

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

O.A No. 1954/2016

New Delhi this the 1st day of June, 2016

**Hon'ble Mr. Justice M. S. Sullar, Member (J)
Hon'ble Dr. Birendra Kumar Sinha, Member (A)**

Jai Kishan, FSO (U/s)
S/o. Late Sh. Amar Singh
Aged 59 years,
R/o. C-751, DDA LIG Flats
East Loni Road,
Shahdara, Delhi-110 093.

.....Applicant

(By Advocate : Mr. P. C. Mishra)

Versus

1. Chief Secretary,
Govt of NCT Delhi
5th Level, Delhi Secretariat, I.P. Estate,
New Delhi.
2. Commissioner Food Supplies & Consumer Affairs
K-Block, Vikas Bhawan,
I.P. Estate, New Delhi-110 02.
3. Principal Secretary, Vigilance
Govt of NCT Delhi,
Delhi Secretariat,
New Delhi-110 002.
4. Sh. Ajit Srivastava, Inquiring Authority
Govt. of NCT of Delhi
Directorate of Vigilance
6th Level, C-Wing
Delhi Secretariat,
I.P. Estate, New Delhi.

.....Respondents

O R D E R (O R A L)

Justice M. S. Sullar, Member (J)

The challenge in the instant Original Application (O.A), filed by the applicant, Shri Jai Kishan, is to the impugned Article of charge dated 25.02.2016 (Annexure M-I) and Statement of Imputation of misconduct (Annexure -II).

2. The epitome of facts and material, which needs a necessary mention for the limited purpose of deciding the core controversy involved in the instant O.A and emanating from the record is that, applicant, while working as Food and Supply Officer, during the year 2013 to 2015, committed a gross misconduct & shared the amount of illegal gratification and did not maintain the proper record.

3. As a consequence thereof, he was served with, impugned memorandum dated 25.02.2016 (Annexure M-I), statement of imputations of misconduct and the following Article of charges :-

“STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST SH. JAI KISHAN, GR.-I (DASS)/FSO, FOOD & SUPPLIES DEPARTMENT, GOVT. OF NCT OF DELHI

Article-I

That Sh. Jai Kishan, Gr.-I (DASS), while working as Food & Supplies Officer, Circle No. 67 (Babarpur), during the year 2013-2015, committed gross misconduct in as much as he issued forms for verification under National Food Security Act to Sh. Girwar Singh, Bearer (Group-D), Maulana Azad Medical College, illegally/unauthorisedly, in the name of Sh. Raja Ram, Senior Stenographer, GGSIP University, and also accepted the verified forms from him, as the said Sh. Girwar Singh was not authorized as Volunteer for the said task.

By the above acts of omission and commission, the aforesaid Sh. Jai Kishan, Gr.I (DASS), exhibited lack of absolute integrity and devotion to duty, which is unbecoming of a Govt. servant, thereby contravening the provisions of Rule 3 of CCS (Conduct) Rules, 1964.

Article-II

That Sh. Jai Kishan, Gr.I(DASS), while functioning in the aforesaid post and during the aforesaid period, committed gross misconduct in as much as shared the amount of illegal gratification collected by Sh. Girwar Singh, Bearer (Group-D), MAMC from persons for verification of forms.

By the above acts of omission and commission, the aforesaid Sh. Jai Kishan, Gr. I(DASS) exhibited lack of absolute integrity and devotion to duty, which is unbecoming of a Govt. servant, thereby contravening the provisions of Rule 3 of CCS (Conduct) Rules, 1964.

Article-III

That Sh. Jai Kishan, Gr.I (DASS), while functioning in the aforesaid post and during the aforesaid period, committed gross misconduct in as much as neither he himself maintained the register/record regarding distribution and collection of aforesaid verification forms from the volunteers nor allocated that work to his subordinate(s) in the Circle Office.

By the above acts of omission and commission, the aforesaid Sh. Jai Kishan, Gr. I (DASS) exhibited lack of absolute integrity and devotion to duty, which is unbecoming of a Govt. servant, thereby contravening the provisions of Rule 3 of CCS (Conduct) Rules, 1964.

Article-IV

That Sh. Jai Kishan, Gr.I (DASS), while functioning in the aforesaid post and during the aforesaid period, committed gross misconduct in as much as he submitted a proposal for payment of Rs.51,450/- as honorarium to Sh. Raja Ram, Senior Stenographer, GGSIP University, Volunteer (ID No. 2768) to the Asstt. Commissioner (North-East), Food & Supplies department, falsely certifying that the aforesaid Sh. Raja Ram had verified the forms, although Sh. Raja Ram had not verified those forms.

By the above acts of omission and commission, the aforesaid Sh. Jai Kishan, Gr.I (DASS) exhibited lack of absolute integrity and devotion to duty, which is unbecoming of a Govt. servant, thereby contravening the provisions of Rule 3 of CCS (Conduct) Rules, 1964.

Article-V

That Sh. Jai Kishan, Gr.I (DASS), while functioning in the aforesaid post and during the aforesaid period, committed gross misconduct in as much as he engaged Smt. Aradhana, an LDC in his Circle Office, as Volunteer with ID No. 2130, in violation of the guidelines of Food & Supplies department.

By the above acts of omission and commission, the aforesaid Sh. Jai Kishan, Gr.I (DASS) exhibited lack of absolute integrity and devotion to duty, which is unbecoming of a Govt. servant, thereby contravening the provisions of Rule 3 of CCS (Conduct) Rules, 1964.

Article-VI

That Sh. Jai Kishan, Gr.I (DASS), while functioning in the aforesaid post and during the aforesaid period, committed gross misconduct in as much as he submitted a proposal for payment of Rs.37,770/- as honorarium to Smt. Aradhana, LDC in his Circle Office, Volunteer (ID No. 2130), to the Asstt. Commissioner (North-East), Food & Supplies department, although Smt. Aradhana, LDC was not entitled for payment of honorarium for verification of forms as Volunteer.

By the above acts of omission and commission, the aforesaid Sh. Jai Kishan, Gr.I (DASS) exhibited lack of absolute integrity and devotion to duty, which is unbecoming of a Govt. servant, thereby contravening the provisions of Rule 3 of CCS (Conduct) Rules, 1964.”

4. In pursuance thereof, the applicant filed a single line reply dated 08.03.2016 (Annexure M-3), vaguely denying all the charges levelled against him. Consequently, the inquiry officer and presenting officer were appointed vide order dated 16.05.2016 (Annexure M-4) by the competent authority.

5. Instead of participating in, and allowing the smooth completion of the departmental inquiry, the applicant initially filed O.A bearing No. 1918/2016, to challenge his suspension orders. However, the O.A was dismissed vide order dated 31.05.2016 by this Tribunal.

6. Strangely enough the applicant has again filed the present second O.A, challenging the impugned charge sheet, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985 on the following grounds :-

“5.1 It is the settled law that if a person is under suspension for contemplation of a disciplinary proceedings, he should be issued charge sheet within 90 days otherwise the suspension will be invalid. In the instant case the respondent issued the charge sheet on 25.02.2016 beyond 90 days of suspension of the applicant on 25.08.2015. Therefore, the charge sheet is issued under colourable exercise of power and is not sustained in law.

5.2 The respondent have not considered the reply/statement dated 20.10.2015 and hence the charge memo is invalid and a nullity due to violation of principle of natural justice. The initiation of the disciplinary proceeding is not bona fide grounds.

5.3 A prima-facie perusal in Article-2, 4 and 6 indicates misappropriation of funds amounting to Rs.51,450/- by Raj Ram-Sr. Stenographer, Demanding and accepting illegal gratification by Girwar Singh bearer (Group-D) M.A.M. College of Govt. of NCT of Delhi and payment of Rs.37,740/- to Smt. Aradhana (so far not paid). The disbursement of payment are made by the Asstt. Commissioner but he was not charge sheeted. This is a case if corruption is involved it should be investigated and the guilty officials should be prosecuted in the court of Special Judge, Delhi. But the respondent have not disclosed whether any investigation is done by ACB of GNCTD which is under the supervision and control of Hon'ble Lt. Governor of Delhi. The charge sheeted is issued to the applicant by the office of the Chief Minister under advisor (Anti Corruption). This is in violation of procedure establish by law.

5.4 The disciplinary proceeding is initiated by the Chief Secretary under the Hon'ble Chief Minister of Delhi – Advisor Anti Corruption Sh. Gopal Mohan. This is beyond lawful jurisdiction of the Govt. of NCT of Delhi. Hence the charge sheet is beyond authority of law.

5.5 The respondent cited 32 documents and 23 witnesses showing as if a big case is made out against the applicant just to give some work to the retired officer who are appointed as enquiry authorities. In fact this is a case done not deserve for limitation of a disciplinary action. The respondent govt. to show to the public that the APP Govt. has reduced corruption suspending officials and taking disciplinary action. Because of this public stand, the honest and innocent officer like the applicant is suffering financial hardship and humiliation.

5.6 The since the case has elements of corruption if the applicant and others would have been prosecuted they could get proper defence in the court of law since the principle beyond reasonable doubt is applicable, but in the departmental enquiry since principle of preponderance of probability is applied, the enquiry officer will blindly will hold the charges proved against the applicant without any cogent

and admissible evidences. The present disciplinary proceedings is futile exercise in law.

5.7 The witnesses were cited in the proceeding could not stand as witnesses against the applicant since they committed the misconduct if any. The applicant has nothing to do with them. If there will be a criminal prosecution these people could be tried along with applicant and no body will be witnesses unless they are pardon by the Magistrate and taken as approver. And hence in the present proceedings the applicant will be denied natural justice and proper defence in accordance with law.

5.8 The applicant is falsely implicated in the present case and since it is involved allegations/criminal ingredients of corruption the applicant deserves a right to take assistance of legal practitioners in the case, which is denied unless the respondent allowed.

5.9 The present initiation of disciplinary proceedings violates fundamental rights of the applicant to Article 14, 16, 21 and 311 of the Constitution of India and deserves to be set-aside and quashed.”

7. Having heard the learned counsel for the applicant, having gone through the record with his valuable help and considering the entire matter, we are of the considered opinion that there is no merit and the instant O.A deserves to be dismissed at this stage, for the reasons mentioned herein below.

8. Ex facie, the cosmetic arguments of the learned counsel that the charge sheet was not issued to the applicant within 90 days from the date of his suspension, his reply/statement was not considered, charge sheet is invalid, due to violation of principles of natural justice and since no criminal case was registered and investigated against the applicant, so the impugned charge sheet is liable to be quashed, are not only devoid of the merit, but, misplaced as well.

9. The mere fact that the criminal case was not registered against the applicant, *ipso-facto*, is not a ground much less cogent, to quash the charge sheet because the registration of criminal case is not a condition precedent to initiate the departmental inquiry against an employee.

10. Moreover, as to whether the applicant has been falsely implicated and whether there is sufficient evidence to prove the charges against him or not, and all other related intricate questions, pleaded and now urged on behalf of the applicant, cannot possibly be decided, in the absence of any evidence, by this

Tribunal at the preliminary stage of the inquiry. The inquiry officer, disciplinary and appellate authorities will definitely appreciate and evaluate the evidence at the first instance, after the same is produced by the parties and then would pass the appropriate orders. Such charge sheet containing serious allegations of grave misconduct and sharing the amount of illegal gratification etc., cannot legally be set aside at this preliminary stage of inquiry. At this stage, the Tribunal has no power to go into the correctness, truth or otherwise, of the charges. It cannot assume the role of Disciplinary Authority. This matter is no more res integra and is now well settled.

11. 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...”

12. Again, the same view was reiterated by the Hon'ble Apex Court in the cases of **District Forest Officer V/s. R. Rajamanickam and Anr.** (2000) 9 SCC 284 and **Union of India Vs. Swathi S. Patil** Civil Appeal No. 3881/2007.

13. Therefore, keeping in view the seriousness of the allegations of indicated grave misconduct and of bribe, attributed to the applicant, no extraordinary ground to entertain the instant OA, at this premature stage, even without the completion of DE and before exhausting all the departmental remedies, 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. Hence, the contrary argument of the learned counsel that the charge sheet is liable to be set aside at this stage “*stricto-sensu*” deserve to be and is hereby repelled. The ratio of law laid down by the Hon’ble Apex Court, in the indicated judgments is, *mutatis mutandis*, applicable to the facts of the present case and is complete answer to the problem in hand.

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

15. In the light of the aforesaid reasons 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 as such in the obtaining circumstances of the case.

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

(Dr. B. K. Sinha)
Member (A)

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

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