
ORDERS OF THE BENCH

Date of Order: 17.04.2012

MA No. 09/2012
(OA No. 140/2011 with MA No. 305/2011 &
MA No. 348/2011)

Applicant is present in person.
Mr. M.A. Khan, counsel for respondents.


MA No. 09/2012


Heard on the Misc. Application for restoration of the Original Application as well as Misc. Applications, and having considered the submissions made on behalf of the respective parties, and the reasons stated in the Misc. Application, we are fully satisfied with the reasons stated and, thus, the Misc. Application for restoration of the Original Application and Misc. Applications stands allowed. The Original Application and the Misc. Applications are restored to its original number and status.

(OA No. 140/2011 with MA No. 305/2011 &
MA No. 348/2011)

We have heard the applicant in person, and the learned counsel appearing for the respondents.

Original Application and the Misc. Applications are disposed of by a separate order on the separate sheets for the reasons recorded therein.


(ANIL KUMAR)
MEMBER (A)


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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 17th day of April, 2012

ORIGINAL APPLICATION No. 140/2011

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

D.K.Srivastava
s/o Shri M.S.Srivastava,
113, Hari Marg, Civil Lines,
Jaipur

... Applicant

(Applicant present in person)

Versus

1. Housing & Urban Dev. Corporation (HUDCO)
Through its Chairman and Managing Director
2. Shri P.K.Mohanty,
Managing Director
3. Shri K.L.Dhingra,
Managing Director,
4. Shri T.Prabhakaran,
Managing Director/
Director Finance
5. Shri Vivek Kumar,
Executive Director
6. Shri S.S.Gaur,
Executive Director
10. Shri N.C.Nakra, Chief

Respondents 1 to 7 address - c/o Housing & Urban Dev. Corporation Ltd., HUDCO House, Indian Habitat Centre, Lodhi Road, New Delhi.

... Respondents

(By Advocate : Shri M.A.Khan)

ORDER (ORAL)

In the present OA, the applicant prays for the following reliefs:-

- “(a) To quash the charge sheet dt. 12.10.2010 whereby non-maintainable, arbitrary, illegal order contrary to the record itself has been issued malafidely to harass applicant by with-holding his salary also w.e.f. 1.2.2011 onwards against protection of whistle blower policy of CVC.
- (b) To direct the respondent to release increments, promotions with consequential and other payments for the suspension period and thereafter and post him above his juniors as if applicant was neither suspended nor charge sheet was issued for all the purposes.
- (c) To direct the respondent to release differential of salary minus subsistence allowance paid and the salary with consequential and other due payments which is not paid from the date of suspension till the date of retirement.
- (d) Pass any other order as is and would be appropriate in the circumstances of the case.”



2. During the pendency of the OA, the official respondents filed Misc. Application No.305/2011 praying for taking order dated 29.9.2011 on record by which penalty of dismissal from service has been imposed upon the applicant. The applicant submitted reply/objections against the Misc. Application praying for placing the order dated 29.9.2011 on record and submitted that there is no provision of infructuousness under the Administrative Tribunals Act, 1985. Since under Section 19(4) of Administrative Tribunals Act, all the proceedings taken out by employer stands abated after Hon'ble Tribunal takes cognizance of the matter and in relation to such matter any appeal or representation is barred, the application of respondents for getting OA No.140/2011 infructuous, which is in advance stage, is not maintainable. Further averred that under principles of natural justice governing the service law, the advanced proceedings of OA could not be thrown away without passing of final order/the judgment. Also submitted that the instant Misc. Application for placing on record the dismissal order arising out of the charge sheet, maintainability of which is under examination by this Tribunal has been filed by the respondents for oblique purposes intentionally which has undermined the authority and dignity of this Hon'ble Tribunal, therefore, suo moto criminal contempt proceedings needs to be taken against the respondents under Section 17 of the Administrative Tribunals Act read with Section 15 of the Contempt of Court Act and prayed that the Misc. Application of the respondents seeking dismissal of OA on the ground of



infructuousness, be dismissed with exemplary cost and suo moto criminal contempt proceedings be also considered to be taken against the respondents in the interest of justice.

3. Having heard the rival submissions of the respective parties on the Misc. Application No. 305/2011 and upon careful perusal of the ordersheets drawn by this Tribunal, it is evident that since this Tribunal has not passed any interim order restraining the respondents not to proceed with the disciplinary proceedings in view of the memo dated 12.10.2010, the Disciplinary Authority, after considering the enquiry report, wherein the charge of misconduct under HUDCO Conduct, Discipline and Appeal Rules against the applicant has been proved, was of the opinion that the misconduct on the part of the Charged Officer is of very serious nature and merits imposition of penalty of 'Dismissal from Service' and consequently imposed penalty of 'Dismissal from Service' on the applicant for the charge as contained in the Memorandum dated 12.10.2010, under Rule 23(2) (j) of HUDCO Conduct, Discipline and Appeal Rules, 1976.

4. We are not impressed with the submissions made on behalf of the applicant in reply to the Misc. Application No. 305/2011 and we are fully convinced with the submissions made on behalf of the respondents, therefore, this Misc. Application No.305/2011 deserves



to be allowed and the same is allowed. The order dated 29.9.2011 passed by the Disciplinary Authority is taken on record.

5. The applicant who is present in person strongly agitated and submitted that this OA still survives. During the course of arguments, in response to the query made to the applicant, whether he wants to challenge the order dated 29.9.2011 or not, the applicant submitted that he has filed Misc. Application No.348/2011 for setting aside the dismissal order dated 29.9.2011 and submits that since maintainability of the charge sheet dated 12.10.2010 itself was under scrutiny/examination of this Tribunal in OA No.140/2011, the respondents had no authority to proceed with the enquiry proceedings and pass impugned dismissal order arising out of same charge sheet, pre-empting the likely decision of this Tribunal. Thus, the dismissal order so passed is void, illegal, abuse of power, malafide, without jurisdiction which stood abated under Section 19(4) of the Administrative Tribunals Act on one hand and on the other hand amounted to criminal contempt of court. It is also alleged in this Misc. Application that void, illegal, malafide dismissal order is passed - (a) in acute desperation, in haste, to prevent the Tribunal from passing judgment on ongoing corruption and misuse of power proved on record of the OA No. 140/2011 brought out by the applicant (b) to save them from being exposed through likely final order of CAT also (c) to prevent from being linked to such exposure in pending PIL WP (C) in Hon'ble Supreme Court in



pending Cont. case (C) No. 489/11 at Delhi High Court in pending Crl. M.A. in Contempt case No. 19/2010 at Delhi High Court, in Crl. Rev. pending Spl Court, Jaipur for offence under Sections 218/406/403/409/467/468/120B IPS in which the top executive of the company are accused of bribery demand, fabrication of record, extortion and criminal conspiracy.

6. It is also stated that the applicant came to know from Misc. Application filed by the respondents before this Tribunal whereby copy of the dismissal order dated 29.9.2011 has been annexed, that the respondents have passed the dismissal order dated 29.9.2011, therefore, the applicant filed appeal dated 10.10.2011 to the Company Board.

7. We have given our thoughtful consideration to the submissions advanced on behalf of the applicant as well as by the respondents. The Misc. Application No.305/2011 filed by the respondents seeking permissions to place the order of dismissal of the applicant on record is strongly agitated by the applicant praying that the Misc. Application of the respondents seeking dismissal of the OA on the ground of infructuousness, be dismissed with exemplary cost and suo-moto criminal contempt proceedings be also considered to be taken against the respondents in the interest of justice. On the contrary, the applicant has also filed MA No.348/2011 seeking for setting aside the dismissal order dated 29.9.2011 and



stated that the applicant came to know about the order dated 29.9.2011 only after the Misc. Application has been filed by the respondents by which the dismissal order has been taken on record. By way of this Misc. Application the applicant has only prayed to set-aside the consequential order of dismissal dated 29.9.2011 ignoring the advice given by this Tribunal that the applicant may challenge this order by amending the present OA or to file a substantive OA and while challenging this dismissal order, the applicant can raise all legal as well as factual grounds which are taken in the present OA and since the Disciplinary Authority has passed the order dated 29.9.2011, as per the settled principle of law, without challenging the same, the present OA has become infructuous. However, the applicant only pressed Misc. Application for quashing and setting aside the order dated 29.9.2011 without amending the present OA or filing substantive OA.

8. In view of above, we deem it proper to give opportunity, in the interest of justice, to the applicant to challenge the dismissal order dated 29.9.2011 before the appropriate authority with liberty to take all sort of legal as well as factual grounds which are taken herein for quashing of the charge sheet and it is for the authority concern to consider the matter on its merits.

9. In our considered view, after issuance of dismissal order dated 29.9.2011, the present OA, so far it relates to challenging the charge



sheet is concerned, has become infructuous and the same is hereby dismissed as having become infructuous. Insofar as other reliefs are concerned, the applicant has claimed multiple reliefs, which is not permissible under law. However, the applicant is at liberty to approach the official respondents for redressal of his grievance.

10. In view of dismissal of the OA, no separate order is required to be passed in Misc. Application No.348/2011, which stands dismissed as indicated hereinabove.

Anil Kumar

(ANIL KUMAR)
Admv. Member

K.S. Rathore

(JUSTICE K.S.RATHORE)
Judl. Member

R/