

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No. 2956/2019



New Delhi, this the 05th day of February, 2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Sh. P. K. Shrivastava, age about 44 yrs,
Sub: Quashing of Charge Sheet/GP 'A',
S/o Shri C. S. Shrivastava,
R/o House No. 683, Sector - 4, R. K. Puram,
New Delhi - 110022.

Presently employed as Senior Public Prosecutor,
O/o the Supdt. Of Police, CBI, SC.I, 5-B, 2nd Floor,
B-wing, CGO Complex, Lodhi Road, New Delhi.

... Applicant

(By Advocate:Shri P. Sriharsha Reddy with Shri M. K. Gaur)

VERSUS

1. Union of India through its Secretary, Dett. Of Personnel & Training, M/o PG & Pensions, North Block, New Delhi - 110011.
2. The Director, Central Bureau of Investigation, 5-B, 11th Floor,CGO Complex, Lodhi Road, New Delhi.

... Respondents

(By Advocate:Shri Gyanendra Singh)

O R D E R (Oral)

By Hon'ble Mr. Justice L. Narasimha Reddy:

The applicant was selected and appointed as Assistant Public Prosecutor (APP) in the Central Bureau of Investigation (CBI), on 18.01.2007. Even while



holding that post, he took part in the selection for the post of Sr. Public Prosecutor (SPP) in the same organization and was accordingly selected and appointed on 06.09.2011. The post of Deputy Legal Advisor (DLA) in the Ministry of Law and Justice was notified on 03.09.2011. The applicant was one of the candidates. According to him, his result thereof was declared on 30.06.2012 and that he emerged successful. However, the further steps could not be taken immediately, on account of litigation that ensued between the promotees on the one hand and the direct recruits, on the other hand, in the department.

2. The OA No. 1925/2013 etc. were filed by the promotees before this Tribunal and they were allowed. The applicant and others filed WP No. 6205/2014 before the Hon'ble Delhi High Court. Through an elaborate judgment, the Hon'ble High Court allowed that Writ Petition and upheld the selection of the applicant. A direction was also issued for the appointment of selected candidates. Judgment of the Hon'ble High Court was upheld by the Hon'ble Supreme Court in SLP (C) No. 24215/2017 vide order dated 18.05.2018. In the context of appointment of the applicant to the post of DLA in the Ministry of Law and



Justice, the vigilance clearance from the CBI became essential.

3. The applicant was issued a charge memo dated 30.01.2017 by the CBI, alleging that he offered to pay certain amounts to a Crime Assistant, CBI at Jaipur for clearing his Transport Allowance (TA) bills. The applicant submitted his explanation and the proceedings are pending. Through an order dated 17.05.2019, the DOPT denied vigilance clearance to the applicant, on account of the pendency of the disciplinary proceedings. This OA is filed challenging the order dated 17.05.2019 as well as the charge memo dated 30.01.2017.

4. The applicant contends that the only charge framed against him is frivolous and the proceedings are totally motivated. He further submits that no disciplinary proceedings were pending against him when the results were declared or when he was selected to the post of DLA and the denial of the vigilance clearance on the basis of the subsequent developments is impermissible in law.

5. The respondents filed a detailed counter affidavit. It is stated that the applicant has already submitted his explanation in the disciplinary proceedings and the enquiry is in progress. As regards the denial of



vigilance clearance, they contend that the state of affairs that was obtaining as on the date of issuance of certificate, is required to be taken into account, and accordingly, the order dated 17.05.2019 was passed.

6. We heard Mr. P. Sriharsha Reddy with Mr. M. K. Gaur, learned counsel for the applicant and Mr. Gyanendra Singh, learned counsel for the respondents.

7. The challenge in this OA is to the charge memo dated 30.01.2017 as well as to the order dated 17.05.2019.

8. So far as the charge memo is concerned, the occasion to interfere with the same would arise if only it was issued by an authority not conferred with the power or where no misconduct can be discerned, even if the contents of the charge are taken into account. Though the applicant made an effort to point out that the charge memo was issued by the incompetent authority, we are of the view that the ground raised by him is untenable.

9. The plea of the applicant that the charge memo was approved and issued by the Minister of State (MoS) in the Prime Minister's Office (PMO), whereas the Prime Minister happens to be the concerned Minister, cannot be accepted. Wherever there is an allocation of



powers within the Ministry as between the concerned Minister on the one hand and MoS on the other, no delegation takes place. It is purely an internal arrangement. We dealt with this aspect in detail, in several other matters.

10. The charge against the applicant is that he offered to pay certain amount to the Crime Assistant, CBI at Jaipur. The applicant raised a specific plea that the complaint was made only with a view to drive him away from the office at Jaipur and to accommodate another person of the community of the said Crime Assistant. That cannot be brushed aside. Even if one takes into account, the report that was submitted by the Head of the Branch it becomes clear that many officials have an axe to grind against the applicant. Notwithstanding all the prejudice, the Head of the Branch has only recommended the transfer of the applicant. It is nearly four years thereafter, that the charge memo was issued. Added to that, no criminal complaint was filed in relation to the so-called incident. If in fact, it has occurred in the office of the CBI itself, the gravity is supposed to be much. In the absence of such a complaint, at the most, it would be a case of minor penalty charge memo. However, the disciplinary authority has chosen to issue a major penalty charge

memo. These are the aspects, which need to be taken into account by the Inquiry Officer and the Disciplinary Authority. We do not propose to express any view on this.



11. Coming to the legality of the order dated 17.05.2019, it may be true that the applicant did not face any proceedings when his result was declared for the post of DLA. The charge memo was issued long after his selection and during the adjudication by the Hon'ble High Court and Hon'ble Supreme Court. Notwithstanding that, state of affairs that was obtaining as on the date of issuance of certificate of vigilance, needs to be taken into account. Viewed from that angle, no exception can be taken to the order dated 17.05.2019.

12. Since the applicant has tendered technical resignation and intends to leave the CBI, it would be in the interest of all, to conclude the disciplinary proceedings at the earliest so that the feasibility of the issuance of the vigilance clearance, depending upon the outcome of the disciplinary proceedings, can be considered. The matter was already delayed by seven years on account of a prolonged litigation before this Tribunal, the Hon'ble High Court and the Hon'ble

Supreme Court, on the issue of selection and appointment.



13. We, therefore, dispose of the OA, declining to interfere with the charge memo dated 30.01.2017 and the order dated 17.05.2019 but directing that the disciplinary proceedings with reference to the charge memo shall be concluded within a period of six weeks' from the date of receipt of copy of this order. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

'lg/vb/ns/ankit'