

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

OA-4337/2017

Reserved on : 12.01.2018.

Pronounced on : 05.02.2018.

**Hon'ble Ms. Jasmine Ahmed, Member (J)
Hon'ble Ms. Praveen Mahajan, Member (A)**

Chaman Azhar Vs. Ministry of Home Affairs

Present : Sh. M.K. Bhardwaj, counsel for the applicant.
Sh. Gyanendra Singh, counsel for the respondents.

ORDER ON INTERIM RELIEF

Ms. Praveen Mahajan, Member (J)

Briefly stated, the facts of the case are that the applicant was arrested on 02.04.2011 by Police in connection with four criminal cases (FIR No.160 dated 31.03.2011, FIRs No.166, 167 & 168 dated 02.04.2011) u/s 419, 420, 468, 571, 120B & 12 PP Act for his involvement in illegal clearance of passengers while working as Clearing Officer at IGI Airport, Bureau of Immigration, Delhi. He was placed under suspension w.e.f. 02.04.2011, which was revoked on 22.11.2012, and he was released on bail on 31.05.2011. Later, Police sought sanction for prosecution of the applicant under Section 197 Cr. PC in all the four cases, which was granted with the approval of Director, IB vide letter dated 17.04.2013. In the meantime, the applicant was issued two more charge-sheets for major penalty

under Rule 14 of the CCS (CCA) Rules, 1965 vide charge-memo dated 28.09.2011 and 27.04.2016. The inquiry is reported to be at the final stage.

2. The issue being adjudicated today is regarding the interim prayer made by the applicant seeking the following relief:-

"Pending final adjudication of the O.A., it is most humbly prayed that this Hon'ble Tribunal may be pleased to stay the impugned disciplinary proceedings initiated vide charge memo dated 28.09.2011 and Memo dated 27.04.2016. In case, the applicant is not granted aforesaid interim relief, he would suffer irreparable loss as the Inquiry Officer may prepare different Inquiry Report for passing adverse order against the applicant."

3. We have heard the learned counsels for the parties on interim relief. During the course of arguments, learned counsel for the applicant produced before us a copy of order dated 30.05.2011 passed by the Court of Additional Sessions Judge-02, Dwarka Courts, New Delhi in the FIR No. 160/2011 filed against him, which reads as under:-

"In this case, strangely the applicant was the complainant. How he was transferred from being complainant to the accused in this case is not justified by the prosecution except that there was a supplementary disclosure statement made by the pax and disclosure of another co-accused, namely, Manoj Sarpan, subsequent to the disclosure to the disclosure of the pax.

The pax, admittedly, nowhere came in contact with the present applicant in this case. Merely because the applicant was on duty on that date is alleged to be the main ground for suspicion, which was entertained by the investigating agency and since in three more cases, which were registered subsequently, this applicant was arrayed as an accused, he was arrested in this case also.

In the instant case, there are no clear cut justifications offered by the investigating officer or by APP for State which might have warranted the arrest of the complainant as accused in this case.

It is pointed out that section 467 IPC had been added. The IO could not stick to his plea and undertaking given on the last date of completing investigation and filing of the challan. He now says that he would exhaust full ninety days in completing the investigation.

In this particular case, no fresh material has been collected or found by the investigating agency and no justification is being shown as to why the applicant should be incarcerated further during the course of investigation, at this juncture. The applicant is no longer required by the police for the investigation.

Under these circumstances, when the applicant is in J.C. since 02.04.2011 i.e. for more than 57 days, the applicant be enlarged on bail on furnishing a personal bond in the sum of Rs.25,000/- (rupees twenty five thousand only) with one surety in the like amount to the satisfaction of concerned court/Link M.M/Duty M.M.

The applicant, however, shall join the investigation as and when required, as per law.

Further, the applicant will not leave the local limits of the trial court save with the prior permission of the trial court.

It is further made clear that in case some new explosive incriminating material comes to the notice of the investigating agency, as against the applicant, during further investigation, the investigation agency shall be entitled to move for cancellation of bail, as per law."

4. He also placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Vijay Shankar Pandey Vs. UOI & Anr.** (Civil Appeal No. 9043/2014) dated 22.09.2014 and **Dr. M.L. Bhuyan Vs. UOI & Ors.** [WP(C)-6930/2011] decided by Hon'ble High Court of Delhi on 21.09.2011.

5. Resisting the prayer, learned counsel for the respondents argued that there are serious allegations against the applicant, who stands charge sheeted under Rule-14 of the CCS (CCA) Rules, 1965. Drawing our attention to the Memo of Charges, the learned counsel submitted that there is sufficient evidence to prove that the applicant provided his immigration stamp to two passengers for

travelling abroad on fake travel documents. He submitted that the order passed by Additional Sessions Judge dated 30.05.2011 on which the applicant places reliance to strengthen his case is nothing more than a routine order directing granting bail to the applicant on furnishing of a personal bond etc. He averred that the enquiry is at final stage of completion and may not be stayed in the interest of justice.

6. After hearing both sides and perusing the records, we feel that the applicant has not been able to make out a convincing case as to why the disciplinary proceedings should be stayed. His only plea is that he would suffer irreparable loss in case the enquiry goes against him. It is not the case of the applicant that the Enquiry Officer or the enquiry proceedings being conducted are biased qua the applicant. The two judgments on which reliance has been placed, are distinguishable from the facts of the present case and do not come to the rescue of the applicant. Also, full facts of the case have to be enquired into by an independent Enquiry Officer, to enable the Competent Authority to adjudicate the matter, as per law.

7. In view of the above discussions, we are not inclined to interfere in the impugned orders at this stage. Accordingly, the prayer of interim relief for staying the enquiry proceedings initiated against the applicant, is rejected.

8. List the O.A. for hearing on 26.02.2018.

(Praveen Mahajan)
Member (A)

(Jasmine Ahmed)
Member (J)

/Vinita/