

16A

ORDER
HON'BLE MR. SANJEEV KAUSHIK , MEMBER (J)

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, the applicant has primarily prayed for the following relief :-

- (i) Respondents be directed to promote the applicant to the post of Superintendent by opening the sealed-cover which has been kept pending / delayed in spite of submission of favourable enquiry report on 2.6.2010 and it be declared that the action of respondents in keeping the recommendations of DPC in sealed cover was illegal.
- (ii) The action of the respondents in seeking advice of Central Vigilance Commission be declared as null and void.
- (iii) The charge-sheet dated 4.2.2012 (Annexure A-7) and penalty order dated 13.8.2013 (Annexure A-27) qua reduction of pay by two stages for a period of one year without cumulative effect and the appellate order dated 30.1.2014 (Annexure A-29) be quashed and set aside.

2. The facts of the case can be summarized in a short compass. The applicant joined service as Lower Division Clerk in 1980 and was promoted as UDC in 1988 and then Tax Assistant and as Inspector in 1994. The applicant purchased certain assets like Maruti Esteem Car and by arranging loans from friends and loan from ICICI and other two wheeler vehicles as mentioned in para 4 (i) and (ii) of Original

1
L

Application. On 11.10.2006 the applicant was asked to supply copy of first IPR filed by him at the time of joining the department. The applicant informed the Department that he had not conveyed about aforesaid transactions to the department out of ignorance. However, he explained the department about the transactions and the genuineness of the same. The department kept silent and did not take any action on the same. However, on an anonymous complaint, a charge-sheet dated 4.2.2010 (A-7) under rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 on the ground that he had failed to inform the Department about purchase of assets within a period of one month and that he has acquired assets through financial resources that are not legal in nature. The applicant explained on 19.2.2010 that he had given due intimation / explanation in letter dated 1.11.2006. The Inquiry Officer in his report dated 2.6.2010 has held that though transactions were genuine but he had not informed about the same to the department and the applicant made compliance at a belated stage. Vide letter dated 20.5.2011 Commissioner of Central Excise, Chandigarh-II wrote a letter to Central Vigilance Commission, New Delhi for a second stage advice.

3. As per Vigilance Manual, volume-I, Para No.3.4.3, complaints which relate to purely administrative matters or technical lapses, such as late attendance, disobedience, insubordination, negligence, lack of supervision or operational or technical irregularities should not be entered in the Complaint Register and should be treated as Non-

Vigilance Complaints. The applicant challenges the action of respondents in seeking 2nd stage advice from CVC on the ground that as per Circular dated 13.4.2004 (A-13) on serious nature of complaints like gratification etc. are referred to Vigilance. Even the CVC, New Delhi has asked vide letter dated 19.2.2004 (A-14) that if lapse is not having vigilance angle, same is not to be referred to the Commission.

4. The applicant submitted a representation on 25.8.2011 for issuance of clearance from Vigilance Case as his case is not of vigilance nature as it does not relate to illegal gratification, corruption, disproportionate assets or misappropriation and he cannot be made to suffer for a technical fault only etc. It was followed by a reminder dated 28.11.2011. He came to know that meeting of Departmental Promotion Committee was going to take place in March, 2012 for promotion to the post of Superintendent during the year 2012-2013, the applicant submitted application inviting certain information under RTI Act, 2005 which was supplied to him vide different letters. He again made a claim that his case does not fall within the definition of "vigilance cases". He came to know that his case was kept in sealed cover due to pendency of charge-sheet dated 4.2.2010. The applicant approached this Tribunal by way of O.A.No. 648-CH-2012 for opening of sealed cover procedure. The DG (Vigilance) / (CVO) in his communication dated 22.5.2013 issued a disagreement note, as a second stage advice which is at variance with communication dated 11.10.2009. The respondents passed order dated 13.8.2013 (A-27) imposing the major penalty of reduction of pay by two

19A

stages for a period of one year without cumulative effect ignoring that he had been exonerated by the Inquiry Officer. The applicant filed a statutory appeal which was rejected on 30.1.2014 (A-29). The applicant had withdrawn earlier O.A. on 7.10.2013.

5. The proceedings are being challenged by the applicant on the premise that the same have been inordinately delayed as cause of action related to 2006 whereas the charge sheet was issued in 2010 and as such stand vitiated. The applicant cannot be made to suffer for the fault on part of the respondents. The applicant had given due intimation to the department which cannot be ignored by them. There was no scope for seeking 2nd stage advice from CVC. In support of the plea reliance is placed on a decision by Madras Bench of this Tribunal in O.A.No. 790/2011 decided on 28.03.2012. He submits that when proceedings are unnecessarily delayed, an incumbent is entitled to promotion in view of decision of Apex Court in **State of Punjab & Others Vs. Chaman Lal Goyal**, 1995 (1) SC SLJ 233. The CVC has taken the place of Disciplinary Authority, which is illegal. The CVC's role is restricted to recording of finding of fact only and it cannot suggest punishment which is in domain of the disciplinary authority. Reliance is placed upon decision of Madras Bench of this Tribunal in **N. Sundra Murthy Vs. Lt. Governor**, which relied upon **Union of India Vs. Permanent** 1989 ATC (10) Page-30. When charge sheet was not issued on the basis of 1st stage advice, question of 2nd stage advice does not arise.

↓

20A

6. The respondents have filed a detailed reply. They submit that case was referred to CBI which conducted discreet verification about the assets of the applicant and found that information was not sufficient to register a case of disproportionate assets against the applicant, though departmental misconduct of non-intimation was clearly made out against him. Thus, a charge was issued to the applicant in that regard and in enquiry he was not found guilty but the disciplinary authority upon advice from CVC held him guilty and imposed the penalty. They submit that the manner in which applicant has defaulted repeatedly, on mandatory intimations to the department and when the same was discovered, the manner in which he has attempted to cover up for some transactions by taking the cover of interest free cash loans from some of his stated friends, indicates that he has acquired some of the assets through financial resources that are not legal in nature. Since charge sheet was issued on advice of CVO, the matter was sent for 2nd stage advice. Referring to various correspondence entered into between the authorities, it is claimed that delay was not intentional but for bonafide reasons. They submit that vigilance angle was involved in this case as lapses were serious in nature. The sealed cover procedure has rightly been kept in view of instructions of DoPT dated 21.11.2002 (R-17) and decision of Apex Court in **Union of India Vs. K.V. Jankiraman etc.** (1991) 4 SCC 109. They submit that Apex Court in State of M.P. Vs. J.S. Bansal & Another decided on 9.2.1998 has held that decision in Chaman Lal Goyal (supra) has not noticed three Judges Bench decision

in the case of Jankiraman (supra). They justify adoption of sealed cover procedure in the case of the applicant.

7. We have heard learned counsel for the parties and perused the material on the file.

8. A perusal of the pleadings of the parties would disclose that the disciplinary authority while passing the penalty order, Annexure A-27 has held that during his posting at Mandi Gobindgarh, a complaint was received against the applicant that he was indulging in corrupt practices and had the assets disproportionate to his known sources of income. The CBI had informed that there was no sufficient information to register a case of disproportionate assets against the applicant. However, the applicant was a highly corrupt officer and enjoyed a bad reputation and as such CBI advised for initiation of major penalty proceeding. The D.A. has gone to the extent of holding that "The theory of probability of preponderance does indicate that the officer was involved in the corrupt practices and following that theory, the charged officer has to be made accountable for that". Thereafter mention about report of enquiry officer has been made and noticing the violation of rule 18 of CCS (Conduct) Rules qua non intimation of purchase of vehicles etc, it has been held that the applicant has failed to maintain absolute integrity and acted in a manner unbecoming of a government servant and as such has contravened the provision of relevant rules and ultimately imposed the penalty upon him. It is apparent that the Disciplinary Authority has been actuated with a finding that the applicant

22A

was involved in the corrupt practices and that he has to be made accountable for the same. Apparently this charge was never levelled against the applicant and as such recording of a finding on the same and imposing a penalty would amount to taking extraneous material into consideration while imposing penalty and the proceedings would stand vitiated.

9. Hon'ble Allahabad High Court in **Rameshwar Dayal Gupta vs The Regional Transport**, AIR 1958 All 575, has held as under :-

"When he could not have been held guilty of one of the charges the considerations in respect of that charge became extraneous considerations and if such extraneous considerations were employed in deciding what punishment was to be imposed on the appellant the entire order imposing the punishment can be held to have become void. As Farwell, L. J. laid down in Rex v. Board of Education, (1910) 2 K. B. 165 at p. 179 (A) :--

"If the Tribunal has exercised the discretion entrusted to it bona fide, not influenced by extraneous or irrelevant considerations, and not arbitrarily or illegally, the courts cannot interfere; but they have power to prevent the intentional usurpation or mistaken assumption of a jurisdiction beyond that given to the tribunal by law, and also the refusal of their true jurisdiction by the adoption of extraneous considerations in arriving at their conclusion or deciding a point other than that brought before them, in which

1

cases the courts have regarded them as declining jurisdiction."

The appellant can therefore contend that the transport authorities committed an error of jurisdiction by imposing a punishment upon him based on extraneous considerations and that this Court should interfere and quash the order. It is not necessary for this Court to go into the question whether if only one of the charges is established the punishment imposed is justifiable or not; that is for the transport authorities to decide. The order of suspension passed against the appellant is liable to be quashed not because it was not a possible order that could be passed in the circumstances of the case but because it must be held to be vitiated by an error of jurisdiction."

10. It is not in dispute that the Disciplinary Authority has come to its conclusion qua charge of corruption, without giving an opportunity of hearing to the applicant to rebut the charge. In the case of **State of A.P. v. S.M. Nizamuddin Ali Khan** AIR 1976 SC 1964 it has been held that "When extraneous matters have been taken into consideration and no opportunity of rebuttal of such matter was given to the delinquent, the order of penalty gets vitiated." We need not touch upon other points as that would be merely an academic exercise only.

11. In view of the aforesaid discussion this Original Application is allowed. Impugned orders of punishment and that passed by appellate authority are quashed and set aside. The respondents are also directed to consider the case of the applicant by taking recourse to opening of

24A

sealed cover procedure. If the recommendations are in his favour, the applicant be promoted to the relevant post following due procedure. The needful be done within a period of three months from the date of receipt of a certified copy of this order.

12. The parties are left to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(UDAY KUMAR VARMA)
MEMBER (A)

Place: Chandigarh
Dated: 7.5.2015

HC*