CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2507/2004

New Delhi, this the 13th day of **October**, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A. Singh, Member (A)

Shri S.S.Mahapatra
S/o Shri G.C.Mahapatra
R/o D-1, 181, Satya Marg
Chanakya Puri
New Delhi. ... Applicant

(By Advocate: Ms. Nandita Rao)

Versus

1. Union of India through
Cabinet Secretary
Government of India
Rashtrapati Bhawan
New Delhi.

2. Secretary
Research and Analysis Wing(RAW)
Cabinet Secretary
Government of India
Room No.7, Bikaner House Annexe
Shajahan Road
New Delhi. .... Respondents

O R D E R(Oral)

By Mr. Justice V.S.Aggarwal:

The applicant seeks quashing of the statement of Articles of Charge and the order of 20.9.2004 by which an Inquiry Officer had been appointed. At this stage, it would be relevant to refer to the Articles of Charge that have been served to the applicant. The same reads:

> "Shri Sudhansu Sekhar Mahapatra, Director posted at Hqrs. New Delhi w.e.f. 21/01/2000 committed the following acts of misconduct:-
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> **ARTICLE OF CHARGE-I**
>
> That the said Shri S.S.Mahapatra, Director, unauthorisedly retained photocopies of certain pages of a "Top Secret" classified document, namely "NGO Hand Book of Administrative Instructions".

By his aforesaid act, Shri S.S.Mahapatra has violated the provisions of para 30(a) and (b) read with para 37 (b) of the Departmental Security Instructions and has also conducted himself in a manner unbecoming of a Government servant, violating the provisions of Rule 3(1) (iii) of the CCS (Conduct) Rules, 1964.

ARTICLE OF CHARGE-II

That the said Shri S.S.Mahapatra, Director, while posted and working at Hqrs. During the aforesaid period, unauthorisedly carried photocopies of the classified material contained in a "Top Secret" official document, namely, "NGO Hand Book of Administrative Instructions", out of the Hqrs. Building premises.

By his aforesaid act, Shri S.S.Mahapatra has violated the provisions of para 36 of Departmental Security Instructions and has also conducted himself in a manner unbecoming of a Government servant, violating the provisions of Rule 3(1) (iii) of the CCS (Conduct) Rules, 1964.

ARTICLE OF CHARGE-III

That the said Shri S.S.Mahapatra, Director, showed the contents of certain pages of the said "Top Secret" official document, namely, "NGO Hand Book of Administrative Instructions" to an unauthorized person and also filed the extracts taken from the same before the Hon'ble Central Administrative Tribunal (CAT), Principal Bench, New Delhi in connection with a Review Application (RA No.156/2003 in OA No.1188/2003) filed by him in the Tribunal.

By his aforesaid act, Shri S.S.Mahapatra has violated the provisions of Rule 11 of the CCS (Conduct) Rules, 1964 and has also conducted himself in a manner unbecoming of a Government servant, violating the provisions of Rule 3 (1) (iii) of the CCS (Conduct) Rules, 1964."

2. We have heard the learned counsel for the applicant. Learned counsel urged that the conduct of the respondents show that the action is mala fide. The articles of charge pertain to certain secret documents. They were allowed to be filed by this Tribunal and that the mala fides of the respondents are patent from the fact that two types of Confidential Reports were being mtaintained.

3. Little more background of the facts can make the position clear. The applicant had filed OA 3268/2002. On 30.1.2003, this Tribunal had dismissed the same with the following findings:

> "4. Now to state that the reports had not been communicated would be of little consequence, as there is no steep fall in the gradation. The entries otherwise were not adverse so as to be communicated. But since the applicant did not meet the benchmark, he was not considered/promoted as Joint Secretary.
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> 5. Resultantly, in accordance with what has been recorded when the matter came up for first hearing, OA fails and is dismissed."

4. He preferred a Civil Writ Petition No.2107/2003 which was decided on 24.3.2003. The same was dismissed as withdrawn with liberty to file a proper application. A Review Application had been filed and this Tribunal on 24.2.2004 had recalled the said order whereby earlier the application was dismissed.

5. MA 2281/2003 had been filed by the respondents contending that certain quoted type secret documents had been filed by the applicant and they should be returned to the respondents. The applicant's counsel had conceded that the same had been filed with the permission of this Tribunal, the order in this regard reads:

> "According to the ld. Counsel of the applicant the same had been filed with the permission of this Tribunal by the applicant. In any case, these documents are relevant for disposal or the review application. A perusal of the record reveals that on 10/09/2003, there was no permission granted for filing such documents, as is clear from the ordersheet. However, since the documents are stated to be filed to dispose off the RA, as they were on record, for the perusal of this tribunal, we dispose of MA 2281/2003 with a direction to the registry that the documents ie handbook Admin____ at page 31 to 43 of the paper book should be kept in sealed cover.
> If necessary, these documents will be considered while disposing of the review application.
>
> 3. MA 2281/2003 is accordingly disposed in RA 156/2003.
> At the request of the respondents, ld. Counsel lists it on 27/01/2004."

6. With these factual facts, one can revert back to the submissions of the applicant's learned counsel.

7. At the outset, we had put it to the learned counsel for the applicant that it would be premature for this Tribunal to consider the merits of the same.The Supreme Court has always taken a view that unless on the face of it the charges

do not disclose any dereliction of duty, there are mala fides or some such considerations, the Tribunal or the Court should be reluctant to quash the chargesheet because at the intervening stage, such an inference is not called for.

8. In the case of **MANAGING DIRECTOR, MADRAS METROPOLITAN WATER SUPPLY AND SEWERATE BOARD AND ANOTHER** v. **R. RAJAN AND OTHERS,** (1996) 1 SCC 338, the Supreme Court held that no interference was called for at an interlocutory stage of the disciplinary proceedings. The findings of the Supreme Court are:

> "7. As rightly held by the learned Single Judge and the Division Bench, no interference was called for at an interlocutory stage of the disciplinary proceedings. The enquiry was no doubt over but the competent authority was yet to decide whether the charges against the respondents are established either wholly or partly and what punishment, if any, is called for. At this stage of proceedings, it was wholly unnecessary to go into the question as to who is competent to impose which punishment upon the respondents. Such an exercise is purely academic at this stage of this disciplinary proceedings. So far as the learned Single Judge is concerned, he did not examine the regulations nor did he record any finding as to the powers of the General Manager, the Board or the Government, as the case may be. He merely directed that in view of the statement made by the learned counsel for the Board, the punishment of dismissal shall not be imposed upon the respondents even if the charges against them are established. When the respondents filed writ appeals, the Division Bench was also of the opinion that this was not the stage to interfere under Article 226 of the Constitution nor was it a stage at which one should speculate as to the punishment that may be imposed. But it appears that the Board insisted upon a decision on the question of power. It is because of the assertion on the part of the appellants (that the Managing Director has the power to impose the penalty of compulsory retirement) that the Division Bench examined the question of power on merits. The said assertion of the Managing Director that he has the power to impose the punishment of compulsory retirement probably created an impression in the mind of the Court that the Board has already decided to impose the said punishment upon the respondents and probably it is for the said reason that they examined the said question on merits. (Insofar as the respondents are concerned, it was their refrain throughout that the Board had already decided to impose the punishment of dismissal/compulsory retirement upon them and that the enquiry and all the other proceedings were merely an eye-wash).

Same was the view expressed by the Supreme Court in the case of **STATE OF PUNJAB AND OTHERS** v. **AJIT SINGH,** (1997) 11 SCC 368 and in the case of **AIR INDIA LTD.** v. **M. YOGESHWAR RAJ,** 2000 SCC (L&S) 710.

9. Even in the case of **DISTRICT FOREST OFFICER.** v. **R. RAJAMANICKAM AND ANOTHER,** 2000 SCC (L&S) 1100, the Supreme Court held that interference is not called for pertaining to the correctness of the charges. The findings are:

> "1..... Learned counsel appearing for the appellant urged that the kind of limited jurisdiction conferred upon the Tribunal, it was not open to the Administrative Tribunal to go into the correctness or otherwise of the charges leveled against the respondents and thereby quashed the charge-sheets issued against them. We find merit in the submission. In *Union of India v. Upendra Singh [(1994) 3 SCC 357]* it was held thus: (SCC p.362, para6)
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> > "6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be."
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> 2. In view of the aforesaid decision we find that the Tribunal was not justified under law to interfere with the correctness of the charges leveled against the delinquent officer. We, therefore, set aside the order and judgment of the Tribunal under appeal. ....."

10. In other words, this Tribunal should not interfere pertaining to the correctness of the charges though this should not be taken as an expression of opinion on the merits but reading the charges which we have reproduced above, it

cannot be stated that the same do not draw any dereliction of duty. Therefore, it would be improper for us to interfere at this stage.

11. As regards the fact as to if the documents were filed with the permission of the Court, we have already reproduced above the order passed by this Tribunal in the MA that no such permission had been obtained.

12. In fact, the first Article of Charge does not even relate to that fact. It relates to unauthorisedly retaining the photocopies of the top secret classified documents and the second charge pertains to unauthorisedly carrying photocopies of the classified top secret documents. Consequently the plea so much thought of, in the facts of the present case can hardly cut any ice. It was urged that the Articles are mala fide, but at this stage, in the absence of any specific material, it will be difficult for this Tribunal to impute mala fides. We hasten to add that if subsequently any such fact is proved, it can be taken note of but detailed opinion at this stage would be putting cart before the horse.

13. The facts indicate that reply to the charge has been filed. An Inquiry Officer has been appointed. It would be in the fitness of things that applicant takes all the legal and factual pleas available in law and make recourse under the law, if any adverse order is passed. At this stage, we find no ground to interfere.

14. The OA being without merit must fail and is dismissed in limine.

(S.A.Singh)
Member (A)

(V.S.Aggarwal)
Chairman

/NSN/