CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 898 of 2003
Original Application No. 61 of 2004
Original Application No. 60 of 2004
Contempt Petition No. 7 of 2004

Bilaspur, this the 9th day of July, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

1. Original Application No. 898 of 2003 -

M.R. Sarthi, aged about 58 years, s/o. late Shri S.R. Sarthi, working as District Collector, District Janjgir-Champa, Chhattisgarh. ... Applicant

(By Advocate - Shri N.S. Ruprah)

Versus

1. Union of India, through Secretary, Personnel and Administrative Reforms, New Delhi.

2. State of Chhattisgarh, through Principal Secretary, Government of Chhattisgarh, General Administrative Department, DKS Bhawan, Mantralaya, Raipur, Chhattisgarh. ... Respondents

(By Advocate - Shri Ajay Ojha for respondent No. 2 and none for respondent No. 1)

2. Original Application No. 61 of 2004 -

M.R. Sarthi, aged about 58 years, S/o. late Shri S.R. Sarthi, Special Secretary, Adim Jati, Anucuchit Jati Evam Pichhada Varg Vikas, Mantralaya, State of Chhatishgarh, Raipur (CG). ... Applicant

(By Advocate - Shri N.S. Ruprah)

Versus

1. Union of India, through Secretary, Personnel and Administrative Reforms, New Delhi.

2. State of Chhattisgarh, Through Principal Secretary, Government of Chhatishgarh, General Administrative Department, DKS Bhawan, Mantralaya, Raipur (CG).

3. Shri Chandrahas Behar, aged about 59 years, Secretary, General Administrative Deptt. Government of Chhattisgarh, Raipur (CG). ... Respondents

(By Advocate - Shri Ajay Ojha for respondent No. 2 and none for respondents Nos. 1 & 3)

3. Original Application No. 60 of 2004 -

M.R. Sarthi, aged about 58 years,
S/o. late Shri S.R. Sarthi, Special
Secretary, Adim Jati, Anucuchit Jati
Evam Pichhada Varg Vikas Mantralaya,
State of Chhatishgarh, Raipur (CG). ... Applicant

(By Advocate - Shri N.S. Ruprah)

Versus

1. Union of India,
through Secretary,
Personal and Administrative
Reforms, New Delhi.

2. State of Chhattisgarh,
through Principal Secretary,
Government of Chhatishgarh,
General Administrative Department,
DKS Bhawan, Mantralaya,
Raipur (CG).

3. Shri Chandrahas Behar, aged about
59 years, Secretary, General Adminis-
trative Deptt. Govt. of Chhattisgarh,
Raipur (CG). ... Respondents

(By Advocate - Shri Ajay Ojha for respondent No. 2 and none for other respondents)

4. Contempt Petition No. 7 of 2004 -

M.R. Sarthi, aged about 58 years,
S/o. late Shri S.R. Sarthi,
Special Secretary, Adim Jati,
Anuc-uchit Jati Evam Pichhada Varg
Vikas Mantralaya, State of Chhatishgarh,
Raipur (CG). ... Applicant

(By Advocate - Shri N.S. Ruprah)

Versus

Smt. Vibha Choudhary,
wife of Shri Pavitra Kumar Choudhary,
aged about 49 years, presently working
and posted as Under Secretary,
State of Chhattisgarh, General
Administration Department,
Mantralaya, D.K. Bhawan, Raipur (CG) ... Respondent

(By Advocate - Shri Ajay Ojha)

ORDER

By Madan Mohan, Judicial Member -

Since the applicants in all the three Original

Applications and Contempt petition is common and the reliefs prayed for by him in all these matters are inter-connected with each other, for the sake of convenience, we are disposing of these matters by this common order.

2. By filing these Original Applications and contempt petition the applicant has sought reliefs to quash the show cause notice (Annexure A-2 in OA No. 898 of 2003), to quash the charge sheet (Annexure A-1 in OA No. 61 of 2004), to quash Annexure A-1 in OA No. 898 of 2003, to direct the respondent No. 2 to grant the applicant sufficient opportunity to submit his explanation after supplying him all the necessary documents of those 2 cases mentioned in para 4.9 of OA No. 898/2003, to direct the respondents to consider the applicant for the grant of super time scale w.e.f. 1.1.2004, keeping him one place above the private respondent No. 3 in OA No. 60/2004 and to punish the respondent contemner in the contempt petition for contempt of the Tribunal.

Original Application No. 898 of 2003 -

3. The brief facts of the case are that the applicant is an IAS Officer of 1988 batch. He was working as District Collector of District - Janjgir-Champa (Chhattisgarh). He has now been transferred to Mantralaya as Special Secretary to the Government, Department of Tribal Welfare, State of Chhattisgarh. The applicant has hand over the charge of Collector, Janjgir, Champa on 22.12.2003. The applicant was working as Additional Collector, Dantewada, District Bastar from 22.?.1994 to 8.1.1996. Vide letter dated 27th Decembe, 1997 the then Government of Madhya Pradesh issued a show cause notice to theapplicant alleging that he was guilty of gross misconduct and suspicious loyalty which was in violation of Rule 3(1) & 3(3)(1) of All India Service (Conduct) Rules, 1968. It is alleged against the applicant

that he as an officer of the Government granted permission to fell 2111 trees, most of which were nationalised trees and that the permission was granted in violation of Madhya Pradesh Protection of (Aboriginal Tribes) (Interest of Trees) Act, 1956. The applicant informed the Government vide letter dated 9.1.1998 that the copies of the cases may be made available to him and he may be given atleast two months time to submit his explanation so as to enable him to study the cases and to submit an appropriate explanation. The authorities did not provide him the copies of the cases nor any action was taken against the applicant. Vide letter dated 30.8.2002 the respondent No. 2 again asked for explanation of the applicant. Replying to this letter the applicant informed respondent No. 2 that he had requested for copies of all the cases so that he could study them and submit appropriate explanation. The Government of Chhattisgarh did not proceed any further and suddenly on 29th May, 2003, record of certain cases were made available to the applicant according to the list enclosed. The applicant submitted that only 29 cases were made available to him and that were enumerated from serial No. 1 to 29 of the list. 6 cases from serial No. 30 to 35 were not made available to the applicant and it was said that the cases enumerated in serial No. 30 to 35 will be made available to the applicant separately. The applicant was asked to submit his explanation in respect of 29 cases. The applicant sent one letter dated 30.8.2003 to respondent No. 2 informing that certain cases did not relate to his tenure and the cases enumerated from serial No. 30 to 35 were made available to him and that it would not be possible for him to submit his explanation without studying them all. He further submitted that all the cases as were mentioned in Annexure A-2 in OA No. 898/2003 may be made available to him so that he could study them and submit

proper exaplanation. He also submitted that similar orders were issued by his predecessor and successor officers, therefore explanations from them should also be sought under the principles of parity and the principles of natural justice. On 17th October, 2003 copies of two more cases were made available to the applicant and explanation on them was also sought immediately. Replying to this the applicant wrote to respondent No. 2 that case No. 157 was not in respect of his tenure and our of 29 cases, 8 related to his predecessor. Vide letter dated 5.12.2003, the respondent No. 2 asked the applicant to submit his explanation in respect of 32 cases by 10.12.2003 positively. By this last opportunity was given to the applicant. Replying to this the applicant wrote a detailed letter to respondent No. 2 informing him that total 10 cases related to his predecessor namely Shri Manoj Jhalani. The applicant returned 8 cases that related to his precedessor. He also informed that the revenue case No. 217/A-63/91-92 supplied to the applicant was not in the list of 35 cases. He also informed that 2 cases enumerated at serial No. 32 and 33 were not received by him. He further mentioned that therefore he could give explanation in respect of 23 cases whereas he has been asked to submit explanation about 32 cases. The applicant also informed vide the above letter that he was busy in election duty being the District Election Officer since last 3 months and therefore he could not get time to study the cases. He also informed that until he minutely studied the cases it would be against his interest to submit the explanation on the basis of a superficial study. He requested for time till 20.1.2004 and copies of 2 cases that were not sent to him be sent to him. The applicant further submitted that the Government had supplied two cases that were not included in 35 cases. By not sending the relevant documents to applicant and copies of the cases the

respondent No. 2 is pressing hard upon the applicant to submit his explanation. The respondent No. 2 on 19.12.2003 issued a letter asking the applicant to submit his explanation immediately failing which action in accordance with law would be taken against him.

Original Application No. 61 of 2004 -

4. The brief facts of the case are that after issuance of show cause notice dated 27th December, 1997, the applicant was served with a charge sheet dated 24.12.2003 for major penalty under Rule 8 of All India (Disciplinary & Appeal) Rules, 1969. The same allegations have been made in the charge sheet which has been made in the show cause notice dated 27th December, 1997, which is pending. Perusal of the charge sheet reveals that it pertains to the same period as is in the show cause notice dated 27th December, 1997. The list of documents mentioned in the charge sheet have not been supplied to the applicant alongwith the charge sheet or subsequently till date. The copies of the proceedings in the revenue cases are also not given. Charge No. 1 does not specify what is the type of misconduct indulged in by the applicant. The only misconduct which the applicant is alleged to have indulged in is that the value of the timber in these revenue cases was more than Rs. 5000/-. Charge No. 1 presumes that the Collector does not have any power to grant permission of felling trees whose value is more than Rs. 5000/-. In Charge No. 2 the allegation is that the applicant has ignored the rules framed under sections 240/241 of the M.P. Land Revenue Code, while granting permission of felling trees. Under Section 50 of the M.P. Land Revenue Code, the Board of Revenue also exercise revisional powers. The charge sheet no where mentions that the orders granting permission of felling trees given by the applicant under 1956 Act, were reversed either in appeal or revision.

The orders passed by the applicant is in exercise of quasi-judicial power under 1956 Act which were never reversed or modified either in appeal or revision.

Original Application No. 60 of 2004 -

5. The brief facts of the case are that in the gradation list of the IAS Officers of the State of Chhattisgarh the name of the applicant appears at serial No. 43 and the name of private respondent Shri Chandrahas Behar appears at serial No. 44. It is further apparent that private respondent No. 3 was awarded IAS 6 months after the applicant. The private respondent No. 3 is junior to the applicant. Both applicant as well as private respondent No. 3 have already got the selection grade of IAS and both of them deserved super time scale w.e.f. 1.1.2004. The only thing is that in the order of granting super time scale, the applicant deserved a place superior to the private respondent. The respondent vide order dated 1.1.2004, has granted super time scale to 4 IAS officers. Out of these 4, 3 are seniors to the applicant but the private respondent No. 3 mentioned at serial No. 4 is junior to the applicant. The respondents have mentioned no reasons to deny the super time scale to the applicant. That the applicant while posted as Additional Collector, Dantewada from 2.12.1994 to 28.1.1996 was given the power and duty to exercise jurisdiction under M.P. Protection of Aboriginal tribes (Interest in Trees) Act, 1956. The applicant exercised the powers and granted permission to fell hundreds of trees in the normal course of his duty. All orders passed by the Additional Collector, Dandewada, were appealable before the Commissioner. The Board of Revenue also exercise the powers of revision including suo moto revision. The applicant was given a show cause notice on 27.12.1997 and thereafter on 24.12.2003 a major penalty charge sheet was issued. The respondents are probably taking the pendency of the major

penalty charge sheet Annexure A-8 as a ground to deny the super time scale to the applicant. This is not permissible in law. The applicant is due to retire on 31.5.2005. The applicant also submitted that 11 cases our of 237 cases, were the subject matter of the show cause notice dated 27.12.1997 and also were made again the subject matter of enquiry in the major penalty charge sheet dated 24.12.2003. This action of the respondents is vitiated due to double jeopardize.

Contempt Petition No. 7 of 2004 -

6. The brief facts of the case are that this C.P is filed by the applicant for flouting/dis-obeying with the orders passed by the Tribunal in OA No. 898/2003. In O.A. No. 898/2003 the Tribunal passed an interim order dated 22.12.2003 in favour of the applicant. According to this order the applicant was granted 10 days time upto 2.1.2004 to file the reply to the show cause notice. The applicant given the reply on 1.1.2004 to the respondents. All the papers were received in the office of the Principal Secretary, GAD, Raipur by a clerk, whose name is Shri Ram Manorath Verma. Shri Ram Manorath Verma accepted the original reply alongwith the documents and gave his signature on the copy of the applicant. Shri Verma also signed and wrote his name in Hindi. But the respondents gave reply to the interim prayer that though the time was granted by the Tribunal to the applicant to submit his explanation, the applicant has not yet submitted his explanation. This reply is duly supported by an affidavit of the respondent contemner. Hence, the respondent contemner has spoken lie before the Tribunal that the applicant has not replied, whereas the applicant had already replied on 1.1.2004.

7. Heard the learned counsel for the parties and perused the records carefully.

8. It is argued on behalf of the applicant with respect to

issuance of show cause notice that the applicant has powers under the relevant rules to grant permission to fell the trees. This order of the applicant was appealable before the Commissioner and the Board of Revenue can also exercise the powers of revision including suo moto revision. Hence, no show cause notice ought to have been issued against the applicant. Inspite of repeated request of the applicant the copies of the relevant documents were not supplied to him.

8.a. In reply the learned counsel for the respondents argued that during the service tenure of the applicant as Additional Collector, Dantewada, he disposed of revenue cases under the M.P. Land Revenue Code, 1959 and other laws and rules in force, within the territorial jurisdiction of Additional Collector, Dantewada. The Divisional Commissioner, Bastar vide report dated 25.6.1997 sent a report to the Government of Madhya Pradesh containing certain irregularities allegedly committed by the applicant by passing orders of law and rules in revenue cases. In the said report, Divisional Commissioner, Bastar had proposed initiation of disciplinary action against the applicant. On this report the Government of Madhya Pradesh, vide letter dated 27.12.97 sought explanation of the applicant in respect of the allegations contained in the report of the Divisional Commissioner, Bastar. There is no illegality or irregularity in issuing this notice. The relevant copies of the documents were made available to the applicant.

9. The learned counsel for the applicant further argued with regard to issuance of charge sheet that no charge sheet should have been issued to the applicant because he had passed such orders granting permission to fell the alleged trees in the alleged revenue cases, during his tenure as Additional Collector, Dantewada from 22.2.1994 to 8.1.1996,

having legal jurisdiction to pass such orders and these orders were neither reversed or modified either in appeal or revision. The impugned charge sheet is issued due to mal-ice. Again on repeated requests made by the applicant the copies of the documents were not supplied to the applicant. The charges against the applicant is vague and is liable to be quashed.

9.a. In reply the learned counsel for the respondents argued that copies of all the 29 cases have been made available to the applicant and remaining six cases not being related to the applicant have been deleted from the subjected earlier case. It is open for the applicant to inspect the documents intended to be used for establishing the allegation of charges. When the applicant made an application on 15.1.2004 for supplying copies of the documents intended to be used against him in the disciplinary proceedings, the respondents vide letter dated 20.1.2003 had informed the applicant that he can inspect the documents in the office of the respondent No. 2 which he has not done as yet. The respondents had no objection in supplying the copies of the subjected documents requested by the applicant. The charge sheet issued against the applicant is on the basis of sufficient materials on record. The proceedings against a public servant exercising judicial powers, for misconduct, and order passed by him should first be reversed or revised by the Appellate/Revisional authorities is not relevant. The respondents further argued that the disciplinary proceedings against the applicant shall be concluded well before his superannuation but the applicant should co-operate in the matter rather stopping the same by approaching the Tribunal. He further argued that at this stage the Tribunal should not quash the charge sheet but allow the respondents to continue with the disciplinary proceedings to pass final orders before the superannuation of the applicant.

10. With regard to the grant of super time scale to the applicant, the learned counsel for the applicant argued that to deny the super time scale to the applicant the alleged show cause notice and charge sheet were issued against the applicant. He has been ignored from his due right, while his junior Shri Chandrahas Behar, respondent No. 3 has been granted the super time scale. Pendency of show cause notice dated 27.12.1997, cannot be a ground of refusal of super time scale to the applicant. Again the respondents wanted to deprive the applicant of super time scale due to malice and extraneous consideration. This charge sheet also contains the same allegations which are contained in the show cause notice. The applicant further argued that no person can be prosecuted and punished for the same offence more than once.

10.a. In reply the learned counsel for the respondents argued that on 1.11.2000, 93 officers from Indian Administrative Services were allocated to the newly formed State Chattisgarh. On 1.8.2003 strength of the officers from Indian Administrative Services under Chattisgarh cadre is 81 and out of which 5 officers are from 1988 batch whose names have been shown from S. No. 40 to 44 in the gradation list circulated by the state of Chattisgarh as on 1.8.2003. Since all the 5 officers whose names were shown in the gradation list from S. No. 40 to 44 completed 16 years of service in the cadre, the State decided to grant the officers super time scale and in this regard a meeting of screening committee was held on 26.12.2003 and screened the cases of all the five officers alongwith one officer Shri S.P. Trivedi from 1983 batch. The screening committee after going through the records found suitable 4 officers fit for granting super time pay scale and accordingly recommended their promotion w.e.f. 1.1.2004. The name of the applicant was also

considered for granting super time scale by the screening committee held on 26.12.2003 and found that since the departmental enquiry against him is being contemplated as per directions of the Hon'ble Supreme Court, giving directions to the Central Bureau of Investigation to conduct an enquiry in the matter of felling of trees in Bastar District while he was posted as Additional Collector, Dantewada, and also the applicant was issued a charge sheet, adopted the procedure of sealed cover and the recommendations have been kept in the sealed cover in terms of the circular issued by the Government of India. The sealed cover will be opened only after the outcome of the departmental enquiry and if the applicant is exonerated from the charges, it will be dealt with accordingly as per the directions contained in the circular issued by the Government of India. Hence the prayer sought by the applicant regarding granting of super time scale cannot be granted at this stage until the outcome of the departmental enquiry.

11. With regard to the contempt petition the learned counsel for the applicant argued that in compliance of the Tribunal's interim order dated 22.12.2003 the applicant has filed the reply alongwith the documents in the office of the Principal Secretary, GAD, Raipur, and which was received by Shri Ram Manorath Verma, a clerk. But the respondents in reply stated that though the time granted by the Tribunal to the applicant to submit his explanation has expired today i.e. on 2.1.2004, the applicant has not yet submitted his explanation. This reply is duly supported by an affidavit.

11.a. Against this arguement of the applicant the learned counsel for the respondent contemner argued that the Government of Chattisgarh vide letter dated 19.12.2003

the applicant was advised to inspect the documents pertaining to the show cause notice issued to him. Aggrieved by the letter dated 19.12.2003, the applicant approached the Tribunal and the Tribunal vide order dated 22.12.2003 granted 10 days time to the applicant for submitting his explanation and the respondents were directed not to insist the applicant to submit his explanation immediately. The respondent acted upon the orders immediately and under took the journey and reached Jabalpur on 1.1.2004 and contacted the standing counsel on 1.1.2004. The respondent was at Jabalpur and after getting the reply prepared by the standing counsel submitted the same before the Tribunal on 2.1.2004. Since the respondent was at Jabalpur on 1.1.2004, it was not in her knowledge that the applicant has submitted reply/exaplanation to the show cause notice at Raipur on 1.1.2004. Therefore in the return it has been mentioned that no explanation was submitted by the applicant till date. The respondent when reached Raipur on 5.1.2004, the clerk concerned placed the explanation submitted by the applicant before her. Since the applicant submitted his reply at Raipur, it was not in her knowledge at Jabalpur, otherwise in reply, it would have been incorporated that the explanation has been received. Hence the respondent has not committed any contempt as alleged by the applicant. The contempt notice issued, deserves to be withdrawn/cancelled.

12. After hearing the learned counsel for the parties and on careful perusal of the records we find that the respondents issued the show cause notice on 27th December, 1997 and thereafter issued the charge sheet dated 24.12.2003 with the allegation that the applicant while serving as Additional Collector, Dantewada from 22.2.1994 to 8.1.1996, granted permission to fell down 2111 trees during his tenure. The

over
value of the same was Rs. 5,000/- and this was in violation of the rules. The notice issued on 27.12.1997 was based on the report of the Divisional Commissioner, Bastar. The applicant was asked to submit his explanation and he was permitted to inspect the relevant documents. The show cause notice and the charge sheet are not the same documents as stated by the applicant. The charge sheet is always served on the delinquent after issuance of the notice and respondents have clearly stated that 35 revenue cases were mentioned in the show cause notice but only 29 cases pertain to the applicant and copies of all these 29 cases have been made available to him. The remaining six cases not being related to the applicant have been deleted from the subjected earlier case. We also find that the argument advanced on behalf of the applicant that the applicant was exercising quasi judicial powers and the alleged orders were subjected to appeal or revision and these orders were never reversed nor modified in appeal or revision, is not legally tenable as in administrative side the respondents are legally authorised to take suitable action and also can initiate departmental proceedings against a charge.

13. Hence, in the Original Application No. 61 of 2004, with regard to issuance of charge sheet, we find that the charge sheet has been issued in terms of the report submitted by the C.B.I. on direction of the Hon'ble Supreme Court, to the State Government regarding illegal felling of trees in the district of Bastar. We do not find any malafide or perversity on the part of the respondents in issuing the charge sheet. It is settled legal proposition of law that this Tribunal has no jurisdiction to go into the correctness of truth of the charges. 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. In view of the aforesaid we cannot interfere with the charge sheet issued to the

applicant. However, we may observed that as the applicant is retiring on 31.5.2005, ends of justice would be met if we direct the respondents to complete the enquiry against the applicant within a period of six months from the date of receipt of copy of this order. We do so accordingly. It is further directed to the applicant to co-operate with the respondents to complete the enquiry proceedings within the time frame fixed by the Tribunal. Accordingly, this Original Application stands disposed of.

14. As regards OA No. 893 of 2003, in which the applicant is challenging the show cause notice issued to him, we find that after the issue of show cause notice to the applicant the respondents have issued a charge sheet dated 24.12.2003 which has been challenged by the applicant in OA No. 61/2004. This OA No. 61/2004 has already been disposed of in terms of the directions given in para 13 of this order. Therefore, this OA No. 893/2003 has become infructuous and is accordingly, dismissed as infructuous.

15. With regard to OA No. 60 of 2004, wherein the applicant is claiming for super time scale, we find that the name of the applicant was also considered for granting supertime scale by the screening committee held on 26.12.2003 and it was found that since a departmental enquiry against the applicant is being contemplated as per the directions of the Hon'ble Supreme Court to the C.B.I. to conduct an enquiry in the matter of felling of trees in Bastar District while the applicant was posted as Additional Collector, Dantewada and in compliance the CBI conducted the enquiry and submitted its report to the State Government for initiating departmental enquiry and looking to that a charge sheet has already been issued to the applicant on 24.12.2003, and as the departmental enquiry is pending against him, the respondents adopted the procedure of sealed

cover in terms of the circular issued by the Government of India, in which the recommendations of the screening committee have been kept. The sealed cover will be opened only after the outcome of the departmental enquiry and if the applicant is exonerated from the charges, it will be dealt with accordingly as per the directions contained in the circular issued by the Government of India. With regard to the charge sheet issued to the applicant, as we have already granted the respondents six months time to finalise the departmental proceedings with full co-operation of the applicant, it would be appropriate at this stage to direct the respondents that when the applicant is exonerated from the charges, the respondents may act upon the sealed cover in accordance with the rules and if the applicant is found suitable, he may be granted all consequential benefits. With the aforesaid observation, this OA No. 60 of 2004 stands disposed of.

16. So far as the contempt petition filed by the applicant, we have fully considered the reply filed by the alleged contemner and also heard the learned counsel for the parties. We find that the explanation given by the contemner is satisfactory and no deliberate contempt has been made by the respondent contemner. Accordingly, the contempt petition is dismissed and the notices issued are discharged.

17. In view of the foregoing paragraphs, the Original Applications Nos. 61/2004 & 60/2004 are disposed of with certain directions and Original Application No. 893/2003 and Contempt Petition No. 7/2004 are dismissed. There shall be no order as to costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

"SA"