

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.482/2013

Monday, this the 19th day of December, 2016

CORAM:

**HON'BLE Mr.JUSTICE N.K.BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE Ms.P.GOPINATH, ADMINISTRATIVE MEMBER**

John Samuel,
Producer Grade II (Retired),
Doordarshan Kendra,
Kudapanakunnu, Thiruvananthapuram – 695 043.
Residing at Medayil, 16/454/2,
Kochar Road, Thiruvananthapuram – 695 014.

...Applicant

(By Advocate Mr.Vishnu S Chempazhanthiyil)

V e r s u s

1. The Director, Doordarshan Kendra,
Kudapanakunnu, Thiruvananthapuram – 695 043.
2. The Chief Executive Officer and Disciplinary Authority,
Directorate General : Doordarshan,
Prasar Bharati (BCI), Doordarshan Bhavan,
Copernicus Marg, New Delhi – 110 001.
3. Union of India represented by its Secretary,
Ministry of Information and Broadcasting,
New Delhi – 110 001.

...Respondents

(By Advocate Mr.N.Anil Kumar,Sr.PCGC [R])

This application having been heard on 18th November 2016, the Tribunal on 19th December, 2016 delivered the following :

ORDER


HON'BLE Ms.P.GOPINATH, ADMINISTRATIVE MEMBER

The applicant entered service in Doordarshan in the year 1984. While so, he was issued with a chargesheet on 17.3.2000 under Rule 14 of CCS (CCA) Rules. The enquiry proceedings attain finality when penalty was



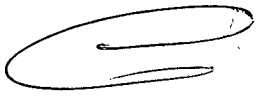
imposed on 25.2.2010. The applicant thereupon filed an appeal in terms of Rule 23 of the CCS (CCA) Rules. The appeal dated 18.3.2010 has been rejected.

2. The charge against the applicant was that during the year 1994-1995 while working as Producer Grade II of DDK, Tvm, he abused his official position and arranged to produce Royalty Sports Programmes assigned to outsider producers and obtained pecuniary advantage for himself. Allegations were also raised by one R.Anilkumar whose applications had not been approved by the applicant for producing programmes under the Royalty Scheme. The chargesheet in the instant case is issued by Secretary, Ministry of Information & Broadcasting. The Chief Executive Officer of Prasar Bharathi ordered a denovo enquiry. Ultimately, the Director General, Doordarshan passed an order of penalty. The applicant argues that he has been subjected to prejudice as the Appellate Authority had issued the chargesheet and he himself had to consider the appeal. Obviously, no Appellate Authority would conclude that his decision to issue chargesheet was without any basis. The Inquiry Authority had found the charges to be proved to a certain extent. However, the Disciplinary Authority holds that the charges are proved. While holding that the applicant was guilty of the charges in its entirety, the Disciplinary Authority has gone beyond the findings of the Inquiry Authority. The Disciplinary Authority can do so only by disagreeing with the findings of the Inquiry Authority and with notice to the delinquent employee. No notice was served before disagreeing with the findings of the Inquiry Authority. The Disciplinary Authority



holds that the applicant has not produced any evidence which indicates that the applicant was not involved in the production of programmes. Applicant argues that it is for the prosecution to prove this alleged fact. The applicant cannot be mulcted with liability to disprove the above alleged facts.

3. Applicant also argues that the enquiry proceedings commenced in the year 2000 and came to finality only after 10 years on 25.2.2010. The long delay in finalization of the disciplinary proceedings has caused prejudice to the applicant. The long delay has prevented the applicant from establishing his innocence since many of the witnesses were not in a position to recall the incident. The witnesses, whom the applicant could have cited as defence witnesses were unable to recall the happenings that had taken place more than 15 years back. The Disciplinary Authority has chosen to take into account the facts, which were totally denied by the witnesses. Shri.Venkitesan and K.Parameswaran, the Cameraman and Film/Video Editor of DDK, Tvm had in the enquiry categorically stated that they had nothing to do with Vision 2000 and did not work for Vision 2000 or obtain payment. However, the Disciplinary Authority states that the denial of both witnesses is not supported by any evidence. Applicant alleges perversity in the appreciation of evidence by the Disciplinary Authority. The Disciplinary Authority while considering the evidence of Sunny Jacob and Shri.Francis finds that there is contradiction between the statement of witnesses. If there is contradiction between statement of witnesses, that should actually go to the benefit of the delinquent employee. However, this fact is used against the applicant, it is contended.



4. Applicant argues that the witnesses were not in a position to give answers because of the long delay in the holding of examination. If the witnesses gave evasive answers, the benefit of doubt should go to the delinquent employee and same cannot be used as a weapon to hold that since the witness is giving evasive answers, the delinquent employee is guilty. The allegation that the applicant had himself produced sports programmes assigned to outside producers like M/s.Sportscope, M/s.Belvedere Communication, M/s.Pumed Communication, M/s.Pumed Communication, M/s.Sports Boom, M/s.Oktopal Sports, M/s.SBT Sports Board and M/s.Rainbow Communications is denied by the applicant. Nothing has come on record to prove that the applicant had abused his official position and obtained pecuniary advantage for his wife Rajamma John. In the enquiry proceedings it had come out that in respect of M/s.Sportscope, M/s.Belvedere Communication, M/s.Pumed Communication, M/s.Pumed Communication, M/s.Sports Boom, M/s.Oktopal Sports, M/s.SBT Sports Board and M/s.Rainbow Communications, no pecuniary advantage was received by the applicant. The findings of the enquiry officer in this respect is in favour of the applicant. Applicant argues that there is no basis for the inquiry officer to conclude that the applicant had abused official position to obtain pecuniary advantage to his wife. Applicant would also argue that there is no evidence to link any pecuniary advantage obtained by the applicant's wife, due to the official position applicant was holding. The inquiry officer on the basis of the denovo/fresh enquiry concluded that the applicant had over stepped his responsibilities. Applicant argues that all that he did was to discharge his



duties diligently ensuring timely telecast of quality sports programme. That the applicant was successful in ensuring that good quality programmes alone were telecast, gave the applicant the ill will and professional rivalry of a good number of people.

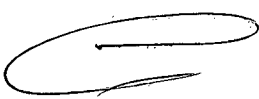
5. As regards the conclusion of the inquiry officer that pecuniary advantage had accrued to the applicant's wife, applicant argues that he had no direct role in SBT Sports Programme producing their programmes through Vision 2000. That Vision 2000 was owned by his wife is not denied by the applicant. Applicant admits that Vision 2000 had been doing certain advertisement programmes for SBT and the said organization was known to the PRO of SBT. It was in such circumstances that when sports programmes was allotted to SBT Sports Board, the PRO of SBT himself suggested the name of Vision 2000, and not by the applicant. Reliefs sought by the applicant is to set aside Annexure A-3 punishment order and Annexure A-7 appellate order and direct the respondents to consider him for promotion in the Junior Time Scale of Indian Broadcasting Service with effect from the date his juniors having been promoted or in the alternative direct the respondents to extend the benefits of MACP to him.

6. Respondents in the reply submit that the CBI registered RC 7(A)/96-Ker against the applicant and in the investigation report it is submitted that while working as Producer Sports in the Doordarshan Kendra he produced Sports Royalty Programmes under the banner of M/s.Pumed Communications, M/s.SBT Sports Board and M/s.Vision by engaging his



own men and by hiring camera units and studio from M/s.Network Television Trivandrum and M/s.V.Tracks Trivandrum during the period 1994 and 1995, earning profits for himself and others. Investigation further revealed that the T.V coverage of four sports events organized by SBT, Trivandrum were entrusted by DDK to the SBT's Sports Board under the royalty scheme. The sports officer of SBT was advised by the applicant to entrust the job of production of the programme to M/s.Vision 2000, a concern floated by his wife Smt.Rajamma John. Based on the CBI investigation, the Central Vigilance Commission vide UO No.98/I&B/007 dated 22.04.1998 advised initiation of major penalty proceedings against the applicant. Thereafter disciplinary proceedings under Rule 14 of CCS (CCA) Rules was initiated against the applicant on 17.3.2000. The respondent submits that the OA is barred by resjudicata as the applicant had filed earlier OA 558/2008 to set aside disciplinary order and thereafter aggrieved by the Tribunals direction moved WP (C) No.13179 of 2009 in the High Court.

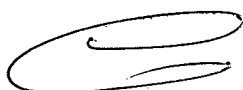
7. The respondent submits that Shri C.B.Pillai, Superintending Engineer, DDK, Thiruvananthapuram was appointed as Inquiry Officer vide order dated 8.8.2001. Shri.Pillai after conducting the enquiry submitted his inquiry report on 28.6.2006. The Disciplinary Authority did not agree with the findings of the Inquiry Officer and ordered fresh enquiry in the matter. The applicant filed an OA (No.558/2008) in CAT, Ernakulam against the order of the Disciplinary Authority to hold enquiry afresh into the charge framed against him. The Tribunal initially stayed the inquiry proceedings against the applicant vide order dated 22.9.2008. The CAT in its final



judgment dated 30.3.2009 ordered that, if at all further enquiry is found necessary, the same should be conducted and decision arrived at before the date of superannuation of the applicant. Accordingly, the IO/PO were directed to complete the enquiry in six months by holding day to day proceedings.


8. The applicant filed a Writ Petition No.13179 of 2009(N) in the Hon'ble High Court of Kerala against the order dated 30.3.2009 in OA No.558/2008. High Court, vide judgment dated 19.6.2009, directed that the Disciplinary Authority shall decide, if it has not so far decided, within one month from the date of receipt of a copy of this judgment, whether further enquiry should be held or not. If the Disciplinary Authority decides not to hold further enquiry, the proceedings against the petitioner shall be completed within one month thereafter. If it decides to hold further enquiry, the Inquiring Authority shall try to complete the enquiry within four months. The writ petitioner shall cooperate with the Inquiring Authority for completion of the enquiry. Thereafter, on receipt of the inquiry report, the Disciplinary Authority shall pass final orders in the matter within two months.

9. After taking into account the disciplinary case against the applicant and in view of the Hon'ble Court's judgment, the oral enquiry against him was found necessary to arrive at a logical conclusion. Shri N.Thiyagarajan, Superintending Engineer, was appointed as Inquiry Officer. In the light of the High Court direction that the enquiry must be completed within a period



of four months, the IO and PO were changed. Inquiry Officer submitted his report on 19.11.2009. The IO held that the part of the Article of Charge that the CO by misusing his position obtained pecuniary advantage for his wife is proved. A copy of the report and tentative view was forwarded to CO for his submissions vide letter dated 17.12.2009. The applicant submitted his representation on 31.12.2009. The Disciplinary Authority after taking into account the record of the case, imposed a penalty of reduction to a lower stage in the same time scale of pay with immediate effect, as he has passed advantage to family members. Vide subsequent order dated 6.4.2010 penalty was clarified and it was ordered that penalty of reduction of pay by one stage was to be operative till his retirement or superannuation which will have cumulative effect.

10. The respondent argues that the delay in finalization of inquiry proceeding is not intentional. Delay occurred due to court cases filed by applicant and order for conducting further inquiry in order to bring clarity to the matter. The delay, argue the respondents, has not caused any prejudice to the charged officer as part of it was caused by applicant seeking relief from CAT and High Court. The CO was given sufficient time and opportunity in the inquiry to defend himself. The Appellate Authority vide Order No.C-16012/5/2012-Vig. dated 27.9.2012, rejected the appeal of the applicant. IO submits that the charged officer has forced himself into a situation of becoming responsible for getting pecuniary advantage to his wife Smt.Rajamma John. The Disciplinary Authority as well as Appellate Authority passed reasoned orders based on the findings of the inquiry and



also after giving full opportunity to applicant and considering the submissions of the appellant. The inquiry report is based on the evidence adduced against the applicant and the evidence required in departmental proceedings is based on preponderance of probability. The penalty imposed vide Annexure A7 is as prescribed under Rule 11 of CCS (CCA) Rules.

11. The charge sheet in this case was signed by Additional Secretary and Appellate Authority is the Secretary to the Government of India. The Additional Secretary, Chief Executive Officer, Prasara Bharati and the Director General who signed the documents were competent to sign those documents at that relevant point of time. The disciplinary authority has observed that M/s.Vision 2000 was owned by Mrs.Rajamma John, wife of the applicant. The CO has never denied it. Vision 2000 was engaged in Production of Sports Programme. The function of the applicant is also production of royalty based Sports Programme for Doordarshan Kendra, Trivandrum. The applicant did not inform the Office that his wife was engaged in production of Programme. This was required to be done as per Rule 15 of CCS (Conduct) Rules if a family member had an interest/ownership in a firm which worked for the programmes being allotted or supervised or conducted by the applicant. The Conduct Rules also laid down that a Government servant cannot canvass in support of the business owned or managed by his wife or any other members of the family. The Disciplinary Authority imposed the penalty after taking into account the nature of the charges framed against the CO, report of the Inquiring



Authority, submissions of the CO and all the facts and circumstances of the case. The Inquiry Authority concluded that the charges stand proved to the following extent :-

a) The applicant had given content related advice to the firm producing outside programmes and also helped the outside firms for identifying production houses that were giving camera and editing facilities.

b) Firms that were not having adequate exposure got to produce royalty programmes and in one case a person who was unemployed when approached through his brother connected with Doordarshan in a sports programme got enrolled for production of royalty programmes under the banner M/s.Sportoscope.

12. Respondent argues that all these prove that in some cases royalty programmes were assigned to inexperienced producers. Such assignment were made by the applicant after taking the approval of the Director of the Kendra. Charged Officer's contention that production of two different producers in a single tape was due to paucity of tapes is not acceptable, as, for other royalty programme like agriculture etc. no similar tape had been received. The applicant would argue that firms doing other royalty programmes had not approached him for such an arrangement. The applicant had overstepped his responsibility by allowing the above concession. By suggesting and endorsing the view that M/s.Vision 2000 could do the programme of SBT Sports Board and by not informing the Director/organization that M/s.Vision 2000 is run by his wife even at the time of suggesting and endorsing that Vision 2000 could do the programme of the said producer, he had violated the conduct rules. Applicant has placed himself in a position for getting pecuniary advantage to his wife Smt.Rajamma John. To this extent the said charge was proved. The findings



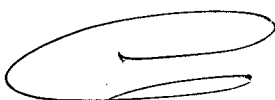
of the Disciplinary Authority were based on the evidence adduced during the inquiry based on depositions of S/Shri.Francis Sunni, Jacob Sunni, Joe Joseph, Manikanda Kurup and also the self submission given by the applicant during the course of the inquiry. It is further submitted that the applicant took the matter to the CAT, Ernakulam as well as High Court of Kerala and further inquiry was conducted as per their directions. The delay in conducting the inquiry has already been adjudicated by this Tribunal in their Order dated 30.3.2009 in OA No.558/2008. This Bench while passing the order did not set aside the inquiry, instead directed that decision should be communicated before the date of superannuation of the applicant which has been duly complied argued the respondents. Therefore, this issue cannot be raised again before the same Tribunal.

13. While considering the statement of the witnesses Shri.Jacob Sunny and Shri.Francis, respondent observed that there is a stark contradiction in their statements. During further inquiry when Jacob Sunny was asked whether all the programmes produced by the applicant were on behalf of his company he stated that arrangements were made through "somebody" else. When asked by the IO who was that "somebody" he said that he did not remember. The witness has maintained that no money was paid to the applicant. Whereas during the previous inquiry the applicant had identified the cheque for Rs.15000/- including his signature, but during further inquiry he said that he did not know to whom this cheque dated 1.7.1995 for Rs.15000/- was paid by him. Being the producer of the sportoscope, Shri.Jacob Sunny's deposition that, he does not remember who was that



“somebody”, was not acceptable, submits the respondent. On perusal of the inquiry report it is seen that Shri.Jacob Sunny had identified the said cheque during the first inquiry and not the appellant. It has been wrongly mentioned in the penalty Order dated 25.2.2010 that the appellant had identified the cheque. This issue has not played any significant role in the outcome of the inquiry. The IO has concluded on the basis of available witnesses that Charged Officer had given content related advice to the firms producing outside programmes and also helped the outside firms for identifying production houses that were giving cameras and editing facilities. However, it could not be proved beyond doubt that the Charged Officer had got pecuniary advantage. But IO could find that Charged Officer was found responsible in one way or other for obtaining pecuniary advantage for his wife.

14. As regards the contention of applicant that the charges were baseless, respondent argues that neither the Tribunal nor High Court had stayed or set aside the disciplinary proceedings. Further, inquiry was conducted as per the directions of Hon'ble High Court of Kerala. The High Court directed that if disciplinary authority decides to hold further enquiry, the Inquiring Authority is required to complete the enquiry within four months and the applicant shall cooperate with the Inquiring Authority for completion of the enquiry. The High Court did not stay the disciplinary proceedings. The delay in conducting the inquiry has already been adjudicated by this Bench in their order dated 30.3.2009 in OA No.558/2008 and the direction given was that decision should be communicated before the date of




superannuation of the applicant which has been duly complied with. Therefore, respondent argues that this issue cannot be re-agitated before the Tribunal now. As per the deposition of Mr.Manikanda Kurup, applicant has suggested/endorsed the capability of M/s.Vision 2000 to do the programme of SBT Sports Board, without informing the Director that M/s.Vision 2000 is run by his wife.

15. The following arguments are submitted regarding conduct of inquiry. Charge Sheet (Annexure A1) was issued under Rule 14 of CSS (CCA) Rules 1965 on 17.3.2000, while applicant was working in Agartala. The charge was that during the years 1994-95 while working as Producer Grade II of DDK, Trivandrum, applicant abused his official position and arranged to produce Royalty Sports Programme assigned to outsider producers and obtained pecuniary advantage for himself and his wife, Rajamma John. In order to respond to the chargesheet the applicant had requested for supply of documents vide letter dated 12.6.2000. The requested documents were supplied vide communication No. C-14012/1/1998/Vig. dated 23.5.2001. Accordingly the applicant submitted his explanation (Annexure A2) denying the allegations in the chargesheet. To enquire into the above allegations, C.B.Pillai, the Superintending Engineer, DDK Trivandrum was appointed as Inquiry Officer as per Order No. C-14012/1/98-Vig (DG:DD) dated 8.8.2001 and J.R.D'Cruz Inspector of CBI, was appointed as Presenting Officer. The preliminary sitting was scheduled 2 years later on 20.6.2003. However, due to the inability of the Presenting Officer to participate in the enquiry, the preliminary sitting was repeatedly adjourned



and was ultimately held on 5.12.2003. Thereafter orders were issued appointing one M.Shajahan, Inspector CBI, Thiruvananthapuram as Presenting Officer on 25.2.2004. The final examination of witnesses was completed in 2005. Presenting Officer submitted his written brief on 3.9.2005. The applicant submitted his written brief on 22.5.2006. Inquiry Report as per Clause 23 of Rule 14 of CCS (CCA) Rules was submitted by the Inquiry Officer on 28.6.2006. Penalty order was issued on 25.2.2010. Appeal was rejected as per order dated 27.9.2012. Though he was due for promotion as Assistant Station Director in the year 1999, he was not granted promotion, whereas his juniors have been promoted. First Inquiry Report submitted on 28.6.2006. Disciplinary Authority found the report deficient/incomplete and ordered to conduct de novo inquiry. New Inquiry Officer, S. Sabarinathan was appointed on 28.11.2007. Smt.Sita Ratnakar, Asst. Station Director, DDK, Chennai was appointed as Presenting Officer on 28.11.2007. No inquiry was conducted. Subsequently Bhuvaneswari Chandrasekharan was appointed as IO on 16.4.2008. No inquiry was conducted by her. O.A. No.558/2008 was filed challenging the de novo inquiry. Applicant argues that the Disciplinary Authority has no power to order a de-novo enquiry and the same can be ordered only by the Appellate Authority. A de-novo enquiry cannot be ordered merely on account of the reason that the enquiry conducted by the Inquiry Authority is not complete. Applicant argues that there is no provision to order fresh inquiry on receipt of Inquiry Report. Option available to the Disciplinary Authority is either to order 'Further Inquiry' or to accept the Inquiry Report or to disagree with the Inquiry Report and record the points of disagreement. Respondent



contested the O.A. submitting that the conduct of the Inquiry Officer during the Inquiry was questionable and he did not make reasonable efforts to find out the truth though there were many loopholes in the statement of witnesses. The Disciplinary Authority had therefore disagreed with the findings of the Inquiry Report and ordered a fresh inquiry.

16. Applicant submits a couple of judgments in favour of his relief. In **Kanailal Bera v. Union of India, (2007) 11 SCC 517** the Apex Court held :

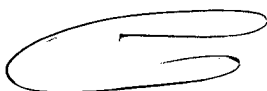
“Once a disciplinary proceeding has been initiated, the same must be brought to its logical end meaning thereby a finding is required to be arrived at as to whether the delinquent officer is guilty of charges levelled against him or not. In a given situation further evidence may be directed to be adduced by the same would not mean that despite holding a delinquent officer to be partially guilty of the charges levelled against him another inquiry would be directed to be initiated on the self same charges which could not be proved in the first inquiry.”

In **L. David v. Union of India, (1990) 14 ATC 590 (Mad)** it was held that :

De novo inquiry by a new Inquiry Officer subsequent to submission of inquiry report is held illegal.

The reason why such a De novo inquiry at the stage when the Inquiry Report is furnished is not permitted is given in the decision of the Apex Court in the case of **Union of India v. K.D. Pandey, (2002) 10 SCC 471** wherein, the Apex Court has held as under :

“5. Learned counsel for the appellant contended that in this case the Board had examined the material on record and come to the conclusion that four of the six charges could be proved on the available material, which had not been properly examined in the earlier inquiry. In fact from the order made by the Railway Board as well as from that part of the file where the inquiry report made earlier is discussed, it is clear that specific findings have been given in respect of each of the charges after discussing the matter and, if that is so, we fail to understand as to how these could have been remitted to the Inquiry Authority for further inquiry. Indeed this resulted in second inquiry and not further inquiry on the same set of charges and the material on record. If this process is



allowed the inquiries can go on perpetually until the view of the inquiry authority is in accord with that of the disciplinary authority and it would be abuse of the process of law. In that view of the matter we think that the order made by the High Court affirming the order of the Tribunal is just and proper and, therefore, we decline to interfere with the same. The appeal is dismissed accordingly.”

17. Replying to the question as to whether the authority has any power to make ‘further inquiry’ the respondent answers in affirmative.

18. Applicant approached the High Court challenging time granted by the tribunal until superannuation in W.P. (C) No. 13179 of 2009 which was disposed of on 19.6.2009 as follows :

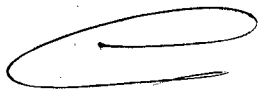
Disciplinary Authority shall decide, if it has not so far decided, within one month from the date of receipt of a copy of this judgment whether further inquiry should be held or not. If the Disciplinary Authority decides not to hold further inquiry, the proceedings against the petitioner shall be completed within one month thereafter. If it decides to hold further inquiry, the Inquiry Authority shall try to complete the inquiry within four months. The writ petitioner shall co-operate with the Inquiry Authority for completion of the inquiry. Thereafter on receipt of the inquiry report, the Disciplinary Authority shall pass final orders in the matter within two months.

19. Hence we note that holding further inquiry was already decided in the above WP with certain conditions and cannot be re-agitated. Shri.N.Thyagarajan, Supertindenting Engineer, DDK, Chennai appointed as the Inquiry Authority to hold further inquiry from the stage of examination of Prosecution Witnesses. Summons were issued to 46 witnesses to conduct further inquiry on 7.9.2009. Tribunal’s order dated 16.9.2009 clarified that the Inquiring Authority can recall witnesses if necessary and permit other witnesses where necessary. Inquiry was conducted from 22.9.2009 to 25.9.2009 and only 11 witnesses attended the inquiry. Summons was issued to another 16 witnesses on 5.10.2009.



20. The oral inquiry in the case adopted a meandering course. In response to chargesheet applicant submitted a statement of defence on 3.7.2001 after passage of considerable time. On 8.8.2001 an IO and PO were appointed by the Disciplinary Authority. There was little progress in the matter and on 25.2.2004 another Inspector from CBI was appointed as PO since the earlier appointed officer was pre-occupied with other cases. The IO submitted the report on 28.6.2006 with the finding that the evidence was insufficient to hold the charges as proved, especially when according to him the majority of the prosecution witnesses retracted from the statements given during the preliminary investigation. Further the IO concluded that the charge of deriving pecuniary advantage could not be established.

21. The Disciplinary Authority did not accept the inquiry report. A further inquiry was ordered. A new IO and PO were appointed from Bangalore Doordarshan who apparently did not take the inquiry forward. In the meanwhile, the charged officer had approached this Tribunal and the High Court of Kerala for relief. He had objected to the action of the Disciplinary Authority for a fresh inquiry and also highlighted the delay in the disciplinary proceedings. The High Court on 19.6.2009 stipulated a time limit of 4 months for completion of inquiry. The inquiry was not set aside on the ground of delay. The Disciplinary Authority appointed a new IO and PO to expeditiously complete the proceedings. The further Inquiry Report came up with the finding that the applicant had advised the external firms producing sports programmes and also helped them to identify production houses that were giving facilities like camera, equipment, editing

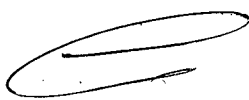


facilities etc. The Inquiry Officer also observed that from the oral evidence adduced, the firms that had been given the work did not have enough experience in the task assigned. It was also found that production from two different producers were accepted in a single tape, which was contrary to the Doordarshan practice of accepting each separate programme in a separate tape. The argument by the charged officer that this was done due to paucity of tapes was not acceptable. The Inquiry Officer had held that :


“ Accepting tapes containing productions of two different producers in a single tape due to paucity of tapes is also not acceptable as for other royalty programmes like Agriculture, Documentaries etc. no such tape has been received containing two different programme in a single tape as stated by the Library Assistant.”

22. Hence the procedure normally followed had been overlooked. The Apex Court in Union of India Vs. Sardar Bahadur (1972) 4 SCC 618 and Devinder Bhai Vs. R.V.Seth (1992) AIR (SCW) 1454 had held that charge may be established either directly on the basis of the material adduced during the proceedings or by drawing reasonable inference from other facts established by evidence. The IO thus held the view that the charged officer overstepped his responsibility by providing such facilities. However, he also noted that “it was not explicitly proved beyond doubt that all these have led to getting pecuniary advantage” to the charged officer. DG Doordarshan, considering the Inquiry Report as the Disciplinary Authority, held that the charges were proved and imposed a penalty.

23. The applicant now has approached the Tribunal with the plea to set aside the punishment and appellate order. Though he has superannuated from service he has also requested that on setting aside of penalty he should be granted due promotion in the JTS of Indian Broadcasting Service.




24. The issue of delay is to be considered first. It is obvious that the whole case from investigation till final conclusion has taken an inordinate length of time. From issue of chargesheet to the furnishing of the second inquiry report, it was about 10 years. This is unusual and should not have been allowed to happen. The primary responsibility for the delay is on account of the fact that the first IO and the PO did not proceed in the matter. Similarly the second IO and PO do not appear to have done any substantial work. The charged officer himself took more than 1 year and 4 months to furnish a statement of defence in response to the chargesheet. There also arose the aspect of further inquiry ordered by the Disciplinary Authority. The pendency of the applicant's case before the Tribunal and the High Court was another factor. The Tribunal in earlier O.A.No.558/2008 filed by the applicant has affirmed the power of the Disciplinary Authority to make further inquiry but had directed that the same should be completed before the superannuation of applicant. We note that the Tribunal had affirmed further enquiry after noting the delay in the case from the year 2000 to 2006. Hence the delay was not adduced as a cause and reason to drop the inquiry. Applicant approached the High Court which also did not set aside the disciplinary proceedings but only stipulated time lines for completion of further inquiry. Delay can also be attributed to the Disciplinary Authority's disagreement with the first inquiry report on eight grounds. However, this can be attributed to bringing more clarity in the matter and the further inquiry cannot be held wrong on the account of rendering justice also. The Disciplinary Authority can request his delegatee the Inquiry Officer to conduct a further inquiry to bring more clarity or if he finds that conclusions




are not flowing from the discussion of evidence adduced. It is not the persona of the Inquiry Officer which is important but rather the chair and designation of IO and the successor to the chair can conduct further inquiry. So the delay cannot be attributed to any one cause but occurred due to various reasons and primarily due to inaction of the two earlier IO's. It is incomprehensible that a departmental inquiry should linger on for five years at the stage of conduct of inquiry. All these aspects of delay and those responsible should be identified by the DG Doordarshan and necessary cognizance taken.

25. Be that as it may, going beyond the procedural delays, the substantive facts of the case merit attention. The crux of the charge relates to the award of work for certain royalty sports programmes of Doordarshan to certain external firms, ill equipped to do the work. It comes from evidence that these firms neither had the professional knowledge or experience or the technical equipment for the work assigned and awarded. It is a matter of record that the charged officer was guiding these firms to get the work done through Vision 2000 owned by his wife, for which pecuniary advantage was derived in so far as payments were received by his wife through Vision 2000. It is also on record that two officials of the Doordarshan Kendra who worked for editing and photographing of these programmes at the behest of the charged officer were proceeded departmentally and punishments awarded. Hence these facts are neither refuted nor merit being overlooked or ignored.



26. In the Inquiry Report a clear finding has been recorded about the action of the charged officer in advising and guiding the private firms to use Vision 2000 for the royalty programme production. The chargesheet alleged these actions entail abuse of office, which is serious in itself. Since Vision 2000 was a firm owned by applicant's wife, it stands to reason that the charged officer acted with suspect and ulterior motive and this adversely reflects and impacts on his integrity. All this constitute a misconduct, grave enough to warrant notice and a punishment. The oral and documentary evidence of the case which came on record during inquiry and produced before the Tribunal would show that pecuniary advantage had been obtained by Smt.Rajamma John of Vision 2000 as well as by other family members of the charged officer as noted from the record of cheques issued. The evidence of the Investigating Officer is also a matter of record and it clearly brings forth the actions of the applicant in making the above payment. Since the Investigating Officer was not cross examined, the evidence so collected, produced and marked was accepted. Therefore, the overwhelming evidence is against the applicant. This being so, the punishment order and the appellate order are based on facts are incontrovertible.

27. Apex Court has held in a plethora of decisions that Judicial Review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafide. We find that these are not attracted in this case. Though there was delay it was not unexplainable. It does not dilute the offence for which the applicant was proceeded against. This is



not a case where the relevant rules of inquiry was not followed or that reasonable opportunity to defend was not allowed or that the punishment was disproportionate to the misconduct. We also note that in the earlier rounds of litigations the Tribunal and High Court had not considered dropping of the disciplinary proceedings. It is also not a case where the punishment does not suit the offence or is vindictive or unduly harsh or one which shocks the conscience. Rather, it is not shockingly disproportionate. The Apex Court in Government of A.P Vs. Mohd. Nasrullah Khan (2006) 2 SCC 373 had held that the jurisdiction of the Tribunal to interfere with disciplinary matters or punishment cannot be equated with that of an appellate jurisdiction. The Tribunal cannot interfere with the findings of the IO or the competent authority where they are not arbitrary or utterly perverse.

28. From above aforementioned discussion, we find no reason to set aside the actions of the Disciplinary Authority or the penalty imposed. Hence the prayer for promotion is also rejected. Accordingly, the O.A is dismissed. No costs.

(Dated this the 19th day of December 2016)


(P.GOPINATH)
ADMINISTRATIVE MEMBER


(N.K. BALAKRISHNAN)
JUDICIAL MEMBER