

(59)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 15.9.2000

OA 676/93

Sanjay Purchit, IAS, r/o G-139, Shyam Nagar Extension,
Jaipur.

... Applicant

v/s

- 1: Union of India through Secretary (D.O.P.), Ministry of Personnel, Govt. of India, New Delhi.
2. State of Rajasthan through its Secretary, Department of Personnel, Secretariat, Jaipur.

... Respondents

CORAM:

HON'BLE MR. JUSTICE B.S. RAIKOTE, VICE CHAIRMAN

HON'BLE MR. N.P. NAWANI, ADMINISTRATIVE MEMBER

For the Applicant ... Mr. Mahendra Singh

For the Respondents ... Mr. U.D. Sharma

ORDER

PER HON'BLE MR. JUSTICE B.S. RAIKOTE, VICE CHAIRMAN

In this application filed u/s 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for a declaration that the orders dated 7.7.93 (Annexure A/3), dated 26.7.93 (Annexure A/4), dated 27.8.93 (Annexure A/5) and dated 18.10.93 (Annexure A/7) are illegal and null and void, with a further direction to the respondents to allow the applicant to join Business Management Course

at Ahmedabad.

2. In support of the relief prayed for, the applicant contended that on the basis of xxxxxxxxxx of the applicant w.e.f. 17.10.92, in pursuance of investigation relating to a criminal charge, he was suspended vide Annexure A/1 dated 20.10.92. During the suspension period the applicant thought of ~~joining~~ joining MBA Course at Ahmedabad and he accordingly sought permission of the department. For that, the department issued Annexure A/3 dated 7.7.93 stating that the applicant was not supposed to join the MBA Course without government's permission. The applicant was further advised to mark/attendance in the office every day during the suspension period. Thereafter, the applicant sought permission to leave the headquarters. That request was also turned down vide order dated 26.7.93 (Annexure A/4). Thereafter, the government issued another order dated 27.8.93 (Annexure A/5) informing the applicant that he should report back to the State Government immediately, failing which a D.E. will be initiated against him. It is also stated that leaving headquarters without permission and joining of MBA Course was against the provisions

contained in the relevant service rules. Against these endorsements the applicant made a detailed representation. For that, the government again issued reply dated 18.10.93 (Annexure A/7) stating that it was not possible for the government to permit the applicant to continue ~~his~~ studies/~~his~~ for MBA in IIM/Ahmedabad. ~~xxxxxxxxxxxxxxxxxxxx~~ The applicant was again asked to mark his attendance every day in the office of the Secretary to the Government, Department of Personnel, Rajasthan, Jaipur. The applicant has challenged these orders vide Annexures A/3, A/4, A/5 and A/7 raising several grounds.

3. By filing reply the respondents have stated that on the basis of the impugned orders vide Annexures A/3, A/4, A/5 and A/7 the departmental proceedings have already initiated against the applicant by framing charges. Alongwith the reply, the respondents have also filed a memorandum of charge-sheet dated 21.1.94 alongwith articles of charges and imputation of charges etc. On the basis of this ~~later~~ development the respondents further contended that the present application has now become infructuous, in view of the fact that the impugned orders are the very

orders which are the subject matter of the inquiry and the already ~~xx~~ inquiry has been completed by submitting the inquiry report and it is at the stage of consulting with the UPSC for taking further action in the matter. The learned counsel for the respondents contended that if this Tribunal gives a finding one way or the other in respect of the impugned orders, which are the subject matter of the inquiry, the inquiry will be prejudiced. The respondents have also submitted that if any order is passed in this application that would ~~xxxxxxxxxxxxxx~~ amount to preemptry the order xxxx yet to be passed by the disciplinary authority in the inquiry. Even otherwise in the reply the respondents supported the impugned orders.

4. Heard the learned counsel for the parties. The learned counsel for the parties raised number of contentions with reference to the documents, record and other rules by relying upon certain judgements of the Hon'ble High Court and Hon'ble Supreme Court.

5. We perused the impugned orders. We find that the impugned orders are the very orders which are for consideration in the inquiry initiated against the applica

on the basis of the memorandum of charge-sheet dated 21.1.94. The said charge-sheet has given the list of documents to be relied upon during the inquiry. From the said list we find that the ~~xx documents xx~~ impugned orders are noted at Sl.No.2 (Annexure A/3), at Sl.No.3 (Annexure A/7), at Sl.No.4 (Annexure A/2), at Sl.No.5 (Annexure A/4), ~~xx~~ at Sl.No.6 (Annexure A/5) and at Sl.No.10 (Annexure A/6).

From this/ fact it is clear that the impugned orders are the very orders which are the subject matter in the said departmental inquiry. If we render judgement with reference to the impugned orders, definitely it will prejudice ~~the xx case~~ either the case of the applicant or the respondents in the inquiry. Normally when this ~~xx~~ Tribunal finds that the very subject matter is seized by other competent authority, this Tribunal would allow that authority to proceed according to law in view of the fact that such orders by such authority would be subject to the supervisory jurisdiction of this Tribunal ultimately. In fact in ~~xx~~ similar circumstances, the Hon'ble Supreme Court has taken the view that such departmental inquiries should

not be normally interfered with unless such inquiry is by an authority who lacks an initial jurisdiction. In the instant case, it is not the case of the applicant that the authority who is now holding the departmental inquiry lacked any ~~initial~~ jurisdiction to initiate such proceedings. In these circumstances, we think it would not be proper in this case to give a finding with reference to the orders which are the subject matter of the inquiry before an authority. Almost in similar circumstances the Hon'ble Supreme Court in 2000 SCC (L&S) 710 (Air India Ltd. v. M.Yogeshwar Raj) has laid down the law that the High Court ~~should not entertain~~ ^a ~~the~~ petition involving certain facts yet to be finally decided by the disciplinary authority. We think it appropriate to ~~extract~~ extract the relevant part of the judgement as under :-

"8. It appears from a copy of the writ petition that the respondent has not questioned the jurisdiction of the disciplinary authority to issue the impugned show-cause notice. The two issues of the respondent's caste and whether he had adequately explained the production of the bogus certificate of 4-2-1998 are yet to be decided by the disciplinary authority. Both the issues are primarily issues of fact. The High Court should not have pre-empted a factual decision of the disciplinary authority on the issues. Nor should the High Court have stayed the proceedings on a *prima facie* finding on the subject-matter of

inquiry particularly when the competence of the disciplinary authority was not in doubt."

In the instant ~~of~~ case, the disciplinary authority has yet to decide regarding the validity of the same impugned orders which are ~~not~~ challenged before us in the present

application. It is no doubt ~~now~~ ^{true} that the present

application was filed earlier to the initiation of the

departmental inquiry ~~xxxxxxxxxxxxxx~~ ^{yet} ~~xxxxxxxxxxxxxx~~

~~xxxxxxxxxxxxxx~~ giving a finding one

way or the other on the basis of the impugned orders

would definitely frustrate the departmental proceedings.

Even ~~if~~ otherwise the findings if recorded with reference

to these impugned orders would definitely prejudice either

the applicant or the respondents. We think it appropriate

to leave the consideration of the validity of the impugned

orders for the disciplinary authority and after passing the

order ~~xxxxxx~~ by the disciplinary authority it is always

party aggrieved

open to the ~~xxxxxx~~ to approach this Tribunal ~~xxxxxxxx~~

~~xxxxxxxxxxxxxx~~.

6. For the above reasons, we think it appropriate to pass the order as under :-

BN

The application is dismissed keeping ~~xxxxxx~~ the contentions
of the respective parties open, to be considered by the
disciplinary authority in the inquiry initiated against
the applicant vide memorandum of charge-sheet dated
21.1.94. No costs.


(N.P. NAWANI)

MEMBER (A)


(B.S. RAIKOTE)

VICE CHAIRMAN