

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.752/2001

Date of Decision: /4.03.2002

Shri R.M. Dayal.

Applicant(s)

Applicant in person

Versus

Union of India & others

.. Respondents

Shri V.S. Masurkar
Ms. H.P. Shah

Advocate for Respondents 1 & 3
Advocate for R2 & R4

CORAM: HON'BLE SHRI S.L. JAIN. .. MEMBER (J)
HON'BLE SMT. SHANTA SHASTRY. .. MEMBER (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library ✓

Shanta
(SMT. SHANTA SHASTRY)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 752/2001

THIS THE 14TH DAY OF MARCH, 2002

CORAM: HON'BLE SHRI S.L. JAIN. MEMBER (J)
HON'BLE SMT. SHANTA SHASTRY . MEMBER (A)

Ravendra Mohan Dayal, IFS,
S/o late Sri Suraj Mohan Dayal
Conservator of Forests,
101, HillView,
85, Lulla Nagar,
Pune-411 040.

...Applicant

In person

Versus

1. The Principal Secretary (Forests)
Revenue & forest Department,
Govt. of Maharashtra,
Mantralaya, Mumbai-400 032.
2. Union of India
Through Secretary,
Ministry of Environment &
Forests, Govt. of India,
ParyawaranBhawan,
C.G.O. Complex, Lodhi Road,
New Delhi-110 003.
3. State of Maharashtra
in Revenue & Forest Department
through Chief Secretary,
Govt. of Maharashtra,
Mantralaya,
Mumbai-400 032.
4. Sri S.K. Mitra, IFS,
Managing director,
Plot No.12, Rawal Plaza,
Kadbi Chowk,
Nagpur 440 004.

... Respondents

By Advocate Shri V.S. Masurkar for R1 & R3
Ms. H.P. Shah for R2 and R4.

O R D E R

Hon'ble Smt. Shanta Shastry. Member (A)

The applicant, who is a direct recruit to the Indian Forest Service 1978 batch has been placed under suspension by an order dated 14th August, 2001 by Government of Maharashtra. The applicant had allegedly committed irregularities during the period from 20.6.1987 to 11.7.1991 when he was working as Deputy Conservator of Forests, Alibag Forest Division in Raigad District of Maharashtra State as revealed in the report of the Sinha Mitra Committee, which was set up under GR dated 20th September, 1997. The main issue was of non-implementation of Maharashtra Private Forest (Acquisition of land) Act, 1975 properly, resulting in illegal purchase of forest land worth Rs.1500 crores. The report was submitted in July, 1998. In the report it was alleged that the applicant had committed certain omissions/commissions in three cases in implementing the 1975 Act. The applicant had sent a detailed representation on 25.9.2000 raising objections against the report. He also made a representation to the Chairman of the Central vigilance Commission through proper channel. Thereafter, the applicant, along with other officers filed Civil Writ Petition No.6318/2000 apprehending that a criminal case might be filed against them. A declaration was also sought from the High Court that the report of Sinha Mitra Committee is arbitrary, void, abinitio as the Sale and Non-Forestry Works had not taken place during applicant's tenure. A charge

memo was issued to the applicant on 04.12.2000. The Writ Petition was dismissed with costs in March, 2001 and thereafter, the applicant has been placed under suspension.

2. The applicant filed OA No.596/2001 before this Tribunal challenging the suspension order. This OA was disposed of with a direction to Respondent No.2 to decide the appeal of the applicant dated 18.8.2001 against his suspension within two weeks from the date of receipt of the order. The applicant had also challenged the charge memo issued to him by OA No.495/2001 that was also disposed of by the Tribunal by order dated 15.10.2001 with a direction to Respondent No.1 to complete the departmental enquiry and to pass final order within nine months failing which the charge memo dated 04.12.2000 would stand abated. As the appeal of the applicant was not decided within two weeks by the Respondent No.2 as per the directions of this Tribunal, the applicant filed another OA No.707/2001 seeking to quash his suspension order. However, the OA was again disposed of as being non-maintainable on the ground of constructive resjudicata with certain other observations.

3. The respondent No.2 has now decided the appeal of the applicant against his continued suspension vide order dated 16.10.2001. In the present OA the applicant is challenging the aforesaid order.

4. According to the applicant, the order passed on his appeal is bald, cryptic non-speaking and in violation of Rule 19 (2) of the All India Service (Discipline & Appeal) Rules, 1969 and also in gross contemptual disregard to the directions given in OA No.596/2001.

5. The applicant has also challenged the impugned order on the ground that his appeal was not considered by the competent authority as provided in Sub-Rule 2 of Rule 19 of All India Service (Discipline and Appeal) Rules 1969, but by the Additional Secretary to the Government of India. His appeal should have been decided by the Central Government under Presidential sanction under rule (2) of Rule 19 of All India Service (Discipline & Appeal) Rule 1969.

6. The main grounds taken by the applicant are that the cause of action i.e. taking over possession of acquired forest land after survey and demarkation and corrections mutation entries in the Revenue or Forest record of ownerships of said land. The charge memo dated 04.12.2000 pertains to a cause of action which is more than 25 years old i.e. pertaining to 30.8.1975 or immediately thereafter when the applicant was not even in service. The applicant was posted at the relevant place from 20.6.1987 to 11.7.19991 i.e. 10 to 14 years

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after the cause of action. According to the applicant when the alleged charge against the applicant was pending pertaining to the period from 20.6.87 to 11.7.91 the act of the respondents in suspending him in the year 2001 is arbitrary, malafide and punitive in character. All the documents relied upon by the Disciplinary Authority are also in possession of the Disciplinary Authority. They are also enclosed with the charge memo dated 04.12.2000 served to the applicant after the investigations are completed. More over the applicant is posted in a functional post of Conservator of Forest (Publicity and Information) at Pune. He cannot be remotely concerned as such with the tampering of evidence and therefore, the tampering of evidence or destruction of the evidences on the part of the applicant does not arise. Therefore, suspension of the applicant is not maintainable. The applicant is relying on the judgment in the case of C.V. Zaide Vs. Union of India & Others (1989 (4) CAT 707 wherein it has been held, that the applicant suspended due to pendency of criminal case - documents already seized no ground for continuation - order reinstatement.

7. The applicant further argues that no witness relied upon by the Disciplinary Authority is posted under the applicant. There is therefore no justification to continue his suspension. The applicant had already replied to the charge memo on 30.5.2001.

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The suspension order is issued after submission of the reply by the applicant. Had the respondents been really serious about it, they could have obtained the orders of the Government on the reply of the applicant and proceeded with the enquiry by completing the same within six months.

8. A major allegation made by the applicant is that Shri S.K. Mitra i.e. Respondent No.4 who was one of the Members of the Sinha Mitra Committee on whose recommendation the charge memo dated 04.12.2000 has been issued to the applicant in this case was posted as Conservator of Forests, Thane from 01.01.1984 to 24.5.1987. He was exercising control over the Alibag Forest Division during this period. He was therefore also responsible for ensuring the effective implementation of the provision of the 1975 Act. He therefore, ought not to have acted as judge on his own case which is against the principles of natural justice. The applicant submits further that no officer during the period from 1975 to 1987 either from the Revenue Department or from the Forest Department has been held responsible for any alleged misconduct in the implementation of mandate of 1975 Act.

9. Further, the Sinha Mitra Committee had also recommended the departmental enquiry and CID enquiry against the applicant's colleague Shri A.R. Chadha. Instead of taking any action against Shri Chadha he is

being continued without any suspension, this is arbitrary and illegal. In this case the applicant has relied on the judgment in the case of E.S. Reddy Vs. Chief Secretary, Government of Andhra Pradesh 1985 (3) SLR 119. It was held in this case that suspension order being arbitrary and discriminatory resulting in denial of equal protection to the petitioner is violative of Article 14 of the Constitution. Similarly the point was also discussed in the judgment in Amit Jha IAS Vs. Union of India and another 1998 AISLJ (3) 471. The applicant has further alleged that because he has filed a writ petition in the High Court of Mumbai, he has been suspended. In the case of Shri Chadha not only he is not suspended but his deputation tenure under Respondent No.2 which was to expire on 14th October, 2001 has been extended further. The applicant submits that though the Hon'ble High Court of Bombay expressed their opinion on the suspension of officers, which was not an issue before the High Court in any of the petitions nor did it form part of the pleadings. The applicant therefore, is relying on a judgment in the case of New Delhi Municipal Committee Vs. State of Punjab AIR 1997 SC 2487 in which it was held that courts should refrain from expressing opinion on points not raised or not fully and effectively argued by the counsel on either side. According to the applicant Respondent No.1 without applying mind independently has mechanically acted on the remarks expressed in the judgment of the High Court.

He is relying on the judgment in Nikka Ram Sharma Vs. C.S.W.B. & Others 1990 (4) SLR 407 wherein it was observed that suspension order passed in routine and mechanical manner at the instance of any authority, which has no power to give such directions - order without jurisdiction and nonest - orders struck down. The applicant has also alleged that no action so far has been taken against the officials of the Revenue Department, who were also equally implicated in the improper implementation of the 1975 Act. The applicant has therefore, sought quashing and setting aside of the suspension order dated 14.8.2001 and the order dated 16.10.2001. He has also prayed for statu⁵quo ante as on 13.8.2001 with consequential benefits.

10. The respondents submit that the High Court while passing the judgment on the writ petition filed by the applicant and others had clearly ordered suspension of the applicant on the basis of the irregularities committed by him while working as District Forest Officer, Alibag Forest Division. The High Court has passed strictures that the petitions are nothing but miserable attempt to delay the initiation of the criminal proceedings. In any case the appeal was duly considered by the respondents and it is after careful consideration, it was decided not to revoke the suspension order of the applicant.

11. As regards the report of Sinha Mitra Committee being a coloured report in that one of the Members i.e. Shri Mitra was also involved in as much as he was the Conservator of Forests during the relevant period upto 1987, The respondents submit that the applicant had challenged this very issue in the High Court and the High Court had dismissed his petition. Therefore, this cannot be a ground for revocation of his suspension.

12. Whatever may be the grievance of the applicant, the limited issue in the present OA is regarding revocation of suspension. The Tribunal had directed the respondents to take a decision on the applicant's appeal, the same has been taken and communicated to the applicant on 16.10.2001.

13. The respondents have also considered the facts and circumstances which indicated the gravity of the irregularities committed by the applicant warranting to keep the officier under suspension till such time the competent authority finds the same justified.

14. The respondents have explained that the tenure of Shri Chadha expired on 13.01.2001, the same was extended for one year in public interest with the consent of Government of Maharashtra and Respondent.No.1 without any prejudice to their proposal to suspend Shri Chadha sent to Government of India on 14.8.2000. The

Government of India has sought the comments of the State Government on the submissions made by Shri Chadha in his representation dated 01.11.2000 and 08.7.2001 and the matter is under consideration. Shri Chadha is working as per special investigation team constituted by Ministry of Environment and Forests in pursuance of the Supreme Court order dated 13.01.2001 in writ petition No.202/91.

15. It is further submitted that action has been taken to prosecute the officers of the revenue department found prima facie guilty. Such a statement was made in fact by the Advocate General of Maharashtra in the High Court in writ petition filed by the applicant and others.

16. The respondents also submit that after the judgment of the High Court two FIRs under Section 407, 420, 102, 34 of the IPC and Section 3 (a) of the Forest Conservation Act, 1980 have been filed. FIR No.440/2001 dated 23.3.2001 in the Police Station at Panvel and FIR No.12/2001 dated 23.3.2001 in the police station of Nerul.

17. The learned counsel has also explained that the delay in initiating and completing the disciplinary proceedings is neither intentional nor motivated but due to lengthy procedure and the waiting for the enquiry

report of Sinha Mitra Committee as well as litigation before the High Court. In the peculiar facts and circumstances of the case, the contention of the applicant about delay is not sustainable.

18. The respondents have also clarified that no detail reply is being given as it would jeopardise the defence and therefore the present OA is premature being at interlocutory stage.

19. The respondents have also relied on the following judgments. (1) Transport Commissioner, Madras Vs. Union of India 1995 (1) ATJ 299 (2) DIGP Vs. K.S. Swaminathan 1997 (1) ATJ 378. According to this judgment, the Tribunals/courts are not justified to interfere in matters at interlocutory stage. The respondents have further relied on the judgment in the case of Union of India Vs. Upendra Singh ATJ 1994 (1) SC 658.

20. We have heard the applicant in person and the learned counsel for respondents. The applicant has taken the preliminary objection that his appeal has not been decided by the competent authority as provided in sub rule 2 of Rule 19 of All India Service (Discipline & Appeal) Rules 1969, but the order has been issued by the Additional Secretary to the Government of India. According to him, it should have been decided by the

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Central Government under Presidential sanction. It is seen that the order on the appeal of the applicant has been signed by the Additional Secretary to Government of India. We do not find anything wrong in this. However, the decision ought to have been taken under Presidential sanction as the appointing authority is the President of India. We therefore, looked into the original record relating to the passing of the order on the appeal of the applicant. It is seen that the impugned order of 16.10.2001 was approved by the Secretary to Government of India. According to Rules of Business, the powers of the President are delegated to the Minister. Accordingly in the present case, the Minister ought to have approved the order on appeal. There is no doubt, under special circumstances and exigencies if the Minister is not available then the Secretary can decide the appeal and get ex post facto concurrence of the Minister. In the present case we find that the matter was disposed of at the level of Secretary and it was not put up to the Minister concerned i.e. Minister for Environment and Forests. Thus, the impugned order suffers from the infirmity of lack of competence. Accordingly, without going into the merits and other contentions we consider it appropriate to remand the matter back to the respondents to ensure that the order in appeal is passed by the competent authority. Accordingly, we quash and set aside the impugned order dated 16.10.2001 and remand the matter back to Respondent No.2 for passing suitable orders by the

the competent authority within a period of two weeks from the date of receipt of copy of this order. All the other contentions raised by both the parties are left open. The OA is disposed of accordingly. No costs.

Shanta

(SMT. SHANTA SHASTRY)
MEMBER (A)

S.L. Jain

(S.L. JAIN)
MEMBER (J)

Gajan

dt: 14.3.2002
order/Judgement despatched
to Applicant/Respondent (s)
on 18.3.2002

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