

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.616/2017

Reserved on: 05.09.2017
Pronounced on: 22.09.2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Uday Kumar Varma, Member (A)**

Manjit Singh Bali, Aged 61 years,
Chief Postmaster General (retired),
S/o Sh.Joginder Singh Bali,
R/o F-34, Galaxy Apartments,
Sector 43, Gurgaon – 122 009. ...Applicant

(By Advocate: Sh. M.K. Bhardwaj)

Versus

Union of India through
Secretary,
Department of Posts,
Dak Bhawan, Sansag Marg,
New Delhi – 110 001. ...Respondent

(By Advocate: Sh. Hanu Bhaskar)

O R D E R

By Hon'ble Mr. Uday Kumar Varma, Member (A):

The instant Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following main relief:-

“(a) To quash and set aside the impugned memo no.16-5/2011-Vig. Dated 20.06.2011 and subsequent proceedings, including the disagreement note sent vide memo dated 19.10.2016, being non est, and direct the respondents to release all consequential benefits in the form of promotion, arrears of pay as well as pensionary benefits with 9% interest.”

2. Brief facts, as narrated by the applicant in the OA, are that on being selected in the Civil Services Examination

[hereinafter referred to as CSE], he joined Indian Postal Service Group 'A' on 30.11.1978 and superannuated on 30.06.2015. It is contended that on 30.10.2010, CBI filed a chargesheet in Special Case no.116/2010 in the Special Court for CBI cases, Greater Mumbai against the applicant and two other private persons under Section 120-C of IPC and Sections 7, 8 and 13(2) r/w 13 (i) (d) of the Prevention of Corruption Act, 1988 for alleged acceptance of an illegal gratification on 24.02.2010 for issuing No Objection Certificate [NOC] in respect of Plot No.177 in Mira Bhayander Municipal Corporation reserved for Post & Telegraph under the Mira Bhayander Development Control Regulations. The applicant denying the allegations challenged the action of the CBI being in violation of Section 6A of the Delhi Special Police Establishment Act, 1946 and the matter is pending adjudication before the Apex Court in SLP (Criminal) No.4364/2011. Upon hearing, the Apex Court was of the view that some of issues involved in the case are important enough to be decided by a Constitution Bench and ordered accordingly. It is further submitted by the applicant that despite the fact that the trial in criminal case is yet to begin, the respondent placed him under deemed suspension w.e.f. 25.02.2010 for being in police custody for more than 48 hours. Admittedly, the suspension of the applicant was revoked on 03.11.2011.

The respondent vide the impugned order dated 20.06.2011 initiated departmental proceedings against the applicant under Rule 14 of CCS (CCA) Rules, 1965 for alleged irregularities committed in issuance of NOC in respect of Plot no.177 of Mira Bhayander Municipal Corporation reserved for Post & Telegraph under the Mira Bhayander Development Control Regulations with alleged ulterior motive of accepting illegal gratification and being arrested. After initiation of disciplinary proceedings, the applicant was again placed under suspension on 08.11.2011 after disciplinary proceedings were initiated against him and he continued to be under suspension till his retirement. The applicant contends that he requested the respondent under RTI Act to supply him the copy of file no.16-5/2011-Vig., in which the enquiry was ordered but the same was denied to him. However, after getting the no objection from the applicant, one Mr. Sonam Sharma, Advocate, who also sought the same record, was provided the same. Meanwhile, the disciplinary enquiry got completed and the allegations against him were not found proved. However, the applicant contends that the respondent/disciplinary authority disagreed with the findings of the enquiry officer and decided to get the enquiry conducted through one of its Commissioners for Departmental Inquiries and sent a disagreement note to the applicant vide Memo dated

19.10.2016, which was received by him on 19.11.2016.

The applicant also submits that he has repeatedly requested the disciplinary authority to provide him the concerned file wherein the decision to initiate disciplinary proceedings against him was taken and the charge memorandum was issued as he apprehended that the correct position had not been brought to the notice of the disciplinary authority and signatures were obtained in a routine manner. However, the respondent refused to provide the copy of the said file. Being aggrieved, the applicant approached the 1st Appellate Authority and thereafter appealed to the Central Information Commission. During the hearing of the appeal, the respondent gave an undertaking before the CIC that they would supply a copy of the file to the applicant. Accordingly, the CIC passed an order dated 20.01.2015 directing the respondent to provide the required information to the applicant. However, despite giving an undertaking before the CIC, the respondent did not provide the required documents to the applicant and instead filed a Writ Petition before the Hon'ble High Court of Delhi which is pending. Though the order of the CIC has not been stayed, yet the respondent has not supplied the information to the applicant till date enabling him to file his response.

3. The grounds taken by the applicant in the OA are that the disciplinary proceedings have been initiated against him without the approval of the competent authority and, therefore, the same is *non est* and even the charge memorandum issued to him does not have the approval of the competent authority. Hence, the same is bad in law. He also submitted that subsequently some amendments were carried out in the Articles of charge that too without the approval of the competent authority, such an act of the respondent vitiates the whole proceedings and the charge memorandum issued to him deserves to be quashed. In support of his contention, the applicant relied upon the decision of the Hon'ble Supreme Court in **CMD Coal India Ltd. & Ors. vs. Ananta Saha & Ors.** [2011 (5) SCC 142] wherein it has been held that the disciplinary authority must give some reasons, and if no reason is recorded, the charge memorandum and further proceedings are *non est* and without any consequence. He further relied upon the decision of the Apex Court in **Union of India & Anr. Vs. Ashok Kumar Aggarwal** [2013 (16) SCC 147] to submit that if initial action is not in consonance with law, all subsequent acts, actions and orders would fall to the ground automatically.

4. The respondent filed the reply giving the factual matrix of the case and denying the allegation of the

applicant that the charge memorandum dated 20.06.2011 issued to him does not have the approval of the competent authority. The respondent submitted that although the Article-1 to the proposed charge memorandum was approved by the competent authority, but when the actual charge memorandum was issued, Article-1 was slightly changed after the vetting was done by CVC. Since the modifications were minor and clarificatory in nature, it was not considered necessary to seek a fresh approval of Competent Authority. The respondent further submitted that since the amendments made in the Article-1 do not change the nature of the charge as the wordings of amendment were very much there in para 26 of the statement of imputations of misconduct or misbehavior, it does not require again to have the approval of the competent authority. The respondent has also taken the ground that if the applicant is challenging the memo dated 20.06.2011, the same is barred and if he is challenging the order dated 19.10.2016, the same is pre-mature for the reason that the disciplinary authority, after considering the inquiry report dated 30.04.2015, disagreed with the same and a disagreement note along with the inquiry report has been given to the applicant to which the applicant has responded vide letter dated 10.02.2017. The applicant has,

however, approached this Tribunal without awaiting the outcome of the proceedings.

5. The applicant has filed the rejoinder more or less reiterating the facts and grounds as mentioned in the OA.

6. We have carefully gone through the pleadings of the case, thoroughly gone through the official record submitted by the respondent and given out thoughtful consideration to the arguments so advanced by the respective learned counsel.

7. The main relief being sought by the applicant, as was evident at the time of oral arguments, was that the charge memorandum being deficient in terms of absence of its approval from the Competent Authority, has become vitiated and, therefore, deserves to be quashed. The learned counsel for the applicant assailed the validity of charge memorandum on two major grounds. His first ground was that some amendments were made in the charge memorandum after approval of the same by the competent authority i.e. the Minister. However, these amendments were not approved by the Minister and, therefore, the charge memorandum *ab initio* has become vitiated. His other ground was that even the initial charge memorandum was not approved by the Competent Authority i.e. the then Minister of Communication & IT. He drew our attention to copy of the notesheet (page 107 of the

paper book) where the DDG (Vg.) & CVO has proposed that disciplinary proceedings against him be approved. He argued that the essential and basic legal requirement for any disciplinary proceedings i.e. the competent authority's approval on the charge memorandum is lacking in the instant case and, therefore, the charge memorandum itself cannot be the basis for any enquiry. Citing some judgments, he tried to establish that non-approval of the charge memorandum by Competent Authority has been held to be perverse to the process of departmental proceedings and such proceedings have been quashed by the Apex Court.

8. Confronted with the fact that the Minister's approval on 16.03.2011 also included the approval of charge memorandum as is evident from para 6 of the Note of the Assistant Director General (Vig.I) dated 04.03.2011, the learned counsel for the applicant vehemently argued that in terms of decision of the Hon'ble High Court of Delhi in **Dr. Sahadeva Singh vs. Union of India & Anr.** [2016 SCC OnLine Del 4233], the approval of the charge memorandum and the approval to initiate departmental proceedings are two distinct stages and, therefore, approval should have been taken separately. In other words, his argument was that even if composite approval was obtained for initiation

of departmental enquiry and charge memorandum, the same cannot be held as valid and in accordance with law. His contention is that the legal and proper course of action in such matters is that the approval to initiate departmental proceedings is taken first and subsequently the charge memorandum is required to be got approved from the competent authority.

9. We have carefully considered his arguments and also perused the records. The fact of the matter, as it transpires from the record, is that the approval for initiation of departmental enquiry and issuance of charge memorandum was taken from the Minister on 16.03.2011. The proposal, in fact, which was part of the notings of Assistant Director General (Vig.I) dated 04.03.2011 reads as follows:-

“6. Shri M.S. Bali is an HAG level officer of the Indian Postal Service and Presidential approval is required for disciplinary proceedings against the officer. In view of the circumstances explained above, it is proposed that the case may be submitted to the Hon’ble MOC&IT for his kind consideration and approval for acceptance of the CVC advice dated 02-12-2010 discussed in the first part of this note, for institution of disciplinary proceedings under Rule 14 of the CCS (CCA) Rules, 1965 against Shri M.S. Bali, the then CPMG, Maharashtra & Goa Circle currently under suspension, for the prima-facie irregularities on his part as discussed in detail in para 3 above, on the charge as in para 5 above, and for taking necessary ancillary action as per the rules. Draft memo of charges along with proposed Articles of Charge, Statement of Imputations of misconduct or misbehavior, and lists of documents and witnesses in support of charges, are placed at Flat ‘A’.” (Emphasis added]

The DDG (Vig) & CVO recorded his own note following the above note seeking Minister's approval of para 6 of the note of Assistant Director General (Vig.I) (quoted above). The file was then signed by the Secretary (Posts) and marked to the Minister. The Minister has signed the file on 16.03.2011 thereby approving para 6 of the Note of the Assistant Director General (Vig.I).

10. It is apparent from the same that a composite approval for initiation of departmental enquiry, proposed memo of charges, articles of charges and statement of imputations of misconduct or misbehaviour has been taken from the Minister on the file. The judgment in **Dr. Sahadeva Singh vs. Union of India & Anr.** (supra) that the learned counsel for the applicant has placed before us spells out that the approval for initiation of disciplinary proceedings and the approval of charge memorandum are two distinct stages and both the stages need to be properly and legally crossed before an employee is proceeded against departmentally. The ruling nowhere suggests that a composite approval of both the decisions to initiate disciplinary proceedings and of charge memorandum is bad in law. In our own view, such a procedure does not, in any way, vitiate the process of departmental proceedings. It is not uncommon that in many matters in administrative departments, the decision on a particular proposal and the

draft of the proposal are both placed before the Executive Head and are approved accordingly. Similarly, in the instant case, we find nothing wrong, legally or otherwise, in Competent Authority accepting and approving the proposal to initiate disciplinary proceedings against the applicant and also approving the articles of charge and statement of imputations of misconduct or misbehavior at the same time.

11. The other major ground placed before us by the applicant is that the charge memorandum, which was approved by the competent authority, was subsequently changed or amended and was issued without seeking approval of the competent authority again.

12. Let us examine the charges. The original charge memorandum was worded as follows:-

“Shri M.S. Bali, HAG level officer of the Indian Postal Service, at present under suspension, while working as Chief Postmaster General, Maharashtra & Goa Circle, Mumbai between 14.7.2008 and 24.2.2010 misused his official position by taking on 24.02.2010 the decision to issue NOC in respect of plot no.177 of Mira Bhayander Municipal Corporation for Posts & Telegraph under the Mira Bhayander Development Control Regulations, in undue haste without taking into account all the relevant facts, which resulted in an injudicious decision as regards the shifting of Mira Road Post Office, and also failure in addressing major issues related to the reserved plot no.177, and then in undue haste got the NOC letter no.Bldg/4-37/MaujeBhayander/82-83 issued on 24.02.2010 itself by Shri G.R. Nagrale, Assistant Director, Office of PMG Mumbai Region, in an irregular manner to an unauthorized person, with ulterior motive. It is, therefore, alleged that the said Shri M.S. Bali by committing the said grave misconduct, failed to maintain absolute integrity, failed to maintain devotion to duty, and acted in a manner unbecoming of a Government servant, and thereby violated Rule 3(1)(i),

Rule 3(1)(ii) and Rule 3(1)(iii) of the CCS (Conduct) Rules, 1964."

The Charge memorandum, which has been issued to the applicant, is worded as follows:-

*"Shri M.S. Bali, HAG level officer of the Indian Postal Service, at present under suspension, while working as Chief Postmaster General, Maharashtra & Goa Circle, Mumbai between 14.7.2008 and 24.2.2010 misused his official position by taking on 24.02.2010 the decision to issue NOC in respect of plot no.177 of Mira Bhayander Municipal Corporation for Posts & Telegraph under the Mira Bhayander Development Control Regulations, in undue haste without taking into account all the relevant facts, which resulted in an injudicious decision as regards the shifting of Mira Road Post Office, and also failure in addressing major issues related to the reserved plot no.177, and then in undue haste got the NOC letter no.Bldg/4-37/MaujeBhayander/82-83 issued on 24.02.2010 itself by Shri G.R. Nagrale, Assistant Director, Office of PMG Mumbai Region, in an irregular manner to an unauthorized person, with ulterior motive **of obtaining illegal gratification. He was arrested by the CBI CAN Mumbai on 25.02.2010 on being caught while accepting the bribe.** It is, therefore, alleged that the said Shri M.S. Bali by committing the said grave misconduct, failed to maintain absolute integrity, failed to maintain devotion to duty, and acted in a manner unbecoming of a Government servant, and thereby violated Rule 3(1)(i), Rule 3(1)(ii) and Rule 3(1)(iii) of the CCS (Conduct) Rules, 1964."*

13. Now, it could be very clearly seen that some changes have indeed taken place, as highlighted above.

14. Learned counsel for the respondent has vehemently stated that such an addition is merely clarificatory and does not substantially alter the charge. Further that the same has been elaborated in the statement of imputations of misconduct or misbehavior in para no.26, which reads as under:-

"26. As per CBI letter No.DP 026 2010/96/RC.6(A)/2010-Mum dated 26-02-2010

addressed to the Chief Vigilance Officer, Shri M.S. Bali, the then CPMG, along with Shri Harish Dalmia and Shri Arun Dalmia were arrested on 25-02-2010 while demanding and accepting bribe amounting to Rs.2 crores for giving the aforesaid NOC. As per FIR No.RCBA1/2010/A0006 dated 18-02-2010 received with the said CBI letter, written complaint had been made to the CBI on 16-02-2010, 17-02-2010 & 18-02-2010. According to the FIR, it is alleged in the complaint dated 16-02-2010 made by Smt. Rita R. Shah that Shri M.S. Bali, the then CPMG, Maharashtra & Goa Circle demanded a bribe of Rs. 1.5 crore, though Shri Harsh Dalmia and Arun Dalmia, Maker Chambers V, Nariman Point, Mumbai, for issuing a "No Objection Certificate" for development of plot no.82, 83, Reservation No.177 "Post and Telegraph" reserved for a Post Office, and that as the complainant did not want to pay the said demanded bribe for getting the said NOC from the postal department, written complaint was made to the CBI. The FIR further states that during verification of the complaint and from the recorded conversations, it was found that Shri M.S.Bali had demanded illegal gratification of Rs.2 crores from the complainant to issue NOC for land of Shri Pravin Trivedi situated at Mira Road. As per the CBI letter dated 26-02-2010, Shri M.S. Bali was produced in court on 25-02-2010 before the Ld. Spl. Judge, Mumbai and he was remanded to police custody upto 03-03-2010."

15. The question before us is whether the amendments made in the charge memorandum substantially or even symbolically alter the basic and substantive nature and scope of the charge and even if it does not, does it require fresh approval from the competent authority?

16. Our considered answer to the above two questions is a definitive 'no'.

17. Now, if we read both the articles of charge as well as para 26 of the statement of imputations of misconduct or misbehavior, both seem in complete harmony and consonance with each other, and it does seem that the expression 'ulterior motive' has been clarified and

elaborated by adding the words 'of obtaining illegal gratification. He was arrested by the CBI CAN Mumbai on 25.02.2010 on being caught while accepting the bribe' after the same. Paragraph 26 of the statement of imputations of misconduct and misbehavior clearly mentions that the applicant along with S/Shri Harish Dalmia and Arun Dalmia were arrested on 25.02.2010 while demanding and accepting bribe amounting to Rs.2 crores on giving the aforesaid NOC. It further mentions that "it was found that Shri M.S. Bali had demanded illegal gratification of Rs.2 crores from the complainant to issue NOC for land of Shri Pravin Trivedi situated at Mira Road. As per the CBI letter dated 26-02-2010, Shri M.S. Bali was produced in court on 25.02.2010 before the Ld. Spl. Judge, Mumbai and he was remanded to police custody upto 03.03.2010". If the charge memorandum is critically seen along with paragraph 26 of the statement of imputations of misconduct and misbehavior, it becomes abundantly clear that the addition of these words does not at all change the nature and scope of the charge against the applicant. In fact, they need to be deemed as a mere clarification or elaboration of the charges without, in any way, altering the basic nature of the charge or the basic facts on which the charge has been framed. The fact that the same has been mentioned in the statement of imputations of misconduct or misbehavior,

which also has the approval of the competent authority, makes such conclusion correct and justified. Therefore, we are of the clear opinion that the addition of a few words as discussed in preceding paragraphs in the charge memorandum does not alter the nature of the charge memorandum.

18. The next question then is whether such a modification can be a ground for the charge memorandum to have become illegal and untenable because these small amendments have not had the approval of the competent authority? We cannot, in fact, agree with this line of reasoning. The Minister's approval was taken both for issuance of charge memorandum as well as statement of imputations of misconduct or misbehavior. Both these documents supplement each other and, therefore, the amendments being clarificatory and elaborative in nature should not be taken as material or substantive amendment in the charge memorandum and, therefore, absence of fresh approval on this amended charge memorandum does not lead to its becoming illegal or vitiated. Hence, our considered view on this issue is that the charge memorandum has not become vitiated or lacking in legal validity just because it has not been again shown to the competent authority and his approval not sought on the same.

19. If we go deeper into the question of relief in this OA and assume that the charge memorandum is quashed on the ground that it is an amended charge memorandum without the approval of the Competent Authority, what would be the implication of such an order? The implication of such an order, to our mind, would mainly be that the so-called amended charge memorandum after having been quashed is again put up to the competent authority and approval sought on the same. Such a situation is analogous to circumstances which qualify to be covered under the “doctrine of unnecessary formality”. The distinct possibility of the respondent re-initiating departmental proceedings on the amended charge memorandum, at the end of the day, does not take the matter any further. The applicant will still be proceeded against departmentally except that the whole process will get further delayed by at least a few months. Does this help the applicant? Well, in our view this does not help the applicant at all. Quashing of the charge memorandum on the grounds placed before us by the applicant will not, in any way, terminate the process of the departmental enquiry except for delaying it further-a situation which may not be desirable either for the applicant or the respondent.

20. Given the fact that initiation of departmental proceedings, charge memorandum and the statement of

imputations of misconduct and misbehavior has the approval of the competent authority, and given the fact that the amended charge memorandum does not in any significant manner alter the nature and scope of the charge, we are of the clear and considered view that the charge memorandum finally issued to the applicant by the respondent must be taken to be in order and there is no justification for quashing the same on the grounds taken by the applicant in the OA. Resultantly, the OA being deficient in merit deserves to be dismissed, and is accordingly dismissed.

21. There will be no order as to costs on either of the parties.

(Uday Kumar Varma)
Member (A)

(Permod Kohli)
Chairman

/AhujA/