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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

D.A.No.622/90.

Date of decision: 08-1-93.

R.Y. Sharma

...Applicant

Versus

Union of India & Others

...Respondents

CORAM:

THE HON'BLE MR. JUSTICE V.S.MALIMATH, CHAIRMAN.
THE HON'BLE MR. S.R.ADIGE, MEMBER(A).

For the applicant ...

Shri J.P.Verghese, Counsel

For the respondents ...

Shri P.P.Khurana, Counsel

JUDGMENT(ORAL)

(By Hon'ble Mr. Justice V.S.Malimath, Chairman):

The principal grievance of the petitioner in this case is two fold - one that the chargesheet could not incorporate new items of allegations of misconduct which did not exist as on the date of the order of his suspension and secondly, that the 3rd respondent, Shri D.D.Guha, the disciplinary authority, being prejudiced against him, the action initiated against him in his case is vitiated by mala fides.

2. The petitioner was working as Horticulturist Gr.I in Taj Mahal, Agra, in Utter Pradesh. He was kept under suspension on 13-8-1987 pending contemplation of disciplinary proceedings against the petitioner. On the 8th of December, 1987, a chargesheet was issued in regard to several alleged misconducts

committed by the petitioner. The petitioner gave his reply in February, 1988. The order of suspension was revoked on the 8th of July, 1988. The petitioner was transferred from Taj Mahal, Agra to Fatehpur Sikri. The petitioner's case is that he joined in pursuance of the order of transfer on 13-7-90. In the meanwhile, he had filed this Original Application on 22-3-90 and an interim order came to be made restraining the respondents from giving effect to the order of transfer, on 24-8-90, obviously without the Tribunal being made aware of the action taken by the petitioner in the meanwhile to obey the order of transfer and his joining at Fatehpur Sikri on 13-7-90. It was explained to us that the petitioner has thereafter proceeded on medical leave.

3. So far as the first contention is concerned, it was contented by Shri Verghese that after the order of suspension, the authorities could not incorporate in the charge memo any misconduct that might have taken place after the order of suspension. It is not possible to accept this contention. There is no bar, legal or otherwise, for issuing a chargesheet in respect of misconducts committed by the delinquent official on any day prior to the issue of the chargesheets. The order of suspension cannot be regarded as restricting the scope and ambit of the powers of the disciplinary authority in the matter of issuing a chargesheet. As a matter of fact, keeping a delinquent official under suspension is not a pre-requisite for initiating a disciplinary enquiry. Hence, it is not possible to accede to the contention that in the charge-
sheet issued against the petitioner, misconduct committed subsequent

to the order of suspension could not have been included. Hence, the first contention fails.

4. The second ground put forth by Shri Verghese, learned counsel for the petitioner, is that the disciplinary authority Shri D.D.Guha, respondent no.3, Chief Horticulturist at Taj Mahal, Agra is prejudiced against him and, therefore, the disciplinary proceedings are vitiated by mala fides. It was submitted that in a criminal case against Shri D.D.Guha, a summon was issued to the petitioner to give evidence on 20-8-87. It is his case that Shri Guha tried to persuade him not to give evidence against him. It is his further case that the petitioner was not willing to accede to the request of Shri Guha. It is also submitted by Shri Verghese that the petitioner did go and gave evidence in the criminal case. Shri Khurana, learned counsel appearing for the respondents, submitted that we should not go into the plea of mala fides based on the allegations against Shri Guha primarily for the reason that the petitioner has not taken any such plea in the Original Application filed by him before the Tribunal. Shri Verghese, apart from advertizing to our attention to the general allegations of bias, could not point out any allegation made against Shri Guha in regard to giving of evidence in the criminal case. Shri Verghese then invited our attention to the allegations made by the petitioner in the rejoinder filed by him. Shri Khurana states that rejoinder is not a proper pleading and that the petitioner could not bring facts which were well within the knowledge of the petitioner at the time of filing of Original Application. He further submitted that Shri D.D.Guha did not in the circumstances

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have a proper opportunity of repelling these allegations.

Shri Varghese then invited our attention to the fact that such allegations were made by him in his reply to the allegations in the chargesheet itself. Our attention was also drawn to the statement made by Shri Guha in reply to MP 3647/91 filed in this Original Application wherein he has met these very allegations. He has stated therein that the allegation that the petitioner was witness in a criminal case against respondent no.3 and as such he was influencing to Respondents No.2 and 1 is not correct and baseless. He has further stated that the petitioner was found to have misappropriated the Government money and tampering with official records by the immediate officer based on the report of which the Respondent No.3 who is the disciplinary authority had instituted disciplinary action against him in accordance with rules. It is further alleged that the petitioner, therefore, filed a false criminal case against the Respondent No.3 which was dismissed by the Chief Judicial Magistrate, Agra. It is in this background that the 3rd respondent has alleged that the petitioner is trying to induce facts which have no relevance. Whereas the petitioner alleges that respondent No.3 tried to induce him not to give evidence in a criminal case levelled against him, respondent No.3 has taken the stand that because of the action taken by him on the report of the other officer, the petitioner initiated criminal proceedings against respondent No.3 which ultimately came

to be dismissed. We need not detain ourselves to ascertain which of the two versions is true.

5. In the circumstances, we are inclined to take the view that there is scope for the petitioner to apprehend that he will not get justice at the hands of respondent no.3, the disciplinary authority. The enquiry is at the very initial stage. However, we make it clear that the appointment of the Enquiry Officer is not vitiated in any manner. The Enquiry Officer has yet to record the evidence and submit his finding. It is only thereafter that the role of the disciplinary authority would come into play on the basis of the Enquiry Officer's report and to decide the punishment to be imposed if he holds the petitioner guilty. What we are, however, satisfied is that further enquiry should be held in such an atmosphere which gives an impression to the mind of the petitioner that he has a fair deal. This can conveniently be achieved by our instructing Shri Guha not to function hereafter as disciplinary authority in regard to this case. If he has already ceased to be in office at Agra by this time, no further question arises. If he, however, still continues to be the disciplinary authority, it is enough for us to say that he shall not function as disciplinary authority and the competent authority shall nominate anyone else other than Shri Guha to act as the disciplinary authority for taking further action under ✓ the relevant rules. This, in our opinion, would sufficiently

meet the ends of justice.

6. For the reasons stated above, this application is disposed of with the direction that the enquiry shall be proceeded with in accordance with law but, Shri D.D.Guha, Respondent no.3, shall not function hereafter as disciplinary authority in respect of this case. If he is still functioning as disciplinary authority in respect of this case, the superior authority shall take necessary steps to nominate some - one else as the disciplinary authority. The person so nominated by the appropriate authority shall have due competence to pass appropriate orders as the disciplinary authority, in respect of this case. The enquiry shall be proceeded with as expeditiously as possible. So far as the suspension allowance and back wages during the pendency of this case are concerned, we leave it to the petitioner to work out his rights in accordance law. No costs.

Thirumalai

Anil
(S.R. ADIGE)
MEMBER(A)

(V.S. MALIMATH)
CHAIRMAN

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