

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

O.A. No.2283/2015

Order reserved on 11th July 2017

Order pronounced on 28th September 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

V K Gupta s/o Mr. O P Gupta

Aged 61 years

r/o B-62, Parijat Aptts., West Enclave

PitamPura, Delhi – 34

Previously employed as Director in

Dte. General of Supplies & Disposals, Deptt. of Commerce

Govt. of India, New Delhi

..Applicant

(Mr. A K Barua, Advocate)

Versus

1. Union of India
Through the Secretary
Dept. of Personnel & Training
North Block, New Delhi – 110 001

2. The Secretary, Deptt. of Commerce
Udyog Bhawan, New Delhi – 110 011

3. The Director General
Dte. General of Supplies & Disposals
2nd Flr., Jeevan Tara Bldg.
Parl. Street, New Delhi – 1

..Respondents

(Mr. R K Jain, Advocate)

O R D E R

Mr. K.N. Shrivastava:

This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

“(i) that Department of Per. & Trg. Vide O.M. F.No.109/5/2012 – AVD.I dated 09.07.2013 and the charge sheet issued therewith may

be set aside and declared null & void being unconstitutional, illegal, violative of rules/instructions, inordinately delayed and biased in view of the facts in para 4.7 to 4.10 and grounds for relief in para 5.1 (a) to (e) above.

(ii) that Department of Per. & Trg. Vide O.M. F.No.109/5/2012 – AVD.I dated 24.06.2014 may be set aside being violative of CCS (CCA) Rules, 1965 and instructions issued thereunder and the principles of natural justice in view of the facts and grounds for relief in para 4.11 and 5.1 (f) above.

(iii) that the directions be issued to the respondents to pay to the applicant the regular pension, commutation of pension, gratuity and encashment of leave salary with interest thereon at market rate as a natural consequence of the relief (i) above and also as being unconstitutional, discriminatory and violative of rules in view of the facts and grounds for relief in para 4.12 – 4.13 and 5.2 & 3 of this application.”

2. The factual matrix of this case is as under:-

2.1 The applicant was initially recruited to the post of Assistant Grade of Central Secretariat Service (CSS) in the year 1976 through Union Public Service Commission (UPSC). He secured his regular promotions and finally reached the Senior Selection Grade (Director level) of CSS on 01.07.2011. At that time, he was posted in the Directorate General of Supplies & Disposals (DGS&D), which comes under the administrative control of Department of Commerce (respondent No.2).

2.2 On some complaints in regard to irregularities in the procurement of jute bags by the DGS&D, respondent No.2 issued Annexure A-3 charge sheet dated 21.08.2012 to the applicant under Rule 14 of CCS (CCA) Rules, 1965 (for short “Rules 1965”) by an order and in the name of President of India. The charge-sheet consisted of the following four charges:-

“Article-I

That the said Shri V.K. Gupta, Director, DGS&D while functioning as Dy. Secy. (IF) in DGS&D during the period from 15.01.2010 to

29.12.2010, committed grave misconduct in the purchase of Jute Mail Bags of different sizes indented by the Department of Posts in as much as he considered and approved modification of Tender Enquiry conditions of Tender Enquiry No. C-III/218/3097/16.07.2009/ 3115/13.01.2010/ED/1806010 Jute Mail Bags dated 12.7.2010 opened on 17.8.2010 after opening of bids and during the negotiation meeting held on 27.08.2010. This was in gross violation of the CVC Guidelines and the DGS&D Manual provisions, which provisions, which prohibit post tender modifications of Tender conditions.

Article-II

That the said Shri Gupta while functioning as Dy. Secretary (IF) during the aforesaid period colluded with the bidders in the cartelization of bids against Tender Enquiry No.C-III/218/3097/ 16.07.2009/3115/ 13.01.2010/ED/18.6.10 Jute Mail Bags dated 12.7.2010 opened on 17.08.2010.

Article-III

That the said Shri Gupta failed to establish responsibility of rates and paid exorbitantly high prices in the contracts concluded against the aforesaid Tender Enquiry which resulted in serious financial loss to the public exchequer.

Article-IV

That during the aforesaid period and which functioning in the office, the said Shri Gupta illegally ignored the offers of three bidders namely M/s Vinay Finance Corporation, M/s Rajendra Trading Co. and M/s. Calcutta Fabricators on invalid grounds in order to extend undue favour to a few of the bidders.”

Pursuant to the Annexure A-3 charge sheet, the applicant submitted his Annexure A-4 statement of defence dated 03.09.2012.

2.3 The said charge-sheet was withdrawn by the respondents vide Annexure A-5 Memorandum dated 02.11.2012, which reads as under:-

“Memorandum

Shri V K Gupta, Dy. Secy, DGS&D is hereby informed that the earlier memorandum of even number dated 21.08.2012 issued to him stands withdrawn.

By order and in the name of the President.”

2.4 The respondents issued a fresh charge sheet dated 09.07.2013 (Annexure A-2) to the applicant containing the same charges that were mentioned in the earlier charge-sheet dated 21.08.2012. This charge-sheet was also issued under Rule 14 of the Rules 1965. Furthermore, this charge-sheet was issued by the Department of Personnel & Training (DoPT) (respondent No.1), whereas the Annexure A-3 charge-sheet dated 21.08.2012 had been issued by respondent No.2.

2.5 The applicant, through his Annexure A-6 (colly.) letter dated 26.7.2013 addressed to respondent No.1, sought certain documents. Thereafter, vide his Annexure A-7 (colly.) letter dated 23.10.2013, Annexure A-8 letter dated 25.10.2013 and Annexure A-9 letter dated 03.06.2014, all addressed to respondent No.1, has represented broadly as under:-

- (a) On the receipt of Annexure A-3 charge-sheet dated 21.08.2012, he had submitted his Annexure A-4 statement of defence dated 03.09.2012. The charge-sheet was withdrawn vide Memorandum dated 02.11.2012 (Annexure A-5). A fresh charge-sheet dated 09.07.2013 (Annexure A-2). However, the charges contained in both the Annexures A-3 & A-4 charge-sheets are the same. It is impermissible in law to issue two charge-sheets for the same set of charges.
- (b) Annexure A-3 charge-sheet was withdrawn after the receipt of statement of defence (Annexure A-4) of the applicant. Withdrawal of Annexure A-3 charge-sheet would go to indicate that all the charges also stood dropped.

(c) The applicant was working as Deputy Secretary (Finance) in the Supply Division of respondent No.2. The complaint against the procurement of jute bags was received against the DGS&D. The applicant is not a part of DGS&D. No finance officer can be treated to be an expert on or even knowledgeable enough about the quality/specifications of the materials. Hence, the charges leveled against him in regard to alleged irregularities in the procurement are not justified.

2.6 Respondent No.1, vide impugned Annexure A-1 O.M. dated 24.06.2014, have informed the applicant that his representations dated 23.10.2013, 25.10.2013 and 03.06.2014 against the charge memorandum dated 09.07.2013 have been considered and it is informed that there are no justification to accede to his request for dropping the charges against him without inquiry, and that he would have sufficient opportunity to vindicate his points during the inquiry.

Aggrieved by the aforesaid O.M. dated 24.06.2014, the applicant has filed the instant O.A. praying for the reliefs, as indicated in paragraph (1) above.

3. The applicant has pleaded the following grounds in support of the reliefs prayed for by him:

3.1 Annexure A-3 charge-sheet dated 21.08.2012 was withdrawn unconditionally / without any reservation or stipulation that the same was being done without prejudice to any further administrative action. It is thus presumed that after having received the statement of defence, the competent authority has decided to drop the charges in terms of Rule 14 (5)

(a) of the Rules 1965, after having been satisfied with the statement of defence.

3.2 The Principal Bench of this Tribunal, vide order dated 29.10.2013 in O.A. No.4206/2012 – **Sh. Rajender Kumar v. Union of India**, has clarified that once the proceedings initiated under Rules 14 or Rule 16 of the Rules 1965 are dropped, the disciplinary authorities would be debarred from initiating fresh proceedings against the delinquent officers unless the reasons for cancellation of the original charge-sheet or for dropping the proceedings are appropriately mentioned and it is duly stated in the order that the proceedings were being dropped without prejudice to further action, which may be considered in the circumstances of the case. Annexure A-5 O.M. of the respondents, by virtue of which the Annexure A-3 charge-sheet was withdrawn, does not say that the proceedings were being dropped without prejudice to further action.

3.3 There is no provision in Rule 14 of the Rules 1965 for issuing a second replica charge-sheet on the basis of the same facts.

3.4 No opportunity was given to the applicant to explain his conduct, role and responsibility in the case before being served with any of the two charge-sheets, which is in gross violation of the instructions contained in paragraph 4.4 (g) of Central Vigilance Commission Manual.

3.5 The first complaint in the matter was received on 01.09.2010, in which preliminary investigations went on for about 2 years before the first charge-sheet was issued on 21.08.2012, which was later withdrawn on 02.11.2012. The second charge-sheet was issued after a long gap of 8

months on 09.07.2013. The statement of defence in the second charge-sheet was filed by the applicant on 23.10.2013 and for almost two years thereafter, there has been no movement in the case. This inordinate delay of about 5 years since the institution of the case is fatal to the defence of the applicant.

3.6 DoPT, vide its O.M. dated 14.10.2013, has stipulated as under:-

“all Ministries /Departments shall ensure that all major penalty proceedings against government servants under their control are completed and final orders are passed by the concerned Disciplinary Authority within 18 months from the date of delivery of charge-sheet on the delinquent government servant.”

3.7 Respondent No.3 is biased against the applicant, as he (applicant) is from outside. On one hand, the applicant was not given opportunity to express his comments during the preliminary inquiry and on the other hand, proceedings were so delayed so as to allow the concerned cadre officers of DGS&D to retire before the charge-sheets could be served to them prior to their retirement.

3.8 While the applicant was working as Deputy Secretary (Finance) in Supply Division of Department of Commerce, he represented the Finance Wing of that Division headed by the Additional Secretary & Financial Adviser in the Department of Commerce in the finalization of purchase of jute bags for Indian Postal Department. He was only required to give the necessary financial concurrence on the basis of given facts and circumstances as brought out by the officers of DGS&D, i.e., respondent No.3.

4. Pursuant to the notice issued, the respondents entered appearance and filed their reply, in which they have made the following averments:

4.1 A complaint was received through CVC regarding alleged irregularities committed and favour extended to some of the firms in awarding of an *ad hoc* contract for supply of different types of jute mail bags indented by the Department of Posts. The issue was examined and a possible culpability of officers, including all the members of the Tender Purchase Committee (TPC) was observed. They were found guilty of the following misconducts:-

“(i) Modification of Tender Enquiry conditions after opening of bids in violation of CVC guidelines and provisions of DGS&D Manual.

(ii) Colluding with the Bidders in the Cartelization of bids.

(iii) Failed to establish reasonability of the rates and paid exorbitantly higher prices resulting in serious financial loss to the public exchequer.

(iv) Ignoring the offers of three bidders on invalid grounds extended undue favours to a few of the bidders.”

4.2 Paragraph 4.4 (g) of the CVC Manual stipulates that during the course of inquiry the public servant concerned may be given an opportunity to say what he may have to say about the allegations against him. It also stipulates that such an opportunity, however, may not be given in cases in which a decision to institute departmental proceedings is to be taken without any loss of time, e.g., in a case in which the public servant concerned is due to retire or to superannuate soon and it is necessary to issue a charge sheet to him before his retirement. A conscientious decision was taken not to seek explanation from the members of TPC since they have already given their views on the file.

4.3 The first charge-sheet dated 21.08.2012 (Annexure A-3) was withdrawn by the respondents since it was issued by respondent No.2, who was not the competent authority, as the applicant belongs to Group 'A' service of the CSS, for which the disciplinary authority is DoPT (respondent No.1), and accordingly, a fresh charge-sheet dated 09.07.2013 (Annexure R-2) was issued to the applicant with the approval of the competent authority. Hence, it is to be noted that withdrawal of the first charge-sheet is due to this technical reason and that the charges were never dropped. Accordingly, in the new charge-sheet the same set of charges has been mentioned.

4.4 The disciplinary action has also been initiated against the officers of Indian Supply Service, who were members of the TPC. On the similar lines, disciplinary action has been initiated against the applicant, who was a member of the TPC.

5. The applicant has filed rejoinder to the reply filed on behalf of the respondents, in which, by and large, he has reiterated the averments made in the O.A. as well as the grounds pleaded in support of the reliefs prayed for.

6. With the completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties on 11.07.2017. Arguments of Mr. A K Barua, learned counsel for applicant and that of Mr. R K Jain, learned counsel for respondents were heard.

7. Mr. A K Barua, learned counsel for applicant raised a preliminary objection to the methodology adopted by the respondents in conducting the

disciplinary proceedings against the applicant pursuant to the impugned Annexure A-2 charge-sheet dated 09.07.2013. It was stated that in terms of the ratio of law laid down by the Hon'ble Supreme Court in **Union of India & others v. B.V. Gopinath**, (Civil Appeal No.7761/2013 (Arising out of SLP (C) No.6348/2011)) decided on 05.09.2013, approval of the disciplinary authority is required at the following four crucial stages of disciplinary proceedings:

- (i) Initiation of disciplinary proceedings for major penalties,
- (ii) drawing up of charges of misconduct,
- (iii) appointment of inquiry officer & presenting officer; and
- (iv) imposition of penalty, if any.

8. Mr. Barua drew our attention to a Note of Prime Minister's office dated 01.07.2013 (page 115 of the paper book), in which approval of the Prime Minister, in his capacity of disciplinary authority, has been accorded for the following in relation to the disciplinary proceedings against the applicant:-

- (i) For initiation of disciplinary proceedings
- (ii) For issuance of articles of charge and statement of imputation with list of relied upon documents and witnesses
- (iii) For appointment of inquiry officer / presenting officer on denial of charges by the officer after considering the representation on the charge memo and for consequential action as may be necessary.

9. It is contended by Mr. Barua that the omnibus approval given by the Prime Minister for all the crucial stages of disciplinary proceedings is not

permissible under law in the light of the ratio laid down by the Apex Court in **B.V. Gopinath** (supra).

10. On the preliminary objection of Mr. Barua, we decided first to examine the matter regarding the procedure prescribed for the conduct of the disciplinary inquiry. However, before dealing with it, we would like to observe that issuance of impugned Annexure A-2 charge-sheet had become necessary since the earlier charge-sheet was not issued by the competent authority. As explained by the respondents, the applicant is a Director level officer belonging to CSS for whom the disciplinary authority is the Prime Minister, being the Minister In-charge of the DoPT. The Annexure A-3 charge-sheet issued by respondent No.2 was not in order. Therefore, no illegality has been committed by the respondents in withdrawing Annexure A-3 charge-sheet and issuing a fresh impugned Annexure A-2 charge-sheet with the approval of the competent authority (Prime Minister). We also do not accept the contention of learned counsel for applicant that Annexure A-5 O.M. of the respondents, whereby Annexure A-3 charge-sheet was withdrawn, amounted to dropping of the charges. In fact, the charges were never dropped. Annexure A-3 charge-sheet was withdrawn for a technical reason as to the competence of the authority, who had issued it. Hence, the commonality of the charges mentioned in Annexures A-3 & A-2 charge-sheets does not amount to issuance of two charge-sheets for the same charges. In fact, Annexure A-2 charge-sheet cannot be construed as a new/distinct charge-sheet.

11. Now we deal with the preliminary objection raised by learned counsel for applicant. We have perused the letter dated 01.07.2013 of the Prime Minister's Office, which is reproduced below:-

“Reference is invited to the proposal in the note dated 20.6.2013 at page 11/n in DoPT File No.109/5/2012-AVD-I on the above subject.

2. The undersigned is directed to convey that the Prime Minister has approved the proposal of the Department for:

- (a) Initiation of disciplinary proceedings as per the procedure laid down in Rule 14 of the CCS (CCA) Rules, 1965, for major penalty against Shri V.K. Gupta, Deputy Secretary, Department of Commerce. Prime Minister has also approved the article of Charge, statement of imputations and list of relied documents and witnesses.
- (b) appointment of Inquiry Officer/Presenting Officer on denial of charges by the officer after considering the representation on the charge memo and take consequential action as may be necessary as regards the inquiry proceedings under the extant rules.

3. DoPT File No.109/5/2012-AVD-I with 1 (one) other file/ folder is returned herewith.”

12. From this letter of the PMO, it is quite clear that approval of the Prime Minister, in his capacity of the disciplinary authority in respect of the applicant, has been accorded, at one go, in regard to all the stages of the disciplinary proceedings for which, in a sequential manner, approval is to be accorded by the disciplinary authority as and when such stages arise. The Hon'ble Supreme Court in **B.V. Gopinath** has clearly held that approval of the disciplinary authority ought to be obtained for the aforementioned four crucial stages of the disciplinary proceedings as and when they arise. Therefore, in this case, the omnibus approval given for all the stages of the disciplinary proceedings by the Prime Minister, in his

capacity of the disciplinary authority, is not in consonance with the ratio of law laid down by the Apex Court.

13. In view of the above, without touching the merit aspect of the case, we are of the view that on ground mentioned in paragraph (11) supra, judicial intervention in the instant case is required. The approval given by the disciplinary authority (Prime Minister) vide the Note dated 01.07.2013 addressed to the DoPT, at the most, is approval for initiation of disciplinary proceedings. Hence, it is mandatory for the DoPT to obtain approval of the Prime Minister for issuance of the charge-sheet separately. Furthermore, after the receipt of the statement of defence from the applicant (accused officer) in response to the charge-sheet issued, disciplinary authority's approval would be necessary for appointment of inquiry officer & presenting officer in case the disciplinary authority has disagreed with the statement of defence of the applicant. Finally, after the inquiry officer has submitted his report, in which if he concludes that the charges are proved, in that case, approval of the disciplinary authority would again be necessary for imposing the intended punishment in terms of Rule 15 of the CCS (CCA) Rules 1965.

14. In the conspectus of the discussions in the foregoing paragraphs, this O.A. is disposed of in the following terms:-

i) The approval of disciplinary authority vide letter dated 01.07.2013 to the DoPT is to be construed as approval for initiation of the disciplinary proceedings only.

ii) Annexure A-2 charge-sheet dated 08.07.2013 is quashed and set aside. The respondents are at liberty to issue a fresh charge-sheet after getting approval of the disciplinary authority exclusively for it.

No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/sunil/