CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 10.04.2013

OA No. 306/2013

Mr. Virendra Lodha, Senior Advocate, assisted by
Mr. Ankit Jain, counsel for applicant.

Heard. O.A. is 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)

Kumawat

THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

Wednesday, this the 10th day of April, 2013

ORIGINAL APPLICATION No.306/2013

CORAM:

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

Hinglajdan,
aged about 34 years,
s/o Shri Shambhudan,
r/o House No.149,
Pratap Nagar,
Khatipura Road,
Jaipur (Raj.)

.. Applicant

(By Advocate : Mr. Virendra Lodha, Sr. Advocate with
Mr. Ankit Jain)

Versus

1. Union of India
through the Secretary,
Ministry of Home Affairs,
North Block, New Delhi.

2. State of Rajasthan
through Chief Secretary,
Government of Rajasthan,
Secretariat, Jaipur.

3. Principal Secretary,
Department of Personnel,
Government of Rajasthan,
Government Secretariat, Jaipur

.. Respondents

(By Advocate: .....)

O R D E R (ORAL)

The present OA is filed by the applicant praying for the following reliefs:-

"It is, therefore, prayed that the learned Tribunal may kindly call for the entire records pertaining to passing of the impugned memorandum of charges dated 11.11.2011 and after examining the same be pleased to declare the impugned order of memorandum of charges dated 11.11.2011 null and void and quash and set aside the same.

By further appropriate order or directions, the official respondents be directed to restrain from taking any coercive steps or proceedings against the aforesaid impugned charge sheet/memorandum of charges dated 11.11.2011 during the pendency of the original application against the applicant or thereafter and further not to proceed in any other inquiry resulted to the aforesaid during the pendency of this original application or thereafter.

By further appropriate order or directions, the official respondents be restrained from taking any coercive steps or proceedings against the applicant on the basis of impugned chargesheet/ memorandum of charges dated 11.11.2011 during the pendency of this original application or thereafter.

By further appropriate order or directions, if any order prejudicial/detrimental to the interest of applicant is passed during the pendency of the O.A., the same may kindly be taken on record and be quashed and set aside by the learned Tribunal.

Any other relief as may be deemed just and proper in the facts and circumstances of the case be also awarded.

Cost of the original application may also be awarded in favour of the applicant.

2. The main challenge to the charge sheet dated 11.11.2011 is on the ground that it is per se illegal, arbitrary and unjustified and the same is in utter defiance to the principles of natural justice. Further challenged on the ground that the impugned charge sheet is not legally sustainable in the eyes of law because the memorandum of charges issued by Principal Secretary, Department of Personnel, Government of Rajasthan is against Rule 3(1) of All India Service Rules, 1969 and it is just for continuing of suspension order dated 28.9.2011 which has already been set aside by the Tribunal on 2.4.2013. The learned counsel appearing for the applicant contended that the power of disciplinary action against an All India Service Officer has been delegated to the State Government and not to a particular Minister In-charge of the Department. This principal has been enunciated by the Hon'ble High Court in D.B. Civil Writ Petition No.4202/2008 and the same was upheld by the Hon'ble Supreme Court.

3. It is further contended on behalf of the applicant that the charge sheet dated 11.11.2011 is not legally sustainable because the action of the Principal Secretary, Department of Personnel, in

issuing the memorandum of charges suffers from malafides, as the same has been issued to justify the illegal suspension order dated 28.9.2011 which was subsequently extended on 22.12.2012. The suspension order could not have been extended or remained valid without issuance of charge sheet within 45 days. Hence, on the last date of expiry of first suspension order (i.e. 45th day as prescribed under All India Service Rules of 1969), the memorandum of charges was issued in a hurried manner without application of mind and without caring to look into the facts and circumstances of the case. Duplicacy of efforts were involved as the same set of facts and circumstances are being enquired into and investigated by CBI, Judicial Commission and Senior Government Officials and this is a clear cut case of pre-determination of mind to perpetuate the suspension of the applicant, as such, suffers from prejudice and arbitrariness.

4. The learned counsel appearing for the applicant further submits that the memorandum of charges suffers from infirmity of selective discrimination against the applicant as the Inspector General of Police, Bharatpur Range report dated 18.4.2012 (Ann.A/8) clearly indicates that before completion of CBI inquiry and without waiting for the findings of the Judicial Commission of inquiry, it would be unjust and improper and contrary to law to

comment on the role of District and Police officials. Not only this, the Inspector General in its report further mentioned that after preliminary examination of all available records, he was not able to ascertain any lapse on the part of any of the officials. Despite this, the issuance of charge sheet is highhandedness and selective penalization against the applicant, which is in violation of Article 14 of the Constitution of India.

5. Further submitted that the applicant challenged the order of suspension dated 28.9.2011 and its extension by way of filing OA No.376/2012 and as an interim measure this Tribunal stayed operation of the suspension order vide its order dated 29.5.2012 and ultimately the suspension order has been quashed and set aside by this Tribunal vide its order dated 2.4.2013.

6. We have considered the submissions made on behalf of the applicant at admission stage and perused the material available on record. After having considered the submissions and the provisions of Section 20 of the Administrative Tribunal Act, 1985, we are of the view that the applicant ought to have availed the alternative efficacious remedies available to him under the relevant provisions of rules and hence, represent before the respondents and raise all legal as well as factual

aspects, which are raised in this OA, with the support of relevant provisions of law as also the law laid down by various competent courts. Thus, without expressing opinion on merit of the case, we deem it proper to give liberty to the applicant to file a detailed representation/explanation within a period of 15 days from the date of receipt of a copy of this order. Upon receipt of representation/explanation given by the applicant, the respondents are directed to consider and decide the representation/explanation of the applicant strictly in accordance with the provisions of law taking into consideration legal as well as factual aspects raised in the representation/explanation and shall pass a reasoned and speaking order, also clarifying whether memorandum of charges dated 11.11.2011 still survives or not. It is expected from the respondents to do the needful, as stated hereinabove, expeditiously, but in any case not beyond the period of three months from the date of receipt of a copy of this order.

7. If any prejudicial order, against the interest of the applicant, is passed by the respondents, the applicant will be at liberty to challenge the same before the competent authority.

8. With these observations and directions, the OA stands disposed of at admission stage.

Anil Kumar
(ANIL KUMAR)
Admv. Member

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

R/