

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 27th day of April 2007.

Original Application No. 1598 of 2005

HON'BLE MR. P.K. CHATTERJI, MEMBER- A.
HON'BLE MR. S.K. DHAL, MEMBER- J.

J.K. Agrawal, a/a 56 years, S/o Late Hari Narayan Agrawal,
Posted as General Manager, Ordnance Clothing Factory,
Shahjahanpur.

..... Applicant

V E R S U S

1. Union of India through the Secretary,
D/o Defence Production, M/o Defence,
Govt. of India, New Delhi.
2. The Ordnance Factory Board,
M/o Defence, Govt. of India, 10-A,
Shaheed K. Bose Road, Kolkata through
Its DDG and CVO.

..... Respondents.

Counsel for the applicant: Sri Vikash Budhwar
 Sri R.C. Pathak

Counsel for the Respondent: Sri Saumitra Singh

ORDER

By Hon'ble Mr. P.K. Chatterji, AM.

The applicant, who is a class -I Gazetted Officer in Indian Ordnance Factories Service, was served with charge sheet for major penalty vide letter dated 02.08.2005 on the ground that while working as Deputy Director General, Ordnance Factory Board, , he committed irregularity by placing a repeat order for about 11,000 boxes for packing ammunition material after more than 6 months from the date

meeth

19

of original contract. On 22.09.2005, the Under Secretary, Govt. of India, M/o Defence issued an order for departmental inquiry and appointed Sri Rohit Tiwari as the Inquiry Officer to inquire into the charges leveled against the applicant. These are the two orders, which have been impugned by the applicant in the present O.A. The relief sought by the applicant are as follows: -

- A. To set aside/ quash the orders dated 22.09.2005 passed by the respondent No. 1 and the charge sheet dated 02.08.2005 by the respondents;
- B. To issue order or direction in the nature setting aside the inquiry proceedings which is sought to be conducted in pursuance of the order dated 22.09.2005 appointing Sri Rohit Tiwari as Enquiry Officer to conduct the inquiry;
- C. To issue an order or direction in the nature of mandamus directing the respondents to consider the case of the applicant for promotion ignoring the orders dated 22.09.2005 and the charge sheet dated 02.08.2005 w.e.f. 01.09.2006 i.e. the date from which his juniors have been promoted;
- D. To issue any other order or direction as this Tribunal may deem fit proper in the circumstances of the case.

2. The grounds on which the orders have been challenged and the reply thereto filed by the respondents are discussed in the following paragraphs: -

- a. It has been alleged by the applicant that the charge sheet has been issued on allegations, which are factually incorrect and were not committed by him. The applicant has raised various points to counter the allegations made in the charge sheet. However, we are of the view

meeth

26

that these points could be looked in to after appraisal of the matter on technical and legal aspects;

b. It has been alleged by the applicant that on the issue of repeat purchase order of Ammunition Boxes, an inquiry was conducted by the CBI. While the CBI inquiry was conducted, the applicant was never called to appear before the inquiry proceedings. He was never interrogated nor his statement was recorded by the CBI. More over, the CBI, in the list of officers/officials suspected to be involved in the said irregularity, did not include the name of the applicant. In the list, as stated by the applicant, 16 names were included. But the respondents decided not to proceed against them including one Sri P.K. Mishra, who later was promoted and became D.G, Ordnance Factories. The applicant has also given other certain names against whom no action was taken although their names figured in the CBI list.

On these allegations, the respondents have stated that the CBI report contains the name of 11 officers and not 16 as stated by the applicant. After examinations of the CBI report alongwith other records in the Ministry of Defence, the competent authority found that only 7 officers /officials including the applicant had prima facie committed serious lapses in purchase of the boxes. More over, the CBI report was also forwarded to the CVC, which, however, after examining the case in its entirety, advised the respondents to charge sheet the applicant under rule 14 of CCS (CCA) Rules 1965.

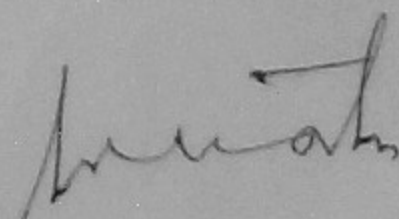
c. The applicant has further stated that the procedure for initiation of proceedings against Group 'A' officer is contemplated in Govt. of India O.M No. F-39/1/69-Estt(A) dated 16.04.1969 and No. 11012/7/79-Estt(A) dated 07.09.1997. From these O.Ms, it would be

M. S. Math

clear that in case of Group 'A' officers, the disciplinary authority is President of India. The initiation of disciplinary proceedings should be approved by the Minister. The competent authority for issuing the charge sheet to Group 'A' officer is the Defence Minister on behalf of the Hon'ble President of India. However, it is alleged by the applicant that the approval of the Minister was not taken. It is alleged by the applicant that the charge sheet was approved by some officer in the Ministry of Defence and issued under the signature of one Under Secretary. Thus, according to the applicant, the action of the respondents is clearly in contravention of relevant rules.

Countering these allegations, the respondents have stated that the approval of the ^{Hon'ble} Minister was taken before issue of the charge sheet against the applicant. ^{Photocopy of approval was furnished by respondents in their written submission} Regarding the authority for issue of disciplinary ^{proceedings}, it was clarified by the respondents that the decision was taken only by the appropriate competent authority. However, there was nothing irregular in the memo issued by Under Secretary for communicating that order. Regarding the competence of an officer of the rank of Commissioner of Inquiry in the CVC to conduct an inquiry against the applicant, who is a much senior officer, the respondents have clarified that conducting inquiry is one matter whereas taking a decision on the basis of inquiry is another matter. The decision should not be taken by an officer below the rank of the officer, who appointed the applicant. In case of officers, who are proceeded for alleged irregularities on the basis of recommendation of CVC, conduct of such inquiry by Commissioner is a common and usual matter and there is no irregularity.

d. It has been alleged by the applicant that after issue of charge sheet, he had made a representation to the respondents to give him a



(20)

personal hearing. Against this submissions, the respondents have stated that as per rules, it is not required to give an opportunity of personal hearing at the stage of issue of charge sheet. No rule provides for the same. The applicant, however, would be given all opportunities during the course of inquiry. Therefore, there was nothing wrong in the action of the respondents.

e. It is also alleged by the applicant that his request for holding a common inquiry against all the suspected officers including him, was also not acceded too. The applicant in his O.A as well as the learned counsel for the applicant during the submissions, cited relevant rules of CCS (CCA) Rules 1965 for common proceedings. It was however, pointed out by the learned counsel for the respondents that although there is a provision for common inquiry proceedings, it is up to the disciplinary authority to decide whether a common inquiry would be advisable and desirable in a particular case. The CCS (CCA) Rules has given this discretion upon the disciplinary authority and therefore, no error was committed by the disciplinary authority in the matter.

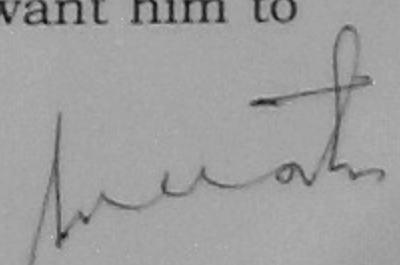
f. Regarding the question of action of the respondents particularly in choosing the applicant for disciplinary action while taking no action against other officer, whose name figured in the CBI list, it has been stated by the respondents that the CBI inquiry was not the final inquiry in the matter. It is not mandatory for the respondents to proceed against all the officers named in the CBI list. It was further scrutinized by the CVC in consultation with the respondents/ Ministry and other documentary and circumstantial factors were also taken in to account and on the basis of that, it was decided to proceed against the applicant. The respondents have very categorically stated that they had not exceeded their powers in issuing the charge sheet. They have

meeth

strongly refuted the allegations that there was malafide in the decision of the respondents in letting off some of the officers, whose name figured in the CBI list and roping in the applicant, whose name did not figure in the list.

g. The applicant has repeatedly stated that there was malice in the decision of the respondents, which is amply clear from the fact that one Sri Sudipta Ghosh, who was accused as per the CVC report, has been exonerated and has been promoted to the post of DG, Ordnance Factories and Chairman, O.F. Board. This would clearly make it evident that the respondents resorted to a practice of pick and choose and they let off the favoured persons. According to the learned counsel for the applicant, the charge sheet can be quashed as the Hon'ble Supreme Court in State of Punjab Vs. V.K. Khanna 2000(5) SLR 734:731: AIR 2001 (SC) 343: 2001(2) SCC 330 has held that "in the event there is an element of malice or malafide motive involved in the matter of issue of a charge sheet, or the concerned authority is so biased that the inquiry would be a mere farcical show and the conclusion are well known, then and in that event, law courts are otherwise justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a public official."

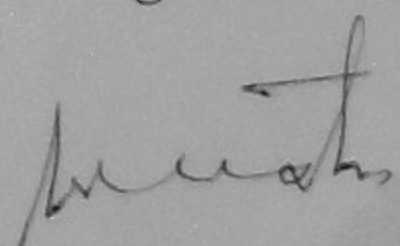
h. It has also been alleged by the applicant that the respondents deliberately delayed the communication of the order of inquiry to him as the DPC for his promotion was to be held on 17.11.2005. The order dated 22.09.2005 for conducting the inquiry against the applicant by Sri Rohit Tiwari, Commissioner of CVC, was communicated to the applicant vide 18.11.2005, which is a ^{day} ~~date~~ after the DPC for promotion was held. It has further been alleged by the applicant that this was a premeditated action of the officer concerned, who did not want him to



be promoted. On this issue, it has been clarified by the respondents that the charge sheet against the applicant was already issued on 20.08.2005, which was also received by him immediately thereafter. Therefore, as per the directives of the Hon'ble Supreme Court in the case of Janki Raman AIR 1991 (SC) 2010, from that date, the applicant is supposed to be under disciplinary proceedings. Therefore, it becomes immaterial as to when the order of Minister was communicated to the applicant. The order, after it was received, was signed by the Chairman, O.F. Board on 12.11.2005. Thereafter it was communicated to the applicant. Therefore, there was nothing preplanned about it nor it is caused any harm to the applicant. On the date of DPC i.e. on 17.11.2005, the case of the applicant had technically gone under sealed cover as per rules. No irregularities were committed by the respondents in the matter.

3. In reply to the points raised by the learned counsel for the applicant Sri V. Budhwar and Sri R.C. Pathak, the respondents further submitted that the applicant has approached this Tribunal prematurely. The respondents are acting within the powers conferred upon them by the relevant rules and he has to face the enquiry, in which he would be given all due opportunities to defend himself. All the points, which he is raising, he will have an opportunity to raise during the course of inquiry proceedings. The respondents have further stated that the law laid down on the subject by the Hon'ble Supreme Court and the following decision would be applicable in this case: -

- i. **Union of India Vs. Ashok Kacker 1995 Supp(1) SCC, 1995 SCC (L&S) 374**, in which it has been held that "when a charge sheet was issued upon a Government employee, he had full opportunity to reply to the charge sheet to refer all the pleas available. This is not the stage at which the Tribunal ought to



have entertained the application filed by the delinquent Government servant challenging and for quashing the charge sheet and appropriate course for the government employee to adopt is to file his reply to the charge sheet and invite the decision of the disciplinary authority thereon. Prior to that stage any application for quashing the charge sheet is premature;

- ii. A similar view has also been taken by the Hon'ble Supreme Court in case of **Dy. Inspector General of Police Vs. K.C. Swaminathan (1996) 11 SCC 498**, in which the Tribunal entered in to the merits of the charges, the Hon'ble Supreme Court has held that the Tribunal was totally unjustified in going to the merit of the charges at that stage and that it is not a case when charge memo or the statements of fact do not disclose any misconduct of the delinquent official and consequently the Tribunal is totally wrong in quashing the charge memo;
- iii. In **State of Punjab Vs. Ajit Singh (1997) 11 SCC 368**, the Hon'ble Supreme Court has held that the High Court erred in setting aside the charge sheet that was served on the respondent in the disciplinary proceedings and going in to the merits of the allegations on which the charge sheet was based even though the charged had yet to be proved by evidence to the adduced in the disciplinary proceedings.

4. The applicant, it is stated by the respondents, has not exhausted legal process of participating in the court of inquiry and ~~not~~ availing the opportunities, which have been given to him. The respondents have strongly countered that the ratio of the Hon'ble Supreme Court judgment in UOI & Ors. Vs. Jamil Ahmad (AIR) 1979 SC 1022 would be applicable in this case. The applicant has cited some portion of the said judgment of Hon'ble Supreme Court in support of his contention, which is as follows: -

“ There may be negligence in performance of duty and lapse in performance of duty or error of judgment in

M. S. M.

(26)

Evaluating developing situation may be negligence in discharge of duties but would not constitute misconduct unless consequence directly attributable to negligence would be such as to be irreparable or resultant damage would be so heavy that degree of culpability may indicate grossest negligence, carelessness can often be productive to some harm then appropriate wickedness or malevolence."

5. We have carefully gone through the arguments advanced by the rival parties as well as the pleadings available on record. We have also applied our mind to the different judgment of the Hon'ble Supreme Court cited by the counsel for the parties during the course of hearing.

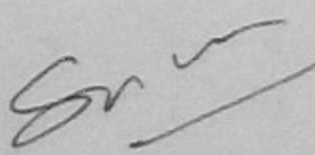
6. We are of the view that there is a need to evaluate the facts and circumstances and also take in to account the apprehension expressed by the applicant in this O.A. However, it is not for the Tribunal to make a comprehensive evaluation of the facts and circumstances. It is necessary to conduct a full fledged enquiry in the matter, for which the Tribunal is neither authorized nor equipped. This is purely the job of the disciplinary authority. We are satisfied that the respondents have not concocted the charge sheet. There was indeed a mention of alleged error committed by the applicant in the report of CVC. Therefore, prima facie, the respondents have not committed any error in issuing the charge sheet. Whether it would sustain or not will depend on the report of the full fledged inquiry during which, all material evidences and witnesses will be produced and cross examined and thereafter a clear view of this matter will emerge.

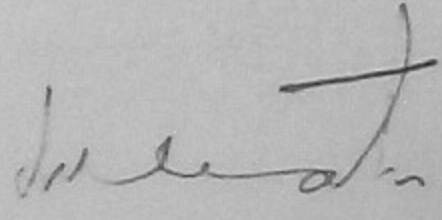
7. The applicant has raised some apprehensions/points as to why some people named in the CBI list were let off whereas a different view was taken against him for the same lapses. We are of the view that these are prima facie not baseless and are not to be ignored/rejected without

M. S. Mahesh

proper investigation. But the answer can be given only after proper inquiry. Obviously the Tribunal is not equipped to do the job. Therefore, it would be advisable that the applicant participate in the inquiry proceedings and counter the charges with the full material evidence he can muster. If he is not given reasonable opportunity at that stage, that could become a matter of examination by the Tribunal. At this stage, our advise to the applicant would be that he should participate in the inquiry with all documentary evidences at his command and then wait for outcome of the result of the inquiry proceedings. We are inclined to agree with the view expressed by the respondents that the applicant has approached the Tribunal prematurely. As regards his promotion, as long as the inquiry remains pending, his name will continue to be in the sealed cover, therefore, in the interest of the applicant, the inquiry should be conducted and concluded expeditiously.

8. With the discussions made above, we are not allowing this O.A, which is being dismissed. However, we would also direct that if there is any scope of considering the request of the applicant for adhoc promotion in terms of DOPT Circular dated 22.09.1992, as cited by the applicant, the respondents will do so. For this, the time spent in disposal of this O.A need not be attributed to him and delay caused by this should not be held against him. When a person confronts such an adverse situation it is only natural that he seeks whatever remedy appears in his sight. With this observation, the O.A is disposed of. No costs.


(S.K. Dhal)
Member- J.


(P.K. Chatterji)
Member- A.

/Anand/