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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 1478/2004

This the 14th day of December, 2004

HON'BLE MR. JUSTICE M.A. KHAN, VICE CHAIRMAN (J)
HON'BLE MR. S.A.SINGH, MEMBER (A)

T.Parthasarthy
S/o late S.Totadari Iyengar,
H.No. 105/3, Type V Qrs.,
PCDA Complex Narwal Pain,
P.O.Satwari,
Jammu Cantt.-180003.

(None)

Versus

1. Union of India
through Secretary,
Ministry of Defence,
South Block,
New Delhi-110011.
2. Sh. Tanveer Ahmed,
Director,
Ministry of Defence,
Government of India,
Sena Bhavan, New Delhi.
3. Director General of Defence Estates,
West Block No.4,
R.K.Puram,
New Delhi-110066.

(By Advocate: Sh. K.C.D.Gangwani)

ORDER (ORAL)

By Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

This case was passed over at the first call. Despite waiting and the second call, nobody appears on behalf of the applicant. We are constrained to hear the arguments of the learned counsel for the respondents who is present by virtue of Rule 15 of the CAT (Procedure) Rules. We have meticulously considered the pleadings and the documents submitted.

2. Briefly the facts are that the applicant is a member of Indian Defence Estates Service (IDES). He was promoted to the Senior Time Scale on

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12.5.1988. He was posted at Cantonment Executive Officer, Jabalpur where he functioned till 20.4.1990. He was also assigned the additional charge of the post of Defence Estate Officer, Madhya Pradesh Circle, Jabalpur. During that period he also became eligible for promotion to the next higher administrative grade and was accordingly considered for promotion by the DPC in this meeting held in July, 1992. But the recommendation of the DPC were kept in a sealed cover, allegedly, illegally since no disciplinary proceedings were pending against the applicant. However, on 11.8.1992, applicant was served with a chargesheet which read as under:-

Article-I: Sh. T.Parthasarathy now Dy. Director, Defence Estates, Eastern Command, Calcutta while functioning as Defence Estates Officer Jabalpur Circle, Jabalpur Cantt., during the period from 28.4.1989 to 6.2.1990 issued a letter No. MP/1005/ACQ dated 26.5.1989 to one Sh. Chatra son of Sh. Khusi Lal forsaking Government interest in the land comprising Khasra No. 565/1. village Barkhera Bonder, Tehsil-Huzur, District Bhopal admeasuring 16.89 acres by abusing his official position, with the intention of causing undue gain to Sh. Chatra and corresponding loss to the Government.

By his above acts, Sh. T.Parthasarathy failed to maintain absolute integrity and devotion to duty and gross misconduct unbecoming of a Government servant, thereby violating Clauses (i), (ii) and (iii) of rule 3 of the CCS (Conduct) Rules, 1964."

Article-II: Sh. T.Parthasarathy now Dy. Director, Defence Estates, Eastern Command, Calcutta while functioning as Cantonment Executive Officer, Jabalpur Cantonment during the period 12.5.1988 to 20.4.1990 caused violation of the mandates of Section 181 (3) of the Cantonment Act 1924 by not referring to the Defence Estates Officer, Jabalpur the building plans submitted by Sh. Narbada Prasad Indurkhy and others in respect of constructions proposed on the site of G.L.R.Sy. No.95 of Jabalpur Cantonment for ascertaining whether there was any objection on the part of the Government to such erection or re-erection of buildings on the site. He misguided the Cantonment Board, Jabalpur through motivated advice procured from an Advocate misinterpreting some court judgements, and caused the Cantonment Board to sanction those building plans vide its resolution No.10 dated 30th march, 1990. Shri T.Parthasarthy thus acted in aberration of his normal duty with the intention of causing dishonestly undue gain to Sh. Indurkya and others and corresponding loss to the Government by exploitation of the defence land by the occupancy holders.

2. By his above acts, Shri T.Parthasarathy failed to maintain absolute integrity, devotion to duty and gross misconduct unbecoming of a Government servant, thereby violating clauses (i), (ii) and (iii) of rule 3 of the CCS (Conduct) Rules, 1964.

3. The enquiry officer in his report held that the applicant was misguided by his subordinate officer and had no mala fide intention and that both the Articles of Charge were partly proved against him. The disciplinary authority, Union of India, after having examined the report of the enquiry officer and evidence adduced during the inquiry and after considering the representation submitted by the applicant accepted the finding of the ~~applicant~~ and referred the matter to the UPSC on 27.11.2000 for opinion and consideration. In the view of the UPSC, first Article of Charge was proved. As a consequence, the disciplinary authority imposed upon the applicant major penalty of 'reduction to the next lower grade until he was found fit after a period of 2 years to be expired to the higher grade and on restoration, the period of reduction would operate to postpone the applicant's future increments of pay' (Annexure A-2). Applicant felt aggrieved and challenged this order dated 27.11.2000 by filing the OA-1580/2001. The Tribunal vide its order dated 9.9.2002 quashed the order dated 27.11.2000 and 19.2.2001 but granted liberty to the disciplinary authority to pass a fresh order in accordance with law after considering the report of the enquiry officer as well as the advice of the UPSC. The Tribunal had observed in the order that it would be appropriate if a decision in this regard is taken preferably within six months from the receipt of a certified copy of the order (Annexure A-3).

4. After more than one and a half year of the said order, the respondents have issued memorandum dated 10.2.2004 which is alleged to be without any authority and the same was illegal, arbitrary and bad in law. Applicant sought the relief for quashment of the memorandum dated 10.2.2004 (Annexure A-1) on the following grounds:-

- (i) It has been issued without appropriate authority and it was, therefore, unauthorized, incompetent and was liable to be quashed and set aside.
- (ii) The respondents had no authority and power either under CCS (CCA) Rules or any other relevant law to issue the impugned order

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and the same, therefore, was ultra vires the powers of the respondents and it was, therefore, arbitrary and bad in law.

- (iii) The order has not been passed in accordance with law and the same is bad in law and liable to be quashed and set aside.
- (iv) The order is without jurisdiction as the same has been passed long after the time allowed by the Tribunal has expired and, therefore, not sustainable in law.
- (v) The disciplinary authority has accepted the report of the Inquiry Officer after having fully considered the oral and documentary evidence, therefore, it was not open to them to record this finding of the Inquiry Officer. Therefore, the impugned order was bad in law.
- (vi) There was no fresh material or evidence before the disciplinary authority to come to different finding than arrived at earlier and therefore, the impugned order is totally perverse and bad in law.
- (vii) The proceedings were initiated in the year 1992 and more than 12 years have elapsed since then. The delay in the process have caused grave prejudice to the applicant and therefore, the impugned order is bad in law.
- (viii) Lastly, as per the penalty order dated 27.11.2000 the penalty period of the applicant has expired in the year 2002 and he was liable for further promotion etc. but in case the impugned memorandum dated 10.2.2004 is allowed to stand it will amount to double jeopardy and will cause grave injustice to the applicant as he will have to further undergo penalty and his future prospects will be totally jeopardized.

5. The respondents contested this OA. It has raised a preliminary objection that the OA was not maintainable. Only a show cause notice in terms of the liberty given by the Tribunal has been issued to the applicant as such the OA was premature. Applicant had not made any representation in response to the show

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cause notice and as such he has not exhausted the remedy available before filing this OA. It was contended that the Tribunal vide its order dated 9.9.2002 had allowed the disciplinary authority to pass a fresh order in accordance with law after considering the report of the enquiry officer and the advice of the UPSC preferably within 6 months from the receipt of the said order. Accordingly, the fresh memo dated 10.2.2004 was issued considering the facts and circumstances of the case including the report of the enquiry officer and the advice given by the UPSC etc. It is further submitted that the name of the applicant was put under sealed cover in the DPC meeting held in July 1992. Later on the review DPC was held on 7.5.1993. The charge sheet was served on the applicant as admitted by him on 11.8.1992 and the procedure of sealed cover was applicable to the applicant. The Government servant who is recommended for promotion by the DPC but in whose case any of the circumstances mentioned in the orders ~~admission is~~ containing sealed procedure arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He would not be promoted until he was completely exonerated of the charges against him and the provisions of Rules in this regard will be applicable to his case. Government was aware of the charge sheet and Vigilance Section of the Ministry would not have cleared the name of the applicant for the DPC on 30.7.2002. It was refuted that the memo dated 10.2.2004 was not issued by the competent authority. It was further contended that the Tribunal vide its order dated 9.9.2002 had not set any specific/rigid time frame for issue of fresh orders but had only stated that the respondents were at liberty to pass a fresh order preferably within six months from the date of receipt of the order. Respondents also submitted that this Tribunal in its order dated 9.9.2002 has not exonerated the applicant of the charges leveled against him but had allowed the OA only on technical grounds.

6. In the rejoinder, applicant has denied the allegations made in the counter.
7. This Tribunal had disposed of the OA-1580/2001 vide order dated 9.9.2002 by passing the following order:-

Second answer

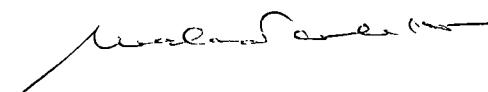
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“ The disciplinary authority would be at liberty to pass a fresh order in accordance with law after considering the report of the Inquiry Officer as well as the advice of the Commission.”

8. In pursuance to this order, the respondents have served a memorandum dated 10.2.2004 (Annexure A-1). The relevant para is reproduced as under:-

“11. Sh. T.Parthasarthy, formerly DEO Jabalpur Cantt may, if he wishes so to do, make a written submission in the matter within 15 days of the receipt of this Memorandum. His submission, if any, will be duly considered by the President before issuing the final orders.”

9. A cursory look at this memorandum is enough to satisfy that it is a mere show cause notice served on the applicant calling upon him to submit his explanation/representation which is to be considered by the disciplinary authority before the finding was recorded and the penalty imposed. It is perfectly in accordance with the order of this Tribunal dated 9.9.2002. In the OA it has been contended that the memorandum has not been issued by a competent authority. The contention is not sustainable. The memorandum is signed by the Director of Ministry of Finance. Paragraph 5 of the memorandum clearly spelt out that it had been issued by that Officer under the order of the President of India. It is not contended that the President of India is not the competent authority and a Director could not have issued the Memo under the order of the said authority. Since it is only a show cause notice, the applicant was a liberty and had a full opportunity to challenge the legality of the memorandum dated 10.2.2004. The reply to this show cause notice and representation, would have been considered by the disciplinary authority before passing the order. The challenge to the show cause notice, to our considered view, is premature. Moreover, the applicant would have raised all available pleas and defence on which he wanted to challenge the memorandum dated 10.2.2004 in this OA to be taken up in the representation/explanation which he was required to submit in reply to the memorandum. They would have been definitely considered by the disciplinary authority before recording his own finding in the proceeding. One of the contention of the applicant is that the respondents had no jurisdiction to issue the respondents order long after the time allowed by the Tribunal. The arguments



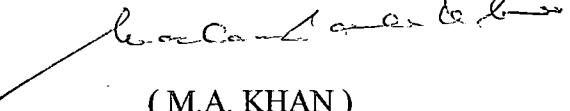
has no force. The Tribunal vide order dated 9.9.2002 had allowed the disciplinary authority to consider the request of the Inquiry Officer and the advice of the UPSC 'preferably within 6 months' from the receipt of the order. The impugned memo was issued on 10.2.2004. The applicant is yet to file reply/representation. The memo impugned in this OA can by no stretch no reasoning can be said to be without jurisdiction. The contention is not tenable in law.

10. We, therefore, refrain from going further into the merit of grounds on which memorandum dated 10.2.2004 is assailed in this OA ~~lest~~ it causes prejudice to any of the parties.

11. But the fact remains that the challenge in this OA is only to a show cause notice, which the disciplinary authority has allegedly served to give an opportunity of hearing to the applicant before recording its own finding on the enquiry report and passing further orders in respect of the penalty to be imposed, if any. The OA, therefore, is premature. It is, accordingly, dismissed as premature. OA is dismissed. No costs.


(S.A SINGH)
Member (A)

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(M.A. KHAN)
Vice Chairman (J)