

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

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ORDERS OF THE BENCH

Date of Order: 12.03.2012

OA No. 418/2007 with MA No. 217/2009

Mr. Prahlad Singh, counsel for applicant.
Mr. Mukesh Agarwal, counsel for respondents.

Heard learned counsels for the parties.

O.A. & M.A. are disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K. S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH**

Jaipur, this the 12th day of March, 2012

Original Application No.418/2007

CORAM:

**HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDICIAL)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMINISTRATIVE)**

**P.K.Kulsreshtha
s/o late Shri Rejanedra Prakash,
Superintending Engineer (Planning),
Office of the Chief Engineer,
CPWD, Nirman Bhawan,
Sector-10, Vidyadhar Nagar,
Jaipur.**

.. Applicant

(By Advocate: Shri Prahlad Singh)

Versus

1. **Union of India
through Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.**
2. **Director General (CPWD),
Nirman Bhawan,
New Delhi.**
3. **Central Vigilance Commission,
Satarkata Bgawan,
I.,N.A. New Delhi.**

.. Respondents

(By Advocate: Shri Mukesh Agarwal)

O R D E R (ORAL)

The present OA is directed against the memorandum of charge sheet dated 12.10.2006 (Ann.A/1) served on the applicant for proposing to take action under Rule 14 of the CCS (CCA) Rules, 1965.

2. Brief facts of the case are that the memorandum of charge sheet dated 12.10.2006 was issued to the applicant under Rule 14 of the CCS (CCA) Rules while he was working as Superintending Engineer and through this Memorandum he was called upon to submit written statement of defence within a period of 10 days. The Memorandum of charge sheet was issued to the applicant in relation to the work done as Superintending Engineer (P&A) Central Zone, Central P.W.D. Bhopal during the period from 28.4.1997 to 31.10.2001. In response to the Memorandum of charge sheet, the applicant submitted his detailed reply on 22.12.2006 (Ann.A/2) and after considering the reply, the respondents initiated action under Rules 14 of the CCS (CCA) Rules, 1965.

3. The learned counsel appearing for the applicant mentioned that the applicant in his detailed reply submitted that one Shri S.R.Pandey, the then Chief Engineer (CZ) decided to reject the



renders on 7.9.2001 due to errors in quantities and manipulations in the tenders and much before rejection, the applicant had recommended the rejection of tender in question on 10.8.2001, but Shri S.S.Chandhoke, the then Chief Engineer (CZ) did not agree with the applicant and insisted upon acceptance of tender. While accepting the tender he specifically mentioned that the tender of C.R.P.F. work need not be rejected even if an error in quantities, as the C.R.P.F. authorities are pressing hard for early completion of work and in such event, the tender be accepted after correction in the quantities to actual quantity required to be executed.

4. It is also alleged by the learned counsel appearing for the applicant that Shri S.S.Chandhoke, the then Chief Engineer (CZ) attempted to award the work of Narmada Control Authority (Indore) to second lowest M/s Tirathdas Shaukat Rai Construction Pvt. Ltd. at a higher cost of Rs. 15 lacs ignoring the fact that M/s Bansal Construction Works was having lowest cost.

5. The memorandum of charge sheet is challenged on the ground that the charge sheet issued to the applicant is unreasonable, unjust and improper, inasmuch as, the charge sheet issued to the applicant was on the advice and instance of Shri S.S.Chandhoke and this fact has been verified time and again in the reply as well as in the impugned Memorandum of charge sheet itself and Shri S.S.Chandhoke hand in gloves with other investigating



authorities have taken all measures to shift their fault on the applicant.

6. Further challenged on the ground that the Memorandum of charge sheet is vague and inconclusive. The charges are not definite and lack finality. The charge sheet is totally defective and deficient in citing of contravention of any rule by the applicant.

7. The Memorandum of charge sheet is also challenged on the ground of delay in issuing charge sheet and conducting the inquiry. Further stating that the delay in issuing the charge sheet is of 5 years and apart from this now about one year has also passed after submission of reply by the applicant. The delinquent was required to consider the reply till date and this unreasonable delay in issuing the charge sheet as well as considering the reply has been caused with a view to deprive the applicant from promotion to the higher post. The learned counsel appearing for the applicant referred to relevant provisions of rule and procedure which prescribes maximum time limit of 3 years from the date of event.

8. The Memorandum of charge sheet is further challenged on the ground that the Disciplinary Authority has acted in highly discriminatory manner and contrary to the principle of equity and persons who are actually responsible were given simple warning and Shri Chandhoke who actually technically sanctioned all the



estimates has been set absolutely free from any accountability. All E.Es. including E.E. (P) who actually processed tender papers and estimates were issued only warning and the only person who has been held liable with such a major penalty under Rule 14 of CCS (CCS) Rules is against the principles of natural justice and equity and against Article 14, 16 and 20 of the Constitution of India.

9. Further challenged on the ground that there is a contradiction in the C.V.C. advice. In the letter dated 12.7.2005 the C.V.C. has agreed for all articles of charge and in the letter dated 30.12.2005 the C.V.C. asked for report for closing complaint against Shri S.S.Chandhoke. Thus, the C.V.C. did not apply independent mind before approving the charge sheet and, therefore, the charge sheet is absolutely illegal and a non-speaking charge sheet has been issued against the applicant.

10. The learned counsel appearing for the applicant also alleged mala-fide intention and bias attitude of the respondents and referred each and every charge which has been leveled against the applicant to demonstrate that *prima facie* the charges are not proved against the applicant and prayed that the OA may be allowed and the Memorandum of charge sheet dated 12.10.2006 (Ann.A/1) may be quashed and set aside and direction be issued to the respondents to consider case of the applicant for non-functional upgradation as provided by Office Memorandum dated 24.4.2009



(Ann.A/3) read with Office Memorandum dated 21.5.2009

(Ann.A/4) and grant him the benefit of this Memorandum by fixing him in the grade of Joint Secretary w.e.f. 1.1.2006 with arrears throughout and interest @ 12% p.a.

11. Per contra, the learned counsel appearing for the respondents submits that the charge sheet dated 12.10.2006 was not defective but based on the basis of the facts and inquiry made against the applicant. The reply submitted by the applicant was thoroughly considered by the Disciplinary Authority i.e. the President and decided to conduct an inquiry into the charges framed against the applicant and appointed Shri Surjit Singh, Commissioner for Departmental Inquiries vide order dated 15.10.2007. It is further submitted that the enquiring authority appointed vide letter dated 15.10.2007 could not proceed as this Tribunal vide order dated 11.2.2008 stayed operation of the Memorandum of charge sheet dated 12.10.2006.

12. Further, the President has appointed Shri Shyam Kapoor, Commissioner for Departmental Inquiries, Central Vigilance Commission as Inquiring Authority to inquire into the charges framed against the applicant vide order dated 23.6.2009 but the applicant failed to attend the preliminary hearing on 6.7.2009 despite of the fact that notice to this effect was issued vide memorandum dated 26.6.2009 (Ann.R/5). The applicant only



attended the brief hearing on 27.7.2009 which is evident by ordersheet drawn by the Commissioner for Departmental Inquiries dated 27.7.2009 (Ann.R/6).

13. The learned counsel appearing for the respondents further submitted that the case was investigated by the Vigilance Unit of CPWD independently and reviewed/considered by the Disciplinary Authority before coming to the conclusion of issuance of the charge sheet against the applicant. The independent advice of the CVC was also obtained. The advice of the Commission was considered by the Disciplinary Authority and charge sheet was issued to the applicant. Moreover, issuance of charge sheet cannot tantamount to imposition of penalty. The applicant has availed the opportunity available to him to prove his innocence.

14. With regard to delay in issuing the charge sheet, the respondents have explained the delay being procedural and bonafide in para 10 of the reply, which is reproduced as under:-

1.	1.10.2001	ADG (WR) forwarded the complaints of the contractors containing allegation of making contact with contractors for gratification by Shri P.K.Kulshrestha.
2.	16.10.2001	Shri P.K.Kulshrestha has alleged misconduct on the part of Shri S.S.Chandhoke, ADG (WR).
3.	1.11.2001	Documents of the case and comments of ADG (WR) received.
4.	21.9.2001	Clarification/records sought from ADG (WR).



5.	6.12.2001	Further documents/records called from Chief Engineer (CZ), CPWD, Bhopal
6.	14.3.2002	Clarification/records sought from ADG (WR).
7.	10.11.2002	Documents received from the Chief Engineer (CZ) CPWD, Bhopal
8.	9.4.2002	Explanation of applicant called by Vigilance Unit.
9.	2.8.2002	Reply of Shri P.K.Kulshrestha, SE/applicant received
10.	29.3.2005	Investigation report prepared by CPWD and sent to Disciplinary Authority (MoUD)
11.	12.7.05	CVC advice received by Disciplinary Authority (MoUD)
12.	12.10.2006	Charge-sheet issued to the applicant

After explaining the delay, it is submitted that delay in issuing the charge sheet unless the same has caused prejudice to the delinquent does not vitiate the proceedings as held by the Hon'ble Supreme Court in the case of Govt. of Andhra Pradesh and Others vs. Appalla Swamy, reported in 2007 (3) SCALE 1.

15. With regard to the allegation alleged in the amended OA in para 5.5 that the very basis of investigation against the applicant was the complaint from the contractors which was mischievously been obtained by Shri S.S.Chandhoke as A.D.G. (WR), Bombay and that there is a grave discrepancy and contradiction about the place of receiving complaint by the contractor against the applicant, has been replied by the respondents that the Disciplinary Authority i.e. President in the MoUD has already reappointed Inquiring Authority



vide order dated 23.6.2009, therefore, full opportunity is extended to the applicant to prove his innocence.

16. In response to the submissions advanced on behalf of the applicant that the charges against the applicant are not made out and are false and same deserve to be dismissed, the respondents submitted that the applicant has mixed up issuance of checking estimates and processing of tenders. The Memorandum of charge sheet was issued to the applicant along with Article of Charges (I) to (V) detailing lapses in the Statement of Imputation of Misconduct or Misbehaviour in support of all the Article of Charges as per Annexure-II of the Memorandum. The charges leveled against the S.S.Chandhoke, the then Chief Engineer (CZ) and other officers in his letter dated 16.10.2001 were investigated and it was found that allegations against Shri S.S.Chandhoke were false and vague. It was found that decision taken by Chief Engineer (CZ) was rational and transparent backed with reasoning and justification in totality of the circumstances and advice rendered to him by the supporting staff. Shri S.S.Chandhoke, the then CE (CZ) kept his senior officers well posted with the developments while deciding the tenders. Thus, letter dated 16.10.2001 of the applicant was found to be motivated in view of the complaint made against him prior to the said letter. Article-V of the Memorandum dated 12.10.2006 specifically refers to lapses on the part of the applicant for making false complaints against his superiors.



17. In the rejoinder to the reply, the applicant strongly controverted the submissions made by the respondents in the reply and reiterated that the reply submitted by the applicant to the charge sheet was not at all considered by the Disciplinary Authority. Had the reply been considered, the charges would have been dropped. The fact that the reply was not considered and the reply of the applicant was treated merely a denial of the charge sheet is evident and established from letter dated 10.8.2009 written by the Engineer Officer (D) I of the office of Director General of Works, (Vigilance Unit), CPWD, New Delhi to Shri Shyam Kapoor, Commissioner for Department Inquiries, Central Vigilance Commission, New Delhi.

18. It is further stated that two complaints which have been taken into consideration for issuing the charge sheet i.e. one by M/s Jethanand Arjundas and Sons and another by M/s Dharam Das Tirathdas Construction Pvt. Ltd. are fake and frivolous complaints and are not genuine. The Disciplinary Authority before issuing the charge sheet has not followed the procedure for the purpose. There is a discrepancy in the place of receipt of two complaints and this discrepancy is sufficient to prove falsehood of the complaint against the applicant.

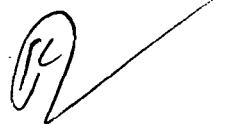
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19. The respondents also filed additional reply to the rejoinder filed by the applicant. In their additional reply, they have reiterated the facts which are mentioned in the reply itself.

20. We have heard the rival submissions of the respective parties and carefully perused the material available on record as well as the original record produced by the respondents and the relevant rules and judgments referred to by the respective parties. We have also given our thoughtful consideration to the Memorandum of charge sheet as the OA is directed against the Memorandum of charge sheet dated 12.10.2006. As the applicant has referred each and every article of charge to make out the case that all the charges leveled against the applicant are baseless, unfounded and contrary to record and deserves to be dropped.

21. In support of his submissions, the learned counsel appearing for the applicant placed reliance on the judgment dated 24.5.2007, Mukesh Vij vs. Union of India passed by this Bench of the Tribunal in OA No.188/2006 wherein this Tribunal having considered the facts and circumstances of the case observed as under:-

"5. Therefore, we are of the considered opinion that in this case inordinate delay had taken placed in issuing the chargesheet to the applicant and there is no satisfactory explanation for inordinate delay. So we find that as per the law laid down by the Hon'ble Supreme Court in the cases of M.V. Bijlani, N.Radhakrishnan, Bani Singh and P.V.Madhavan



(supra) as applied by the Coordinate Bench at Principal Bench which is also binding on us, and we have no reason to differ from the same. As such, we find that the OA has sufficient merits and deserves to be allowed. We, therefore, allow the OA and quash and set aside the chargesheet. No order as to costs."

Placing reliance on the above judgment, it is stated by the learned counsel appearing for the applicant that in the present case also, the charge sheet is issued after an inordinate delay and this Tribunal in the aforesaid case having considered the facts and circumstances of the case was of the view that inordinate delay had taken placed in issuing the chargesheet to the applicant and there was no satisfactory explanation for inordinate delay. So the Tribunal found that as per the law laid down by the Hon'ble Supreme Court in the cases of M.V.Bijlani , N.Radhakrishnan, Bani Singh and P.V.Madhavan., the OA deserve to be allowed.

22. The learned counsel also placed reliance on the judgment of the Hon'ble Supreme Court in the case of P.V.Mahadevan vs. MD, T.N. Housing Board, reported in (2005) 6 SCC 636 wherein the Hon'ble Supreme Court held as under:-

"The respondent submitted that the irregularity during the year 1990, for which disciplinary action had been initiated against the appellant in the year 2000 came to light in the audit report for the second half of 1994-95. But, Section 118 of the Tamil Nadu State Housing Board Act, 1961 specifically provides for submission of the abstracts of the accounts at the

(12) 

end of every year and Section 119 of the said Act relates to annual audit of accounts. Therefore, the explanation offered for the delay in finalizing the audit account cannot stand scrutiny in view of the above two provisions. There is no acceptable explanation on the side of the respondent explaining the inordinate delay in initiating departmental disciplinary proceedings. The stand taken by the respondent in the counter-affidavit is not convincing and is only an afterthought to give some explanation for the delay."

23. The learned counsel for the applicant also referred the judgment dated 24.8.2009 passed in OA No.1975/2008, Dr. S.K.Sharma vs. Union of India and anr. wherein the Central Administrative Tribunal, Principal Bench, New Delhi was of the view that it would not be in the interest of justice to continue with the departmental proceedings against the applicant in the light of the inordinate and unexplained delay.

24. The learned counsel for the applicant further relied the judgment in the case of P.V.Mahadevan rendered by the Hon'ble Supreme Court and the judgment of the Principal Bench of Tribunal in the case of Mukesh Vij and Dr. S.K.Sharma (supra) on the ground that Memorandum of charge sheet was issued on 12.10.2006 with regard to rejection of tender in question on 10.8.2001 i.e. after a delay of about more than 5 years and, therefore, in view of the ratio decided by the Hon'ble Supreme Court and this Tribunal (supra),



the impugned Memorandum of charge sheet dated 12.10.2006 deserves to be quashed and set-aside only on this ground.

25. We have thoroughly considered the judgments relied upon by the applicant. In all the judgments which have been referred by the applicant OA/WP were allowed and the Memorandum of charge sheet was quashed because of the reason that the respondents had not able to give satisfactory explanation for inordinate delay. In the case of P.V.Mahadevan (supra), there was no acceptable explanation from the respondent explaining the inordinate delay in initiating the departmental proceedings and the stand taken by the respondent in the counter-affidavit was not convincing and only an afterthought to give some explanation for the delay.

26. Here in the instant case, the respondents are able to explain the inordinate delay and have categorically explained the delay in para-10 of the reply, which is caused in issuing the charge sheet. We are fully convinced and satisfied with the explanation given by the respondents. Thus, we are of the firm view that the Memorandum of charge sheet cannot be quashed and set-aside only on the count of inordinate delay.

27. The judgments referred to by the applicant are not applicable to the facts and circumstances of the present case as the delay has been fully explained by the respondents.

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28. Now the issue remains before us is whether the charges leveled against the applicant are vague as the applicant has given much emphasis and referred each and every charge submitting that each and every charge is vague and in support of his submissions he referred to the judgment of the Hon'ble Supreme Court in the case of Transport Commissioner, Madras-5 vs. A.Radha Krishna Moorthy, reported in 1995 (1) SLR 239 and more particularly referred to para-9 of the judgment, which is reproduced below:-

“9. Insofar as the vagueness of the charges is concerned we find that it deserves acceptance. It is asserted by Shri Vaidyanathan, learned counsel for the respondent that except the memo of charges dated 4.6.89, no other particulars of charges or supporting particulars were supplied. This assertion could not be denied by the learned counsel for the appellant. A reading of charges would show that they are not specific and clear. They do not point out clearly the precise charge against the respondent, which he was expected to meet. One can understand the charges being accompanied by a statement of particulars or other statement furnishing the particulars of the aforesaid charges but that was not done. The charges are general in nature to the effect that the respondent along with eight other officials indulged in misappropriation by falsification of accounts what part did the respondent play, which account did he falsify or help falsify, which amount did he individually or together with other named persons misappropriate, are not particularized. The charge is a general one. It is significant to notice that respondent has been objecting to the charges on the ground of vagueness from the earliest stage and yet he was not furnished with the particulars. It is brought to our notice that



respondent a name was not included in the schedule appended to G.O. Ms. 928, dated 25.4.88, mentioning the names of officials responsible for falsification of accounts and misappropriation and that he is also not made an accused in the criminal proceedings initiated in that behalf. "

29. In the light of the ratio decided by the Hon'ble Supreme Court, we are of the view that each and every charge contains particulars of charge and supporting particulars were supplied and bare reading of the charges would show that the same are specific and clear. Thus, the ratio decided by the Hon'ble Supreme Court in the case of Radha Krishna Moorthy (supra) is also not applicable to the facts and circumstances of the present case.

30. It is not disputed that the Inquiry Officer has already been appointed, but he could not proceed on account of interim order passed by this Tribunal and it is also not in dispute that the applicant has every right to raise his objection, legal as well as factual, with regard to Memorandum of charge sheet before the Inquiry Officer, as has been raised in this OA. We are not satisfied with the submissions of the applicant that the charges leveled against the applicant are unfounded and vague and deserve to be quashed at this stage and bare perusal of the articles of charge, *prima facie*, it cannot be said that charges on its face value are false, as alleged by the applicant, and requires any interference by this Tribunal.



31. Therefore, we find no illegality in the Memorandum of charge sheet dated 12.10.2006 and same requires no interference by this Tribunal. This Tribunal having limited scope of judicial review cannot re-appreciate the findings given by the Disciplinary Authority and the applicant still has chance to raise objection before the Inquiry Officer. Consequently, the OA being devoid of merit fails and is hereby dismissed with no order as to costs. The respondents are at liberty to proceed with the matter as per provisions of law.

32. In view of disposal of the OA, no order is required to be passed in MA No.217/2009, which stands disposed of accordingly.

Anil Kumar
(ANIL KUMAR)
Admv. Member

K. S. Rathore
(JUSTICE K.S.RATHORE)
Jdil. Member

R/