

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

OA No.315/2014

Order Reserved on:29.09.2015

Order pronounced on:01.12.2015

**Hon'ble Mr. Justice B.P.Katakey, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Shri Prem Matiyani
Director (Retd.)
Flat No.101, Arihant Altura
GH-3, Abhay Khand-2,
Indirapuram, Gaziabad
UP-201014. Applicant

(By Advocate: Shri Padma Kr.S. and Shri K.K.Mishra)

Versus

1. Union of India, through
The Secretary
Ministry of Information & Boradcasting
'A' Wing, Shastri Bhawan,
New Delhi
2. Chief Vigilance Officer
Ministry of Information & Broadcasting
'A' Wing, Shastri Bhawan,
New Delhi
3. Secretary
Central Vigilance Commission
Satarkta Bhawan,
G.P.O. Complex,
Block-A, INA,
New Delhi-110023. Respondents.

(By Advocate: Shri Rajeev Kumar)

ORDER

By Hon'ble Shri K.N.Shrivastava,M(A):

This OA has been filed under Section 19 of the Administrative Tribunal Act, 1985 by the applicant. The specific reliefs sought in the OA read as under:-

"Relief:

- (i) To quash and set aside the impugned order/charge-sheet dated 22.6.2010 with all consequential benefits.
- (ii) To quash and set aside the advice dated 13.10.2009, given by the CVC which is based on a fraudulent PE Report.
- (iii) A direction imposing exemplary cost and also of litigation to the Applicant taking into account the sufferings the Applicant has gone through during the last seven years at the hands of the respondents by being forced to approach this Hon'ble court time and again.
- (iv) Any other relief which this Hon'ble Tribunal may be pleased to grant under the facts and circumstances of the case."

2. This is the fourth round of litigation between the applicant and the respondents. The applicant was working as Director, Songs & Drama Division (S&DD) under respondents No.1.

3. The respondent authority had issued a memorandum of charges dated 15.09.2009 to the applicant indicating the following charges against him:-

"Whereas, while working as Director in Song & Drama Division, Ministry of Information & Broadcasting, Shri Prem Matiyani was respondents for making many irregular appointments in the years 1999, 2000 and 2001 to various categories of staff artists posts in S&DD. The irregularities include (i) deviation from the reservation policy of Union of India (ii) making the recruitment of more than the number of posts advertised and (iii) deviation in sub-trade of the posts advertised. By doing so, he contravened Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of (CCS) Conduct Rules, 1964."

Against the said memorandum of charges dated 15.09.2009, the applicant approached this Tribunal in OA-2922/2009. The said OA was disposed of by this Tribunal on 06.04.2010 with the observation that the OA had become infructuous as the respondents have since withdrawn the memorandum of charges. The specific order of the Tribunal dated 06.04.2015 in the said OA reads as under:-

"Pursuant to our orders dated 23.02.2010 and 19.03.2010, the respondents have come up with the order, copy of the same has been shown to us, which we order to be placed on record. The same reads thus:

"The undersigned is directed to refer to your ID No. C-13011/19/2007-Vig.

dated 11.3.2010 and the letter dated 24.3.2010 from Shri R.N. Singh, Senior Central Government Counsel, which has been forwarded by you to the Ministry. With reference to Hon'ble CAT's observation dated 23.2.2010 in OA No. 2922/2009 (MA 288/2010) it is informed that the Competent Authority has agreed to issue a fresh chargesheet after withdrawing the present chargesheet dated 15.9.2009 issued to Shri Prem Matiyani. The Hon'ble CAT may be informed accordingly.

2. Once a decision has been taken to withdraw the chargesheet, subject matter of challenge in this case, present Original Application becomes infructuous. If the respondents may issue fresh chargesheet to the applicant, it will be open to the applicant to challenge the same by filing fresh Original Application with all the grounds that may be available to him."

4. The respondents issued another memorandum of charges to the applicant on 23.06.2010 which reads as under:-

"Article I: It is alleged that Shri Prem Matiyani, during the period from May, 1991 to August 2006 while working as Director in Song & Drama Division (S&DD), a Media Unit under the Ministry of I&B functioned as Selection Committee Chairman for all the selections made to various posts of Staff artistes in the years 1998-1999, 1999-2000 and 2000-2001. He was the Head of the Department. He approved the recommendations of Selection Committee. While making the said recruitment/appointments, he failed to take into account the basic aspect of

number of vacancies advertised in total and for each category/trade/region in respect of various posts and approved issue of offer of appointment to the selected candidates though he was not the Appointing Authority leading to irregularities in appointments in the form of (i) deviation from the reservation policy/instructions of Government of India because of appointment of General / OBC candidates against the vacancies earmarked for SC/ST category, appointment of General/SC candidates against the vacancies earmarked for OBC candidates (ii) making appointment of more candidates than the number of vacancies advertised in total and under different categories for a post (iii) advertised for that trade/sub-trade in deviation of vacancies advertised for that trade/sub-trade and (iv) appointments in regions by picking up the candidates from other select panels/regions in violation of Recruitment Rules. The deviation in appointments vis a vis the number of vacancies were neither brought on record nor justifications/reasons provided for the deviations while accepting the recommendations of the selection committee which resulted in irregular appointments.

Shri Prem Matiyani was thus allegedly found to be grossly negligent in the discharge of his duty amounting to grave misconduct while accepting the recommendations of the Selection Committee's for various posts of S&DD advertised in 1998-1999, 1999-2000, 2000-2001 when he was working as Director in the Hqrs. office of Song & Drama Division, New Delhi. By doing so, he has contravened Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964."

5. The applicant approached this Tribunal in OA-2284/2010 seeking quashing of the said memorandum of charges. The said OA came to be disposed of by this Tribunal vide order

dated 18.11.2010. The operative part of the order dated 18.11.2010 reads as under :-

" The respondent cannot take shelter behind the plea that the Tribunal had directed that fresh Memorandum of charge should be issued against the applicant, because no such directions had been given

In the result the OA succeeds. The impugned Memorandum of Charges dated 23.06.2010 is quashed and set aside. No costs."

The Tribunal has also made a specific observation in para(7) of the said order which reads as under:-

" It is ironical that in spite of the clear mention in the report dated 30.08. 2005 of the CBI, which has been quoted above that the applicant was not the appointing authority, the first respondent remained unaware of this fact till 2010, as can be seen from paragraph 2 of the note quoted above. The report of the CBI was submitted to the first Respondent, on the basis of which a major penalty proceeding was also initiated against the applicant. The approach of the first respondent, to put it most mildly, is casual in the extreme."

6. The respondents filed a review petition before this Tribunal in RA-375/2011 which came to be disposed of on 18.11.2011 by way of refusal to review the order dated 18.11.2011 in OA-2285/2010. The Tribunal, however, ordered deletion of certain parts from its order dated

18.11.2010. The operative part of the order reads as under:-

"The Review Application is disposed of in terms of our order in para 7 above. The registry is directed to carry out changes in the order dated 18.11.2010 and issue fresh order to both parties. There is no order as to costs."

7. Pursuant to the memorandum or charges vide OM No.15015/6/2003 viz., respondent No.1 vide the impugned order no. 15015/6/2003 vig.Vol.II dated 30.06.2010 imposed the penalty of "reduction to a lower stage in the time scale" on the applicant. The operative part of the said order reads as under:-

"And whereas the Disciplinary Authority, after careful consideration of the relevant records, the advice tendered by the UPSC, the advice tendered by the DOP&T and the facts and circumstances of the case, has come to the conclusion that the advice dated 29.01.2010 tendered by the UPSC is appropriate and that the same be accepted. Accordingly, the penalty of "reduction to a lower stage in the time scale of pay by 1 (one) stage up to May, 2010, without cumulative effect and not adversely affecting his pension" is imposed on Shri Prem Matiyani, the Charged Officer."

8. The said order also indicates the article of charges for which the applicant has been penalized. The said charges contained in OM No.15015/6/2003 (supra) read as under:-

"That Shri Prem Matiyani, while posted and functioning as Director, Song and Drama Division, New Delhi during the period 1998-2000 failed to maintain absolute integrity and

devotion to duty and acted in a manner unbecoming of a Government servant in as much as:-

(i) That as Chairman of the Selection Committee during the year 1998-2000 he recommended Ms. Asha Sarwal for the post of Performer in the Song and Drama Division, Shimla under the ST Category even when there were no vacancies in the ST category and also when he was aware of the facts that Ms. Asha Sanwal belongs to general category and overaged.

(ii) That as the Chairman of the Selection Committee during the year 1998-2000 he did not award marks to the candidates as per the proforma of the assessment sheet under the individual items of assessment.

By his above acts, Shri Prem Matiyani has failed to maintain absolutely integrity, shown lack of devotion to duty and acted in a manner unbecoming of a Govt. servant, thereby violating Rule 3(1) (i), 3(1) (ii) and 3(1) (iii) of Central Civil Services (Conduct) Rules, 1964.”

9. The applicant approached this Tribunal in OA-1600/2011 challenging the order dated 30.06.2010 (supra) passed by the respondent no.1. The said OA was disposed of by this Tribunal vide order dated 16.09.2011 allowing the OA-1600/2011. The operative part of the said order reads as under:-

" In view of the discussion as made above, the Original Application is allowed. Order dated 30.06.2010 is quashed. The applicant shall be entitled to all consequential benefits that may accrue to him in consequence of setting the order aforesaid. We are of the firm opinion that in the facts and circumstances of this case, the Application deserved to be allowed with costs. The respondents have illegally, arbitrarily and without A semblance of justification, dragged the applicant in avoidable litigation. A Division Bench of the Punjab & Haryana High Court in Jawan v. Mewa Singh (AIR 2001 Punjab & Haryana 344) in which one of us (V.K. Bali, J.) was a Member, in somewhat similar circumstances, observed as follows:

"44. A citizen in this country, undoubtedly has right to vindicate his stand in any Court of law, established in India, depending upon his cause and our judicial system is duty bound to look into all the grievances of the citizens aired by them. This vested right, however, cannot be permitted to be abused. It is often seen that an unscrupulous litigant, even in a false, frivolous and vexatious litigation, which may span over even decades, gets away by simply getting his cause rejected. More often than not, no orders, that may deter him and others equally situate, are passed by the Courts, thus resulting into massive litigation and pendency of cases, which cannot be transacted properly and speedily. Such a litigation is surely an impediment in the way of administration and dispensation of justice. Justice, in the process, in other matters, which do need proper attention of the Court, are delayed beyond measures which in turn results in endless sufferings and, in any cases, denial of justice. It appears that the time has come that the evil propensities of such unscrupulous litigants be curbed and, therefore, when the Court might find that either a claim or deference is sought to be propped up on false, frivolous and vexatious grounds and if such a finding is recorded, it must result into special or compensatory costs as that alone might serve a warning to all concerned and

may also provide some sort of solace to the one who has been harassed and tormented"

Present Original Application is thus allowed with costs quantified at Rupees twenty-five thousand."

10. The respondents, thereafter, issued another memorandum of charges to the applicant dated 21/22.06.2010 which reads as under:-

"State of article of charges made against Shri Prem Matiyani, the then Director, Song & Drama Division (presently posted as Director, Ministry of Information & Broadcasting)

Article-II It is alleged that, while working as Director in Song & Drama Division, Ministry of Information & Broadcasting, Shri Prem Matiyani approved the recommendation of the Selection Committees for the appointment made in the years 1998-1999, 1999-2000 and 2000-2001 to various categories of staff artist posts as if he were the competent appointing authority. By acting as the appointing authority, he stepped into the statutory functions of Deputy Director (Administration), who is his subordinate authority. In the years 1999-2000 and 2000-2001, he also functioned as Selection Committee Chairman. In this function also he intervened into the legitimate functions of Joint Director, who is his subordinate authority. While stepping into the functions of his subordinate authorities he made appointments of ineligible persons. By doing so, he contravened Rule 3(1) (i) 3(1)(ii) and 3(1) (iii) of CCS(Conduct) Rules, 1964.

Article-III. It is alleged that while working as Director in Song & Drama Division, Ministry of Information & Broadcasting, Shri Prem Matiyani

dealt with the matter of appointments to direct recruitment posts in various categories of staff artists posts in the years 1999-2000 and 2000-2001 ignoring the instructions of Ministry of Finance and made many appointments. When there was a query from the Ministry of Finance and made many appointments. Where there was a query from the Ministry of I&B in this regard, he missed the Ministry of I & B. By doing so, he contravened Rule 3 (1) (i) 3(1) (ii) and 3 (1) (iii) of Conduct Rules, 1964.

Article-IV: It is alleged that while working as Director in Song & Drama Division, Ministry of Information & Broadcasting, Shri Prem Matiyani dealt with the matter of postings and transfers. During his tenure in S&DD, he shifted number of posts on permanent basis from one place/station to another place/station ignoring the instructions of Ministry of Finance over shifting of the posts. When there was a query about the shifting of the posts, he misled the Ministry of I&B. By doing so, he contravened 3 (1) (i) 3(1) (ii) and 3 (1) (iii) of Conduct Rules, 1964.

Article-V It is alleged that while working as Director in Song & Drama Division, Minsitry of Information & Broadcasting, Shri Prem Matiyani violated the instructions of Hon'ble MIB in the case of transfer of Smt. Jaya Das Roy, Dancer, S&DD. Besides that he misled the Ministry of I&B about the position of artistes and their placement. By doing so, he exhibited insubordination/disobedience to the instructions of Ministry of I&B and Hon'ble MIB. This is in contravention of 3 (1) (i) 3(1) (ii) and 3 (1) (iii) of CCS Conduct Rules, 1964.

Article-VI. It is alleged that while working as Director in Song & Drama Division, Minsitry of Information & Broadcasting, Shri Prem Matiyani obstructed furnishing of correct information in an application under the RTI Act, 2005. He gave wrong/incorrect information when he prepared the reply. By doing so, he contravened of 3 (1) (i) 3(1) (ii) and 3 (1) (iii) of CCS Conduct Rules, 1964.

11. In the present OA, the applicant has inter alia sought quashing of said memorandum of charges vide OM No.C-13015/2/2008-viz, dated 21/22.06.2010.

12. Pursuant to the notice issued in the OA, the respondents entered appearance and filed their reply. As the pleadings were complete, the case was taken up for final hearing on 29.09.2015. Shri Padma Kr. S learned counsel for the applicant and Shri Rajeev Kumar, learned counsel for the respondents argued the case.

13. The learned counsel for the applicant besides highlighting the points raised in the OA stated that the applicant is being harassed by the respondents for no fault on his part. He said that the applicant had played no role in alleged irregularities committed during the course of recruitment of staff artists at various centers of Song and Drama Division(S&DD). He stated that the alleged irregularities were committed during the year 2002-2005 for which the impugned memorandum of charges was issued on 21.06.2010(Annexure A-1). The applicant retired from service after attaining the age of superannuation on 30.06.2010. In this connection, the learned counsel drew our attention to the provision of Section 9(2)(b) (ii) of CCS Pension Rules and said

that even on the procedural grounds, no departmental proceedings can be started in respect of events which had taken place more than four years ago.

14. Per contra, learned counsel for the respondents stated that CBI had received numerous complaints against recruitment of staff artists at various centers of S&DD viz. Jammu, Chandigarh, Shimla, Hd. Quarter, New Delhi. After investigation, CBI recommended RDA against some officials of S&DD, in connection with the same. The CBI also advised for imposing major penalties on some of them namely, Shri M.L. Dogra, Assistant Director, L.M. Vaidyarthi, Admn. Officer and Shri S.C. Narwal, Technical Assistant. Based on the recommendations of CBI, departmental proceedings were conducted against the concerned staff of S&DD and they were punished by way of imposition of major/minor penalties. Learned counsel for the respondents further stated that the CBI had also, vide its communication dated 30.09.2005, recommended initiation of RDA against the applicant, the then Director, S&DD, besides 3 others. It was also submitted that the CVC too recommended for initiation of major penalty proceedings against the applicant vide OM No.003/I&B 002 dated 15.05.2009 and that the applicant was ultimately punished by way of imposition of minor penalty on him, which of course was set aside by the Principal Bench of this Tribunal vide order dated

16.09.2011 in OA-1660/2011. Elaborating further, the learned counsel for the respondents submitted that before starting the RDA against the applicant and others, three course of investigations; two by Ministry of I&B and one by CBI were instituted. Explaining the reason for the delay in issuing the memorandum of charges, learned counsel for the respondents stated that undoubtedly, the charges against the applicant pertain to the period 1998-2001 but important to note that initially the matter was under CBI investigation and only after CBI recommended RDA against the applicant, the proceedings against him were initiated, and hence the delay. Learned counsel further submitted that several officers of S&DD involved in the selection process for selecting the staff artists have already been punished and since the applicant was the Chairman of the Selection Committee, his complicity in the alleged irregularities was bound to be there as reflected in the charge memo. Learned counsel further submitted that one of the reasons for delay in issuing the charge memo was due to frequent petitioning by the applicant. Concluding his arguments, learned counsel for the respondents pleaded that the relief sought by the applicant in the OA deserved to be denied and OA must be dismissed.

15. Replying to the arguments of the learned counsel for the respondents, learned counsel of the applicant submitted that the

respondents were hell-bent to implicate the applicant in false charges and they brought undue pressure on the CBI to launch criminal investigation against the applicant for his role in the alleged irregularities in the selection process. In this connection, the learned counsel for the applicant drew our attention to the letter dated 30.09.2005 of the CBI to the respondents in which the CBI has clearly informed the respondents that the applicant was in no way associated with calling the ineligible candidates for the interview. The CBI, however, had said that the applicant should be proceeded against for selecting one Ms. Asha Sanwal against a reserved category vacancy although she was a general category candidate. Thereafter, disciplinary proceedings were conducted against the applicant and a minor penalty was imposed on him but the same has been set aside by this Tribunal. Learned counsel further stated that the applicant himself is a renowned artist, in recognition of which, he has received several national awards. Concluding his arguments, learned counsel stated that the charge memo deserves to be set aside as the allegations are not only false but they also belong to a period more than 4 years prior to the date of issue of the impugned charge memo and hence the prayers made in the OA may be allowed.

16. We have gone through the arguments of learned counsel for both the parties. We have also perused the pleadings as well as the documents annexed thereto.

17. It very unfortunate that respondents have been persisting with the same charges against the applicant that pertain to a period of almost 15 years earlier and despite the fact that the matter has been investigated by the CBI who could not find any substantial evidence against the applicant and despite the fact that this matter has been looked into by this Tribunal in some OAs. filed by the applicant earlier. The applicant no doubt headed the selection committee for the selection of staff artists at various centers of S&DD. The internal investigations done by the respondents through the vigilance wing of S&DD as well as through a Joint Secretary of Ministry of I & B too have not established any concrete charge against the applicant. The alleged irregularities in selection of staff artists have also been inquired into by the CBI who too could not find any incriminating evidence against the applicant. Even on a plain reading of the impugned charge memo dated 21.6.2010 would reveal that the charges levied are frivolous in nature. The charge memo alleges that the applicant has made some irregular appointments by arrogating to himself the power vested in his subordinate i.e. Deputy Director (Admn.) which the records do not support.

18. Admittedly, the charges pertain to events having taken place during the period 1998-2001 whereas the impugned charge memo was issued on 21/22.6.2010. The reasons for delay explained by the respondents in their reply as well as in the arguments of learned counsel for the respondents cannot be accepted as these reasons are internal to the respondents and that applicant had no role in causing the delay. Further, the complaint of alleged irregularities in the selection of staff artists in S&DD and the role of the applicant therein has been thoroughly investigated by the CBI who could not substantiate the charges against the applicant. Even the internal inquiries of the respondents have not established any misdemeanor of the applicant in the selections in unequivocal terms.

19. Considering the fact that the applicant has retired from service after attaining the age of superannuation, charges pertain to events that had taken place more than 15 years ago, the matter has been investigated by the CBI who could find any substantial evidence against the applicant, the two internal inquiries of the respondents have also not established charges against the applicant in unambiguous terms, we are of the view that ends of justice and equity could meet only by allowing the

prayer of the applicant made in the OA and by setting aside the impugned charge memo dated 21/22.6.2010. Accordingly, the OA is allowed by setting aside the charge memo dated 21/22.6.2010. No order as to costs.

(K.N.Shrivastava)
Member (A)

(Justice B.P.Katakey)
Member(J)

/rb/