

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

**OA No.339/2015 with MA Nos.107/2016, 452/2017,
457/2018**

This the 22nd day of January, 2021

**Corman : Hon'ble Shri J.V.Bhairavia, Member (J)
Hon'ble Shri A.K.Dubey, Member (A)**

Mrs. Ashlesha,
Wife of Shri Mihir Mehta,
Age about 52 years,
Working as Transmission Executive in the office of Res.No.3
Residing at M/14/159 Vidyanagar Flats,
132 feet Ring Road, B/h Himmatlal Park II,
Ahmedabad - 380 015.Applicant
(By Advocate : Shri M.S.Trivedi)

Versus

1. Chief Executive Officer,
O/o. CEO, AIR, Vigilance Section
Akashwani Bhavan, Sansad Marg,
New Delhi - 110 001.
2. The Director General,
O/o. D.G, AIR, Vigilance Section,
Akashwani Bhavan, Sansad Marg,
New Delhi - 110 001.
3. The Assistant Director (P)
H.O. Prasar Bharati
India's Public Service Broadcaster,
AIR, Bhuj, Kachchh – 370 001..... Respondents.
(By Advocate : Shri H.D.Shukla)

O R D E R – ORAL

Per : Hon'ble Shri J.V. Bhairavia, Member (J)

The applicant has filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

“(A) That the Hon'ble Tribunal be pleased to allow this petition
(B) That the Hon'ble Tribunal further be pleased to quash and set aside the impugned action / order No.6/8/2009/Vig.

Dated 21.07.2015 (Annexure A-1), issued by the respondent No.1 rejecting the request / reply of the applicant dated 15.6.2015 (Annexure A-3).

(C) Such other and further relief/s as may be deemed just and proper in view of the facts and circumstances of the case may be granted.”

2. The brief facts as stated by the applicant are as under :

2.1 The applicant was working as TREX at AIR, Ahmedabad. On the basis of the complaint lodged by the Respondent No.2 i.e. Station Director, AIR, Ahmedabad to the Respondent No.1 Vigilance Branch for the incident which occurred in the year 2006-07, the applicant was placed under suspension and subsequently it was revoked in the year 2011 by the respondents.

2.2 Thereafter, applicant was served with the charge sheet dated 22.10.2012 under Rule 14 of the CCS (CCA) Rules, 1965 for the incident which was occurred in the year 2006-07.

2.3 In response to the said charge memorandum, the applicant had submitted her reply and thereby requested for supply of relied upon documents on the basis of which the charge was framed/ level against her (Annexure III to the charges sheet). However, without supply of the relied upon documents, the respondents had taken decision

dated 22.10.2012 to hold joint inquiry under Rule 18(2) against the applicant as well her husband who was also working with the same department.

2.4 Being aggrieved of the said decision of joint inquiry, the applicant had approached this Tribunal by way of filing OA bearing No.11/2013. This Tribunal vide its order dated 09.06.2015 (Annexure A-2) quashed and set aside the Order No.6/8/2009 dated 22.10.2012 regarding to hold joint inquiry against the applicant and given liberty to the applicant to submit her statement of defence in respect of the Articles of Charges contained in the Memo dated 22.10.2012 and the Disciplinary Authority was directed to take a fresh decision, if statement of defence has been produced by the applicant, within stipulated time.

2.5 The applicant had submitted her statement of defence on 15.6.2015. The respondents vide order No.6/8/2009/Vig. dated 21.7.2015, turn down the request (Statement of defence) and decided to continue with the departmental inquiry against the applicant.

2.6 Being aggrieved with the said impugned order dated 21.7.2015 (Annexure A-1) the applicant has filed the present OA for the relief as stated hereinabove.

3. The learned counsel for the applicant Shri M.S.Trivedi mainly submitted as under :

3.1 The respondents failed to consider the grounds stated by the applicants in her statement of defence and erroneously passed the impugned order.

3.2 It is submitted that in para 3 of the Defence Statement the applicant has raised the preliminary objection with respect to the competence of the Disciplinary Authority to issue chargesheet to the applicant. However, the said ground has not been dealt with by the Disciplinary Authority in its order dated 21.7.2015.

3.3 Though it was brought to the notice of the Disciplinary Authority that the Article of charges, list of documents and witnesses of the Special case No.31/2009 filed against the applicant before CBI Court, and the charges/ documents and witnesses relied upon the charge memorandum in the present departmental inquiry are the same, the present disciplinary proceedings needs to be withdrawn or

postponed. However, the Disciplinary Authority failed to appreciate the said contention of the applicant.

3.4. It is further submitted that under the shelter of the direction issued by this Tribunal in her earlier OA No.11/2013 decided on 09.06.2015, the respondents did not take care to consider the statement of defence of the applicant objectively and independently. Not only that, in his SCA No.12143/2015 filed before the Hon'ble High Court of Gujarat against the order passed by this Tribunal in OA No.11/2013, the applicant had pointed out her apprehension that the respondents will take shelter of the direction issued by this Tribunal and will reject the representation. Thus, apprehension of the applicant which was also referred by the Hon'ble High Court of Gujarat while dismissing the SCA No.12143/2015 dated 24.08.2015 (Annexure A-6) proved true. It is submitted that the impugned order is bad in law as the same is passed arbitrarily and with bias attitude against the applicant. Therefore, the impugned order is required to be quashed and set aside.

4. On the otherhand, the respondents has contested the submissions of the applicant by filing their reply. The learned Standing counsel Shri H.D.Shukla mainly submitted as under :

4.1 It is stated that pursuant to charge memorandum bearing No. 6/8/2009-Vig./762 dated 22.10.2012 for holding an inquiry under Rule 14 of CCS (CCA) Rules, 1965, the Disciplinary Authority passed an order dated 22.10.2012 directing to conduct a joint inquiry against the applicant and one Shri Mihir Mehta, PEX (Husband of the applicant) as they both were involved in the same case. Being aggrieved with the decision of the joint inquiry the applicant herein had filed the OA No.11/2013 and raised the grievance that the applicant was the then Group 'C' officer, so the Disciplinary Authority was the Station Director, AIR, Ahmedabad whereas applicant's husband namely Shri Mihir Mehta who was Group 'B' Officer, so the Disciplinary Authority for said Shri Mihir Mehta was Director General, AIR, Ahmedabad. This Tribunal vide its order dated 09.6.2015 in OA No.11/2013 quashed the said decision of holding joint inquiry and further liberty was granted to the applicant to file statement

of defence since all the documents relied upon and stated in charge memorandum dated 22.10.2012 with further direction to the disciplinary authority to consider it and take appropriate decision with respect to initiate the departmental inquiry against the applicant. In response to the said order passed by this Tribunal, the applicant filed her statement of defence dated 15.6.2015 and the respondents vide order dated 21.7.2015 rejected the contentions raised by the applicant in her statement of defence.

4.2 It is submitted that this Tribunal had only quashed and set aside the decision dated 22.10.2012 of the disciplinary authority for holding joint inquiry against the applicant and one Shri Mihir Mehta vide order dated 09.06.2015. The charge memorandum dated 22.10.2012 (Annexure A-4) issued against the applicant has not been interfered with by this Tribunal. On the contrary, as noted hereinabove, the disciplinary authority was directed to consider the statement of defence which may be filed by the applicant in pursuance to the said charge memorandum. The said charge memorandum was issued to the applicant by the competent authority,

therefore, it is not correct on the part of the applicant to state that said charge memorandum issued without any authority.

4.3 It is submitted that by speaking order dated 21.07.2015, the Disciplinary Authority rejected the statement of defence and decided to continue with the departmental inquiry under the provision of Rule 14 of the CCS (CCA) Rules, 1965. The allegation of bias of the Disciplinary Authority against the applicant is without any material on record and the same is afterthought of the applicant. The SCA filed by the applicant against the order passed by this Tribunal was dismissed. The respondents have followed the provision of Rule 14 of the CCS (CCA) Rules, 1965 and after due consideration of the statement of defence of the applicant decided to initiate the departmental inquiry. It is further submitted that pursuant to the order dated 21.7.2015 (Annexure A-1), the competent authority has now appointed IO & PO vide order dated 14.01.2016 to inquiry into the charges levelled against the applicant. As such, no fundamental right or principles of natural justice has been violated by the

respondents in taking action against the applicant.

Therefore, the applicant is not entitled for any relief sought for in this OA.

5. Rejoinder has been filed by the applicant reiterating the averments made in the OA. Additionally, it is submitted that the unauthorised / incompetent official has filed reply on behalf of the respondents and no letter of authority has been produced along with the said reply.

6. Heard Shri M.S.Trivedi, counsel for the applicant and Shri H.D.Shukla Standing counsel for the respondents, as also perused the materials on record.

7. It is noticed that in the present case, the applicant was served with charge memorandum dated 22.10.2012 (Annexure A-4) under Rule 14 of the CCS (CCA) Rules, 1965 wherein four charges were levelled against her to the effect that the applicant has exhibited lack of integrity, lack of devotion to duty and acted in a manner unbecoming a public servant and engaged herself in a private trade and employment, contravening Rule 3(i), (ii) & (iii) and also Rule 15 of the CCS (Conduct) Rules, 1964. The Disciplinary Authority also passed an order dated 22.10.2012 for holding joint inquiry against the applicant along with other charged official i.e. Shri Mihir Mehta. Aggrieved by the said order of holding joint inquiry, the applicant herein had filed OA

No.11/2013 which came to be disposed of by this Tribunal vide order dated 09.6.2015 whereby the decision of the Disciplinary Authority to conduct joint inquiry was quashed and set aside and further by granting liberty to the applicant to file her statement of defence in response to the charge memorandum dated 22.10.2012, the respondents were directed to consider it and take appropriate decision in accordance with the rules.

8. Pursuant to the said direction, admittedly, the applicant has filed her statement of defence dated 15.6.2015 whereby the applicant has denied the charges levelled against her and further requested either withdraw or postpone the disciplinary proceedings taking into consideration that for the same charges, applicant is also facing CBI Criminal case i.e. Special Case No. 31/2009 pending before the CBI Court, Ahmedabad.

9. It is further noticed that vide impugned order dated 21.7.2015 (Annexure A-1), the Disciplinary Authority has considered the Statement of defence of the applicant and recorded in its finding that there needs to be an inquiry into the charges made against the applicant in accordance with the rules for bringing to matter to a logical conclusion.

In the said decision, the Disciplinary Authority dealt with all the objections raised by the applicant in her statement of defence and cognized reasons to deny the same has been

recorded. Answering to the defence of the applicant that for the same charges criminal proceedings are already under way and therefore, department inquiry needs to be postponed or withdraw, the Disciplinary Authority stated that the charged memo was issued on 22.10.2012, already a period of three years time of delay in culmination of proceedings as occurred and in effect, the postponement of proceedings has already happened, the departmental proceedings cannot be left open ended indefinitely. In fact, this Tribunal in its order dated 09.6.2015 directed that the Disciplinary Authority should conclude the inquiry at the earliest. Further, this Tribunal had also advised the charged official that the applicant herein for her cooperate to bring the matter to its logical conclusion.

10. At this stage, it is appropriate to mention that the scope of departmental inquiry and judicial proceedings by criminal court has been examined by a three Judge Bench of the Hon'ble Apex Court in the case of **A.P.SRTC v/s. Mohd. Yousuf Miya** reported in **1997 SCC (L&S) 548** in para 8 of the said judgment it has been observed that "*Para-8.....the purpose of departmental inquiry and of prosecution are two different distinct aspects. The criminal prosecution is launched for an offence for violation of duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The*

departmental inquiry is to maintain discipline in the service an efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditious as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental inquiry and trial of a criminal case unless the charge in the criminal trial is of a grave nature involving complicated question of facts and law. Offences generally implies infringement public (sic duty), as distinguished from mere private rights punishable under the criminal law".

It is further held that "*invariably the departmental inquiry has to be conducted expeditiously as to effectuate efficiency in public administration and in the criminal trial will take its own course.*"

11. In the present case, we have seen that the charges levelled in the disciplinary proceedings about doubtful integrity, lack of devotion to duty and acted in a manner unbecoming of a public servant and engaged herself in a private trade employment thereby contravening Rule 3(1)(i)(ii) & (iii) and also Rule 15 of the CCS (Conduct) Rules, 1964. Whereas the criminal proceedings under Special case pending against the applicant for the offences under Section 120(b), 168, 420 of IPC and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988, the said charges and the charges levelled against the applicant

under the disciplinary proceedings cannot be said to be same and even otherwise, it is settled principles of law that the nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touch stone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard points of the Evidence Act. The evidence required in the departmental inquiry is not regulated by the Evidence Act. Under the circumstances, we do not find any infirmities in the impugned decision in rejecting the representation/ defence of the applicant with regard to pendency of the criminal case before CBI Court, Ahmedabad.

12. In conclusion, in the light of the aforesaid discussion, we do not find any infirmities in the decision making process of the Disciplinary Authority in exercising its power under the provision of Rule 14(4)&(5) of CCS(CCA) Rules, 1965. The OA lacks merit and the same is dismissed accordingly. Pending MAs stand disposed of accordingly. No order as to costs.

(A.K.Dubey)
Member (A)

(J.V.Bhairavia)
Member (J)

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