

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.1208/2016

New Delhi this the 31stth day of March, 2016

**HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. SHEKHAR AGARWAL, MEMBER (A)**

Raj Kumar Uppal, Grade-I DASS,
Aged about 50 years
S/o Late Shri Bihari Lal
R/o Flat No.A-102,
New Delhi Kanchanjunga Apartments,
Plot No.1, Sector 23, Dwarka,
New Delhi-110077.Applicant

(Argued by: Mr. M.K. Bhardwaj)

Versus

1. Govt. of NCT of Delhi,
Through its Chief Secretary,
5th Floor, Delhi Sachivalaya, I.P. Estate,
New Delhi.
2. The Principal Secretary (Services),
7th Floor, Delhi Sachivalaya,
I.P. Estate,
New Delhi.
3. Director of Vigilance,
4th Floor, C-Wing,
Delhi Sachivalaya,
I.P. Estate,
New Delhi.Respondents

ORDER (ORAL)

Justice M. S. Sullar, Member (J)

The epitome of the facts and material, which needs a necessary mention for the limited purpose of deciding the core controversy involved in the instant Original Application (OA) and emanating from the record, is that applicant, Raj Kumar Uppal, while working as Sub-Registrar-V (Mehrauli)

in the office of Deputy Commissioner (South), Government of NCT of Delhi, was charged with committing gross misconduct. Consequently, the impugned Memorandum, Articles of Charge and Statement of Imputation of Misconduct or Misbehaviour in support of Articles of Charge dated 11.09.2014 (Annexure A-1) were served upon him, which, in substance, are as under:-

**“STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST
SHRI RAJ KUMAR UPPAL, GR.I(DASS)/SUPDT., GOVT. OF
NCT OF DELHI**

Article-I

That the said Sh. Raj Kumar Uppal, Gr. I (DASS)/ Supdt., while functioning as Sub-Registrar-V (Mehrauli) in the office of the Deputy Commissioner (South), Govt. of NCT of Delhi, during the period 2004-2005, committed gross misconduct in as much as he registered a false and forged sale deed for property No. A-6, Jangpura Extension, New Delhi in violation of the provisions of Section 34 r/w Section 31 of the Registration Act, 1908.

By the above acts of omission & commission, the aforesaid Sh. Raj Kumar Uppal, Gr. I (DASS)/Supdt., exhibited lack of integrity and devotion to duty, which is unbecoming of a Govt. servant, thereby violating the provisions of Rule 3 of CCS (Conduct) Rules, 1964.

Article-II

That the said Sh. Raj Kumar Uppal, Gr. I (DASS)/ Supdt., while functioning in the aforesaid post, during the aforesaid period, committed gross misconduct in as much as he registered a false and forged sale deed for property No. J-13, Jangpura Extension, New Delhi in violation of the provisions of Section 34 r/w Section 31 of the Registration Act, 1908.

By the above acts of omission & commission, the aforesaid Sh. Raj Kumar Uppal, Gr. I (DASS)/ Supdt., exhibited lack of integrity and devotion to duty, which is unbecoming of a Govt. servant, thereby violating the provisions of Rule 3 of CCS (Conduct) Rules, 1964.

Article-III

That the said Sh. Raj Kumar Uppal, Gr. I (DASS)/ Supdt., while functioning the aforesaid post, during the aforesaid period, committed gross misconduct in as much as he registered a false and forged General Power of Attorney for the shop No. 13, Chandniwala Bagh, main Mathura Road,

Nizamuddin East, New Delhi in violation of the provisions of Section 34 r/w Section 31 of the Registration Act, 1908.

By the above acts of omission & commission, the aforesaid Sh. Raj Kumar Uppal, Gr.I (DASS)/Supdt., exhibited lack of integrity and devotion to duty, which is unbecoming of a Govt. servant, thereby violating the provisions of Rule 3 of CCs (Conduct) Rules, 1964.

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR IN SUPPORT OF ARTICLES OF CHARGE FRAMED AGAINST SHRI RAJ KUMAR UPPAL, GR.I(DASS)/SUPDT., GOVT. OF NCT OF DELHI

While working as Sub-Registrar-V (Mehrauli), Sh. Raj Kumar Uppal, Gr. I (DASS)/Supdt. registered following documents on 20/04/2005 –

- (i) Sale deed executed by Sh. Dinesh Kumar s/o Sh. Anand Sharma, through his father and General Power of Attorney Sh. Anand Sharma, in favour of Smt. Vidya Sharma w/o Sh. Kailash Sharma, in respect of half undivided share of built up property bearing No. A-6, Jangpura Extension, New Delhi.
- (ii) Sale deed executed by Sh. Anand Sharma s/o late Sh. Raja Ram in favour of Smt. Vidya Sharma, w/o Sh. Kailash Sharma, in respect of built up property bearing No. J-13, Jangpura Extension, New Delhi.
- (iii) General Power of Attorney of Sh. Anand Sharma s/o late Sh. Raja Ram in favour of Sh. Kailash Sharma s/o Sh. Anand Sharma, in respect of shop No. 13, part of Khasra No. 571, situated at village Inder Pat, Bagh Chandiwala, Nizamuddin East side, Mathura Road, New Delhi.

An FIR No. 499 dated 22/07/2005 was lodged by Sh. Dinesh Sharma s/o late Sh. Anand Sharma at PS-Hazrat Nizamudding u/s 420/468/471/120-B, alleging that his brother Sh. Kailash Sharma had prepared and got registered a forged/fabricated sale deed in respect of his portion of property bearing No. A-6, Jangpura Extension, New Delhi, purportedly executed by his father Sh. Anand Sharma on the strength of his General Power of Attorney, which had already been cancelled by him. During the investigation of the case by the police, it was revealed that the aforesaid documents were forged and fabricated, and Sh. Raj Kumar Uppal, while working as Sub-Registrar-V (Mehrauli) had registered the above mentioned three documents, in connivance with Sh. Kailash Sharma, Smt. Vidya Sharma and Sh. V.S. Chauhan, Advocate, and issued false certificates u/s 60 of the Registration Act, 1908. In furtherance of the criminal conspiracy, he gave a false statement before the Investigating Officer of the case that he had visited at A-6, Jangpura Extension on 20/04/2005 and enquired from late Sh. Anand Sharma whether he was willing and ready to sell the said properties to Smt. Vidya Sharma and gave General Power of Attorney to Sh. Kailash Sharma, although Sh. Anand Sharma was lying unconscious in a

critical condition on that date i.e. 20/04/2005. Sh. Raj Kumar Uppal, with malafide intention and to favour the other accused persons, registered the aforesaid three documents, without identifying the person (Sh. Anand Sharma) executing the documents, and enquiring from him as to whether or not the said documents were executed by him, in violation of the provisions of Section 34 r/w Section 31 of the Registration Act, 1908.

By the above acts of omission & commission, the aforesaid Sh. Raj Kumar Uppal, Gr. I (DASS)/Supdt., exhibited lack of integrity and devotion to duty, which is unbecoming of a Govt. servant, thereby violating the provisions of Rule 3 of CCS (Conduct) Rules, 1964".

2. Sequelly, the Disciplinary Authority appointed Shri D.S. Pandit, IAS (Retd.) as enquiring authority to enquire into pointed charges against the Delinquent Official (DO) and Shri Lokesh Kumar, Grade-I (DASS) as Presenting Officer vide impugned orders dated 01.12.2014 (Annexure A-2 and Annexure A-3) respectively.
3. Initially, a criminal case was registered against the accused and vide FIR No.499 dated 22.07.2005 (Annexure A-9) on accusation of having committed the offences punishable under Sections 420/468/471/120-B IPC by the police of Police Station, Hazrat Nizamuddin but subsequently the name of the applicant was also added in the array of accused.
4. Instead of participating in the departmental enquiry with respect to the indicated grave charges, the applicant has straightaway jumped to file the instant OA to challenge the impugned charge sheet and orders, directly invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

5. The case set-up by the applicant, in brief, insofar as relevant, is that although the period of incident of registration of forged sale deeds was between the year 2004-05, whereas the delayed charge sheet was served upon him on 11.09.2014. Even the documents asked for were not supplied to him by the Disciplinary Authority. He did not commit any misconduct warranting initiation of departmental enquiry as he acted in discharge of his official duty.

6. According to the applicant the vendors and vendees have amicably settled their dispute, and at the same time applicant and complainant have compromised in the matter. Consequently, the FIR was quashed by Hon'ble High Court of Delhi by way of order dated 17.03.2015 (Annexure A-8) in the case titled **Vidya Sharma Vs. State of NCT of Delhi and Others** (Crl.M.C. No.5542 and Cr.M.A. No.18931 of 2014) and filed by the applicant (Crl. M.C. No.1426/2015) by means of order dated 03.09.2015 (Annexure A-10) on the basis of settlement of compromise.

7. Thereafter, applicant filed representations dated 29.09.2015 (Annexure A-12) and 01.03.2016 (Annexure A-13) to close the departmental proceedings, but in vain and the enquiring officer is proceeding further with the departmental enquiry.

8. In all, the applicant claimed that the initiation of departmental enquiry was illegal, vitiated and without jurisdiction. On the basis of the aforesaid grounds, the applicant has sought quashing the impugned Memorandum, Articles of Charge and orders.

9. Having heard the learned counsel for the applicant and having gone through the record with his valuable help & after considering the entire matter deeply, we are of the considered view that no exceptional ground to entertain the OA at this stage is made out.

10. Ex-facie, the arguments of the learned counsel that there was a delay in initiation of departmental proceedings and since the matter has been settled between the vendors and vendees and FIR has been quashed on the basis of compromise between applicant and complainant vide indicated orders, so the impugned departmental proceedings/orders were liable to be set aside, are neither tenable nor the observations of Hon'ble Apex Court in cases **Zunjarrao Bhikaji Nagarkar Vs. U.O.I. and Others JT 1999 (5) SC 366, Inspector Prem Chand Vs. Govt. of NCT of Delhi and Others JT 2007 (5) SC 294** and **Union of India and Others Vs. J. Ahmed JT 1999 (5) SC 366**, are at all applicable to the facts of the present case wherein, it was observed that initiation of disciplinary proceedings against an officer cannot take place on information which is

vague or indefinite. Suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent officer. It was also held that no finding of fact was recorded by the Disciplinary/Appellate Authority that the DOs (therein) were guilty of an unlawful behaviour, lack of efficiency, failure to maintain higher standard of integrity while holding the post and on the peculiar facts and in the special circumstances of those cases, it was observed that the punishment awarded to them was illegal.

11. Possibly no one can dispute the indicated observations but same would not come to the rescue of the applicant at this initial stage of enquiry because the competent authority has yet to record such findings on the basis of evidence after completion of enquiry and that stage has not yet reached specially when very specific and glaring allegation of forgery and grave misconduct were made against the applicant.

12. What cannot possibly be disputed here is that the Hon'ble Apex Court in the case of **State of A.P. Vs. N. Radhakishan 1998 (4) SCC 154** has held that whether a disciplinary proceedings is to be quashed on the ground of delay, is to be determined according to the facts and circumstances.

13. Moreover, from the crux of the law laid down by Hon'ble Supreme Court in cases **State of M.P. Vs. Bani Singh 1990(supp.) SCC 738, A.R. Antulay Vs. R.S. Nayak**

and Another AIR 1992 SC 1701 and State of Punjab and Others Vs. Chaman Lal Goyal 1995 (2) SCC 570, the following conditions emerge to be considered in respect of delayed charge-sheets:-

- “1. The competent authority should be able to give an explanation for the inordinate delay in issuing the memorandum of charge;
- 2. The charge should be of such serious nature, the investigation which would take a long time and would have to be pursued secretly;
- 3. The nature of charges would be such as to a long time to detect such as embezzlement and fabrication of false records;
- 4. If the alleged misconduct is grave and a large number of documents and the statement of witnesses had to be looked into, delay can be considered to be valid;
- 5. The court has to consider the nature of charge, its complexity and on what account the delay has occurred;
- 6. How long a delay is too long always depends on the facts of the given case;
- 7. If the delay is likely to cause prejudice to the charged officer in defending himself, the enquiry has to be interdicted; and
- 8. The court should weigh the factors appearing for and against the disciplinary proceedings and a decision on the totality of circumstances. In other words, the court has to indulge in process of balancing”.

14. Such thus being the legal position and material on record, now the short and significant question, though important, that arises for determination is, as to whether the present OA can directly be entertained at this initial stage of departmental enquiry or not?

15. Having regards to the contention of the learned counsel for applicant and record, the answer must obviously be in the negative.

16. As is evident from the record, very serious and glaring allegation of registering the forged sale deeds with respect to valuable properties were made against the applicant in the charge sheet. Moreover, it is not a matter of dispute that the criminal case was registered and investigated against the accused by the police. Later on, the FIR was quashed by Delhi High Court on the basis of settlement/compromise by means of orders dated 17.03.2015 (Annexure A-8) and 03.09.2015 (Annexure A-10).

17. Therefore, taking into consideration the seriousness of the allegations of grave misconduct relatable to the forgery and the culmination of criminal case, *prima facie*, there appears to be sufficient ground for delayed charge sheet and the present case does not fall within the ambit of criteria to quash the charge on the ground of delay, as laid down by Hon'ble Supreme Court. It is now well settled principle of law that such serious charges of misconduct cannot be quashed by this Tribunal without proper enquiry by the competent authority.

18. Similarly, the mere fact that the Delhi High Court has quashed the pointed FIR on the basis of settlement/compromise between the parties, *ipso facto*, is not a ground much less cogent, to quash the specific charge of forgery and to exonerate the applicant, was urged on his behalf.

19. Likewise, as to whether all the documents were supplied to the applicant or not, he was at fault or not, as to whether committing forgery was a part of his official duty or not and all other grounds pleaded & urged on his behalf, cannot possibly be decided at this stage by this Tribunal in the absence of any evidence on record. Such intricate questions can only be decided after the production of evidence of the parties in departmental enquiry by the competent authority at the first instance.

20. Moreover, it is now well recognized that jurisdiction of the Tribunal to interfere with disciplinary proceedings at initial stage is very limited. The power to hold departmental enquiry and to impose punishment on a DO is conferred on the competent authority either by the act or legislative rules made under the provisions of Article 309 of the Constitution. In case the enquiry is being conducted consistent with the rules and in accordance with the principle of natural justice, such matters fall exclusively within the jurisdiction of the competent authority.

21. Not even that the applicant has filed the present OA on 23.03.2016 whereas the charge sheet was served on him on 01.12.2014, i.e., after a delay of more than 1 year and 2 months, which indicates that the applicant is interested in delaying the disposal of the enquiry on one pretext or other.

22. No other point, worth consideration, has been urged or pressed by learned counsel for the parties.

23. In the light of the aforesaid reasons, taking into consideration the totality of the facts and circumstances of the case on record, as discussed hereinabove, and without commenting further anything on merits, lest it may prejudice the case of either side during the course of departmental enquiry, as there is no merit, therefore, the instant OA is dismissed at this stage.

Needless to mention that nothing observed herein above, would reflect on the merits of the case in the enquiry proceedings in any manner, as the same has been so recorded for a limited purpose of deciding the present OA. At the same time, the competent authority is directed to complete the enquiry proceedings expeditiously. No costs.

(SHEKHAR AGARWAL)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Rakesh