

**Central Administrative Tribunal
Principal Bench: New Delhi**

**OA No.216 /2014
MA No.1034/2014**

Reserved on: 03.05.2016
Pronounced on: 22.07.2016

**Hon'ble Dr. B.K. Sinha, Member (A)
Hon'ble Dr. B.A. Agrawal, Member (J)**

Sh. Tushar Ranjan Mohanty,
S/o Shri Rabi Naryan Mohanty,
Ad-hoc SAG Officer of the
Indian Statistical Service,
Deputy Director General (Under posting),
Ministry of Statistics and
Programme Implementation,
G-31, HUDCO Place Extension,
New Delhi-110049.

...Applicant

(By Advocate: Applicant in person)

Versus

1. Union of India through
The Chief Statistician of India and Secretary,
Ministry of Statistics and Programme Implementation,
Sardar Patel Bhawan, Parliament Street,
New Delhi-110001.
2. Shri D. Sai Baba,
Director and Chief Vigilance Officer,
Ministry of Statistics and Programme Implementation,
Sardar Patel Bhawan, Parliament Street,
New Delhi-110001.
3. Shri D.K. Sharma,
Under Secretary (ISS and Vigilance),
Ministry of Statistics and Programme Implementation,
Sardar Patel Bhawan, Parliament Street,
New Delhi-110001

...Respondents

(By Advocate: Sh. R.N. Singh)

O R D E R

By Dr. B.K. Sinha, Member (A):

This is yet another battle in a war of attrition that rages between the applicant and the respondents. Of course, we have lost count of number of these battles.

2. The applicant in the instant OA filed under Section 19 of the Administrative Tribunals Act, 1985 is aggrieved with the order dated 16.01.2014 whereby several officers junior to him have been granted Non-Functional Upgradation [hereinafter referred to as NFU) to Higher Administrative Grade (hereinafter referred to as HAG) in the pay scale of Rs.67000-79000 w.e.f. 02.07.2013 leaving the applicant out.

The applicant has prayed for the following relief(s):-

“8.1 to allow the present Application;

8.2 to quash the impugned order dated 16.01.2014 (Annexure A-1) in as much as it is detrimental to the Applicant;

8.3 to direct the Respondent Ministry to grant Non-Functional Financial Upgradation to the Applicant to the Higher Administrative Grade with effect from 02.07.2013, at par with the juniors of the Applicant;

8.4 to direct the Respondent Ministry to pay arrears of salary of the Higher Administrative Grade with effect from 02.07.2013;

8.5 to direct the Respondent Ministry to compound interest @ 18% per annum, compounded monthly, with effect from 02.07.2013, till the date of payment of the arrears of salary;

8.6 to direct the Respondent Ministry to take appropriate action against the erring official for their acts of omissions and commissions in the matter in terms of Department of Personnel and Training

Office Memorandum No.22011/9/98-Estt.(D) dated 14.12.2000;

8.7 to issue any such and further orders/directions this Hon'ble Tribunal deems fit and proper in the circumstances of the case; and

8.8 to allow exemplary costs of the application."

3. The facts of the case, in brief, are that the applicant, who is a direct recruit 1981 batch of Indian Statistical Service and joined as an officer in Grade-IV (Junior Time Scale), got promotions in the hierarchy i.e. he was promoted to Senior Time Scale on 02.04.1993; further promoted to JAG on ad hoc basis w.e.f. 31.08.1998 and regularized on 10.05.1999; he was granted Non-functional Selection Grade w.e.f. 06.06.2000; again promoted to SAG on ad hoc basis w.e.f. 02.11.2006 and regularized in the same capacity w.e.f. 29.05.2009. He has also been granted the NFU in SAG w.e.f. 03.01.2006 but has been denied NFU in HAG w.e.f. 02.07.2013. It is the case of the applicant that he is placed at serial no.36 in the seniority list of SAG to ISS as published w.e.f. 21.06.2010 immediately below one Ramesh Kumar Khurana and above one Rajiv Lochan. The applicant further contends that with this seniority position he ought to have been considered for HAG w.e.f. 02.07.2013. He has neither been granted NFU to HAG from the above date i.e. 02.07.2013 nor was informed about his exclusion from the list. It later came to the knowledge of the applicant

informally that his name had been placed in sealed cover contrary to the guidelines on the subject.

4. The applicant further submits that he was visited with a minor penalty chargesheet dated 10.09.2012 and was thereafter imposed a penalty of censure vide order dated 20.08.2013. The applicant contends that the penalty of censure imposed upon him would not have been deterrent to grant him the NFU w.e.f. 02.07.2013 as the Annual Performance Appraisal Report (APARs) for five years till 2011-12 would have been relevant while the penalty was imposed in the year 2012-13. This Tribunal vide order dated 11.12.2013 in OA No.2837/2013 quashed the afore order of penalty of censure dated 20.08.2013. The respondents, however, interpreted that order as having the effect of reviving the minor penalty chargesheet dated 08.09.2012 and have, therefore, placed the case of the applicant in sealed cover.

5. The first ground adopted by the applicant is that when the order of penalty of censure dated 20.08.2013 was not deterrent to punishment itself the same could not constitute a bar in any case to his promotion in support of which the applicant relies upon a decision of the Constitution Bench in *State of Madhya Pradesh & Another Vs. Thakur Bharat Singh* [AIR 1967(SC) 1170]. Therefore, it is the case of the

applicant, the act of the respondent in promoting his juniors over his head is violative of Articles 14 & 16 of the Constitution and the same is arbitrary.

6. The second argument of the applicant is that on the date of DPC, the three conditions provided in the case of *Union of India vs. K.V. Janakiraman & Others* [1991 (4) SCC 109] and the subsequent Circular dated 14.09.1992 were not getting fulfilled i.e. he was not having any chargesheet against him; there was no chargesheet in a criminal case as well and he was not under suspension. Therefore, there is no way that the sealed cover procedure could have been resorted to in his case. This action smacks of mala fide and he has charged the respondent no.3 of malice at law.

7. The respondent nos. 1 & 3 have filed their joint counter affidavit wherein rebutting all allegations of the applicant and stated that the instant case is not maintainable as the applicant has not exhausted all remedies provided under Section 20 of the Administrative Tribunals Act, 1985. They have also contended that the instant OA is barred by limitation. The Tribunal in its order dated 13.01.2012 in OA No.2059/2011 (Sh. Pravin Srivastava V/s. UOI) had directed, while referring to the directions of the Hon'ble Supreme Court in *Gujarat Electricity Board V/s. Atmaram Sungomal Poshani* [AIR 1989 (SC) 1433], that the applicant

was required to make a detailed representation before the competent respondent authority. The submission of the applicant in para 6 of the OA that he had made a detailed representation on 23.10.2013 was incorrect because the same was for convening the DPC for grant of NFU to him and his batch mates.

8. Learned counsel for the respondents submitted that when the minor penalty chargesheet had been issued against the applicant, he promptly approached this Tribunal vide OA No.3762/2012 seeking directions to the respondents to dispose of his representation by providing him the requisite information and grant him two weeks time to file an adequate reply to the chargesheet dated 10.09.2012 and stay of further action in the disciplinary proceedings by way of interim order. While this matter was still under consideration of the Tribunal, the applicant filed another OA No. 502/2013 seeking quashing of the said minor penalty chargesheet dated 10.09.2012. He also filed one CP No.223/2013 in OA No.3762/2012 seeking punishment for the respondents for deliberate and willful disobedience of the Tribunal's order. The matter in OA No.3762/2012, the respondents submit in their counter affidavit, had already been disposed of vide order dated 21.12.2012 which had attained finality, a Contempt Petition for non-

implementation was still pending. It was, therefore, incumbent upon the applicant to abide by the directions of this Tribunal in OA No.3762/2012 and also for the outcome of the disciplinary proceedings. Instead, he filed OA No.502/2013 pressing for quashing the impugned minor penalty chargesheet dated 10.09.2012 and initiated contempt proceedings bearing CP No.223/2013 pressing for early decision by the disciplinary authority.

9. The OA No.502/2013 and CP No.223/2013 in OA No.3762/2012 were heard on 17.07.2013 during the course of which the respondents claimed to have informed the Tribunal seeking advice of the UPSC on quantum of punishment. Accordingly, a censure was imposed upon the applicant on 28.02.2013. Despite being fully aware of the fact that decision in OA No.502/2013 was still pending, the applicant filed OA No.2837/2013 challenging the penalty order dated 28.02.2013 without the decision in OA No.502/2013. The Tribunal, however, discharged the contempt notice in CP No.233/2013. Thus, the applicant had misused the process of law, the respondents allege, as he had filed two OAs namely OA No.502/2013 and OA No.2837/2013 relating to the same subject. However, OA No.502/2013 was dismissed as withdrawn as he was not interested in challenging the same. OA No.2837/2013 was

disposed of vide order dated 11.12.2013 quashing the minor penalty order of censure imposed upon the applicant vide order dated 28.08.2013. It is the case of the respondents that the Tribunal had only quashed the minor penalty of censure dated 20.08.2013 on procedural grounds giving opportunity to the respondent Ministry to pass appropriate orders including holding of enquiry. Accordingly, the respondents had filed RA No.19/2014 in OA No.2837/2013 on basis of errors apparent on face of record which was heard on 25.03.2014 and appropriate order had been passed. Further, the grant of NFU is one in terms of OM dated 24.09.2009 of the DOP&T (Annexure A-2 page 25-29 of the OA) which *inter alia* stipulates in para 5 that all instructions governing grant of NFU were also applicable in the case of grant of NFSG to officers of Group 'A' Service in the event of penalty, disciplinary proceedings and suspension etc.

10. Shri R.N. Singh, learned counsel for the respondents argued that the conditions in OM dated 14.09.1992 were not met by the applicant as minor penalty chargesheet dated 10.09.2012 was still pending and, therefore, the applicant was not clear from vigilance angle.

11. The respondent no.2 has also filed a counter affidavit stating that he has been made a respondent though he had

never dealt with the file of grant of NFU and denied the allegations made by the applicant that he has been misled by the respondent no.3.

12. The applicant has submitted a rejoinder to the counter affidavit of respondent nos. 1 & 3 wherein the points raised by the respondents have been rebutted entirely. The applicant submits in the rejoinder application that he has approached this Tribunal against the impugned order dated 06.12.2014 vide which his juniors have been granted the NFU to the scale of RS.67000-73000 w.e.f. 02.07.2013. Therefore, by no stretch of imagination, his OA is premature. He has also submitted that review DPC conducted under similar circumstances for one E.Nagachandran, while the same had been placed under sealed cover makes the action of the respondents as discriminatory. The applicant has also filed rejoinder to the counter affidavit of respondent no.2 wherein he alleges as under:-

“4. That with regard to paragraph 3 of the counter reply of respondent no.2 the applicant wishes to state that either respondent no.2 is unfit to hold the post of Chief Vigilance Officer in the respondent Ministry or is acting naïve and innocent to escape the clutches of law. The issue at hand is not grant of Non-Functional Financial Upgradation Per Se to the applicant, but refusal to grant Vigilance Clearance for the same by the Vigilance Department, which is headed by Respondent no.2 in his capacity as the Chief Vigilance Officer of the Respondent Ministry.”

13. The applicant has also referred to the decision of the Hon'ble Supreme Court in *M.J. Sivani Vs. State of Karnataka* [AIR 1995 (SC) 1770] wherein it has been held that every action of the State or an instrumentality of the State must be informed by reasons, absence of which makes it arbitrary and mala fide.

14. The only issue that emerges for our consideration is that whether on the date of DPC, the case of the applicant had been barred by the decision of the Hon'ble Supreme Court in *Union of India vs. K.V. Janakiraman & Others* (supra) and subsequent OM dated 14.09.1992 of the DOP&T. In other words, whether the respondents have taken steps to revive and/or initiate departmental proceedings leading to a chargesheet before the date of Screening Committee.

15. In order to examine the issue, we need to look at the prayers made by the applicant and the orders passed by the Tribunal in the two OAs i.e. OA No.502/2013 and 2783/2013 and also the order in CP No.233/2013. These are being listed in the tabular form as under:-

| S. I. N o. | OA No./ RA No. | Diary No./Date of filing OA/CP/RA | Date of Decisions | Applicant | Respondent | Prayer | Order | Comments |
|------------|---|-----------------------------------|--------------------|---|---|---|---|----------|
| (1) | (2) | (3) | (4). | (5) | (6) | (7) | (8) | (9) |
| 1. | OA No. 502/2013 | 466/2013 7.2.13 | Decided on 29.6.15 | Sh.T.R. Mohanty | UoI through Chief Statistician of India and Secretary, Ministry of Statistics and Programme Implementation & Others | 8.1 to allow the present application; 8.2 to quash and set aside the impugned minor penalty charge-sheet dated 10.09.2012 (Annexure-A1) and all the consequences thereof; 8.3 to allow exemplary cost of the application; and 8.4 to issue any such and further order/directions this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case. | Decided on 29.06.2015 with the following directions:- 28. We, therefore, allow this OA and quash and set aside the impugned minor penalty charge sheet dated 10.09.2012 with all consequential benefits. The Respondents shall also pass appropriate orders in compliance with the aforesaid directions, within a period of 2 months from the date of receipt of a copy of this order. No costs. | |
| 2. | OA No. 2837/2013 | 2923/13 21.08.13 | 11.12.2013 | Sh.T.R. Mohanty | UoI through Chief Statistician of India and Secretary, Ministry of Statistics and Programme Implementation & Others | 8.1 to allow the application; 8.2 to quash and set aside the impugned minor penalty of "Censure" imposed vide order dated 20.08.2013 (Annexure-A1) and all the consequences thereof; 8.3 to allow exemplary cost of the application; and 8.4 to issue any such and further order/directions this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case. | We, therefore, allow this OA and quash and set aside the impugned minor penalty of "Censure" imposed upon the Applicant vide order dated 20.08.2013. The Respondents shall pass appropriate orders in compliance of the aforesaid direction within a period of one month from the date of receipt of a copy of this order. However, we make it clear that we have not gone into the merit of the charge or any other aspect in this case. We also make it clear that this order will not come in the way of Disciplinary Authority from holding an enquiry in the matter in terms of Rule 16(1) (b) of the CCS (CCA) Rules, 1965, if after taking a decision in the matter and if so advised. | |
| 3. | RA No. 19/2014, MA No. 314/2014 and 313/2014 and 814/2014 in OA NO. 2837/2013 | 1042/2014 29.1.14 | 25.03.2014. | UoI through Chief Statistician of India and Secretary, Ministry of Statistics and Programme Implementation & Others | Sh.T.R. Mohanty | (a) Afford the respondents (applicants herein) on the present Review Application (b) Review its order dated 11.12.2013 in OA NO. 2837/2013 and consequently hear the OA afresh and dismiss the OA. (c) May also pass any further order(s) as be deemed just and proper to meet the end of justice. | This Review Application has been filed by the Respondents in OA No.2837/2013 for review of the order of this Tribunal dated 11.12.2013 therein. They have submitted that in page-3 of the said order, date mentioned should have been 27.06.2013 instead of 28.06.2012. The Respondent in the Review Application (Applicant in the OA) has also agreed that there was mistake in recording the date as submitted by the counsel for the Review Applicant. Accordingly, this Review Petition is allowed to the aforesaid extent. 2. The Review Applicant has further submitted that the | |

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| | | | | | | | <p>aforesaid order of this Tribunal gives the impression that there has been procedural lapse on the part of the Respondent- Ministry in the matter related to the Disciplinary Proceedings against the applicant as it was stated therein that they sought statutory advice of the UPSC prior to the issuance of the minor penalty charge-sheet dated 10.09.2012.</p> <p>3. However, the Respondent in the Review Application (Applicant in the OA) who is present in person, has submitted that he himself has no such impression.</p> <p>4. In view of the above position, the aforesaid submission of the Review Applicant is rejected.</p> <p>5. This MA has been filed by the Review Applicant seeking stay of the order of this Tribunal dated 11.12.2013 passed in OA No.2837/2013 during the pendency of the aforesaid Review Application.</p> <p>MA No.314/2014</p> <p>6. This MA has been filed by the Review Applicant seeking condonation of delay in filing the aforesaid MA.</p> <p><u>MA No.814/2014</u></p> <p>7. This has been filed by the Applicant in OA seeking preponment of the date of hearing of the aforesaid RA.</p> <p>8. In view of the aforesaid order passed in RA No.19/2014, no further orders are required in these MAs and they are disposed of accordingly.</p> | |
| 4. | CP No. 253/ 2014 in OA 2837 /2013 | Dy. No. 5021/14 Dated 28.05.2014 | 20.08.2014 | Sh.T.R. Mohanty | Prof. T C A Anant Chief Statistician of India and Secretary, MoSPI, Shri D K Sharma, Under Secretary (ISS Division), MoSPI, New Delhi | <p>(i) to allow the present Contempt Petition;</p> <p>(ii) to issue rule nisi;</p> <p>(iii) to punish the Respondent/ Contemnor who by virtue of their acts of omission and commission, has not only deliberately and willfully disobeyed the express order dated 11.12.2013 of this Honøble Tribunal, but have also attempted to lower the authority of this Honøble Court, thereby committing contempt of court;</p> <p>(iv) to issue ant such and further order/ direction this Honøble Tribunal may deem fit</p> | <p>2.Respondents have filed their compliance affidavit stating that the aforesaid order has been complied with. They have also filed copies of the orders dated 04.07.2014 and 24.07.2014 and Corrigendum thereto dated 04.08.2014, passed in compliance of the aforesaid directions.</p> <p>3. In view of the above position, this petition is closed. Notices issued to the alleged contemnors are discharged. No costs.</p> | |

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| | | | | | | and proper in the facts and circumstances of this case; and (v) to allow exemplary costs of this petition throughout. | | |
| 5. | 1983 /201 4 | 5042 dt.19.5. 14 | | Sh.T.R. Mohanty | UoI through Chief Statistician of India and Secretary, Ministry of Statistics and Programme Implementation & Others | 8.1 to allow the present Application; 8.2 to restrain the Respondent Ministry to initiate any further Penal Action against the Applicant on the basis of the Minor Penalty Charge Sheet dated 10.09.2012 (Annexure: A-1); 8.3 to direct the Respondent Ministry to declare that the Minor Penalty Charge Sheet dated 10.09.2012 (Annexure: A-1) against the Applicant stands closed; 8.4 to allow exemplary costs of the application; and 8.5 to issue any such and further order directions this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the case | | |

16. It is to be noted here that the applicant filed OA No.2837/2013 challenging the minor penalty of censure imposed vide order dated 20.08.2013, which was decided by the Tribunal vide order dated 11.12.2013 by quashing and setting aside the impugned punishment of minor penalty of censure imposed upon the applicant. The respondents were also given a chance to pass fresh orders within a period of one month from the date of that order. The Tribunal had also made it clear that it had not gone into the merit of the charges and, as such, it would not come in the way of the disciplinary authority from holding enquiry against the applicant in terms of Rule 16 (1)(b) of the CCS (CCA) Rules,

1965 after taking a decision in the matter, if so advised. The respondents-UOI filed RA No.19/2014 with MA Nos. 314/2014, 313/2014 and 814/2014 with a prayer to recall the order dated 11.02.2013 passed in OA No.2837/2013 and hear the OA afresh. The Tribunal while allowing corrections of some clerical errors in recording of dates, rejected the RA and also the MAs.

17. The applicant further filed OA No.502/2013 seeking to quash and set aside the minor penalty chargesheet dated 10.09.2012 which was decided by the Tribunal on 29.06.2015 whereby the impugned minor penalty charge sheet dated 10.09.2012 was quashed and set aside with all consequential benefits. The Respondents were further directed to pass appropriate orders in compliance with the aforesaid directions, within a period of 2 months from the date of receipt of a copy of the order.

18. From the above narratives of facts, it clearly emerges that when the meeting of the Screening Committee was held, there was neither a chargesheet nor a punishment standing against the applicant. The respondents in this case have not produced even a chit of evidence to show that the respondent authorities had taken action to pass fresh order in the stipulated period of one month in compliance of the Tribunal's order dated 29.06.2015 in OA No.502/2013.

Therefore, the case of the respondents that the Tribunal would quash the minor penalty chargesheet of censure dated 28.02.2013 on procedural grounds giving liberty to the respondents to pass appropriate orders including holding of enquiry is not sustainable. Such order was passed with a stipulation that the respondents should pass an order within a period of one month from the date of receipt of the order of the Tribunal. Instead, the respondents moved a review application which was only allowed to the extent of correction of some clerical errors of recording of dates. As noted earlier, the Tribunal in OA No.502/2013 decided on 29.06.2015 quashed the chargesheet dated 10.09.2012. Therefore, there is nothing that survives against the applicant by way of punishment or chargesheet acting as a gate to grant of Non-functional Financial Upgradation to the applicant.

19. In this regard, we are to refer to DOP&T OM dated 02.11.2012, which sets the following requirements to follow:-

“Instructions issued vide OA No.22012/1/99-Estt.(D) dated 25.10.2004 based on the OM No.22011/4/1991-Estt.(A) dated 14.09.1992 (issued on the basis of procedure laid down by Supreme Court in K.V. Jankiraman case AIR 1991 SC 2010) makes it clear that vigilance clearance for promotion may be denied only in the following three circumstances:

- (i) Government servants under suspension;*
- (ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and*

- (iii) *Government servants in respect of whom prosecution for a criminal charge is pending.”*

20. In view of the afore conditions, we find that the applicant has been able to substantiate his plea that none of the above conditions, on the basis of which the proceeding of the Screening Committee could have been put under the sealed cover, exist.

21. In view of the above discussion, we allow the instant Original Application with the following directions:-

1. Respondents are directed to open the sealed cover of the applicant and act according to the recommendation of the Screening Committee and in case the applicant is found fit for grant of Non-Functional Financial Upgradation, grant the same to the applicant w.e.f. 02.07.2013 at par with his juniors with consequential benefits.
2. There shall be no order as to costs.

(Dr. B.A. Agrawal)
Member (J)

(Dr. B.K. Sinha)
Member (A)

/AhujA/