

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

O.A.No.100/3213/2015

Tuesday, this the 16th day of August 2016

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

V.K. Bahuguna
Former Director General, ICFRE
Aged about 61 years
R/o Flat No.A-101, Jagdabe Apartment
C-58/25 Opposite TOT Mall
Near Fortis Hospital, Sector – 62, Noida – 201309
Uttar Pradesh

....Applicant

(Dr. Harsh Pathak and Mr. Siddharth Shukla, Advocates)

Versus

1. Ministry of Environment, Forest & Climate Change
Through Secretary
Indira Paryavaran Bhawan, Aliganj
Jorbagh Road, New Delhi – 110 003
2. Cabinet Secretariat Through
Cabinet Secretariat
Govt. of India
Rashtrapati Bhawan, New Delhi – 110 004

....Respondents

(Mr. Hanu Bhasker, Advocate)

O R D E R (ORAL)

Justice Permod Kohli:

The applicant has approached this Tribunal by invoking its jurisdiction under Section 19 of the Administrative Tribunals Act, 1985 questioning the memorandum of charge dated 04.05.2011 (Annexure A-6 (colly.)) and departmental proceedings initiated thereon. He has also challenged the show cause notice dated 12.11.2013.

2. Briefly stated, the facts, as emerged from the record, are that the applicant was posted as Director General, Indian Council of Forestry

Research and Education (ICFRE), Dehradun. He reached in the Apex Scale of `80,000/- (fixed). It is contended that the applicant was equal to the rank of Secretary to the Government of India for a period of two years w.e.f. 20.05.2011 to 04.06.2013. While serving as Director General, ICFRE, the applicant was served with a memo of charge dated 20.05.2015 for initiating disciplinary proceedings for major penalty under Rule 6 (1) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958. The substance of imputations of misconduct or misbehavior and articles of charge, list of witnesses and documents were served upon him. As many as, IV articles of charge were served upon him. Insofar as charge IV is concerned, it is further divided into sub-charges from (a) to (h). The applicant has filed a detailed reply to the memorandum of charge on 10.06.2015 (Annexure A-11 (colly.)). It is relevant to state that earlier before initiating the disciplinary proceedings, the applicant was served with a show cause notice dated 12.11.2013 (Annexure A-5), delineating therein certain acts attributed to him. His response was sought within fifteen days. The applicant submitted his detailed reply to the show cause notice on 19.01.2014 (Annexure A-7 (colly.)). It is thereafter the present charge memo has been issued.

3. Learned counsel for the applicant has argued that the charge memo itself suffers from various illegalities and irregularities warranting interference by the Tribunal at this stage itself. His first contention is that due process has not been followed and reference is made to Office Memoranda dated 14.01.2010 and 04.05.2011 issued by the Department of Personnel & Training (DoPT). The first memorandum dated 14.01.2010, *inter alia*, provides the procedure for handling complaints against the Secretaries to the Government of India and equivalent level etc. by a

Committee notified therein. The second memorandum dated 04.05.2011 prescribes the category of officers against whom the complaints are required to be examined by the aforementioned Committee. The applicant claims that he falls within the purview of memorandum dated 04.05.2011 and thus the procedure prescribed under the memorandum dated 14.01.2010 was required to be gone into before the disciplinary proceedings were to be initiated against the applicant. For failure to adopt such a recourse, the applicant is seeking interference by this Tribunal.

4. The second submission is delay and laches in initiating the disciplinary proceedings against the applicant. The incidents alleged against the applicant relate to the period 2011-2013. The charge memo has been issued on 20.05.2015, i.e., after about two years. The applicant relies upon the Office Memorandum dated 23.05.2000, which *inter alia* prescribes the time limit for initiating steps for various stages of disciplinary proceedings etc. It is contended that the charge memo having been issued beyond the time stipulated in the said memorandum, the memo of charge is barred by time.

5. The third submission is that the charge sheet suffers from perversity. According to the learned counsel for applicant, a show cause notice was issued to him, as referred to hereinabove, and a detailed reply having been filed, it was obligatory upon the respondents to have considered the reply and thereafter initiate the proceedings by a speaking order recording reasons.

6. We have examined the charge memo. One of the contentions raised on behalf of the applicant is that some of the articles of charge framed

against him were earlier considered by the competent authority and the complaints closed, whereas the disciplinary authority has not taken into consideration this aspect as well.

7. Mr. Hanu Bhasker, learned counsel for the respondents, on the other hand, has argued that the inquiry and presenting officers have already been appointed and even the applicant has appeared before the inquiry officer. This fact is acknowledged by learned counsel appearing for the applicant. His further contention is that the applicant is not entitled to the benefit of procedural recourse envisaged under the memorandum dated 04.05.2011, as he does not fall within the category of Secretary to the Government of India or equivalent.

8. Be that as it may, this Tribunal while exercising the power of judicial review neither can assume the functions of the disciplinary authority nor sit as a court of appeal in respect to disciplinary proceedings, particularly for judicial intervention at the stage of charge alone. Admittedly, the inquiry and the presenting officers have been appointed. We are informed that the inquiry is at the initial stage. The Hon'ble Supreme Court in **B C Chaturvedi v. Union of India & others**, (1995) 6 SCC 749 has defined the role of the Tribunal and the Court for judicial intervention in exercise of judicial power or judicial review. It has been observed as under:-

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority

entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re- appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”

9. Admittedly, the power of judicial review can be exercised where the charge memo has been issued by the incompetent authority, violation of principles of natural justice, contravention of statutory rules and apparent bias/malafides. We do not think that this is the stage where the power of judicial review needs to be exercised and judicial intervention should be made on account of some of the submissions made by the learned counsel for applicant. However, we also do not want to shut all the questions raised by the applicant at this stage. The inquiry having been initiated, the applicant is entitled to raise all these questions/issues before the inquiring/disciplinary authorities.

10. We thus direct the inquiring/disciplinary authorities to examine all such issues, as may be raised by the applicant before them, and on consideration decide the same by reasoned order. Since the inquiry has already commenced, it is deemed appropriate that the inquiry and all disciplinary proceedings should be concluded at the earliest.

11. This O.A. is accordingly disposed of with the following directions:-

- (i) The applicant is entitled to raise all issues pleaded in the present O.A. and such other issues, as are permissible under the law, before the inquiring/disciplinary authorities.
- (ii) The inquiring authority would examine and decide such issues by passing a reasoned and speaking order.
- (iii) The inquiring authority would conclude the inquiry proceedings within a period of four months from the date of receipt of a copy of this Order.
- (iv) On receipt of the report of the inquiring authority, the disciplinary authority shall pass the final order within a period of four months thereafter.
- (v) The applicant is also directed to cooperate during the course of inquiry. In the event the applicant fails to cooperate, the inquiring authority is at liberty to proceed in the matter in accordance with law.

Needless to say the applicant shall have the liberty to seek remedial measures in the event he is aggrieved of the order as may be passed by the inquiring/disciplinary authorities. No costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

August 16, 2016
/sunil/