

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI**

**O.A No.1835/2016**

**New Delhi this the 27<sup>th</sup> day of May, 2016**

**Hon'ble Mr. Justice M. S. Sullar, Member (J)**

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

Anjum Bhardwaj  
S/o Late Shri S.K. Sharma  
Aged 50 years,  
(Superintendent in EDMC),  
Resident of 2/2, Tehsildar House,  
Near Transformer,  
Prem Gali, Babarpur,  
Delhi-110032. ....Applicant

(Argued by: Shri B.R. Sharma, Advocate)

Versus

East Delhi Municipal Corporation,  
Through its Commissioner,  
Udyog Sadn, Patparganj Industrial Area,  
Delhi. ..Respondent

**ORDER (ORAL)**

**Justice M.S. Sullar, Member (J)**

The challenge in this Original Application (OA), filed by applicant, Anjum Bhardwaj, is to the impugned charge-sheet dated 11.12.2015 (Annexure P-1).

2. The epitome of the facts and material, exposted from the records, which needs a necessary mention for the limited purpose of deciding the instant OA, at this preliminary stage of enquiry and emanating from the record is that, applicant was working as Upper Division Clerk (UDC) in Internal Audit Department (IAD) at the relevant time. He was stated to have

committed grave misconduct during the course of his employment. As a consequence thereof, he was charge-sheeted with the following the Article of Charge and Statement of Imputation of Misconduct:-

**“Statement of Charges**

Sh. Anjum Bhardwaj was working as Upper Division Clerk in Internal Audit Department, Kashmiri Gate, MCD in the year 2005. He failed to maintain absolute integrity, devotion to duty and committed gross misconduct for the following lapses:-

1. He gave contradictory/misleading information with regard to source of funding for construction of his property situated at 2/2 Babarpur Shahdara Delhi to the Internal Audit Department, MCD in writing on 22.03.2005 and also before the Hon'ble (sic) Court of Sh. N. K. Kaushik, Spl. Judge, PC Act, CBI, Dwarka Courts on 31.01.2013.

2. He also resiled from his earlier statement in case No.CC-44/11 on the issue of having received Rs.6 lacs from his sister Ms. Anjali Bhardwaj as his statement dated 31.01.2013 given before the Hon'ble Court of Sh. N. K. Kaushik Spl. Judge, PC Act, CBI, Dwarka Courts was different from his earlier statement dated 19.07.2014 recorded by the CBI u/s 161 Cr. P.C.

He, thereby, contravened Rule 3 (1) (ii) (iii) of CCS (Conduct) Rules, 1964 as made applicable to the employees of MCD/EDMC”.

**STATEMENT OF ALLEGATIONS ON THE BASIS OF WHICH CHARGES HAVE BEEN FRAMED AGAINST SH. ANJUM BHARDWAJ S/O. SHRI S. K. BHARDWAJ, SUPERINTENDENT, CENTRAL OFFICE (HQ) EAST DELHI MUNICIPAL CORPORATION.**

Sh. Anjum Bhardwaj was working as Upper Division Clerk in Internal Audit Department, Kashmiri Gate MCD in the year

On 06.02.15 a reference dated 05.02.15 received in Vigilance Department from the office of SP/CBI ACU-I, CGO Complex Lodhi Road, New Delhi through Asstt. Director (Vigilance, North DMC regarding giving false intimation to the department as well as before the Hon'ble Court on 30/10/2013 by Sh. Anjum Bhardwaj the then UDC, Internal Audit Department, Kashmiri Gate, MCD. The SP/CBI vide their above reference forwarded the self contained note with recommendation for taking department action as deemed fit against Sh. Anjum Bhardwaj.

Under approval of the Chief Vigilance Officer, EDMC the matter was investigated by the Vigilance Department. During the course of investigation, statement of the concerned officials were recorded and relevant documents also collected. Investigation revealed that Sh. Anjum Bhardwaj deposed before the Court that he got the house renovated after taking the loan from office and also after taking some money from his mother whereas he made a declaration to the department on 23/03/2005 that his mother got constructed/renovated/repared the property No. 2/2, Tehsildar house, near transformer Babarpur, Shahdara (sic)(Khasra No. 450/434/311/41) situated in rural village (Lal Dora) of Old Abadi of Village Babarpur out of her funds i.e. (i) 6 Lacs taken from her daughter Ms. Anjali Bhardwaj which was kept by her as trustee of her old family funds. (ii) Rs.1.24 Lacs was taken from him, (Anjum Bhardwaj) (iii) Rs.1.20 Lacs was taken from his (Anjum Bhardwaj) brother-in-law & out of her own saving through her pension account.

Investigation further revealed that declaration made to the department on 22.03.05 was different from what was deposed before the Hon'ble Court on 30.01.2013 he was very well aware of the fact that Rs.6 Lacs was given by his sister Ms. Anjali Bhardwaj to his mother at the time of construction/conovation/repair of the above said property but, despite being aware of the above fact Sh. Anjum Bhardwaj, during examining in the court on 30.01.2013 stated that Ms. Anjali Bhardwaj did not give him any amount of Rs.6 Lacs even a pie to him, investigation revealed that statement of Sh. Anjum Bhardwaj recorded by the CBI u/sec 161 Cr. P.C. CBI on 19.07.2004 is also different from the statement given before the Hon'ble court on 30.01.2013 in case No. CC-44/11 which made him hostile on the issue of having received Rs.6 Lacs from his(sic) sister Ms. Anjali Bhardwaj and, due to his contradictory statement Ms. Anjali Bhardwaj was acquitted of the charge of the Disproportionate Assets registered by CBI vide RC AC-I 2004-A-0002.

From the foregoing, it is evident that Sh. Anjum Bhardwaj, Superintendent (the then UDC) failed to maintain absolute integrity, devotion to duty and committed gross misconduct in as much as he gave contradictory misleading information to the internal Audit Department in writing on 22.03.2005 and before the Hon'ble Court Dwarka on 30.01.2013. He also resiled from his earlier statement in case No. CC44/11 on the issue of having received Rs.6 Lacs from his sister Ms. Anjali Bhardwaj as his statement dated 30.01.2013 given before the Hon'ble Court of Sh. N. K. Kaushik, Spl. Judge, PC Act, CBI, Dwarka Court was different from his earlier statement dated 19.07.2004 recorded by the CBI u/sec 161 Cr. P.C

He thereby, contravened Rule 3 (1) (i) (ii) (iii) of CCS (Conduct) Rules, 1964 as made applicable to the employees of MCD/EDMC".

3. At the very outset, it will not be out of place to mention here that, the applicant had also filed OA bearing No.531/2016 challenging the same very proceedings on various grounds. All the grounds, contained therein, were negated. However, respondent was directed to consider the reply of the applicant, submitted in pursuance of the charge sheet dated 11.12.2015, in accordance with law, before proceeding further in the departmental enquiry by this Tribunal on 10.03.2016 (Annexure P-8).

4. Strangely enough, instead of participating in, and to allow the Departmental Enquiry (DE) proceedings to proceed smoothly, the applicant straightaway jumped to this Tribunal to prefer the second OA challenging the same very charge-sheet dated 11.12.2015, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

5. After hearing the learned counsel for the applicant, going through the record with his valuable assistance and after considering the entire matter, we are of the firm view that there is no merit and the present OA deserves to be dismissed for the reasons mentioned hereinbelow.

6. Ex-facie, the arguments of the learned counsel that since there is a considerable delay in serving the charge-sheet, so the impugned DE proceedings are vitiated, is not only devoid of merit but misplaced as well.

7. As is evident from the record, that the applicant was stated to have given contradictory and misleading information with regard to source of funding for construction of his property, in writing on 22.03.2005 to IAD (MCD) and also before the Court of CBI, Special Judge, Dwarka on 30.01.2013 whereas, charge-sheet was served on 11.12.2015.

8. It is not a matter of dispute, rather acknowledged by the applicant in his pleadings, that matter was investigated by the Vigilance Department and now after 2 years, at the instance of CBI, the present charge-sheet has been issued and DE proceedings has been initiated against the applicant on the issues, which are not covered by the definition of “misconduct”. That means, the matter had remained pending long before the Vigilance and CBI authorities. Hence, the pendency of the enquiry before Vigilance and CBI authorities is sufficient explanation for serving the charge-sheet after 2 years. So, it cannot possibly be saith, that the alleged delay in serving the charge-sheet is fatal to the department at this stage.

9. Moreover, the question of explanation of delay and its effect would naturally depend upon variety of factors, which can be decided only on the basis of evidence produced by the parties during the enquiry proceedings. The Hon’ble Supreme Court in ***B.C. Chaturvedi Vs. Union of India AIR 1996 SC 484*** has held as under:-

“11. The next question is whether the delay in initiating disciplinary proceeding is an unfair procedure depriving the livelihood of a public servant offending Article 14 or 21 of the Constitution. Each case depends upon its own facts. In case of the type on hand, it is difficult to have evidence of disproportionate pecuniary resources or assets or property. The public servant, during his tenure, may not be known to be in possession of disproportionate assets or pecuniary resources. He may hold either himself or through somebody on his behalf, property or pecuniary resources. To connect the officer with the resources or assets is a tardious journey, as the Government has to do a lot to collect necessary material in this regard. In normal circumstances, an investigation would be undertaken by the police under the Code of Criminal Procedure, 1973 to collect and collate the entire evidence establishing the essential links between the public servant and the property or pecuniary resources. Snap of any link may prove fatal to the whole exercise. Care and dexterity are necessary. Delay thereby necessarily entails. Therefore, delay by itself is not fatal in this type of cases, it is seen that the C. B. I. has investigated and recommended that the evidence was too strong enough for successful prosecution of the appellant under Section 5 (1) (e) of the Act. It had, however, recommended to take disciplinary action. No doubt, much time elapsed in taking necessary decisions at different levels. So, the delay by itself cannot be regarded to have violated Article 14 or 21 of that Constitution.”

10. It is not a matter of dispute that on reference forwarded from the office of Superintendent of Police, Central Bureau of Investigation, the applicant was shifted to a non-sensitive place vide letter dated 08.09.2015 (Annexure P-5), which, in substance, is as under:-

“EAST DELHI MUNICIPAL CORPORATION  
VIGILANCE DEPARTMENT

No.419, IInd Floor, Ydyog Sadan, Indl., Area, Patpar Ganj Delhi-110092

No.16/89/2015/VIG-1/2015/EO-1318      Date:08/09/2015

Subject: Complaint regarding initiation of action proposed by the CBI against Shri Anjum Bhardwaj, UDC, Internal Audit Department, MCD.

On a reference forwarded from the office of Supdt. Of Police, Central Bureau of Investigation, Anti-Corruption-I, B-5, CBI/HQ 8<sup>th</sup> Floor CGO Complex, Lodhi Road, New Delhi-110003 on the subject cited above, an enquiry was conducted by vigilance department. The inquiry report was placed before the Commissioner, EDMC, whereupon Commissioner, EDMC vide order dated 04.09.2015 ordered that Shri Anjum Bhardwaj S/o

Shri S.K. Bhardwaj, Superintendent (who is presently working in CED/EDMC)/HQ may be shifted to a non-sensitive place.

You are therefore requested to comply the above orders of Commissioner, EDMC, under intimation to vigilance department”.

11. The next contention of the learned counsel that as the applicant was transferred in pursuance of the CBI report, therefore, he cannot be dealt departmentally again, has no legal force. The mere fact that applicant was transferred to a non-sensitive place, ipso facto, is not a ground, much less cogent, to exonerate the applicant from the charges framed against him. Giving false written information dated 22.03.2005 to the department and making false statement in the Court of CBI, Special Judge, Dwarka on 30.01.2013 will, *prima facie*, constitute a misconduct, unbecoming of a public servant.

12. The matter did not rest there. As depicted hereinabove, the applicant had previously filed OA No.531/2016 to challenge the same charge-sheet and DE proceedings on the various grounds, which were negated by this Tribunal vide order dated 10.03.2016 (Annexure P-8). Now, he has again filed the instant OA to challenge the very same charge-sheet and DE proceedings at the preliminary stage of enquiry. This matter is no more res integra and is now well settled.

13. An identical issue came to be decided by the Hon'ble Supreme Court in a celebrated judgment in the case of ***Union of India V/s. Upendra Singh (1994) 3 SCC 357*** wherein

having considered the scope of judicial review, at the stage of framing the charge, it was ruled as under:-

“6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be...”

14. Therefore, it is held that the OA challenging the Article of Charge and statement of allegations is not maintainable at this stage. No extraordinary ground to entertain this OA at this premature stage is made out, in view of the law laid down by the Hon'ble Apex Court in the cases of **S.S. Rathore Vs. State of Madhya Pradesh (1989) 4 SCC 582** and **The Govt. of A.P. and Others Vs. P. Chandra Mouli and Another (2009) 13 SCC 272**, we are of the view that the OA cannot be entertained. Hence, the contrary arguments of the applicant that the OA is liable to be allowed at this stage “*stricto-sensu*” deserves to be and are hereby repelled.

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

16. In the light of the aforesaid reason and without commenting further anything on merit, lest it may prejudice the case of either side during the course of disciplinary



proceeding, as there is no merit, the instant OA is hereby dismissed in the obtaining circumstances of the case.

17. Needless to mention that nothing observed herein above, would reflect on the merits of the case in any manner, during the departmental proceedings, as the same has been so recorded for a limited purpose for deciding the present OA at this preliminary stage. No costs.

**(V.N. GAUR)**  
**MEMBER (A)**

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

**Rakesh**