

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

OA No. 060/00324/2014 Date of Order : 7-4-2017.

**CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MR.UDAY KUMAR VARMA, MEMBER(A)**

Sh. Harsh Kumar, I.F.S., Conservator of Forests, Research & Training Circle, Hoshiarpur, Punjab.

.....Applicant

BY: Applicant in person

VERSUS

1. Secretary, Ministry of Environment & Forests, Paryawaran Bhawan, CGO Complex, Lodhi Road, New Delhi.
2. Chief Secretary, Government of Punjab, Main Civil Secretariat, Chandigarh.
3. Sh. D.S. Bains, IAS, Financial Commissioner cum Secretary, Department of Forests & Wildlife Preservation, Government of Punjab, Punjab Civil Secretariat, Chandigarh.

.....Respondents

BY ADVOCATE: Sh. Ram Lal Gupta, for respondent no 1

Sh. Ajaib Singh, for respondents no. 2 & 3.

ORDER

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

1. Applicant Harsh Kumar Senior Officer of Indian Forest Service belonging to State of Punjab is before us in the present Original Application under section 19 of the Administrative Tribunal Act, 1985 impugning charge-sheet dated 10.2.2012 and consequential orders, particularly order dated 13.11.2013 appointing Shri B.C.Gupta,

Additional Sessions Judge (Retd) as an Inquiry Officer. The explicit prayer made in the OA reads as under:-

"The charge-sheet served on the member of the service in the light of benign report of Commissioner of inquiries be filed. Disciplinary action and criminal proceedings be initiated against the concerted officials who have violated Government instructions and rules while dealing with the case of the applicant. The order of conducting de-novo inquiry be quashed."

2. The facts which led to filing of the present OA are that when the applicant was posted as Conservator of Forests, Ferozepur Circle, in June, 2011, he was on tour in Amritsar Forest Division, he was approached by two complainants Sh. Harbhajan Singh and Sh. Roshan Masih who gave representations to him wherein allegations of corruption against Deputy Divisional Forest Officer, Amritsar, and a Block Forest Officer of Amritsar Forest Division were alleged. The aggrieved persons stated on sworn affidavit that their trolley of wood was detained by Wilbert Samson, the then Dy. DFO, Amritsar, and later on released the same by taking bribe of Rs. 25,000/. They had made official complaint that they were made to understand that this was on account of a fine, but when they asked for the receipt, no receipt was given to them. Applicant being Conservator of Forests, marked a preliminary inquiry to Shri Sewa Singh, IFS, Divisional Forests Officer, Amritsar, who conducted the preliminary inquiry. The Divisional Forest Officer had recorded the statements of complainants and other staff. The DFO, Amritsar, vide its memo dated 15.7.2011 found the complaints of Sh. Harbhajan Singh, Roshan Masih and others as correct with regard to the issue of graft is concerned.

3. It has submitted that as per the provisions of Punjab Forest Manual Vol-II Chapter on Conservator's duties and Punjab Financial Rule 2.33 A, the matter was sent to Vigilance Department by him as Vigilance Department is the competent authority to investigate the complaints of corruption. In this regard, the Vigilance Department also issued circulars regularly that any complaint of corruption be sent to them. As per investigation done by the Vigilance Department, a case under Prevention of Corruption Act, 1988, was registered against Wilbert Sampson, PFS and one Forester vide FIR No. 16 dated 08.09.2011 by PS Vigilance Bureau, Punjab.

4. Applicant has further pleaded in his O.A. that he was transferred to Research and Training Circle, Punjab Forest Department in September, 2011. A charge-sheet was straight away served upon the applicant at the behest of then Forest Minister for having sent the case of corruption to the Department of Vigilance without seeking his explanation. The extract of Government of India instructions as issued vide GOI, DoPT OM No. 11018/3/94-AIS.III dated 9th June, 1995 Rule 7 of the AIS (Discipline & Appeal) Rules, 1969 reads as follows:-

".....Any proposal to initiate disciplinary proceedings should be forwarded only after a decision has been taken at the level of the Minister-in-Charge of the Department/Ministry after obtaining the preliminary explanation of the officer and after considering the same. In cases having a vigilance angle, the administrative Ministries/Departments are also required to consult the Central Vigilance Commission and obtain its first stage advice before submitting the papers to the Minister."

Meanwhile, complainants Harbhajan Singh and Roshan Masih in this case approached the Chief Minister, Punjab and Chief Conservator of Forests to send their case to the Commissioner of Inquiries as they had no faith in the Departmental probe. As per Punjab Vigilance

Manual, in such cases where Vigilance Department registers FIR and does investigation on the civil side, cases have to be inquired through Commissioner of Inquiries. The then Chief Conservator of Forests (Plains) ordered Conservator of Forests to send this case to the Commissioner of Inquiries as per the demand of the complainants. After proper inquiry, Commissioner of Inquiries found that FIR No. 16 dated 08.09.2011 was rightly registered as the case was to be investigated as per Prevention of Corruption Act, 1988 as there were allegations of bribery. The Commissioner of Inquiries further found the action of the applicant for referring the case to the Vigilance Department to be proper. It was further held that cases under Prevention of Corruption Act have to be inquired through Dy. SP level officers.

5. The applicant has further stated that a preliminary inquiry after registration of FIR was marked to Shri S.S. Bhatti, IFS for scuttling the investigation of the FIR against Wilbert Samson, PFS who tried to give clean chit to then Dy. DFO Wilbert Samson, PFS, and in turn has himself become an accused. Sh. S.S. Bhatti, IFS for violation of Government circulars and for not recording proper evidence especially the evidence of the complainant, was served notice by the Commissioner of Inquiries for doing wrong preliminary inquiry. But in his preliminary report, Sh. S.S. Bhatti, IFS never attributed anything to the applicant and moreover, in IFS hierarchy, he is junior to the applicant. The Principal Chief Conservator of Forests (PCCF) i.e. Head of the Forest Department sent the communiqué dated 12.10.2011 to the State Government for taking strict disciplinary action against the applicant. In the light of Vigilance Department circular dated



21.12.2005 when Vigilance Department was conducting investigation into FIR No. 16 dated 08.09.2011, no other authority could conduct any inquiry. The State Government through Secretary Forest, violated its own circular by getting a parallel inquiry conducted. This fact has been found true by Commissioner of Inquiries. The applicant has further stated that as per Government of India instructions, before charge-sheeting the member of All India Service, an explanation is to be taken.

6. It is further alleged that when the applicant asked for relevant documents for submitting effective reply to the charge-sheet, the same was not provided to him. Therefore, it is submitted that the action of the respondents in providing documents is in-violation of principles of natural justice and fair play as it takes away his right to submit effective defence. To buttress his plea, the applicant has placed reliance upon the case of Amrik Singh, Sup (1) SCC (32) 1995, wherein it was held that the relied upon documents have to be supplied along with the charge-sheet so that the delinquent officer is able to file reply in his defence.

7. It was mentioned in the charge-sheet that on 17.08.2011 Rules of Business were circulated to the level of Directorate which stated that no case would be sent to the Vigilance Department without approval from the Minister concerned. In the same charge-sheet, it is written that applicant had sent the case of corruption to Vigilance on 20.07.2011. By no stretch of imagination, the applicant could imagine on 20.07.2011 that in future Rules of Business would be amended.



8. To strengthen his plea, the applicant has also placed reliance upon the findings recorded by the Commissioner of Inquiries which is based upon record and witnesses, where the applicant was declared innocent. Nothing was proved against the applicant and on the other hand, it was realized that Financial Commissioner, Forests, had misused the powers vested in him. The Commissioner of Inquiries gave notices to B.C. Bala, IFS (Retd.) and Sh. S.S. Bhatti, IFS, along with other staff as they were prima-facie found to have committed the crime of abetting corruption and in turn had violated conduct rules. The Commissioner of Inquires on the basis of record and witnesses found Sh. H.S. Gujral, IFS guilty of having abetted the corruption and no action was taken by the Secretary, Forests, against Sh. H.S. Gujral, IFS. Rather, the applicant had written against the action of the respondents wherein he had allowed Sh. H.S. Gujral to continue on the post of Principal Chief Conservator Forests, Punjab beyond his date of superannuation i.e. 30.09.2013. Since respondent No. 3 was exposed, he took revenge by issuing order dated 13.11.2013 by appointing Inquiry Officer and that too in violation of AIS (Disciplinary and Appeal) Rules, 1969. The Commissioner of Inquiries had on the basis of record and witnesses, further issued notices to Sh. H.S. Gujral, IFS, Sh. B.C. Bala, IFS, Sh. S.S. Bhatti, IFS, Sh. Sewa Singh, IFS, Sh. Wilbert Samson, PFS and other subordinate staff and their conduct is still under the scanner.

9. As per the decision of the Hon'ble Supreme Court in the case of **Punjab State Vs. V.K. Khanna**, AIR 2001 S.C Page 330, sending corruption cases to CBI etc. is justified and State cannot charge-sheet an AIS officer alleging misconduct on this account. The

Hon'ble Apex Court has further held that where documents which are listed in the charge-sheet are not supplied, the same charge-sheet is bad in law. The mala fide action of State is further proved wherein present Secretary, Forests, in the order passed at Annexure A-1, has not given any reference of the inquiry already conducted by Commissioner of Inquiries. As per the decision dated 20.5.2004 passed by Hon'ble Supreme Court in the case of **Ram Brich Muchi Vs. Coal India Ltd. & Ors.** on 20.05.2004, the interference of Courts is justified where charge-sheet is issued out of personal grudge and mala fide.

10. The applicant has further alleged that as per Cabinet Secretariat, Department of Personnel, Memo No. 7/01/70 Estt (A) dated 6-01-1971, the inquiry authority has to be higher in rank, pay and status than the charged officer. However, the retired Additional Sessions Judge who was made an Inquiry Officer in this case, besides being a non-IFS/IAS Officer was in pay grade lower than the applicant who is in the pay grade of Joint Secretary to Government of India. Regarding this aspect, a letter dated 24.1.2014 was written by the applicant to the Chief Secretary and Forest Minister. Besides, the retired Inquiry Officer who has been authorized by the Department of Personnel, Government of Punjab, to conduct inquiry under Punjab Punishment and Appeal Rules, 1970, vide Department of Personnel letter No. 3/21/2009-3PP2/79 dated 21.01.2013 while he lacks the power of doing any inquiry under AIS (Discipline and Appeal) Rules, 1969 (Annexure A-20 colly), hence this Original Application.

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11. The Tribunal, while issuing notice of motion to the respondents on 16.4.2014 as an interim order had stayed the charge-sheet till the next date of hearing and this interim order has been extended from time to time.

12. No written statement was filed on behalf of respondent No. 1 Union of India being proforma party.

13. On notice, respondents no.2 & 3(against whom allegation of malice) had jointly filed reply wherein they have stated that no order had been issued by the Competent Authority to Commissioner of Inquiries under All India Services (Discipline & Appeal) Rules, 1969 to conduct a regular inquiry in connection with charge-sheet sent to applicant vide memo dated 10.02.2012. Smt. Sujata Dass, Commissioner of Inquires, started this inquiry merely on the basis of the DO letter dated 20.09.2013 of Sh. Harsh Kumar, IFS, the officer who himself has been charge-sheeted. Hence, the findings of the Commissioner of Inquires could not be relied upon and were being misused by the applicant regarding the charge-sheet pending against him. They have stated that the claim of the applicant regarding complainants approaching him on 08.07.2011 during his tour to Amritsar, appear to be fabricated as log book record of staff car of CF, Ferozepur showed that the applicant was at Chandigarh during the period 07.07.2011 to 09.07.2011 and not in Amritsar.

14. It is further stated that the Principal Chief Conservator of Forests vide letter No. 14330 dated 12.10.2011 (Annexure A-14) addressed to the Financial Commissioner (Forests) Government of Punjab had stated actual position emerging out of the inquiry report of

Sh. S.S. Bhatti, Conservator of Forests, Ferozepur. As per this letter, on 04.03.2011, Forest Range Officer, Amritsar and his staff seized a tractor trolley in which five trees illicitly cut from Kaluwal Minor were loaded and a damage report No. 23428 dated 04.03.2011 was issued. An application was given by Range Officer, Amritsar to Sh. Sewa Singh, IFS, the then Divisional Forest Officer, Amritsar on 04.03.2011 to confiscate the tractor trolley under Section 52-A of Indian Forest Act, 1927. The contention of the applicant that the said complainants were stopped by the Forest Staff and the complainants' tractor trolley with wood released only after taking the bribe is also not correct as per the report dated 12.10.2011 of the Principal Chief Conservator of Forests that clearly mentioned that during this process of confiscation of the tractor trolley in which five big trees illicitly cut from Kaluwal Minor were seized by Forest Range Officer, Amritsar, neither the concerned complainants or Sh. Wilbert Samson, Deputy DFO Amritsar or Sh. Balbir Singh, Block Officer were present on the site. Sh. S.S. Bhatti, Conservator of Forests, Ferozepur had already concluded that the report of Sh. Sewa Singh, Divisional Forest Officer is not based on the official record.

15. It is further stated that as per the standing orders under Rules of Business issued by the Forest Minister, Punjab which were circulated vide Punjab Government letter No. 46/72/1992-Ft-5/6704 dated 17.08.2011, the right to register a case against a Gazetted Officer to Vigilance Department lies under the jurisdiction of Forest Minister only. Thus, the applicant misused his powers in sending the complaint against Sh. Wilbert Samson (Gazetted Officer) to Vigilance Department without obtaining the approval of the competent

authority. The contentions of the applicant in the OA have been further rebutted in the written statement.

16. MA No. 060/01156/2014 has been filed by the applicant for placing additional material on record. It is stated therein that the applicant had also approached Human Rights Commission with the complaint against Respondent No. 3 wherein the issuance of charge-sheet was agitated at Sr. No. 16 of the said complaint. The Human Rights Commission had sent all the case to the Chief Secretary, Punjab. The Chief Secretary, Punjab, in turn had marked the whole case to Financial Commissioner (Revenue) for inquiry after seeking appropriate orders from the Chief Minister, Punjab. The Financial Commissioner (Revenue), Punjab (FCR) then heard the applicant and had given his findings by holding that the charge-sheet served upon the applicant is illegal. It is further stated in the said MA that harassment of the applicant has been proved by two Inquiry Officers i.e. Sujata Dass, and Sh. N.S. Kang, IAS, in the rank of Chief Secretary. Action is now called for against earlier Financial Commissioner Forests, Sh. D.S. Bains, IAS (Retd.) who has been impleaded party by name. Thus, sending the case of corruption to Vigilance Bureau in the light of Annexure A-10 of State Government cannot be termed as an act of misconduct by any stretch of imagination.

17. The arguments advanced by the applicant in person and learned counsel for the respondents have been heard at length when the applicant-in-person narrated the background of the matter. His main contention was that he had sent the reference to the Vigilance Bureau on 20.07.2011, while the standing order through which it was prescribed that cases could be sent to Vigilance Department only after

approval of the Minister in charge, was issued on 17.08.2011. He stated that the Chief Conservator of Forests (Plains) had ordered the implementation of Chief Minister's orders for giving inquiry to Commissioner of Inquiries, Punjab on the civil side on 15.07.2011. The Commissioner of Inquiries had commented adversely on the functioning of Sh. C. Bala, IFS (Retd.), Sh. H.S. Gujral, IFS (Retd.), Sh. Wilbert Samson, PFS, Sh. Balbir Singh, Forester, Sh. S.S. Bhatti, IFS (Retd.) and Sh. D.S. Bains, IAS (Retd.) while the Commissioner of Inquiries had found Sh. D.S. Bains guilty of violation of Government of India's instructions for issuing the charge-sheet to the applicant, and he had been given a clean chit. The Financial Commissioner (Revenue) had also justified the action of the applicant for sending the case of corruption to the Vigilance Bureau and found the charge-sheet against him to be illegal, but he was still being harassed in the matter. Moreover, without providing documents listed in the charge-sheet to the applicant and giving reasonable time to him for furnishing his reply, decision was taken to appoint an Inquiry Officer though such decisions could only be taken after weighing the contents of the reply filed by the applicant to the charge-sheet. The applicant also relied upon the judgment passed by the Hon'ble Apex Court in the case of **T.S.R.Subramanyam versus Union of India & Another** in W. P. (Civil) No. 82 of 2011 and 234 of 2011 to press that disciplinary proceedings against AIS Officers could only be started on the recommendations of the Civil Service Board (CSB) headed by the Chief Secretary of the State, but his case had never been referred to the CSB. He also referred to **Ram Birch Mochi Vs. Coal India**, (2005) 1 CALLT 388 HC), Appeal No. 140 of 2007 titled **Union of India versus Naman Singh Shekhawat** decided on 14.03.2008, W.P. (S). No.

2527 of 2006 titled **Kishore Kumar** versus **State of Jharkhand & Another** decided on 12.02.2013. He also placed reliance on a judgment passed by the Hon'ble Apex Court in the case of **State of Punjab Vs. V.K. Khanna & Ors.** in Appeal (Civil) No. 6963 of 2000 decided on 30.11.2000 to press that a public servant could not be charge-sheeted for alleged misconduct on account of referring a case involving corruption for enquiry by the Vigilance Department.

18. Per contra, prayer for quashing the charge-sheet is emphatically opposed by the learned counsel for respondents No. 2 & 3. He further argued that the present OA is pre-mature as the inquiry into the matter relating to the charge-sheet served upon the applicant had not been concluded. He stated that the officer had violated the Standing Order of the Government of Punjab that cases could not be referred to the Vigilance Department without the express approval of the Minister in Charge.

19. We have given our conscientious consideration to the matter.

20. Firstly, we will deal with the preliminary objection raised by the respondents with regard to the maintainability of present petition in its present form. No doubt, it is firmly rooted principle of law that when the matter is at the stage of departmental inquiry and only the charge against the respondent is framed, at this stage the Court/Tribunal, normally, does not interfere with. At this stage, the judicial authority has no jurisdiction to go into the correctness or truthfulness of the charges. When the arguments of learned counsel for the respondents are examined in the context of aforesaid principle, they appear to be attractive. However, it is only when we have not looked into the other side of coin and taken note of some material

facts, which Mr. Verma glossed over while making his submissions.

These are the following.

21. The solitary prayer which born out of the conjunctive perusal of the pleadings at the hands of the applicant is to quash charge-sheet which is outcome of malice and colorable exercise of power with sole motive to fix applicant for no fault of him that too contrary to the rule formation. For better understanding of the matter, it is useful to note down the charges leveled against the applicant. The same reads as under:-

- “ 1. Misuse of powers by sending complaint to Vigilance Department of a higher rank.
- 2. Try to entangle the officials/employees by lodging wrong FIR and giving bad impressions on department works”.

A perusal of the above extracted charges, it is crystal clear that the applicant is charge-sheeted on two counts. Firstly, the applicant referred the matter to the Vigilance Department directly without prior permission, as such, his action is in violation of Government Standing Order on this subject. Secondly, the applicant registered FIR against his senior officer. Pleadings as noticed in the preceding paragraphs leaves no doubt in our mind that the contention raised at the hands of the applicant is to be accepted that the charge-sheet is an outcome of malice , arbitrary exercise of powers and non-application of mind, is to be quashed for the simple reason that the applicant had made a reference to the Vigilance Department in July, 2011 without obtaining approval of Minister in Charge, while the Standing Order requiring such cases to be submitted to the Minister in Charge was issued by the Government of Punjab on 17.08.2011. Thus, the charge is not sustainable as the applicant referred the case to the Vigilance



Department in July, 2011 well before the Standing Order dated 17.08.2011 was issued. It is not expected from a prudent person to visually future things which are going to be happened. Every officer is expected to follow Government orders or rules which is relevant at the given time. Secondly the applicant has not logged any FIR by naming Senior Officer. Both the above noted factual facts lead to one conclusion that the disciplinary authority did not apply its mind while issuing the charge-sheet. Moreover, the ratio lay down by the Lordship's in the case of V.K. Khanna (supra) came to the rescue of the applicant, wherein the Lordships have held that no AIS officer can be charge-sheeted for referring the matter to CBI or any other agency likewise. Since wrong doing came to the notice of the applicant who was posted as Conservator of Forests and this appeared to be a case of corruption, he made the reference to the Vigilance Department. Standing Order of the nature as issued on 17.08.2011 cannot circumvent this position especially since such an Order constrains the public servants in performing their legitimate duty.

22. It is also observed from the material on record that the Commissioner of Inquiries, on a reference received through the Chief Minister's office had inquired into the matter and held that the applicant Sh. Harsh Kumar was not at fault in the matter at all and the charge-sheet had been wrongly issued to him in violation of All India Service (Disciplinary & Appeal) Rules, 1969 and Government of India's instructions issued from time to time. A similar conclusion had been reached by the Financial Commissioner, Revenue when the Chief Secretary of the State referred this matter to him for inquiry. It is not understood as to why the Government of Punjab was continuing to pursue the matter in respect of the charge-sheet issued to the

present applicant. This appears to be a clear case of mala fide and harassment of an officer who was only trying to perform his duties. It also appears that undue protection was being afforded by the then Minister in Charge to some of the officers of the Forest Department and the then Secretary (Forests) was going along with him in the matter and the applicant was made a scapegoat. Correct procedure as per All India Service (Disciplinary & Appeal) Rules, 1969 as well as Government of India's instructions were not followed and even when the reality of the matter came to light through the reports of the Commissioner of Inquiries and FCR, the charge-sheet was not dropped.

23. After examining the matter ourselves, in the light of record and the submissions made by the respective parties, we are inclined to agree with the submissions at the hands of the applicant. The charge for which the applicant is implicated, no misconduct or other irregularities can be said to have been made out. Charge-sheet framed is also contrary to law as there was no proper application of mind by the Disciplinary Authority. Accordingly the charge-sheet dated 10.02.2012 and consequential order dated 08.11.2013 are hereby quashed. The OA is allowed. No costs.

**(SANJEEV KAUSHIK)
MEMBER (J)**

**(UDAY KUMAR VARMA)
MEMBER (A)**

Dated: 07-4-2017.
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