

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

O.A.No.899/2012

Reserved on 8th January 2016

Pronounced on 3rd February 2016

**Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)**

K P Gupta
Aged 62 years
s/o late Mr. M L Gupta
r/o 18/26, Shakti Nagar
Delhi-7

..Applicant

(Mr. S K Gupta, Advocate)

Versus

Union of India through

1. Govt. of NCT of Delhi
Through its Chief Secretary
Delhi Secretariat
Player Building,
IP Estate, New Delhi-2
2. Director
Directorate of Vigilance
C Wing, Delhi Secretariat
Players Building
I P Estate, New Delhi

..Respondents

(Mr. Vijay Pandita and Mr. Anmol Pandita, Advocates)

O R D E R

Mr. A.K. Bhardwaj:

In March 2005 a sting operation was carried out by the News Channel 'Aaj Tak' where the applicant was shown demanding and accepting bribe while functioning as Sales Tax Officer in Department of Trade & Taxes, thus he was placed under suspension in terms of order dated 09.03.2005.

Subsequently, he was dismissed from service under Rule 19 of CCS (CCA) Rules, 1965. He challenged the order of dismissal before this Tribunal. The Tribunal set aside the order and accorded liberty to the Department to proceed against him in accordance with rules, i.e., to hold regular inquiry. Thereafter the respondents treated the applicant under deemed suspension from the date of the order of his dismissal till he reached the age of superannuation, i.e., 31.05.2009. The order to this effect was passed on 13.06.2011. Thereafter in view of the liberty granted by the Tribunal, a proposal was initiated in terms of the letter dated 15.07.2011 for initiation of departmental proceedings against the applicant and in sequence thereof, charge sheet under Rule 14 of CCS (CCA) Rules, 1965 read with Rule 9 (6) (a) of CCS (Pension) Rules, 1972 was issued to the applicant vide memorandum dated 30.04.2012, thus the applicant filed the present Original Application praying therein:

“(i) quash and set aside the deemed departmental proceedings in terms of Rule 9 (6) of the CCS (Pension) Rule, 1972 with all consequential benefits like salary and treatment of suspension period as spent on duty etc;

(ii) quash and set the charge sheet dated 30.04.2012 (Annexure – A-1A);

(ii) May also pass any further order(s), direction(s) as be deemed just and proper to meet the ends of justice.”

2. Though the applicant has raised several grounds pervaded in paragraph 5 (A) to (H) of the Original Application, during the course of hearing, Mr. S.K. Gupta, learned counsel for applicant espoused only two grounds; viz. (i) for the allegations contained in the impugned charge sheet a criminal case (Corruption Case No.19/2013) was also registered against the applicant in which he has been discharged in terms of the Order dated

11.03.2015, thus in view of the judgment of Hon'ble Supreme Court in the case of **Capt. M Paul Anthony v. Bharat Gold Mines Ltd. & another**, JT 1999 (2) 456 the disciplinary proceedings are liable to be quashed; and (ii) the charge pertained to the year 2005, i.e., more than four years old as on the date of retirement of the applicant, thus in terms of Rule 9 (2) (b) (ii) of CCS (Pension) Rules, 1972, the disciplinary proceedings could not have been initiated against him.

3. Mr. Vijay Pandita, learned counsel for respondents opposed the Original Application by submitting that the respondents have liberty to do so in terms of the Full Bench Order of this Tribunal in O.A. No.2546/2006 (with connected cases) dated 31.08.2009.

4. Rejoining the submissions, learned counsel for applicant submitted that in the case of the applicant, this Tribunal had passed a separate Order dated 08.11.2010 in O.A. No.2484/2010 in terms of which the respondents were given liberty to take up the proceedings against him in accordance with law and once in terms of CCS (Pension) Rules, 1972, i.e., the law on the subject, the disciplinary proceedings cannot be initiated against him on his retirement, after four years of the date of alleged misconduct, the charge sheet is vitiated. To buttress his plea, he relied upon the judgment of Hon'ble High Court of Delhi in **Union of India & others v. Yateendra Singh Jafa** (Writ Petition (C) No.8171/2008 with connected petition) decided on 02.07.2012.

5. We heard the learned counsels for the parties and perused the record.

6. It is not in dispute that the alleged misconduct, in which the applicant has been charge-sheeted in terms of the impugned charge-sheet, was committed in the year 2005 and the present charge sheet was issued after four years of the date of misconduct when the applicant already stood retired from service w.e.f. 31.05.2009. In terms of Rule 9 (2) (b) (ii) of CCS (Pension) Rules, 1972, the disciplinary proceedings cannot be initiated against a retired government servant in respect of four years old misconduct as on the date of retirement.

7. One of the plausible arguments, could be raised on behalf of the respondents is that maybe once the applicant was deemed under suspension from the date of dismissal and the date of order of suspension can be the date of initiation of the disciplinary proceedings, the proceedings should be deemed pending against the applicant from the date prior to the date of his retirement. The proposition could be dealt with by the Hon'ble High Court of Delhi in **Yateendra Singh Jafa's** case (supra). In the said case, the Hon'ble High Court ruled that once no charge sheet had been issued to the applicant, there was no question of holding further inquiry against him and any inquiry set in motion against him by issuing charge sheet would be deemed as a fresh inquiry. Paragraphs 37 to 44 of the judgment read thus:-

“37. It is also contended by the petitioners that there is no illegality in the order dated 24th November, 2003, by which the respondent was deemed to have been suspended from the date of the dismissal order dated 23rd January, 2001 by resorting to the provisions of Rule 3 of the AIS (D&A) Rules, 1969. This plea has been dealt with in detail by the Tribunal in its judgment.

38. The Tribunal considered Rule 3 of the AIS(D&A)Rules, 1969, and Rule 10 of the CCS (CCA) Rules, 1965 and observed that sub rule (1) of Rule 10 is totally distinct and different viz-a-viz sub rule (1) of Rule

3, since under Rule 10 (1) of the CCS (CCA) Rules 1965, there is no requirement of drawing up of charges before placing the delinquent under suspension, which is a condition precedent while invoking Rule 3(1) of the AIS(D&A) Rules, 1969. While on the other hand it was observed that as per the language used under Rule 3(6) of the AIS(D&A) Rules, 1969 viz-a-viz to Rule 10(4) of the CCS(CCA) Rules, 1965 it is identical and pari-materia. Thus, it was noted that there are four ingredients that need to be satisfied for the application of Rule 3(6), which are (1) member of service is dismissed, removed, or compulsorily retired as a measure of penalty (2) such penalty is set aside or declared or rendered void by a decision of the Court of Law (3) it is decided to hold "further enquiry" against the member of service on the allegations on which the original order of penalty was imposed and (4) Court has passed an order purely on a "technical ground" without going into the merits of the case.

39. If these ingredients are satisfied, then the member of the service could be placed under deemed suspension by the Central Government from the date of the original order of dismissal, removal or compulsory retirement, and he/she shall continue to remain under suspension until further orders.

40. The Tribunal, therefore, carefully assessed the provisions of Article 311(2) of the Indian Constitution in order to ascertain if the order dated 29th July, 2003 was passed without going into the merits of the case, and thus whether it was passed purely on "technical grounds". The Tribunal after careful consideration concluded that the ingredients of Rule 3(6) had not been complied with so as to justify a deemed suspension. It was noted that on 23rd January, 2001 provisions of Article 311(2)(c) was invoked in order to dismiss the respondent, which ex-facie shows that the President was satisfied that in the interest of the security of the State it was not expedient to "hold such inquiry". While on the other hand, Rule 3(6) clearly prescribes that "deemed suspension" could be resorted to only when the disciplinary authority on consideration decides to hold "further inquiry". Thus, the Tribunal noted that when on an earlier occasion it was felt that it was not expedient to hold an inquiry, then the question of holding "further inquiry" could not arise.

41. The Tribunal also categorically noted that on perusing the order dated 29th July, 2003, it is clear that it was not passed on technical grounds but was, in fact, passed on merits. Therefore, Rule 3(6) could not be invoked and applied by the petitioners in case of the respondent. The Tribunal also relied on the judgment of State of Bihar & Ors. v. Mohd. Idris Ansari, (1995) Supp (3) SCC 56 and concluded that since the suspension order could be passed or issued under the provisions of Rule 3(1) of the AIS (D&A) Rules, 1969 only when the articles of charges have been "drawn up", which condition was not satisfied in the case of the respondent before his retirement. Perusal of the suspension order dated 24th November, 2003 also reveals that it was not passed by taking recourse to the provisions of

AIS(D&A) Rules, 1969, therefore, the retrospective deemed suspension could not be imposed on the respondent.

42. This Court does not find any illegality, irregularity or perversity in the reasoning of the Tribunal, nor the learned counsel for the petitioners have been able to impeach the reasoning of the Tribunal. It is clear that in order to apply Rule 3 of the AIS(D&A) Rules, 1969 and to direct deemed suspension, the condition precedent was the issuance of a charge sheet, which in the present facts and circumstances was not complied with prior to the respondent's retirement. The charge sheet stipulating the allegations was issued against the respondent only on 12th August, 2004 after the respondent's retirement i.e. on 30th November, 2003, prior to which no inquiry was conducted against the respondent, nor any charge sheet was issued. Perusal of the Tribunal's judgment in OA No. 729/2001 clearly reveals that the action of the petitioners under Article 311 (2) (c) of the Constitution of India was set aside on merits and not only on technical grounds.

43. The Tribunal in its judgment dated 29th July, 2003 in O.A. No. 729/2001 had given detailed reasons and had observed that there was clear violation of the principles of natural justice in the SCOI proceedings, which is the basis for the allegations charged against the respondent, in which he was merely called upon as a witness. The Tribunal also noted the plea of the respondent that the alleged incident concerning the raid on the terrorists, was neither planned, nor ordered by the respondent but was, in fact, undertaken by one Sh. M. L. Purohit, Commandant of 116 Bn. BSF, on his own initiative and that the respondent was informed regarding the raid only subsequently. The Tribunal held that even though the respondent would be responsible for the actions of the juniors in the area where he was posted, however, since it is evident from the record that the Commandant or the DIG had not consulted with the respondent in the planning or the execution of the raid, and that the respondent had come to know of it only after the raid was completed successfully, therefore, the respondent's culpability, if any, is less than that of the Commandant or the DIG. The Tribunal also noted that the report of the SCOI regarding the allegations imputed against the respondent was not fully correct. The Tribunal further observed that the respondent was treated at a different footing in comparison to the DIG and Commandant, in that while in the case of the respondent the provisions of Article 311(2) (c) had been invoked, however, in the case of the others, Article 311(2) (b) had been applied, in spite of the fact that it was evident from the record that the respondent did not have more culpability in the matter than the DIG and the Commandant.

44. The Tribunal also carefully considered if the order dated 23rd January, 2001 dismissing the respondent by invoking Article 311 (2) (c) of the Indian Constitution was justified. The Tribunal observed that Article 311 (2) (c) is invoked in circumstances of expediency, or in cases involving the security of the state, when in view of the facts and circumstances of the case, it is considered impracticable to hold an

inquiry. However, the Tribunal observed that in the present matter, there was no expediency, nor was there any issue of security. The matter was examined in detail by the SCOI and the findings of the same had become public and over a period of nine years nothing had taken place, nor had any fresh material brought on record, so as to imply a threat to the security, in order to justify resorting to Article 311 (2) (c) of the Constitution of India. The Tribunal also carefully analysed the law laid down by the Supreme Court in the judgments of Union of India & Anr. v. Tulsiram Patel, 1985 SCC (L&S) 672; A.K. Kaul & Anr. v. Union of India & Anr. (1995) 4 SCC 73; Union of India & Anr. v. Balbir Singh & Anr. JT 1998(3) SC 695; S.R. Bommai v. Union of India (1994) 3 SCC 1 and the OM dated 26th July, 1980 which lays down the procedure for dealing with the cases of the Government servant engaged in or associated with subversive activities in so far as the applicability of proviso to Article 311 (2) is concerned and ultimately held that the order of dismissal dated 23rd January, 2001 was not sustainable in law. The relevant portion of the Tribunal's reasoning is as follows:

"42. Having regard to the aforesaid, we observe that initially the SCOI held by the BSF where applicant was on deputation, found the applicant to be guilty of lapses of supervision, command and control. This proceeding has been carried out as per the BSF Rules during the course of which of it several witnesses mostly BSF officers have been examined and explanations have been sought from the concerned. The applicant was one of the witnesses. On the basis of the findings of the SCOI, a proposal was drawn up to invoke against the applicant proviso to Article 311 (2) (c) of the Constitution in the interest of the security of the State. The move was stayed by the Tribunal and the Hon ble Supreme Court but with the directions that the respondents are free to take action against the applicant in accordance with law. However, only on much later date, after the OA was dismissed as pre-mature and liberty was granted to the respondents by the Hon'ble High Court, it was felt needed to hold a meeting of the Committee of the Advisers.

43. OM No.34012/1(5)/79-Estt.(Bo dated 26.7.1980 lays down procedure for dealing with the cases of Government servant engaged in or associated with subversive activities in so far as applicability of proviso to Article 311 (2) is concerned. As per this OM on receipt of the information regarding subversive activities a Committee of Advisers is constituted and to first decide.

- (i) whether the allegations made against the suspect or any of them should be disclosed to the suspect and he should be given an opportunity to furnish his information; or
- (ii) whether on grounds of national security or the nature of allegations made against the suspect, it is not advisable or necessary to disclose the allegations against the suspect or to call upon his reply thereto. Thereupon, after consideration

recommendations of Committee of Advisers is to be forwarded to the President.”

In the present case also, there was no regular inquiry proceeding against the applicant, thus the proceeding initiated with issuance of impugned charge sheet was fresh proceeding.

8. The fact that from the charges, constituted subject matter of disciplinary proceedings, the applicant has been discharged in the criminal case registered vide FIR No.12/2005 also weighs in his favour. Paragraphs 1.2, 6.1 and 6.2 of the Order dated 11.03.2015 (ibid) passed by the learned Special Judge (PC Act)-05, (ACP) (Central), Tis Hazari Courts, Delhi read thus:-

“1.2 In a sting operation, correspondent & camera person of Aaj Tak Chanel, conducted Audio-Video recording of the Assessing Authorities & other officials of Sales Tax Department, Delhi, accepting bribe. The sting was telecast on 08.03.2005 & 09.03.2005 in a program titled as ‘Ghoos Mehel’. The Program indentified and named 10 Assessing Authorities namely D.J. Gupta, R.S. Jeph, K.P. Gupta, H.R. Kapoor, Swaran Gujral, K.S. Yadav, Shashi Singh, Hari Parsahd, B.K. Dhingra & Prabha Joshi. After the program had been telecast, Commissioner (Sales Tax), Delhi approved registration of FIR and Vigilance Officer, Sales Tax, Department lodged the present FIR. During investigation, two CDs of the program ‘Ghoos Mehel’ as telecast were handed over by Dheerender Pundir – correspondent of Aaj Tak, which were seized. During the telecast of program ‘Ghoose Mehel’, it had been informed that 82 officer / officials of Sales Tax Department were seen in the Sting Operation demanding and accepting bribe. CD & Voice samples of accused persons were also sent to CFSL, Chandigarh. However, the CD handed over by Dheerender Pundir did not contain the details of the aforementioned 82 officials. After persistent follow up, Dheerender Pundir handed over a videwo cassette of the sting operation to the IO on 12.09.2006 and 3 CDs were prepared of the same for the purpose of investigation. The aforesaid CDs, which were copies of video cassette, were sent to CFSL for opinion, which opined that the video recordings is not ‘Camera Original’. However, the same were similar to the CDs provided earlier for which a report had been submitted on 19.02.2007.

6.1 For the reasons detailed in paras 4 and 5 above, I am of the opinion that prosecution has failed to even remotely raise suspicion sufficient to put accused persons to trial. This evidence can not in any manner be sufficient for conviction. I, therefore, discharge all the accused persons for the offences u/sec.-7 & 13 (i) (d) of the PC Act punishable u/sec.-13 (2) of the PC r/w/sec.- 120 IPC.

6.2 In terms of sec.-437 (A) Cr.P.C., accused persons are directed to furnish bail bonds for the amount of Rs.25,000/- each with one surety in the like amount, to appear before the appellate/ revisional court, as and when such notice is issued, in respect of any appeal/ revision, which may be filed against this order on charge.”

9. In view of the aforementioned, particularly being bound by the Order of Hon'ble High Court of Delhi in **Yateendra Singh Jafa's** case (supra), we allow the Original Application. As a corollary thereto, applicant would be entitled to all consequential benefits. No costs.

(V. N. Gaur)
Member (A)

(A.K. Bhardwaj)
Member (J)

/sunil/