

AG
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH LUCKNOW

O.A.No. 31/90(L)

Kamleshwar Prasad Srivastava .. Applicant

vs.

Union of India & Ors. .. Respondents

Coram: Hon'ble Vice Chairman Shri B.C.Mathur

Hon'ble Member(J) Shri D.K.Agrawal

Judgment delivered by D.K.Agrawal, Member(J) Date:

This application under Section 19 of the Administrative Tribunals Act, 1985 has been filed by Shri K.P. Srivastava, IAS, Special Secretary to the Govt. of Uttar Pradesh in the Department of Education (Higher and Secondary) aggrieved by the order of opposite party No.3 (Secretary, Appointment Department, Govt. of Uttar Pradesh) placing him under suspension in contemplation of disciplinary proceedings against him. The impugned order of suspension dtd. 17-1-1990 has been passed purporting to be in exercise of the power in sub-rule(1)(a) of rule 3 of All India Services (Discipline & Appeal) rules, 1968 for violation of rule 3 thereof. It has been filed as Annexure-1 to the application. The chargesheet containing 11 articles of charges dated 28.2.1990 has been filed by the State Govt. (Opposite Party No.2 as Annexure CA-2 to the counter).

2. Briefly, the facts are that the applicant was appointed to the U.P. Civil Service by direct recruitment on 14.4.1958 and confirmed w.e.f. 14.4.1960. He earned due promotions in the Civil Service and was selected for appointment in the senior scale of Indian Administrative Service and

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appointed on 4.5.1982 to officiate against senior scale I.A.S.post. The applicant was appointed as Competent Authority-cum- Joint Director, Urban Land Ceiling, Varanasi under Section 2(d) of the Urban Land(Ceiling and Regulation)Act and worked on that post during the period from 10.3.1976 to 30.6.1981. The State Government sometime in the year 1984 directed a general enquiry into the working of the offices of Competent Authorities of Urban Land Ceiling in the city of Lucknow, Agra, Varanasi, Allahabad and Kanpur. The officers of the vigilance establishment thereafter took into their possession the case files and the Director, Vigilance submitted his report on the basis of which the impugned order of suspension dated 17.1.1990 (Annexure-I) and the chargesheet dated 28.2.1990 (Annexure CA-II) were issued by the State Government/ disciplinary authority.

3. The applicant has assailed the impugned order of suspension and the chargesheet on various grounds, firstly, that the standard clause relating to immunity of Public Servants as contained in Section 40 of the Urban Land (Ceiling & Regulation) Act, 1976 has been ignored, secondly that there was ~~the~~ violation of Rule 3 of All India Services Conduct Rules, 1968, and thirdly that the order of the State Government authorising the U.P. Vigilance establishment

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to make an inquiry was illegal and contrary to the provisions of U.P. Vigilance Establishment Act, 1965.

4. The application was admitted and an ad-interim order staying suspension order was passed by another Bench of the Tribunal on 30-1-1990.

5. We have heard the learned counsel for the parties and perused the record. The vigilance report has also been perused by us.

6. It would be relevant to note down the object and broad features of Urban Land Ceiling & Regulation Act, 1976. The object of the act was to provide for the imposition of ceiling on vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit, to regulate the construction of holdings on such land and for matters connected therewith, with a view to preventing the concentration of urban land in the hands of few persons and speculation and profiteering therein and with a view to bringing about an equitable distribution of land in urban agglomerations to subserve the common good. Therefore every person holding vacant land in excess of ceiling limit was required to file a statement before competent authority. On the basis of statement filed u/s 6 and after such enquiry as the competent authority deemed fit, the competent authority was required to prepare draft statement against which objections could be

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filed u/s 8(4). Final statement of vacant land was prepared u/s 9 and excess land acquired u/s 10. Section 19 contained provision regarding vacant land which was exempt from the provisions of the act. Further section 20 empowered State Government to exempt excess vacant land from acquisition. Section 21 contained a provision that excess vacant land if required to be utilised for construction of dwelling units for accommodation of weaker sections of the society (in accordance with the scheme approved by State Government) was not ^{to} be declared excess land. Section 31 deals with the powers of competent authority and declares that the competent authority is vested with the authority of civil court in specified matters. Section 33 provided for an appeal against the competent authority and section 34 empowered State Govt. to call for and examine records of any order passed or proceedings taken under the provisions of the act against which no appeal has been preferred for the purpose of satisfying itself as to the legality or propriety of such order or as to the regularity of such procedure and pass such order with respect thereto as it may think fit. Finally section 40 contained a standard immunity clause in respect of acts done in good faith by the authority under the Act.

Dr. G. S. Rao

7. The applicant's contention is that his alleged acts of omission and commission were not subjected to revision or appeal under the provisions of the Act and therefore on account of indemnity clause as contained in Section 40 could not form the basis of the chargesheet merely on the basis of a general enquiry held by the Vigilance Establishment of the State Government. He has placed reliance in his pleadings on the case of Mohammad Iqbal Azmi decided by U.P. Public Services Tribunal-I Lucknow by judgment and order dated 28-7-1986 (Ann.A-2 to the application). Shri Mohammad Iqbal Azmi challenged the order of reversion passed on the basis of errors committed by him in the orders passed by him as Asstt.Consolidation Officer under the U.P.Consolidation of Holdings Act. The Tribunal took the view that "there are no allegations of malafide against the petitioner. Besides, the malafides could be best proved in appeal or revision.....If the action of the petitioner was not in good faith in giving decisions in the cases mentioned in the chargesheet, the appellate or revisional court only could hold malafides or otherwise against the petitioner while deciding cases but under no circumstances a presiding officer can be chargesheeted on this account." State of Uttar Pradesh preferred a Writ Petition in the High Court, Lucknow numbered as 801/87 wherein it was held by judgment dated 10.4.1987 that protection under

Dr. C. S. Mehta

Section 48A of the Consolidation of Holdings Act would be available only when it is shown that the impugned act has been done in good faith. The High Court expressed its disagreement with the proposition laid down by the Tribunal that the question of good faith could be decided only by the appellate or revisional court. The judgment of the High Court has been filed as Annexure A-3 to the application. Mohd. Iqbal Azmi preferred a Special Leave Petition before Supreme Court which on grant of Special Leave was numbered as Civil Appeal No.3338/88. The said appeal was allowed by Supreme Court by judgment dated 22.9.1988. Their Lordships of the Supreme Court set aside the judgment of the High Court and restored that of Tribunal. A copy of the judgment of the Supreme Court has been filed as Annexure A-4 to the application. On the basis of the said judgment of the Supreme Court it was contended that lack of good faith could be determined only by way of appeal or revision.

8. Thus it raises two questions, firstly whether the judgment of Supreme Court in Civil Appeal 3338/88 lays down the law that the finding of malafides can be reconsidered by appellate or revisional court only against a Presiding Officer, secondly, that no disciplinary proceedings can be taken against a Presiding Officer/authority discharging judicial/quasi judicial function under a particular act or

Dr. G. S. Sankar

statute if it happens to contain an immunity clause. The Supreme Court in its judgment vide appeal No.3338 of 1988 referred to above has not declared law to the effect that lack of good faith can be established only by way of appeal or revision. With reference to various decisions rendered by the Supreme Court in the case of (i) Nawab Sir Mir Qsman Ali Khan v. Commissioner of Wealth Tax; (1986) Supp. SCC 700, (ii) Union of India v. All India Services Pensioners Association, AIR 1988 SC 501 and (iii) Daryao & Ors. v. State of UP and another AIR 1961 SC 1457, it emerges out that where a decision contains reasons even though the order is passed dismissing an SLP in limine it would be binding under Article 141 of the Constitution. Consequently, the converse is also true viz. where reasons are not given, such orders passed by the Supreme Court are not binding as a precedent, for such orders do not declare any law. A decision rendered by the Supreme Court is a binding precedent only to the extent of what it actually decides and must be understood in the background of the facts of the case decided - vide AIR 1987 SC 1073 (Ambica Quarry Works v. State of Gujarat). Again in AIR 1974 SC 818 (M/s. Rawal and Co. v. K.G. Ramachandran) it was held that general observations should be confined to the facts of the cases wherein they were made and that, "any general observation cannot apply in interpreting the provisions of an Act unless the Court has applied its mind to and analysed the provisions of that particular Act."

Dr. C. S. Murthy

The second issue raised in this application is of great importance. There are numerous enactments under which Govt. servants are vested with powers of quasi-judicial nature. These enactments contain an immunity clause also. The question arises whether these authorities enjoy complete immunity from legal proceedings, including departmental proceedings, in respect of matters decided by them in performance of their quasi-judicial functions. This issue has been considered in detail by Supreme Court in S.Govinda Menon v. Union of India, AIR 1967 SC 1274 and held that if there was prima facie material for showing recklessness or misconduct on the part of the appellant in the discharge of his official duty, Govt. was entitled to institute disciplinary proceedings. However, there was no indemnity clause contained in Madras Hindu Religious and Endowments Act, 1951 whereunder the appellant (Commissioner) was vested with the quasi-judicial functions. Therefore we may discuss the issue with reference to immunity clause. However, before we proceed to examine the issue it may be mentioned that even judicial officers to whom protection of considerably higher order is available, are also not immune from departmental proceedings. The combined effect of the judicial officers (Protection) Act, 1850 and the Judges (Protection) Act, 1985 is that a Judge or any person acting judicially cannot be

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sued in any civil Court for any act done or ordered to be done by him in the discharge of his quasi-judicial duties. There is, however, no bar to departmental proceedings being initiated against such a person in accordance with law. There are many reported cases in which disciplinary proceedings for misconduct has been initiated against members of subordinate judiciary in the exercise of their judicial functions in accordance with relevant rules. Rajasthan High Court in *Bhagwat Swaroop v. State of Rajasthan*, (1978) 1 SLR 835 held as follows:-

"But where a Magistrate, while exercising his judicial discretion, acted upon insufficient material or if it is found that further evidence of substantial nature was necessary before a search warrant under Section 100 of Code of Criminal Procedure could have been issued in a particular case, the same could not amount to misconduct and it could hardly be a matter for taking disciplinary action unless it is alleged and proved that the conduct of the Magistrate, while exercising his judicial discretion, was of a nature not befitting the dignity of his office or where he was actuated by malice and it is found that a particular order was the result of malafide conduct on the part of the Magistrate."

In this light we may examine the immunity clause and the validity of action of disciplinary authority in the instant case.

9. Section 40 of the Ceiling Act reads as under:-

"No suit or other legal proceedings shall

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lie against the Government or any officer of the Government in respect of anything which is in good faith or intended to be done by or under this Act."

The word "Good faith" has been defined in Section 3(22) of the Central General Clauses Act as well as under Section 4(17) of the Uttar Pradesh General Clauses Act as follows:-

"A thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not"

The Supreme Court has explained the legal meaning of the word 'honestly' in the case of Bhilwandi & Nizampur Municipality vs. Kailash Sizing Works, AIR 1975 SC 529 by relying on the version of Lord Blackburn, in Jones v. Gordon(1877) 2 App Cas 616 and has distinguished between the case of a person who is honestly blundering and careless and the case of a person who has acted not honestly. It was stated that an authority is not acting honestly where an authority has suspicion that there is something wrong and does not make further enquiries. Being aware of possible harm to others and acting inspite thereof, is acting with reckless disregard of consequences. It is worse than negligence, for negligent action is that, the consequences of which, the law presumes to be present in the mind of negligent person, which actually it was there or not. This legal presumption is drawn through the

Dr. C. S. Reddy

well known hypothetical reasonable man. "Reckless disregard of consequences and malafides stand equal, where the actual state of mind of the actor is relevant. This is so in the eye of law, even if there might be variations in the degree of moral reproach deserved by recklessness and malafides." Thus the protection available to the public servant while discharging judicial/quasi judicial is that no action can be taken against him for discharge of his quasi-judicial functions if the same have been discharged in good faith. Action can be initiated against him only if lack of good faith i.e. dishonesty or deliberate negligence is prima-facie shown to have been discovered against him by the Disciplinary Authority whether the State Government or Central Government. In other words it would mean that if the provisions of the act or rules have been disregarded by a public servant while discharging his judicial functions which has resulted in an erroneous judgment or order the correctness or legality of the decision can be challenged by way of appeal or revision under the relevant provisions of the act. Then if a public servant is merely guilty of negligence, he will be entitled to protection under the immunity clause. But if there is prima facie evidence of lack of integrity or recklessness in the discharge of duties, he becomes

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exposed to departmental action.

10. In the light of the above legal position we may examine action of the disciplinary authority in the instant case to find out whether prima facie evidence has been discovered to establish that the applicant acted with oblique motive/dishonestly or recklessly in utter disregard of consequences to be able to attribute malafides to him. Unless the disciplinary authority/State Govt. has taken up such an exercise, the action is liable to be struck down not only as arbitrary but against the provision of law. In the instant case a general enquiry was conducted in relation to some districts of the State about the working of competent authorities under Ceiling Act as a result of which a general report was submitted holding that rules/law and guidelines issued by Govt. from time to time were not followed. The question is whether departmental action can be initiated against the applicant only on the ground that rules or provisions of the act were disregarded or that he was guilty of inaction. In case the rules or provisions of the act were disregarded, such an action could be questioned in appeal u/s 33 or in revision u/s 34 of the Act. Further, if the applicant was negligent, he was entitled to protection under the immunity clause. He can be departmentally dealt with only if his act or omission is such as to

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reflect on his integrity or recklessness or was the result of deliberate negligence on his part. The enquiry officer of vigilance establishment has failed to take account of this legal aspect. The report of vigilance establishment merely indicates that the competent authorities in KAVAL towns of Uttar Pradesh have failed to act deligently which has resulted in loss to Govt. and consequent benefit to landholders. In turn, the Govt. has proceeded to initiate action against one of them i.e. the applicant. Even the statement of imputation accompanying articles of charge does not furnish prima-facie material to the effect that the applicant was guilty of dishonesty or recklessness. It is only in such cases that the immunity clause comes into play and action of Govt. liable to be struck down as being violation of the statutory provision. Charge No.1 and the statement of imputation accompanying it very well illustrates the nature of allegations and evidence in support thereof. Charge No.1 runs like this. 'while posted as Competent Authority at Varanasi you did not act with due care and caution in as much as you failed to order survey & submit report to Govt. u/s 20 of the Act in pursuance of statement filed by Ramesh Chandra Dey, Managing Director & Partners of Standard Machine Bricks & Tiles Co.Ltd. claiming utilisation of 30.11 acres of land for industrial purpose.'

The scheme of the act as mentioned above was to the effect that after receipt of statement u/s 6, the

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competent authority was required to prepare draft statement of vacant land against which objections could be filed by landholder u/s.8(4). Then final statement of excess land was to be prepared u/s 9 or if the excess land was alleged to be in use for industrial purpose, a report had to be submitted to State Govt. which had power to exempt its acquisition u/s. 20 of the Act. The basis of charge No.1 is that the alleged omission was malicious. However, the evidence proposed to establish the charge does not mention facts, constituting dishonesty or deliberate negligence. The evidence in support of charge No.1 consists only about the fact that Statement u/s 6 was filed and thereafter no action was taken as required under the provisions of the act. Thus it merely seeks to establish omission on the part of competent authority. The facts constituting deliberate negligence have not been brought out either because the same did not exist or the vigilance officer was unable to dig them out. In such a situation the action of the disciplinary authority will be liable to be struck down. The protection clause in the act in question or for that matter in any other statute does make it obligatory on the part of the disciplinary authority to discover and establish prima facie facts constituting malice or deliberate negligence before it can proceed to initiate disciplinary proceedings against

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a public servant whose actions are sought to be protected by act of legislature or Parliament.

It is not sufficient that State's police or vigilance agency in a general manner concludes malafides without there being specific material of malice or deliberate negligence as required by immunity clause. In the circumstances we have no other option but to quash the charge memo with liberty to Govt. to allege and furnish prima-facie evidence of malafides in support of the allegations in the charge memo ~~for~~ initiating departmental action against the applicant.

11. The impugned orders of suspension and chargesheet in the instant case have been challenged also on the ground that the acts of omission and commission alleged to have been committed by the applicant relate to the period prior to his induction in Indian Administrative Service. Therefore, it has been urged ~~xxxxx~~ that the chargesheet issued in exercise of powers in sub rule (1)(a) of Rule 3 of All India Civil Services(Discipline and Appeal)Rules 1965 is bad in law. The said rule reads as under:-

"3. Suspension --(1) If, having regard to the circumstances in any case and, where articles of charge have been drawn up, the nature of charges, the Government of a State or the Central Government, as the case may be, is satisfied that it is necessary or desirable to place under

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suspension a member of the Service, against whom disciplinary proceedings are contemplated or are pending that Government may--

(a) if the member of the Service is serving under that Government, pass an order placing him under suspension, or

(b) if the member of the Service is serving under another Government request that Government to place him under suspension

pending the conclusion of the disciplinary proceedings and the passing of the final order in the case."

It has been contended on behalf of the applicant that the suspension order was passed on 17-1-1990 while chargesheet was issued on 28-2-1990 and consequently it is obvious that the suspension order was passed before the articles of charges were actually drawn. There is no doubt that the disciplinary authority can initiate action against an officer of IAS under Rule 7 of the All India Civil Services (Discipline and Appeal) Rules, 1965 for acts of omission and commission committed before he was inducted in the Indian Administrative Service. Therefore, it is urged that chargesheet issued under Rule 3 was without authority because it deals with the misconduct of an officer as a member of IAS as well as for the reason that the order of suspension was passed without actually drawing the articles of charges. We agree to the extent that there was ^{no} violation of Rule 3 of All India Services Conduct Rules. The misconduct, if any, relates to the period when the applicant was member of State Civil service. Therefore, the charge memo is liable to be struck down on this ground as well.

12. We may also deal with the last and the least important point raised by the applicant. In the instant case the inquiry was made by the State Government through its Vigilance Agency. The applicant has assailed the right of the State Government to get an enquiry conducted by the Vigilance Establishment on the basis of provisions of the Vigilance Establishment Act 1965. We have carefully gone through the provisions of the Vigilance Establishment Act 1965 but failed to discover lack of authority on the part of the State Government to use the Vigilance Agency for holding such an enquiry. It is, however, true that the vigilance enquiry was of a general nature and the Vigilance Officer failed to discover prima-facie material to establish lack of good faith. The Enquiry Officer merely concluded ~~the~~ malafides on the part of the applicant without bringing on record necessary material to establish the same. However, there is no reason for us to say that the State Government cannot use the Vigilance Agency or any other agency to hold a preliminary enquiry, if it so desires. In any case, there was no want of authority in the State Government to use the Vigilance Agency to make a preliminary enquiry in the instant case. We are of the opinion that the plea raised by the applicant is misconceived.

In the result, we hold that the impugned order dated 17-1-1990 (Annexure-I) and charge memo dated

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28-2-1990(Annexure CA-2 of the counter affidavit)
are liable to be quashed. We, accordingly, quash the
impugned order of suspension and the chargememo.
However, it will remain open to the State Govern-
ment to initiate departmental action in the light
of the observation made by us in the body of the
judgment and in accordance with the rules on the
subject. The parties will bear their own cost.

D.K. Agrawal
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(D.K.AGRAWAL)
Member(J)

B.C. Mathur
(B.C.MATHUR)
Vice-Chairman