final report No.46 dated 28-2-86 under Section 380 I.P.C. with a prayer to accept the case as such."

On the basis of the above report, the learned Sub Divisional
Ce.

Judicial Magistrate, Bhubaneswar passed the following order on 15-3-86: -

"Seen the F.R. No.46 dated 28-2-86 u/s 380 I.P.C. The case is true u/s 380 I.P.C. Insufficient evidence for charge sheet, property stolen - Some documents, Property Recovered - Nil - Final Report is accepted."

It may also be stated here that the applicant has devoted a considerable part of his pleadings in this case to the issue of suspension order passed on 18.2.1986, which was revoked on 10.12.86 in pursuance of the Tribunal's order dated 10.11.86, as also a fresh suspension order which was passed on 11.12.1986. The suspension order dated 18.2.1986 was passed in view of the pendency of a criminal offence under investigation. As the criminal case under investigation was closed, as already explained above, the Tribunal directed revocation of the above suspension order, which was revoked by the respondents. However, a fresh order of suspension was passed in view of the pendency of the disciplinary proceedings which are impugned in this O.A. In this O.A., we are really not concerned with the issue of suspension as the applicant has filed a separate O.A. in that connection.

3. The main ground of attack taken by the applicant in this case is that the facts of the Memorandum of charge-sheet and the Articles of Charge therein are similar / identical to those of First Information Report lodged by the respondents with the police and as the proceedings in pursuance to the F.I.R. resulted in his discharge on merits, the respondents cannot initiate departmental proceedings on the same alleged facts. It is in this context that the applicant has also stated that the charge-sheet and the departmental proceedings are mala-fide, that they have been initiated to harass the applicant, that the officers are biased and vindictive, and that these proceedings are without

Cen.

jurisdiction. In his rejoinder, the applicant has stated some additional grounds. It is stated that a long gap between the date of occurrence, i.e., 6.2.86 and the date of charge-sheet, i.e., 15.9.86 on the same allegations indicates closed mind and bias on the part of the disciplinary authority and that the respondents prepared a false case against the petitioner during this period of time. It is also stated that the respondents prepared false grounds to initiate disciplinary proceedings out of malice and anger because he had filed Civil Writ Petitions No.2231/85 and 2229/85. It is further stated that no memorandum of charges could have been legally drawn under Rule 14 of the C.C.S. (C.C.&A.) Rules, 1965, as there were no prima-facie irregularities which could be said to have been committed by the applicant. He denies the allegations which are the subject-matter of the impugned Memorandum of charge-sheet. It is his further case that a F.I.R. covering all the allegations was lodged with the police and the police after thorough investigation into all the allegations submitted final report, which was accepted by the competent Magistrate, which shows that he was prosecuted and acquitted. He has, therefore, pleaded that he cannot be proceeded with after his prosecution and acquittal in the criminal case on the same facts. It is also pleaded that the words "insufficient evidence" ^{which} occur in the Final Report dated 28.2.86 and in the Magistrate's order dated 15.3.86 mean only that there was "no evidence". The applicant has also taken in his rejoinder another ground to the effect that he is entitled to protection of the provisions of Article 20(2) of the Constitution which says that no person shall be prosecuted and punished for the same offence more than once. Still another ground taken by the applicant in his rejoinder is that the disciplinary authority had already prejudged the issue and had a closed mind even at the stage of framing the charges.

(Ces)

4. We have given our careful consideration to the contentions of the applicant. It is well settled by now that there is no bar in law for simultaneous proceedings for a criminal offence and for disciplinary proceedings under the relevant statutory rules (KUSHESHWAR DUBEY Vs. BHARAT COKING COAL LIMITED & OTHERS - AIR 1988 S.C. 2118). It may also be stated here that offence under Section 380 IPC is not equivalent to the Articles of Charge which have been levelled against the applicant in the impugned Memorandum of charge-sheet. The contention of the applicant in his rejoinder that the report lodged by the respondents with the police contained all the allegations is not tenable in view of the case having been registered under Section 380 IPC only and the final report submitted by the Investigating Officer only in that regard. The orders of the competent Magistrate accepting the final report also relate to the case registered under Section 380 IPC. It is pertinent to mention that the Magistrate, in his order dated 15.3.86 had said that the case under Section 380 IPC is true, but for insufficient evidence, he had accepted the final report. It is also necessary to note that submission of final report under Section 173 of the Code of Criminal Procedure and its acceptance by the Magistrate having jurisdiction in the matter neither amounts to prosecution nor acquittal of the accused. Under the provisions of Section 173 of the Code of Criminal Procedure, if after completion of the investigation, the Investigating Officer finds that there is no sufficient evidence or reasonable ground, he may submit a final report. If there is sufficient evidence or reasonable ground, to place the accused on trial, he is to take necessary steps therefor under Section 170 of the Code of Criminal Procedure and in such a case, he has to submit the charge-sheet to be used when the accused is sent up for trial. It was held in the case of Wazir v. Babu, 1983 Cr. LJ 1922 (P&H); Narayan v.

State, (1972) 74 PIR 297 (D) that the order of discharge passed by the Magistrate on the police report does not amount to acquittal nor is a final order and cognizance on the same facts on the basis of a private complaint is not barred. Section 173 of the Code of Criminal Procedure refers to "investigation" and the word "investigation" as defined in Section 2 (h) of the Code of Criminal Procedure includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf. Investigation is a normal preliminary to an accused being put up for trial for a cognizable offence. Moreover, during investigation by the police, evidence cannot be taken on oath; even the statements of the witnesses made to the police are not required to be signed. The terms 'prosecution and trial' and 'acquittal or conviction' form part of the judicial proceedings which, as defined in Section 2(i) of the Code of Criminal Procedure include any proceeding in the course of which evidence is or may be legally taken on oath.

5. In this view of the matter, we have no hesitation in taking the view that the submission of final report by the police and acceptance thereof by the Magistrate having jurisdiction ^{to} take cognizance of the offence do not amount either to prosecution or trial or acquittal in the facts of the case.

6. As regards the plea of violation of Article 20(2) of the Constitution, according to which, no person shall be prosecuted and punished for the same offence more than once, it is necessary to note that the question of prosecution does not arise in connection with disciplinary proceedings in which a penalty may be imposed and not a punishment as the term is understood in legal parlance.

Moreover, it was held by a Five-Judge Bench of the

Ce

Supreme Court as early as in 1954 in the case of S.A. VENKATARAMAN Vs. UNION OF INDIA (A.I.R. 1954 SC 375) and again in the case of THOMAS DANA Vs. STATE OF PUNJAB (AIR 1985 SC 119) that protection of Article 20(2) of the Constitution does not extend to ~~xxx~~ disciplinary proceedings. We have, therefore, no hesitation in taking the view that there has been no violation of Article 20(2) of the Constitution.

7. A perusal of the pleadings of the parties in this case leaves us with a clear view that the contention of the applicant that the issue of the impugned Memorandum of charge-sheet is mala-fide or vindictive or biased, is not at all sustainable. If a Government servant has committed some misconduct in violation of the relevant conduct rules, the disciplinary authority is competent under the relevant statutory rules to initiate disciplinary proceedings. Initiation of such proceedings in itself cannot amount to either malafide or malice in law or vindictive or biased. Of course, if the allegations are not established, no penalty can be imposed on a Government servant. The process of initiating disciplinary proceedings is primarily with a view to give to the charged Government servant an opportunity to establish his innocence. Such a course of action is really a part of the observance of the principles of natural justice, which is mandated by the provisions of Article 14 of the Constitution. The charges levelled against the applicant read with the imputations of misconduct on the basis of which these have been framed undoubtedly show that these are fairly grave.

8. In the light of the foregoing discussion, we see no merit in this O.A., which is accordingly dismissed, leaving the parties to bear their own costs.

J.P. Sharma
(J.P. SHARMA)
MEMBER (J)

P.C. Jain
(P.C. JAIN)
MEMBER(A)

22/5/92