

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA-2876/2015
MA-2546/2015

Order Reserved on 06.08.2015
Order Pronounced on: 06.10.2015

Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

G. Suresh
S/o K.K. Gopinath
R/o C-3A/39-A,
Janakpuri, New Delhi.

-Applicant

(By Advocate: Shri Aman Preet Singh Rahi)

Versus

National Highways Authority of India
Through the Chairman
G 5 & 6, Sector 10, Dwarka,
New Delhi-110075.

-Respondent

ORDER

Per Sudhir Kumar, Member (A):

This case was filed by the applicants on 30.07.2015, listed before the Bench on 06.08.2015, and heard and reserved for orders at the admission stage itself.

2. MA-2546/2015 has been filed by the applicant under section 151 CPC seeking exemption from filing typed copies of the original documents and dim Annexures. This MA is allowed.

3. The applicant of this OA has impugned the Memorandum of Charges dated 20.06.2015 (Annexure A-1), and the order of his suspension dated 23.06.2015 (Annexure A-2). Even though there is a single respondent in this OA, Para 1.1 of the OA somehow mentions that

the impugned orders were passed “by Respondent No.2”, while there is no Respondent No.2 in the present OA.

4. In Para 1.2 of the OA the applicant has himself stated that the Hon’ble Apex Court has in the case of **Union of India vs. Kunishetty Satyanarayana, (2006) 12 SCC 28**, categorically held that ordinarily the Court should not interfere and quash a charge-sheet or show-cause notice, unless in some very rare and exceptional cases, when it is found to be (i) wholly without jurisdiction or (ii) for some other reason if it is wholly illegal. However, he submits that the present case falls within one of the exceptions, whereby interference by this Tribunal is necessitated.

5. He has submitted that the charges levelled against him in the impugned Memorandum and Articles of Charge relate to incidents which had occurred way back in 2009, and he has already been exonerated by the then Chairman, NHAI and Disciplinary Authority, and, therefore, the initiation of the present disciplinary proceeding is against the principles of natural justice, and prejudice has been caused to him, which is “*writ large*”. The applicant has challenged that the observations and conclusions now arrived at by the successor Chairman, NHAI, and Disciplinary Authority for holding the applicant guilty in order to impose major punishment, and the present proceedings being conducted *de novo*, on the strength of the recommendations against the applicant by the Central Vigilance Commission (CVC, in short) are not in consonance with the decision rendered by the Hon’ble Apex Court, particularly when the predecessor Disciplinary Authority has already once judged the issue earlier.

6. The applicant has submitted that when the matter has again been referred by the CVC to the respondent to proceed ahead with a disciplinary enquiry, and to try it *de novo*, it attempts to traverse the entire grounds once again, in order to enable the Disciplinary Authority to come to a fresh decision, which is contrary to the well-recognized principle that a decision once rendered by the Competent Authority on the matter and issue, after a full enquiry, should not be permitted to be re-agitated and re-opened.

7. It was submitted that the respondent Disciplinary Authority does not have any power to *suo motu* review its own earlier order. The applicant had cited the Hon'ble Apex Court judgment in the case of **Vijay Shankar Pandey vs. Union of India (2014) 10 SCC 589**, to state that a second disciplinary inquiry was not permissible.

8. The applicant has further cited the Hon'ble Apex Court judgment in **Lt. Governor, Delhi v. H.C. Narinder Singh (2004) 13 SCC 342**, in which case also it was held that a second show-cause notice would amount to double punishment, based on the same cause of action.

9. The applicant denied any negligence or misdemeanour on his part, and submitted that only a vague charge has been alleged in the Charge-Sheet in respect of the subject matter. He has alleged that long after his having undergone the punishment of "counselling" awarded by the Disciplinary Authority way back in 2009, and his having already undergone the punishment, the matter is being reopened once again.

10. The applicant has, therefore, submitted to re-open and re-start the disciplinary proceedings again is clearly impermissible and amounts to harassment, and alleged that the impugned Charge Sheet has been issued to him due to vested interests in concealing and distorting material facts, and therefore, it ought to be quashed, as the same has been issued without any application of mind.

11. Heard the learned counsel for the applicant. During the course of his arguments on the point of admission, the learned counsel for the applicant had pointed out that before the impugned Annexures A-1 & A-2 had been issued to the applicant, the role of the applicant in respect of the alleged irregularities, as mentioned in the Articles of charges etc., had been looked into by the Chief Vigilance Commission, Chief Technical Examiner's Organization, and a Report on the Intensive Examination of Work had been submitted by one Shri Shailendra Singh, Technical Examiner of CVC office, through Annexure A-3. Annexure A-4 (colly) contained a Bill of Quantities, and parts of some other documents, contract and other summary of Bill of quantities in relation to other bidders.

12. He has submitted that on those documents, even the legal opinion of the Solicitor General had been sought and obtained through Annexure A-5 dated 23.01.2008, in which, in his opinion dated 18.01.2008, the then Solicitor General of India, Shri Goolam E. Vahanvati, had given an opinion that differences in computation of figures have to be resolved on a proper and practical basis, and not on a hypothetical basis, and the

only way to proceed is on arithmetical calculations, which only yields the correct result.

13. He has submitted that thereafter the matter had been placed before the Variation Committee Meeting (Annexures A-6 & A-7), and the respondent of the OA had filed a Miscellaneous Petition O.M.P. No. 234/2012 against the Contractor M/s. Oriental Structural Engineers through Annexure A-8. He has pointed out that, thereafter, through their Office Memorandum dated 21.12.2010, the office of CVC had given its opinion which included an opinion to the following effect:-

“There was gross negligence on part of all the connected officials of NHAI. As stated by CVO, NHAI there has been gross negligence at all levels; however, even though no malafide intention is discernible, as the amount involved was huge, the gross negligence can't be pardoned by mere issue of warning to Shri RP Indoria, then General Manager for his larger share of the blame and counselling to other members i.e. Sh. IK Pandey, Sh. G. Suresh and Sh. R.K. Singh for this mistake. The penalty proposed by the department is grossly inadequate”.

14. The applicant has submitted that, thereafter, an Award of Arbitration had been passed by the three Member Arbitral Tribunal through Annexures A-10 & A-11/colly dated 07.11.2011. It was pointed out that, thereafter, the Respondent NHAI had written to the Joint Secretary (Estt.) & Chief Vigilance Officer of the Ministry of Road Transport and Highways, through Annexure A-11 dated 03.04.2012, and Annexure A-12 dated 16.12.2014, in which the opinion of the then Chairman, NHAI, had been stated as follows:-

“2. The Government as per the orders received have now decided to initiate major penalty proceedings against Shri IK Pandey, Shri RK Singh and Shri G. Suresh. The Government has also placed Shri IK Pandey and Shri RK Singh under suspension and has sent a draft suspension order in respect of Shri G. Suresh to be signed by me and served on Shri G. Suresh. Since Shri G.

Suresh is an employee of the NHAI and as per the regulations of the NHAI, Chairman is the appointing and disciplinary authority for Shri G. Suresh, the issue of suspension order in respect of Sh. G. Suresh requires an examination and application of mind by me. I have gone through the record carefully. The matter pertains to a discrepancy which was overlooked by the Evaluation Committee in the rates quoted by the bidder in as much as in the rates for a particular item quoted was different in figures and words. As per the CTE, the lower figure which was quoted in the words should have been taken into account for making the payments. There is a contrary view that since the overall bid amount matched by taking into account the amount mentioned in the figures, the payment made at the behest of the field officers was correct.

3. Incidentally the extra payments made based on the quotation in figures was actually recovered in the year 2007 and was again released after obtaining the bank guarantee with the approval of the Variation Committee.

4. The Solicitor General: who opined in the matter has not agreed with the views of the CTE. The Arbitration award in the matter has gone in favour of the contraction. The same has been challenged and the matter is still pending in the High Court. It is clear from the above that the last word has not yet been said on the merits of the issue.

5. Keeping in view the above and the fact that the CVC has not specifically suggested initiation of major penalty proceedings and has only opined that the punishment proposed viz warning and counselling is grossly inadequate. I do not think it is a fit case to initiate major penalty proceedings, much less place an officer under suspension. The latches on the part of the NHAI & Government whereby the matter has been kept pending for so long need also to be taken into account while initiating disciplinary action against the others at the stage especially when the then GM who had headed the Committee has retired after being promoted as ADG and Incharge DG. In my view at the most, a case is made out for initiating minor penalty proceedings. The Government may, therefore be advised accordingly.

6. In case the Government, being disciplinary authority in case of Shri IK Pandey and Shri RK Singh still decides to go ahead with major penalty proceedings in respect of above two officers. It may be examined whether the combined proceedings against the three officers can be initiated or NHAI will have to initiate separate proceedings against Shri G. Suresh”.

15. The applicant has, therefore, relied upon the order of a Coordinate Bench of this Tribunal in OA No.4602/2014 dated 03.03.2015 (Annexure A-13), through which the OA of one of the co-delinquents of the applicant had been dismissed as withdrawn, as the respondents had since issued a Charge Memo for initiating the departmental proceedings against that

applicant, and he had sought liberty to challenge the same in separate proceedings, which prayer had been allowed.

16. In a nutshell, the case put forward by the learned counsel for the applicant was that the above reproduced Note dated 16.12.2014 of the then Chairman, NHAI, had totally exonerated the applicant, and, therefore, the present impugned Memorandum and Articles of Charges, for initiating fresh disciplinary enquiry proceedings against him, and Annexure A-2 order of his suspension, could not be sustained.

17. We have considered the contents of the O.A., and the arguments of the learned counsel for the applicant, but find them to be bereft of any merit whatsoever. The Note recorded by the then Chairman, NHAI on 16.12.2014, as reproduced above, and administrative notings thereafter, as produced by the applicant, were not as the result of a culmination of a disciplinary enquiry proceedings. The law as laid down in **Vijay Shankar Pandey** (supra), citing the earlier judgment of the Supreme Court in **K.R. Deb vs. The Collector of Central Excise, Shillong 1971 (2) SCC 102**, is held that a second disciplinary enquiry is not permissible. But the applicant before us has never been subjected to a disciplinary enquiry earlier. The Note dated 16.12.2014, as reproduced above, cannot be said to be the opinion of the Disciplinary Authority on the basis of the consideration of an enquiry report submitted by an Enquiry Officer, duly appointed under the relevant Regulations, as no Enquiry Officer had ever been appointed earlier in the applicant's case, and no disciplinary enquiry had ever been conducted earlier against the applicant.

18. We also find that the applicant cannot be allowed to derive any benefit from the observations of the Apex Court in **Union of India vs.**

Kunishetty Satyanarayana (supra), as neither the Charge Sheet presently issued is without jurisdiction, nor it can be termed to be illegal in any manner whatsoever. Therefore, in terms of the observations of the Hon'ble Apex Court in the very same case, the present case does not come under the category of a "very rare and exceptional case", where this Tribunal can proceed to quash the Charge Sheet.

19. In fact the applicant has rushed to this Tribunal without even filing his reply to the Charge Sheet, under the provisions of NHAI (Conduct & Discipline) Regulations, 1997.

20. In support of our refusal to interfere with the disciplinary proceedings now initiated, we may cite the law as laid down by the Supreme Court in **Union of India vs. Ashok Kacker 1995 (Supp1) SCC 180**, in which it was held as follows:-

"4. Admittedly, the respondent has not yet submitted his reply to the charge-sheet and the respondent rushed to the central Administrative tribunal merely on the information that a charge-sheet to this effect was to be issued to him. The Tribunal entertained the respondent's application at that premature stage and quashed the charge-sheet issued during the pendency of the matter before the Tribunal on a ground which even the learned counsel for the respondent made no attempt to support. The respondent has the full opportunity to reply to the charge-sheet and to raise all the points available to him including those which are now urged on his behalf by learned counsel for the respondent. In our opinion, this was not the stage at which the tribunal ought to have entertained such an application for quashing the charge-sheet and the appropriate course for the respondent to adopt is to file his reply to the charge-sheet and invite the decision of the disciplinary authority thereon. This being the stage at which the respondent had rushed to the tribunal, we do not consider it necessary to require the tribunal at this stage to examine any other point which may be available to the respondent or which may have been raised by him".

21. In view of the above law as laid down by the Supreme Court, the applicant cannot be allowed to escape his liability to reply to the Charge Memorandum as presently issued to him. The same is the ratio in the case of **Secretary to Government, Prohibition and Excise Department vs. L. Srinivasan JT 1996 (3) SC 202**, and in the case of **Union of India vs. Upendra Singh JT 1994 (1) SC 658**, in both of which cases also the Supreme Court has held that the Courts (and Tribunals) should not interfere in the matter of disciplinary proceedings at the initial stage.

22. Therefore, the OA is dismissed *in limine*, at the stage of admission itself.

(Dr. Brahm Avtar Agrawal)
Member (J)

(Sudhir Kumar)
Member (A)

cc.