

Central Administrative Tribunal
Principal Bench
New Delhi

M.A.No.3330/2015

in

O.A.No.3682/2015

Order Reserved on: 15.10.2015

Order pronounced on 20.10.2015

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri P. K. Basu, Member (A)

Smt. Archana Ramasundaram ... Applicant

(By Advocate: Shri Sudhir Nandrajog, Sr. Advocate with Ms. Rimali Batra & Shri Ashwin Kumar)

Versus

State of Tamil Nadu & Another ... Respondents

(By Advocate: Sh. Sandeep Khurana with Ms. Seemab Ali Fatima for R-1 and Shri D.P.Bhardwaj with Shri Ranjan Tyagi for R-2)

ORDER

By V. Ajay Kumar, Member (J):

The applicant, a 1980 batch Indian Police Service officer of Tamil Nadu Cadre, filed the OA No.3682/2015, seeking to quash and set aside the Charge Memorandum issued vide letter No.HSC.5/350-4/2014 dated 18.06.2014 (Annexure A16) of the 1st Respondent, i.e.,

State of Tamil Nadu, and all other consequential proceedings held in pursuant thereto.

2. M.A.No.3330/2015 is filed in OA No.3682/2015, seeking interim stay of the disciplinary proceedings initiated vide the impugned Charge Memorandum dated 18.06.2014 and the consequential proceedings thereto.

3. Heard Shri Sudhir Nandrajog, Sr. Advocate with Ms. Rimali Batra & Shri Ashwin Kumar, the learned counsel for the applicant and Sh. Sandeep Khurana with Ms. Seemab Ali Fatima, learned counsel for Respondent No.1 and Shri D.P.Bhardwaj with Shri Ranjan Tyagi, learned counsel for Respondent No.2, on MA, and have perused the pleadings on record.

4. Brief facts, which are necessary for the present purpose of deciding the MA, are as follows:

a) The 1st Respondent-State Government, while the applicant was working as Director General of Police/Chairperson, Tamil Nadu Uniform Services Recruitment Board, forwarded her willingness application along with two others, for placing her name in the offer list for appointment on deputation to Government of India and placed her name 'on offer' for central deputation during October, 2013. The Appointments Committee of the Cabinet (ACC) has approved the selection of the applicant from the panel to

the post of Additional Director, Central Bureau of Investigation (CBI), vide Annexure A4 dated 07.02.2014.

b) In spite of repeated requests from Respondent No.2 - Union of India, the applicant was not relieved by Respondent No.1 - State of Tamil Nadu, to enable her to join as Additional Director, CBI at New Delhi. The 2nd Respondent vide Annexure A9 letter dated 07.05.2014, addressed to the applicant, and copy to the 1st Respondent, while stating that the post of Additional Director, CBI is a high level supervisory rank post and that in view of the fact that the Hon'ble Supreme Court has been monitoring several high profile cases being investigated by CBI, keeping the post vacant for a long time has not been viewed favourably by the Director, CBI and accordingly the same has been taken up with Secretary, DoPT, several times requesting the applicant for early joining in CBI, the applicant was requested to assume charge as Additional Director, CBI, immediately. In pursuance of the said direction, the applicant vide Annexure A10 letter, informed the 1st Respondent that she is getting relieved and proceeding to New Delhi to assume charge as Director, CBI. Vide Annexure A11 charge assumption report dated 08.05.2014, the applicant assumed charge of the post of Additional Director, Central Bureau of Investigation at New Delhi, w.e.f. 08.05.2014.

c) The 1st Respondent-State of Tamil Nadu vide Annexure A12, OMS No.324 dated 8.05.2014 placed the applicant under suspension, under Rule 3(1)(a) of the All India Services (Discipline & Appeal) Rules, 1969, pending contemplation of disciplinary proceedings. The applicant preferred statutory appeal against the said suspension order. While the same is pending, the 1st Respondent has also issued the impugned Charge Memorandum vide Annexure A16 dated 18.06.2014, levelling the following charges:

Charge-1

"That you Tmt. Archana Ramasundaram, IPS while serving in the affairs of the Government of Tamil Nadu, deserted the post of Chairperson, Tamil Nadu Uniformed Services Recruitment Board, Chennai on 07.05.2014 and left headquarters to proceed to assume charge as Additional Director, Central Bureau of Investigation, New Delhi without getting relieving orders of the Government of Tamil Nadu, and without properly handing over the charge of the post of Chairperson, Tamil Nadu Uniformed Services Recruitment Board. Thus, you have conducted yourself in a manner unbecoming of a member of the Service and failed to maintain absolute integrity and devotion to duty, violating sub-rule(1) of rule 3 of the All India Services (Conduct) Rules, 1968".

Charge-2

"That you Tmt. Archana Ramasundaram, IPS while serving in the affairs of the Government of Tamil Nadu, deserted the post of Chairperson, Tamil Nadu Uniformed Services Recruitment Board, Chennai, have signed the relieving form on your own accord without having received any relieving order from the State Government and without intimation to the competent authority, left headquarters without due permission. Thus, you have conducted yourself in a manner unbecoming of a member of the Service and failed to maintain absolute integrity and devotion to duty, violating sub-rule (1) of rule 3 of the All India Services (Conduct) Rules, 1968."

d) It is also relevant to state that one Shri Vineet Narain filed W.P. No.309/2014 before the Hon'ble Supreme Court, challenging the appointment of the applicant to the post of Additional Director of CBI. The Hon'ble Supreme Court on 16.10.2014 in the said Writ Petition directed that if for any reason, the applicant makes any representation before the Central Government for the disposal of the statutory appeal pending before it against the order of suspension passed by the State of Tamil Nadu, the Central Government shall consider the said representation in accordance with law, as early as possible. Accordingly, in pursuance of the representation of the applicant, the 2nd Respondent – UOI considered the statutory appeal of the applicant and vide Annexure A8 order dated 30.04.2015, while holding that the State Government had no jurisdiction to place the applicant under suspension by an order dated 08.05.2014 as the applicant had joined in CBI in the forenoon of 08.05.2014 itself, allowed the appeal.

e) Aggrieved by the said Annexure A28, appellate order dated 30.04.2015 of the 2nd Respondent-UOI, the 1st Respondent- State of Tamil Nadu, filed WP(C) No.5145/2015 before the Hon'ble High Court of Delhi. The said Writ Petition finally was dismissed, on merits, on 28.09.2015, whereunder it was held that:

"12. The respondent No. 2, as on May 8, 2014 (afternoon) was not serving under the petitioner, the petitioner had no locus/jurisdiction to place the

respondent No. 2 under suspension. If there was a difference of opinion, it would be the view of the Central Government which would prevail. The Central Government having taken a view in terms of the impugned order dated April 30, 2015, the said order is proper in accordance with the Rules and need to be upheld."

- f) When the inquiry officer, who was appointed to enquire into the charges made against the applicant, in pursuance of the Charge Memorandum dated 18.06.2014, directed the applicant to participate in the inquiry proceedings, the applicant quoting the pendency of her appeal before the 2nd respondent and the aforesaid circumstances, expressed her inability to attend the inquiry proceedings. The applicant was appointed as Director General, National Crime Records Bureau on 16.06.2015.
- g) The 1st Respondent vide Annexure A32 letter dated 13.07.2015 communicated the inquiry report to the applicant and called for her representation, if any, on the findings of the inquiry authority.

5. Shri Sudhir Nandrajog, the learned senior advocate, appearing for the applicant, mainly contended that the 1st Respondent has no power, authority or jurisdiction to issue the impugned Charge Memorandum dated 18.06.2014,. The learned counsel further submits that the 2nd Respondent, which is the cadre controlling authority, after consulting with the DoP&T and after obtaining advice of the learned Attorney General of India, allowed the statutory appeal of the applicant made against the suspension order issued by the 1st Respondent, by holding that it has no jurisdiction over the applicant

after the forenoon of 08.05.2014 as the applicant had joined in CBI in the forenoon of 08.05.2014, and that the Hon'ble High Court of Delhi by its order dated 28.09.2015 in WP(C) No.5145/2015 has categorically upheld the said order of Respondent No.1 and hence, the impugned Charge Memorandum and all the consequential proceedings thereto are liable to be stayed.

6. Shri D.P.Bhardwaj, the learned counsel appearing for Respondent No.2-Union of India, while supporting the contentions of the learned counsel for the applicant, submitted that Respondent No.2 is the cadre controlling authority and since the applicant had joined as Additional Director, CBI, on the forenoon of 08.05.2014, the 1st Respondent has no disciplinary power, including issuance of the impugned Charge Memorandum, w.e.f. the forenoon of 08.05.2014.

7. However, Shri Sandeep Khurana, the learned counsel appearing for the 1st Respondent-State of Tamil Nadu, opposed granting of any interim order by mainly submitting as under:

a) The power to place an All India Service officer under suspension under Rule 3 and power to institute proceedings and to impose penalty under Rule 7 of the All India Services (Discipline & Appeal) Rules, 1969 are different and distinct. The 2nd Respondent-UOI while allowing the statutory appeal of the applicant on 30.04.2015, and the Hon'ble High Court of Delhi while upholding the said order on 28.09.2015 examined the power of the 1st Respondent under Rule

3(1)(b) only, i.e., the power of suspension, but not examined the power of the 1st Respondent under Rule 7, and hence, the same cannot be relied in this OA. The learned counsel further submits that the 1st Respondent is contemplating to file an appeal against the order dated 28.09.2015 in WP(C) No.5145/2015 of the learned single judge and hence, no interim order can be passed in this OA.

b) The learned counsel for Respondent No.1 also submits that the impugned Charge Memorandum dated 18.06.2014 was issued at Chennai and that all the consequential proceedings were also issued at Chennai and hence, no part of cause of action of this OA arose within the territorial jurisdiction of this bench of this Tribunal, and hence, the OA is liable to be dismissed for want of jurisdiction.

8. Rule 6(1) of the CAT (Procedure) Rules, 1987 read with Section 14 of the A.T.Act, 1985 provides for filing of an application within whose jurisdiction the applicant is posted for the time being.

9. It is not in dispute that the cadre controlling authority of the applicant is the 2nd Respondent-Union of India, and that she assumed the charge as Additional Director, CBI on 18.05.2014(forenoon) in pursuance of the orders of the 2nd Respondent-UOI and that the applicant has been working at New Delhi from that date, and also as on the date of filing of this OA and hence, this Tribunal has jurisdiction to entertain the present OA.

10. It is to be seen that placing an officer under suspension and issuing chargesheet are part of disciplinary power. The 2nd Respondent-UOI, while allowing the appeal of the applicant against the suspension order issued by the 1st Respondent under Rule 3(1)(a), and also in the present OA filed questioning the Charge Memorandum issued by the 1st Respondent under Rule 7(1) of the said Rules, states that after the forenoon of 08.05.2014, the State Government has no jurisdiction over the applicant. Rule 31 of the said Rules, provides that where a doubt arises as to the interpretation of any of the provisions of the All India Services (Discipline & Appeal) Rules, 1969, the matter shall be referred to the Central Government for its opinion. As observed above, the Central Government has categorically stated that the 1st Respondent has no jurisdiction over the applicant, after 08.05.2014 (forenoon). The Hon'ble High Court of Delhi also did not uphold the order of suspension, passed under the same set of facts.

11. In the circumstances and in view of the fact that pleadings are complete, list the OA for final hearing on 17.11.2015. In the meanwhile, the respondents shall not pass any final order in pursuance of the impugned order dated 18.06.2014. The MA is accordingly disposed of.

(P. K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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