

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 08.05.2014

MA No. 291/00252/2014

(MA No. 291/00050/2014) (MA No. 291/00064/2014)
(OA No. 370/2012)

Mr. R.P. Singh, Senior Advocate, assisted by
Mr. Shashi Kant Saini, counsel for applicant.
Mr. Mukesh Agarwal, counsel for respondent no. 1.
Mr. V.D. Sharma, counsel for respondent nos. 2 to 4.

MA No. 291/00252/2014

Heard on the Misc. Application filed on behalf of the applicant praying for early hearing of the matter. The learned counsel for the respondents have no objection if the O.A. is heard today itself. Therefore, the M.A. for early hearing is allowed. The matter be listed today itself i.e. on 08.05.2014.

MA No. 291/00064/2014

Heard on the Misc. Application filed on behalf of the applicant praying for condonation of delay in filing Misc. Application for restoration of the O.A. Having considered the submissions made on behalf of the parties, the delay in filing of M.A. for restoration of O.A., is condoned. Accordingly, the Misc. Application is allowed.

MA No. 291/00050/2014

Heard on the Misc. Application filed on behalf of the applicant praying for restoration of O.A. No. 370/2012. Having considered the submissions made on behalf of the parties, the O.A. is restored to its original number and status and is taken up for hearing today itself. Accordingly, the Misc. Application is allowed.

OA No. 370/2012

Heard learned counsel for the parties.

Order is reserved.

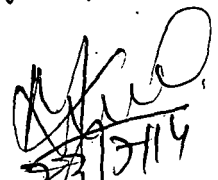

(SMT. JASMINE AHMED)
JUDICIAL MEMBER


(ANIL KUMAR)
ADMINISTRATIVE MEMBER

GA No. 370/2012 Sameer Singh Chandel

Dt. 23.7.2014

Order pronounced today in the open
Court by the Honble Bench.


23/7/14
COURT OFFICER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO. 370/2012

ORDER RESERVED ON 08.05.2014

DATE OF ORDER : 23-7-2014

CORAM:

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE MRS. JASMINE AHMED, JUDICIAL MEMBER

Sameer Singh Chandel son of Coln. Anand Singh, aged about 47 years, resident of 1/45, Gandhi Nagar, Jaipur. Presently posted as Commissioner III, Departmental Enquiry, Government Secretariat, Jaipur but presently on study leave)

... Applicants

(By Advocate: Mr. R.P. Singh Sr. Advocate assisted by
Mr. Shashi Kant Saini)

Versus

1. Union of India through its Secretary, Ministry of Personnel & Public Grievances (Department of Personnel & Training, New Delhi
2. State of Rajasthan through Secretary, Department of Personnel, Secretariat, Jaipur.
3. The Secretary, Department of Personnel, Government of Rajasthan, Secretariat, Jaipur.
4. The Inspector General of Police, Anti Corruption Bureau, Jaipur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal – Respondent no. 1.
Mr. V.D. Sharma – Respondent no. 2 to 4)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

The applicant has filed this OA praying for the following reliefs:-

- "(i) by an appropriate writ, order or direction in the nature thereof the charge sheet dated 13.10.2011 and amendment dated 27.12.2011 may kindly be quashed and set aside and also any proceedings initiated in furtherance of same and the applicant

Anil Kumar

may be discharged from the charges leveled in the charge sheet in the interest of justice.

- (ii) Any other order which this Hon'ble Court may deem fit in the facts and circumstances of the present case may kindly be passed in favour of the applicant."

2. The brief facts of the case, as stated by the learned senior counsel for the applicant, are that the applicant is a member of the Indian Administrative Service and has a clean record of service. However, a complaint was made to the Hon'ble Lokayukta on 25.09.2002 by Shri Sumer Singh and Shri Hukam Raj Gurjar. The complaint was made in relation to his tenure as Collector, Sawaimadhopur when the applicant was posted as Collector Sawaimadhopur from 1999 to 2001. It was alleged in the complaint that when the applicant was working as Collector at that time, Zila Parishad issued notification inviting applications for the post of Village Level Worker cum Secretary (Gram Sewak). Since Shri Hukam Raj Gurjar and Sumer Singh wanted to get appointment, they met applicant for the same through one Shri Hans Raj Gurjar. It was alleged that the applicant asked for Rupees one lakh each from the complainants for helping them in getting appointment. It is also alleged that the amount was paid to the applicant as bribe for the purpose of getting appointment but when the result was declared they failed. Therefore, the complainants contacted the applicant for the return of money. The applicant, however, did not return the money on one pretext or the other.

3. That one of the complainants pressed further for return of money. The applicant gave a site plan of the plots belonging to

Anil Kumar

him and asked them to sell the same to get their money. Actually no such plot was existed in the name of the applicant. Therefore, subsequently the applicant gave them a signed blank paper and Shri Hansraj gave them a promissory note which was signed by Hansraj with guarantee to return money. The complainants also alleged that the applicant had given them a cheque drawn on the State Bank of Patiyala, Surya Nagar, Ghaziabad but on its presentation to the Bank, it was dishonoured. Therefore, the complainants requested to punish the Collector suitably. A copy of the complaint has been annexed at Annexure A/3.

4. The Hon'ble Lokayukta initiated investigation on the complaint under Section 10 of the Rajasthan Lokayukta and Up-Lokayukta Act, 1973. A notice was issued to the applicant and in pursuance of the same, the applicant submitted detailed reply on 14.06.2004 (Annexure A/4).

5. The learned senior counsel for the applicant submitted that after the reply, the statements of witnesses were recorded, the same was done in the absence of the applicant and ex-parte proceedings were drawn against the applicant. He emphasized that the proceedings in the Lokayukta Office were conducted by the staff of the Lokayukta as the post of Lokayukta was vacant for almost two years. He submitted that the proceedings against the applicant could have been undertaken only by the Lokayukta. However, the investigation report was forwarded to the Department of Personnel, Government of Rajasthan. A copy of

Anil Kumar

the investigation report was also sent to the applicant by the Department of DOP on 07.06.2010 (Annexure A/5).

6. The applicant submitted his detailed reply on 05.07.2010 to the notice dated 07.06.2010 (Annexure A/6). Thereafter the case of the applicant was considered by the respondents and prima-facie found that the complaint was frivolous and there is no supporting evidence to prove the claim made by the complainants. The applicant has quoted in the OA some portions of the note sheets. In the end of the note sheet, it has been stated that no action is required on the report received from the Lokayukta and the reply submitted by the Sumer Singh Chandal should be accepted. However, a contrary opinion was drawn on the change of the officer on 27.08.2011 and suggested to issue a charge sheet to the applicant for major penalty. Thereafter the applicant was issued charge sheet dated 13.10.2011. Therefore aggrieved by the same, the applicant has preferred this OA challenging the charge sheet dated 13.10.2011 and subsequent amendment dated 27.12.2011.

7. The learned senior counsel for the applicant submitted that the issuance of the charge sheet initially under Rule 10 and then amended under Rule 8 of the AIS (D&A) Rules, 1969 is illegal and arbitrary. No preliminary inquiry was held by the Lokayukta before proceeding with the inquiry.

8. He further submitted that the applicant was not involved in the process of appointment to the post of Gram Sewak as it is

Anil Kumar

Chief Executive Officer of the Zila Parishad, who is the person authorized to make appointment. He also controls the process of appointment on the post of Gram Sewaks. The applicant was not even aware whether the vacancies for the post of Village Level Worker cum Secretary (Gram Sewaks) were advertised during his tenure as Collector at Sawaimadhopur. The applicant never met the complainant at any point of time.

9. The learned senior counsel for the applicant submitted that contention of the Hon'ble Lokayukta despite the notice, the applicant did not appear is not correct. During the period of investigation for long time, the post of Lokayukta remained vacant. On joining of new Lokayukta, the applicant was proceeded with ex-parte investigation without issuance of fresh notice to the applicant for fixing of the date of such investigation. Thus recording of the evidence in the absence of the applicant is violative of the principles of natural justice. The applicant had no opportunity to cross-examine the witnesses or complainants. Thus it has caused great prejudice to the applicant.

10. The learned senior counsel for the applicant argued that it has been alleged in the complaint that the amount of bribe was paid to one Shri Shanti Lal, who was said to be Personal Assistant/Peon by the complainant. However on inquiry, it was found that no such person has been working in the office/ at the house of the Collector i.e. the applicant. Thus any evidence in regard to the bribe is not acceptable in the eyes of law. The

Anil Kumar

Anil Kumar

learned senior counsel for the applicant also argued that the applicant never gave any promissory note to any one in this connection. Similarly it was found that the plot in question was not at all related to the applicant.

11. That the applicant never gave any blank cheque to the complainants. The learned counsel for the applicant argued that there are many discrepancies in the investigation report submitted by the Hon'ble Lokayukta and, therefore, any action on the basis of such report is bad in the eyes of law. In the OA, the applicant has given detailed procedure for appointment of Gram Sewaks to show that the Collector has no role in the appointment of Gram Sewaks.

12. The learned senior counsel for the applicant further submitted that the charge sheet has been issued without application of mind by the competent authority merely on the basis of Hon'ble Lokayukta's report. The bare reading of the Memorandum of charge sheet shows that there was no evidence available against the applicant and further a vague charge has been leveled against the applicant which is not sustainable in the eyes of law. Therefore, the issuance of the charge sheet is illegal and arbitrary and the same is in violation of the principles of natural justice. Therefore, it should be quashed and set aside.

13. The applicant has also annexed the charge memo vide Annexure MA/1. The learned counsel for the applicant in support of his averments has relied on the following case laws:-

Anil Kumar

1. State of Punjab vs. V.K. Khanna & Others,
AIR 2001 SC 343
2. Narendra Mohan Arya vs. United India Insurance Co. Ltd.
2006 (4) SCC 713
3. Ravi Yashwant Bhoir vs. District Collector, Raigad & Ors
2012 (4) SCC 407
4. R.S. Garg vs. State of U.P. & Others
2006 (6) SCC 430
5. Smt. S.R. Venkataraman vs. Union of India & Another
1979 (2) SCC 491
6. Union of India vs. Parma Nanda
1989 (2) SCC 177
7. Rasid Javed & Others vs. State of Uttar Pradesh &
Another 2010 (7) SCC 781
8. M.P. State Coop. Bank Ltd., Bhopal vs. Nanuram Yadav &
Others, 2007 (8) SCC 264
9. Dr. Yash Lal Yadav vs. State of Bihar & Others
1994 (5) SCC 267

14. On the contrary, the respondents have submitted their reply. The respondents in their written reply have submitted that an inquiry report was submitted by the Hon'ble Lokayukta against the applicant and it was found that there was prima-facie material and evidence against the applicant for his mis-conduct and, therefore, a decision has been taken to initiate regular inquiry under Rule 8 of the AIS (D&A) Rules, 1969.

15. The respondents have admitted that it was by over sight that initially the present matter was referred under Rule 10 whereas the matter should have been referred for initiating inquiry under Section 8 of Rules of 1969. Therefore, the memorandum dated 13.10.2011 was issued under Rule 10 of the Rules 1969 under wrong impression. However, subsequently it was decided that the matter be inquired under Rule 8 of All India

Anil Kumar

Services (D&A) Rules, 1969. The amended order dated 27.12.2011 has been issued with the approval of the Hon'ble Chief Minister. Thus there is no illegality in the charge sheet issued to the applicant.

16. The learned counsel for the respondents further submitted that since the process of inquiry has been initiated with the issuance of the memorandum of charge sheet, the Tribunal should not interfere at this stage. The filing of the present OA is premature as the applicant has a right to defend himself in the disciplinary proceedings initiated against him by the Department.

17. The learned counsel for the respondents argued that the OA is liable to be dismissed on the ground that the applicant has failed to produce any cogent reason or any proof of any malice or bias on the part of the answering respondents in the issuance of charge sheet in question. In support of his averments, he referred to the judgment of the Hon'ble Supreme Court in the case of **Shri Parma Nanda vs. State of Haryana and Others** {1989 (2) SCC 177}, **Union of India vs. Upendra Singh** {1994 (2) SLJ 77 (SC)} and **District Forest Officer vs. R. Rajamanickam & Another** {2000 SCC (L&S) 1100}

18. The learned counsel for the respondents further submitted that applicant has not availed alternative departmental remedy available to him. Therefore, as per section 20 of the Administrative Tribunal's Act, 1985, the present OA is not maintainable.

Anil Kumar

19. The learned counsel for the respondents also submitted that the applicant was given notice by the Hon'ble Lokayukta and he appeared on 22.12.2003. The applicant was permitted to inspect the complete records and on 22.06.2004, he filed reply. Thereafter, the Hon'ble Lokayukta issued the notices to the applicant. However, he did not turn up and subsequently vide order dated 25.02.2009, investigation report was sent to the Hon'ble Chief Minister with recommendation to initiate disciplinary proceedings for major penalty against the applicant.

20. The learned counsel for the respondents further argued that the notings on the file which have been quoted by the applicant in the OA were written by the Deputy Secretary. However, Principal Secretary, DOP after examination of the file found that the finding recorded by the Deputy Secretary is not legally sustainable as the finding recorded by the Hon'ble Lokayukta after thorough investigation clearly proves the guilt of the applicant and it was after considering the report submitted by the Hon'ble Lokayukta, the charge sheets dated 13.10.2011 and 27.12.2011 have been issued to the applicant, which are perfectly legal and according to the rules. That the applicant has been rightly given charge sheet under Rule 8 of the AIS (D&A) Rules, 1969.

21. That it is settled law ^{that} the charge sheet can be quashed by the Hon'ble Tribunal/Courts only on the grounds that it has been issued by the incompetent authority or on malice. In the present

Anil Kumar

Anil Kumar

case, the applicant has not challenged the charge sheet on the ground that it has been issued by the incompetent authority. The applicant has failed to prove any malice in law or any fact. Therefore, at this stage, the charge sheet cannot be quashed. The applicant has all the opportunity to take whatever defense he wants to take before the Inquiry Officer. Therefore, the OA has no merit and it should be dismissed with costs.

22. The applicant has filed a rejoinder.

23. Heard the learned counsel for the parties, perused the documents on record and the case law referred to by the learned counsel for both the parties.

24. A complaint was made to the Hon'ble Lokayukta on 25.09.2002 by Shri Sumer Singh and Shri Hukum Raj Gurjar, that the applicant was posted as Collector Sawaimadhopur between 1999 to 2001 and he asked for a bribe of Rupees one lac each from the complainant for helping them in getting appointment on the post of Village Level Worker cum Secretary (Gram Sewak). But complainants did not get the job. Therefore, complainants contacted the applicant i.e. Sameer Singh Chandel, the then Collector Sawaimadhopur, for the return of their money but the applicant did not return the money on one pretext or the other. The Hon'ble Lokayukut initiated the investigation on the complaint under Section 10 of the Rajasthan Lokayukt and Up-Lokayukt Act, 1973 and submitted a report on 25.02.2009. A copy of the investigation report, submitted by the Hon'ble

Anil Kumar

Lokayukt, was sent to the applicant for his comments. The applicant submitted his detailed report on 05.07.2010 (Annexure A/6). However, without considering his reply in the correct perspective, the applicant was issued a charge sheet dated 13.10.2011 and being aggrieved by the same, the applicant has preferred this OA challenging the charge sheet dated 13.10.2011 (Annexure A/1) and subsequent amendment dated 27.12.2011 (Annexure A/2).

25. The learned senior counsel for the applicant has pointed out certain lacuna in the report of the Hon'ble Lokayukt. He argued that not a single documents submitted in support of the complaint was either worthy of reliance or was legally admissible proof associated with the applicant or in any manner indicting the applicant at all viz. that the cheque whose copy was submitted with the complaint did not have the applicant's signature. Further promissory note submitted alongwith the complaint did not have applicant's signature. That the copy of documents relating to a Plot could not in any way be connected with the applicant.

26. The learned senior counsel also argued that it is ridiculous to allege that a Collector would take Rupees two lacs as bribe at his official residence in the presence of four witnesses and would return the money by a cheque, as alleged. Thus the entire story was mere *ipse dixit* of the complainant.

Anil Kumar

27. That the office of the Hon'ble Lokayukt was vacant for more than two years and in the absence of the Lokayukt, contrary to the Act of the 1973, Secretary of its own volition and without any authorization proceeded to continue inquiry. The new Lokayukt on taking over the charge merely signed the report and submitted it to the Government.

28. It has been alleged that the money was given to one Shri Shanti Lal at the collector's residence. It has been admitted in the Hon'ble Lokayukt's report that in spite of best efforts, the Hon'ble Lokayukt's office/ complainant/State, Shanti Lal could not be traced out because there was no Shanti Lal. The learned senior counsel for the applicant submitted that there was no person by the name of Shanti Lal. He was a figment of imagination created to fuel the allegations of an imaginary bribe. The Hon'ble Lokayukat states that Shanti Lal could have been in the personal employment of the Collector. Thus, he submitted that the allegation of the quasi criminal nature cannot be founded on such hollow and filmsy presumption.

29. The Hon'ble Lokayukat's report itself admits that there are certain discrepancies in the amount of the bribe alleged to have been paid to the applicant (Para 10 of the Lokaykat Report).

30. Despite specific denial by the applicant of his signature either on the cheque or on the blank paper and other documents, they were not sent to FSL but the story was believed merely on the 'ipse dixit'.

Anil Kumar

31. The Hon'ble Lokayukat could not trace the bank account as alleged by the complainant. The Lokayukt twisted the facts observing that a fake account appears to be maintained by the applicant. This smacks of huge bias against the applicant.

32. When the report was examined by the State Government, it was submitted that the report submitted by the Hon'ble Lokayukat was not unbiased and wholly based on oral evidence. That the report of the Hon'ble Lokayukat was prepared totally ignoring the reply of the applicant. Therefore, no action should be taken against the applicant in pursuance of the Hon'ble Lokayukat's report and that the reply of the applicant should be accepted. This conclusion was put up to the highest authority in the State and after some confabulations at the top level the file travelled back. The report was again analyzed in the Department of Personnel and in a suo moto review sort of proceedings, the entire conclusion was reversed and a charge sheet was issued to the applicant. Thus the aforesaid sequence of events shows that the charge sheet has been issued on the basis of malice in law.

33. Initially the charge sheet was issued under Rule 10 of All India Services (Discipline & Appeal) Rules, 1969 i.e. for minor penalty but subsequently it was amended to be issued under Rule 8 of All India Services (Discipline & Appeal) Rules, 1969 with a filmsy excuse that initially charge sheet has been issued by over sight. This further underlines malice in law. Therefore,

Anil Kumar

the charge sheet based on malice in law requires to be quashed and set aside.

34. It is settled law that a charge sheet can be quashed only on the ground that it has been issued by incompetent authority or is issued on malafides either of facts or on malice in law. We are in agreement with the averments of the learned counsel for the respondents that the charge sheet has been issued by the competent authority and the applicant has a right to defend it before the Inquiry Officer and power of judicial review in such cases is very limited.

35. We have carefully perused the judgment of the Hon'ble Supreme Court in the case of **Shri Parma Nanda vs. State of Haryana and Others** {1989 (2) SCC 177}, as referred to by the learned counsel for the respondents and we are of the opinion that the ratio decided by the Hon'ble Supreme Court in this case is not applicable under the facts and circumstances of the present case. In the case of **Shri Parma Nanda vs. State of Haryana and Others** (supra), the applicant was dismissed from service by the Department but the Tribunal reduced the punishment of dismissal to that of stopping of his five increments which he had earned for a period of five years. The Hon'ble Supreme Court set aside the order of the Tribunal, imposing the lesser penalty. But in this case, no decision has been taken in the disciplinary proceedings. The question before the Hon'ble Supreme Court in this case was whether the Tribunal has power to modify the penalty awarded by the competent

Anil Kumar

authority on the ground that it was excessive or disproportionate to the misconduct proved. In the present OA, the applicant has challenged the charge sheet on the basis of malice in law and on account of 'ipse dixit'. Therefore, the ratio decided by the Hon'ble Supreme Court in this case will not be applicable under the facts & circumstances of the present case.

36. We have carefully perused the judgment of the Hon'ble Supreme Court in the case of **District Forest Officer vs. R. Rajamanickam & Another** {2000 SCC (L&S) 1100}, referred to by the learned counsel for the respondents. The Hon'ble Supreme Court in this judgment relied upon their own judgment in the case of **Union of India vs. Upendra Singh** {1994 (2) SLJ 77 (SC)} and held that the Tribunal was not justified under law to interfere with the correctness of the charges leveled against the delinquent officer. Whereas in this case as stated earlier, the applicant has challenged the charge sheet on the basis of malice in law and on account of 'ipse dixit'. Therefore, the ratio decided by the Hon'ble Supreme Court in these two cases is not applicable to the facts and circumstances of the present O.A.

37. We are not in agreement with the contention of the learned counsel for the respondents that the applicant has not availed alternative departmental remedy available to him and, therefore, the OA is not maintainable. The learned counsel for the respondents could not show us the law under which the applicant could have challenged the issuance of the charge sheet

Anil Kumar

to any departmental authority. Therefore, we are of the opinion that on this ground, the present OA cannot be dismissed.

38. Therefore, the limited question before us in the present OA is whether the charge sheet suffers from malice in law and has been issued merely on the account of 'ipse dixit' of the complainants.

39. We have carefully perused the report of the Hon'ble Lokayukt. From the perusal of the record, it appears that Shri Sameer Singh Chandel denied that he had issued any cheque or has signed any promissory note but the Hon'ble Lokayukt did not send those documents to the FSL for verification and statements of the complainants were believed. The evidence adduced on behalf of complainant must have nexus with the charges. The entire story of giving bribe to the applicant was mere 'ipse dixit' of the complainant. The learned senior counsel for the applicant referred to the judgment of the Hon'ble Supreme Court in the case of **Narendra Mohan Arya vs. United India Insurance Company Ltd. & Others**, 2006 (4) SCC 713. In Para No. 44 of the judgment, the Hon'ble Supreme Court has held that the evidence adduced on behalf of the management must have nexus with the charges. The Inquiry Officer cannot base his finding on mere hypothesis. Mere 'ipse dixit' on his part cannot be a substitute of evidence. The ratio decided by the Hon'ble Supreme Court in this case is squarely applicable in the present OA.

Anil Kumar

40. We have carefully perused the report of the Hon'ble Lokayukt with regard to the Bank Account in the State Bank of Patiala, Suryar Nagar, Ghaziabad. In the report of the Hon'ble Lokayukt, it has been mentioned that the relevant cheque was issued in the name of Karan Dev but summon could not served on him and it was returned with the note that no person by this name resided in the house. The Hon'ble Lokayukt concluded that it appears that this was a fake account maintained by Shri ^{Anil Kumar} Sameer Singh Chandel, the applicant. Again, obviously there was no evidence that this account belongs to Sameer Singh Chandel and conclusion was drawn on presumption.

41. In the case of **R.S. Garg vs. State of U.P. & Others** (supra), the Hon'ble Supreme Court in Para 25, 26 and 27 of the judgment has dealt with the issue of legal malice, which are quoted below: -

"25. The difference in concept of malice in law and malice on fact is well known. Any action resorted to for an unauthorized purpose would construe malice in law. (See S.R. Venkataraman vs. Union of India - (1979) 2 SCC 491, State of A.P. v. Goverdhanlal Pitti - (2003) 4 SCC 739, Chairman & MD, BPL Ltd. v. S.P. Gururaja - (2003) 8 SCC 567 and also Punjab SEB Ltd. v. Zora Singh - (2005) 6 SCC 776).

26. "Malice" in its legal sense means malice such as may be assumed for a wrongful act done intentionally but without just cause or excuse or for one of reasonable or probable cause. The term "malice on fact" would come within the purview of the aforementioned definition. Even, however, in the absence of any malicious intention, the principle of malice in law can be invoked as has been described by Viscount Haldane in Shearer v. Shields - 1914 AC 808, at p. 813 in the following terms:

"A person who inflicts an inquiry upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken to know the law, and he must act within the

Anil Kumar

law. He may, therefore, be guilty of malice in law, although, so far as the state of his mind is concerned, he acts ignorantly, and in that sense innocently."

27. The said principle has been narrated briefly in S.R. Venkataraman vs. Union of India - (1979) 2 SCC 491, in the following terms: (SCC p. 494, para 5)

"Thus, malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause."

Under the facts and circumstances of the present OA, it is clear that the charge sheet issued to the applicant suffers from legal malice.

42. The learned counsel for the applicant submitted that the applicant in his representation has categorically stated that he was not the appointing authority of Village Level Worker cum Secretary (Gram Sewak) nor he was in any way associated with the recruitment process for the said post. Therefore, there was no occasion even for the complainants to offer him any money as bribe. Thus the complaint itself has no force.

43. We have carefully perused the reply filed by the respondents and we find that the State Government has not examined this point before the issuance of the charge sheet because it is important aspect as to why the complainant would pay any bribe to the applicant if he is not associated with the recruitment process of Gram Sevaks, the post on which the complainant had applied.

Anil Kumar

44. Learned counsel for the applicant argued that the office of the Lokayukta was vacant between November, 2004 and May, 2007, therefore, it was presumed that no proceedings would take place in the absence of Lokayukta. However, contrary to the provisions of the Rajasthan Lokayukta and Up-Lokayuktas Act, 1973, the Secretary of the Lokayukta on his own volition and without any authorization proceeded to continue the inquiry. The new Lokayukta on taking over the charge of the post signed the report and submitted it to the Govt. for appropriate action.

45. The respondents in their reply have not clarified whether the Secretary, Lokayukta recorded the statements of the complainants or witnesses in this case in the absence of Lokayukta and if the Secretary did proceed with the inquiry in the absence of the Lokayukta whether he was authorized to do so under the law and if he was not authorized to proceed with the inquiry in the absence of Lokayukta / Up-Lokayukta then what would be its effect on the investigation conducted by the Lokayukta.

46. Since these important legal points as discussed in para 42 to 45 of this order have not been replied by the respondents, in their reply, it can be said that they were not examined by the respondents before the issuance of charge sheet. Hence, it can be concluded that the charge sheet suffers from legal malice.

47. When the report of Hon'ble Lokayukta was examined in the Government, the extracts of which has been quoted by the

Anil Kumar

applicant in Para No. 4.7 of the OA shows that investigation report of the Hon'ble Lokayukt was not unbiased and wholly based on oral evidence. It further states that reply submitted by the applicant before the Hon'ble Lokayukt has perhaps been ignored. That it is highly improbable that an officer of the IAS would accept the bribe and then return it by a cheque. Even a lower functionary of the State Government would not do so. It further states that the report of the Hon'ble Lokayukt has not concluded as who issued the cheque. Further the signatures have not been verified by any expert. That report of the Hon'ble Lokayukt is not unbiased and, therefore, no action is required to be taken on report of the Hon'ble Lokayukt and reply submitted by Shri Sameer Singh Chandel should be accepted.

48. It is not disputed that superior officer in a Government have all the right to disagree with ~~the~~ note prepared by the Deputy Secretary, DOP but then such officer should have given the reasons of disagreement with ~~that~~ note. The respondents in their reply have not given any reason for the disagreement with ~~this~~ note. It only states that after examination, it was found that the findings recorded by the Deputy Secretary are not legally sustainable. The note of the Deputy Secretary is a detailed note and, therefore, merely over-ruling this note on the ground that it is not legally sustainable is not sufficient. Right to reasons is an indispensable part of sound judicial system. The ratio decided by the Hon'ble Supreme Court in the case of **Ravi Yashwant Bhoir vs. District Collector, Raigad & Ors.** (supra) is applicable in the present case. In para 47 of the judgment, the

Anil Kumar

Hon'ble Supreme Court has held that the State is under an obligation to act fairly without ill-will or malice in fact or in law. "Legal malice" or "malice in law" means something done without lawful excuse. In the present case, the opinion of the Deputy Secretary has been overruled without giving any cogent reasons at the direction of the superior authority. Therefore, we are of the opinion that the charge sheet suffers from malice in law.

49. Moreover, it is also admitted that initially the charge sheet was issued under Rule 10 of All India Services (Discipline & Appeal) Rules, 1969 i.e. minor penalty but subsequently the charge sheet was amended to be issued under Rule 8 of the All India Services (Discipline & Appeal) Rules, 1969. In the written reply, the respondents have stated that it was due to over sight of the Chief Secretary and under inadvertent impression, the present matter was referred under Rule 10 whereas the matter should have been under rule 8 of the Rules, 1969. In our opinion, there is no legal bar in issuance of the amended charge sheet to the delinquent officer but under the facts and circumstances of the present case it could further under line malice in law.

50. The Hon'ble Supreme Court in the case of **Union of India vs. Govind Manish** (Civil Appeal No. 1442 of 2011 arising out of SLP (C) No. 11378 of 2010, judgment dated 07.02.2011 has held that the Tribunal will not interfere with the inquiry proceedings except when it is proved that the action taken by the employer is without jurisdiction or is ex facie vitiated due to

Anil Kumar

the mala fides. In the present OA, the charge sheet suffers from malice in law. The learned senior counsel for the applicant also referred to the judgment of the Hon'ble Supreme Court in the case of **State of Punjab vs. V.K. Khanna & Others**, AIR 2001 SC 343. In the case of **State of Punjab vs. V.K. Khanna & Others** (supra) charge sheet was quashed by the Hon'ble High Court of Punjab and Haryana on the ground that the charge sheet was issued to the petitioner because of malafide approach towards Shri Khanna. The Hon'ble Supreme Court upheld the decision of the Hon'ble High Court. In Para 33 of the judgment, the Hon'ble Supreme Court held that -

"33. While it is true that justifiability of the charges at this stage of initiating a disciplinary proceeding cannot possibly be delved into by any Court pending inquiry but it is equally well settled that in the event there is an element of malice or mala fide, motive involved in the matter of issue of a charge-sheet or the concerned authority is so biased that the inquiry would be a mere farcical show and the conclusions are well known then and in that event law Courts are otherwise justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a public official. It is not a question of shielding any misdeed that the Court would be anxious, it is the due process of law which should permeate in the society and in the event of there being any affectation of such process of law that law Courts ought to rise up to the occasion and the High Court in the contextual facts has delved into the issue on that score. On the basis of the findings no exception can be taken and that has been the precise reason as to why this Court dealt with the issue in so great a detail so as to examine the judicial propriety at this stage of the proceedings."


51. The ratio decided by the Hon'ble Supreme Court in these judgments is squarely applicable to the facts & circumstances of the present OA. Therefore, we are of the opinion that the charge sheet issued to the applicant dated 13.10.2011 (Annexure A/1)

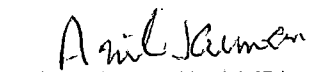
Anil Kumar

and 27.12.2011 (Annexure A/2) suffer from legal malice and, therefore, they are liable to be quashed.

52. Consequently, the Original Application is allowed.

The charge sheet dated 13.10.2011 (Annexure A/1) and as amended vide letter dated 27.12.2011 (Annexure A/2) are quashed and set aside. There shall be no order as to costs.


(JASMINE AHMED)
MEMBER (J)


(ANIL KUMAR)
MEMBER (A)

/abdul/