

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 606/2001
T.A. No.

200

DATE OF DECISION _____

L.K.Sharma

Petitioner

Mr.R.N.Sharma for Mr.S.P.Sharma

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Mr.T.P.Sharma for R-1 and

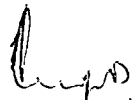
Advocate for the Respondents(s)


Mr.Arvind Gupta for R-2 & R-3.

CORAM:

The Hon'ble Mr. Justice G.L.Gupta, Vice-Chairman,

The Hon'ble Mr. A.P.Nagrath, Member (A).


(A.P.NAGRATH)
MEMBER (A)


(G.L.GUPTA)
VICE-CHAIRMAN

1. Whether Reporters of local papers may be allowed to see the Judgement?

✓ 2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of the Judgement?

4. Whether it needs to be circulated to other Benches of the Tribunal?

CENTRAL ADMINISTRATIVE TRIBUN.
JAIPUR BENCH, JAIPUR.

Date of decision : 25.04.2003.

O.A. No.606/2001.

L.K.Sharma aged about 52 years son of late Shri J.N.Sharma
R/o. 4, Mansinghpura, Tank Road, Jaipur. Presently
working as Working Plan Officer, Banswara.

...Applicant.

Versus

1. Union of India through Secretary, Ministry of
Personnel, Public Grievances & Pension, Government of
India, North Block, New Delhi.
2. Secretary, Department of Personnel, Government of
Rajasthan, Secretariat, Jaipur.
3. Principal Chief Conservator of Forest, Van Bhawan,
Rajasthan, Jaipur.
4. Shri Bhag Raj Choudhary, State Forest Minister,
Rajasthan, Jaipur.

...Respondents.

Mr.Raghu Nandan Sharma Proxy counsel
for Mr.S.P.Sharma, counsel for applicant,
Mr.Tej Prakash Sharma, counsel for R-1,
Mr.Arvind Gupta, counsel for R-2 & R-3.

CORAM

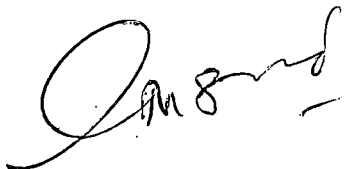
Hon'ble Mr.Justice G.L.Gupta, Vice-Chairman,
Hon'ble Mr.A.P.Nagrath, Member (A).

: O R D E R :

(Per Hon'ble Mr.Justice G.L.Gupta)

The applicant calls in question the Memorandum
dt. 5.10.2001 whereby a charge sheet has been served on
the applicant.

2. Applicant was Deputy Conservator of Forest,
Jaipur West in the years 1998-2000. One of his
subordinate officers i.e. Assistant Conservator of Forest,



Flying Squad caught Truck No.RJ-16 G0461 on Jaipur-Chandwaji-Delhi Road which was loaded with Charcoal but there was no State Transit Pass or a Licence issued by the Forest Department. This Truck belonged to one Shri Chaina Ram Choudhary, who happened to be the real brother-in-law of Shri Bhag Raj Choudhary, Forest Minister, Respondent No.4. The Truck, it is averred, remained in the custody at Chandwaji Amer Range for considerable period as F.I.R. had not been lodged and the Court had refused to release the Truck. This irritated R-4. In order to take revenge against the applicant and other Officers in his unit, they were placed under awaiting posting order and the applicant was transferred to Bharatpur. The sum and substance of the O.A. is that the charge sheet has been issued to the applicant because of the malice and bias of R-4, because of the incident of taking in possession of the Truck of his brother-in-law. It is stated that Respondent No.4 even recorded adverse entries in his ACRs of 1998-99 and 1999-2000 against which he has made representations.

3. In the counter, the respondents have come out with the case that the charge sheet has been served after a preliminary enquiry held by a team of four experts and that the applicant was found guilty of serious irregularities, mis-conduct and Supervisory negligence. It is stated that because of the mis-conduct of the



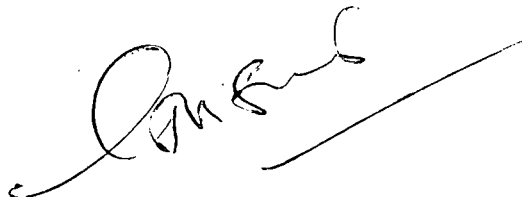
applicant, the State Government suffered a loss to the tune of Rs.3,58,439/-. It is denied that the charge sheet has been issued at the behest of R-4.

4. Respondent No.4, though served has not appeared.

5. We have heard learned counsel for the parties and perused the documents placed on record.

6. The contention of Mr.Sharma was that the competent authority has not taken into consideration the circular dt. 2.7.2001 issued by the Principal Conservator of Forest and that the document (Annexure A-5) dt. 23.2.2000 clearly shows that the charge sheet has been given at the instance of the Forest Minister, i.e. R-4. Relying on the case of Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant and Ors. (AIR 2001 SC 24), it was urged that the charge sheet be quashed.

7. On the other hand, learned counsel for Respondents contended that the charge sheet has been issued after holding preliminary enquiry and there cannot be any justification for interference by the Tribunal at this stage. It was pointed out that the charge sheet does not contain material regarding the incident of 21.2.2000 and therefore, it cannot be inferred that the charge sheet has been issued on account of that incident. It was contended that it is not the case for the applicant that the charge sheet has been issued by an authority not



competent to issue. Reliance has been placed on the case of Union of India Vs. Upendra Singh (JT 1994 (1) S.C. 658, The Deputy Inspector General of Police Vs. K.S.Swaminathan (1997 (1) SLR 176) and Air India Limited Vs. M.Yogeshwar Raj (2000 SCC (L&S) 710).

8. We have given the matter our thoughtful consideration. Evidently, it is not the case for the applicant that the charge sheet has been issued by an authority not competent to issue the charge sheet. Also it cannot be said that there is absolutely no material against the applicant for issuing the charge sheet. What was contended by the counsel for the applicant is that in the circular dt. 2.7.2001 it was accepted that on physical verification cent percent work cannot be found as the earth work or the plantation gets damaged by the rains, wind or storm and other natural reasons. It was submitted that charge sheet could not have been issued on the basis of the physical verification done after more than one year.

9. The charges Memorandum Annexure A-1 indicates that the applicant was overall in-charge of the plantation in the years 1998-2000, and on physical verification less work than recorded was found, and also that no daily diary was sent to the Controlling Officer in time and that full details were not stated in the daily dairy. It is

A handwritten signature in black ink, appearing to be 'S. S. S.', is written over the bottom of the text in paragraph 9.

also alleged that the applicant failed to supervise the work of two Foresters inasmuch as the irregularities of grave nature committed but then were not detected by him. It is further alleged that because of doing less work, the State has suffered a loss of more than Rs.3,58,000/-.

10. It is not the case for the applicant that the physical verification report was not correct or that the allegation that the daily diary was not sent in time, was incorrect or that no irregularities had been committed by the Foresters working under him. The applicant has to file reply to the charges if he has not already filed before the Enquiry Officer. This court cannot be justified in considering the correctness or otherwise of the charges framed against the applicant.

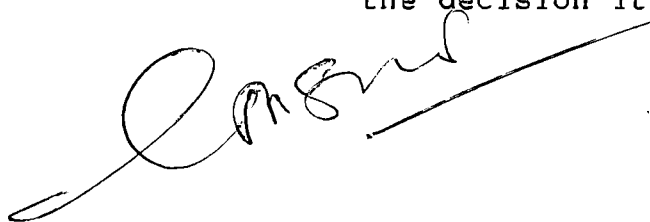
11. It is settled legal position that the Tribunal/Court should not interfere at the stage of serving charge sheet. In the case of Union of India Vs. Gpendra Singh (supra) it was observed that a disciplinary action can be taken against an employee if there is prima facie material to show recklessness or misconduct in discharge of his duty or he had acted negligently or omitted the prescribed conditions which are essential for the exercise of statutory powers. It was held that the Tribunal cannot take over the function of Disciplinary Authority and go into the correctness or truth of the charges. It is profitable to reproduce the observations of their Lordships appearing at para 6 of the report



hereunder:-

"In the case of charges framed in a disciplinary inquiry the Tribunal or Court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the Tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to Court or Tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the Court/Tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B.Gandhi, Excise and Taxation Officer-Cum-Assessing Authority, Karnal & Ors. v. M/s. Gopi Nath & Sons and Ors. (1992 Supp. (2) SCC 312). The Bench comprising M.N.Venkatachaliah, J. (as he then was) and A.M.Ahmadi, J., affirmed the principle thus:

"Judicial review, it is trite, is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself".



11.1. In the case of M.Yogeshwar Raj (supra) also it was observed that the Court should not interfere in the departmental inquiry at interlocutory stage. It is significant to point out that in that case even the enquiry had been completed by the Enquiry Officer exonerating the petitioner of the charges, but the Disciplinary Authority had issued show cause notice to the petitioner that why he should not be held guilty of the charges. The High Court stayed the proceedings of the departmental inquiry. The matter went up to the Supreme Court. Their Lordships observed that the High Court should not have pre-empted decision of the Disciplinary Authority on facts nor should have stayed the proceedings on a prima facie finding on the subject matter of inquiry when the Disciplinary Authority was yet to make up its mind. It is evident that even in a case where the enquiry was completed and final order was not passed, the Court was not held to be justified in interfering with the inquiry.

In the instant case, the enquiry is in its initial stage. There cannot be any justification to interfere at this stage.

11.2. So also, in the case of K.Swaminathan (supra) the Supreme Court has held that at the initial stage, the Court should not look into the truth or otherwise of the charges.

12. As to the case of Kumaon Mandal Vikas Nigam Ltd. (supra) relied on by the applicant, it may be stated that




the observations therein were made after the disciplinary proceedings had come to an end. It was observed that Judicial Review in the departmental proceedings is permissible if it is found that recorded findings are based on 'no' evidence or are totally perverse. In that case, it was noticed that the enquiry was conducted in hot haste and there was obvious material on record indicating that the Managing Director had a mind set to punish the petitioner therein.

13. In the instant case, the charge memo does not contain the incident that had occurred on 21.2.2000. It may be that the Forest Minister was annoyed with the incident, but that does not lessen the gravity of the charges. If on facts, it is established that the Government had suffered pecuniary loss to the tune of Rs.3,58,489/- due to the negligence on the part of the applicant, he cannot be exonerated even on assuming that the incident of 21.2.2000 had annoyed Respondent NO.4. That might be the cause of ordering preliminary enquiry, but when in the preliminary enquiry material has been found against the applicant we cannot be justified in quashing the charge sheet.

14. Consequently, we find no case of interference at this stage. The instant O.A. is dismissed. No orders as to costs.


(A.P.NAGRATH)
MEMBER(A)


(G.L.GUPTA)
VICE-CHAIRMAN

B.