

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.4527/2014

Order Reserved on: 22.07.2016
Order pronounced on 31.08.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Dr. Birendra Kumar Sinha, Member (A)

VD Pushkarana, Aged about 58 years
S/o Sh. B.L.Pushkarana
Working as DSI in Central Jail Tihar
R/o B-4, Officers Flat, Single Storey
Tihar Jail Complex
New Delhi – 110 064. Applicant

(By Advocate: Mr. Bhavook Chauhan with Ms. Aasifa Sheikh for
Shri S.C.Luthra)

Versus

1. GNCT of Delhi through
Chief Secretary, Delhi Sachivalya
New Delhi – 110002.
2. Director General (Prisoners)
PHQ Near Lajwanti Garden Chowk
New Delhi – 110064. Respondents

(By Advocate: Ms. P.K.Gupta)

ORDER**By V. Ajay Kumar, Member (J):**

Questioning the Annexure A1-Charge Memorandum, dated 18.07.2012 issued against the applicant, a Deputy Superintendent, Central Jail, Tihar, Delhi under Rule 14 of the CCS (CCA) Rules, 1965, the OA has been filed.

2. The 1st Respondent, i.e., Chief Secretary, Govt. of NCTD, issued the impugned Annexure A1 - Charge Memorandum dated 18.07.2012, under Rule 14 of the CCS (CCA) Rules, 1965, to the applicant containing the following charge:

"That the said Shri V.D.Pushkarana, while functioning as Dy. Superintendent (Deodi) on 17.02.2004 in Central Jail No.1, committed gross misconduct in as much as he failed to ensure the proper transferring out of the under trial prisoner Sher Singh Rana. Shri V.D.Pushkarana further failed to exercise control over his subordinate staff which resulted in the escape of one under trial prisoner Sher Singh Rana @ Sher @ Pankaj, prime accused in the murder of Smt. Phoolan Devi, MP, from Central Jail No.1 on 17.02.2004.

Thus, Shri V.D.Pushkarna, Dy. Superintendent, Central Jail, by above acts of omission and commission failed to maintain devotion to duty and exhibited the conduct unbecoming of a Government servant contravening thereby the provisions of Rule 3 of the CCS (Conduct) Rules, 1964."

3. The applicant submitted a detailed written statement of defence on 25.02.2013 but the 1st Respondent without considering the same appointed the inquiry officer on 18.03.2014, i.e., one year after the applicant's reply to the charge memorandum.

4. This Tribunal after hearing both sides, by its order dated 27.03.2015 stayed the impugned charge sheet, and the said order is in

operation till date. It is submitted that the applicant retired from service, on attaining the age of superannuation, on 30.06.2016.

5. Heard Shri Mr. Bhavook Chauhaan with Ms. Aasifa Sheikh for Shri S.C.Luthra, the learned counsel for the applicant and Ms. P.K.Gupta, the learned counsel for the respondents, and perused the pleadings on record.

6. The learned counsel for the applicant, in support of the OA averments, would contend as under:

- i) The applicant, a Deputy Superintendent, Central Jail, Tihar, is governed by Punjab Jails Executive Staff (Punishment and Appeal) Rules, 1943 (in short, Punjab Jails Rules). The CCS (CCA) Rules, 1965 have no application to the applicant. As per the Punjab Jails Rules, the Lt. Governor is the competent authority to initiate disciplinary proceedings against the applicant but not the Chief Secretary of the Govt. of NCTD. Hence, the impugned charge memorandum issued by the 1st Respondent-Chief Secretary is without jurisdiction, power and authority. Placed reliance on a Coordinate Bench decision of this Tribunal (Principal Bench) in O.A.No.778/2006 dated 24.11.2006 in **R.D.Bohet v. Lt. Governor of Delhi & Others.**
- ii) The impugned charge memorandum is abnormally belated. The charge leveled against the applicant

pertains to the year 2004 and whereas the impugned charge memorandum was issued in the year 2012, i.e., after lapse of 8 years, without there being any explanation for the said abnormal delay.

iii) Applicant joined as Deputy Superintendent in Central Jail No.1, Tihar on 12.02.2004. One Shri Prem Chand was the Assistant Deputy Superintendent of Central Jail No.1, Tihar Jail at that time. The alleged incident occurred on 17.02.2004. A chargesheet was issued to the said Shri Prem Chand, alleging that he was solely responsible for escape of the under-trial prisoner Sher Singh Rana from Central Jail No.1 on 17.02.2004. In a detailed inquiry conducted against the said Prem Chand it was held that the charge was proved against him. Considering the departmental inquiry record, the disciplinary authority imposed a penalty of reduction of pay on Shri Prem Chand by three stages in the time scale of pay for a period of three years with cumulative effect, which was modified, by the appellate authority, to reduction of pay by two stages in the time scale of pay for a period of two years without cumulative effect. However, in pursuance of an order dated 06.12.2010 in OA No.325/2010, filed by the said Prem Chand, when the appellate authority reconsidered his appeal, in view of withdrawing of the said appeal by the said Prem Chand,

the said appeal was dismissed as withdrawn and accordingly, the said punishment was implemented against the said Prem Chand. The applicant was appeared as prosecution witness in the inquiry proceedings held against Prem Chand. Hence, the applicant cannot be proceeded with for the same charge, which was already proved against said Prem Chand and he was imposed with appropriate punishment.

- iv) Identical charge leveled against one Shri Hari Shanker, a Warder at the relevant time vide Charge Memorandum issued in the year 2009, and the consequential punishment was set aside by judicial pronouncements, on merits.
- v) As per the Annexure A7 Office Order dated 08.12.1999 wherein the detailed duties of the applicant were mentioned does not contain the production of under trial prisoners in the Courts. But the duties of Assistant Superintendent do contain the same. Hence, the charge leveled against the applicant is unsustainable.

7. Per contra, the learned counsel for the respondents, while denying the contentions of the applicant, would contend as under:

- a) Courts/Tribunals cannot interfere, while exercising its power of judicial review, at the stage of initiation of disciplinary proceedings or inquiry, as the delinquents will get an

opportunity to prove their innocence in the departmental inquiries.

- b) Though this Tribunal in **R.D.Bohet** (supra), held that Lt. Governor is the competent authority to exercise jurisdiction, but not the Chief Secretary, but the same is with respect to exercising of power under Article 311(2)(b) of the Constitution but not the power to issue charge sheet under Rule 14 of the CCS (CCA) Rules, 1965, and hence, **R.D.Bohet** (supra) has no application to the present case.
- c) Another Coordinate Bench of this Tribunal (Principal Bench) in OA No.4261/2013, dated 28.08.2015 in **B.S.Jarial v. Govt. of NCT of Delhi & Anr.**, distinguished **R.D.Bohet** (supra), and dismissed the said OA No.4261/2013.
- d) The Annexure A7 duties are the duties in addition to the duties already specified in various previous orders and hence, the applicant cannot escape from his responsibility to supervise the production of under trial prisoners.
- e) Shri Prem Chand, the Assistant Superintendent, who was found guilty of the charge and was accordingly imposed with an appropriate punishment was a direct subordinate to the applicant and hence, the applicant is also liable for his negligence and lack of proper supervision. Punishing the said Prem Chand does not absolve the applicant from his omissions.

f) The delay in initiating the disciplinary proceedings does not prejudice the applicant and hence, the impugned charge memorandum cannot be interfered on the ground of delay.

8. Admittedly the incident, which caused the issuance of the impugned charge memorandum, occurred on 17.02.2004 whereas the impugned Charge Memorandum was issued on 18.07.2012, i.e., after more than about 8 years.

9. In **M.V. Bijlani v. Union of India** (2006) 5 SCC 88, the Hon'ble Apex Court held

"16..The Tribunal as also the High Court failed to take into consideration that the disciplinary proceedings were initiated after six years and it continued for a period of seven years and, thus, initiation of the disciplinary proceedings as also continuance thereof after such a long time evidently prejudiced to the delinquent officer.

17. In *State of Madhya Pradesh v. Bani Singh & Anr.* [(1990) Supp. SCC 738], this Court has clearly held:

"The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage."

10. In **Shri Anant R. Kulkarni v. Y.P. Education Society and Others**, (2013) 6 SCC 515, the Hon'ble Apex Court held:

"Enquiry at belated stage:

14. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is de hors the limitation of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of

judicial review at the very threshold. Therefore, a charge-sheet or show cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question, must be carefully examined, taking into consideration the gravity/magnitude of charges involved therein. The Court has to consider the seriousness and magnitude of the charges and while doing so the Court must weigh all the facts, both for and against the delinquent officers and come to the conclusion, which is just and proper considering the circumstances involved. The essence of the matter is that the court must take into consideration all relevant facts, and balance and weigh the same, so as to determine, if it is infact in the interest of clean and honest administration, that the said proceedings are allowed to be terminated, only on the ground of a delay in their conclusion. (Vide: State of U.P. v. Brahm Datt Sharma & Anr., AIR 1987 SC 943; State of Madhya Pradesh v. Bani Singh & Anr., AIR 1990 SC 1308; State of Punjab & Ors. v. Chaman Lal Goyal, (1995) 2 SCC 570; State of Andhra Pradesh v. N. Radhakishan, AIR 1998 SC 1833; M.V. Bijlani v. Union of India & Ors., AIR 2006 SC 3475; Union of India & Anr. v. Kunisetty Satyanarayana, AIR 2007 SC 906; The Secretary, Ministry of Defence & Ors. v. Prabash Chandra Mirdha, AIR 2012 SC 2250; and Chairman, LIC of India & Ors. v. A. Masilamani, JT (2012) 11 SC 533).

11. It is not the case of the respondents that though the incident occurred on 17.02.2004 but the role of the applicant came to light subsequently. It is also not the case of the respondents that they were not aware of the fact that the applicant was working as Deputy Superintendent and was immediate superior officer of Shri Prem Chand against whom disciplinary proceedings were initiated for the escape of the under trial prisoner Sher Singh Rana and was ended in imposing a punishment on him. It is also not their case that either during the inquiry proceedings of the said Prem Chand, Assistant Superintendent or Shri Hari Shanker, Warden, any witness spoke or any evidence came to light about the role of the applicant. Absolutely, there is no explanation forthcoming either from the counter averments or from the pleadings on record for initiating the departmental proceedings against the applicant after a lapse of more than eight years. Hence, in

our considered view, the case of the applicant falls within the exceptional circumstances enunciated by the Hon'ble Apex Court in **Shri Anant R. Kulkarni** (supra). The contention of the respondents that the delay of more than 8 years in initiating the departmental proceedings against the applicant, does not prejudice his rights, is unsustainable, in the circumstances and as per the settled principle of law.

12. The contention of the applicant that Annexure A7 does not contain the duty of production of under-trial prisoners in the Courts for the Deputy Superintendents and hence, the charge is liable to be quashed cannot be accepted. As rightly contended by the learned counsel for the respondents the duties mentioned under Annexure A7 are the duties in addition to overall superintendence, including the production of under-trial prisoners. Similarly, punishing certain other officers who were entrusted with different duties in different capacities, may be with respect to same incident, cannot be a ground for quashing the charge memorandum, as the duties and responsibilities of each officer are different and distinct.

13. In **R. D. Bohet** (supra), the applicant, who is working as Deputy Superintendent, Grade-I in Central Jail, Tihar, has assailed an order of the respondents whereby on dispensation of disciplinary proceedings as not reasonably practicable applicant has been dismissed under Article 311(2)(b) of the Constitution of India as well as Rule 19 of the CCS (CCA) Rules, 1965, in connection with a sting operation

undertaken by Aaj Tak wherein it was shown that the applicant indulging in the corrupt activities of demanding and accepting illegal gratification. The order of the Lt. Governor, rejecting the appeal and upholding the punishment was also assailed. One of the grounds raised was that the impugned order of dismissal was passed by the Chief Secretary, who is incompetent and the competent authority is Lt. Governor. The said issue was answered by this Tribunal as under:

"69. Another ground, which has not been raised or discussed in coordinate Bench decision, is jurisdiction of the Chief Secretary to pass an order as a disciplinary authority. Article 311 (2) (b) vests the jurisdiction to exercise power to dispense with the inquiry upon the appointing authority to take a decision. The Delhi Prisons Act, 2002 promulgated on 14.2.2002 does not lay down any separate procedure for holding an inquiry. In Sections 70 and 71 (xxiv) the Government has been empowered to make rules to carry out any provision of this act, including recruitment, punishment and as no rules have been framed repealed provisions under Section 73 notwithstanding the repeal act of 18 of 1994 regulations made under the Prisons Act of 1984 Section 73 Punjab Jail Department Executive Staff (Punishment & Appeal) Rules, 1943 define Government as Provincial Government under Section 73. Rule 15 empowers the Deputy Superintendent concerned, power of appointing authority insofar as removal or dismissal is concerned, has been entrusted to the Government and Government has been defined as per the Prisons Act of 2002 Government of NCT of Delhi and the competent authority being Lt. Governor. The decision in Bar Council of Delhi v. Surjeet Singh, 1980 (4) SCC 211 and Marathwada Universityv. Seshrao Balwant Rao Chavan, 1989 (3) SCC 132, confirms that it is Lt. Governor who is the Government for NCT for want of an independent State is competent authority to exercise jurisdiction. As the contention put-forth by respondents as to jurisdiction of the disciplinary authority to be amenable to the Schedule of CCS (CCA) Rules and the Punjab Police Rules applied to Punjab Jail is misconceived, as Rule 3 (e) of the CCS (CCA) Rules provides applicability of the Rules except to a person to whom a special provision is made under the law for the time being in force by an agreement after the commencement of the Rules. As we find special provision in existence by necessary implications even after Punjab Rules are repealed and Delhi Prisons Act has come into being, yet for want of any rules framed thereunder to govern such a situation the Rules of Punjab Jails would have applicability and would have applied and in such an event if the Lt. Governor is the competent authority to exercise jurisdiction in the matter of appointing authority to exercise in turn Article 311 (2)(b) of the Constitution then the order passed by the Chief Secretary cannot be sustained in law for want of jurisdiction and incompetence."

14. The WP(C) filed against the aforesaid order was dismissed along with WP(C) No.51/2010 and batch dated 06.08.2010 (**Govt. of NCT of Delhi & Others v. Jai Bhagwan**) by the Hon'ble High Court of Delhi. The SLPs filed against the said orders were also dismissed.

15. However, the Hon'ble High Court of Delhi while dismissing the WPs mainly considered the aspect of dispensing with the inquiry and dismissing the delinquent officers under Article 311(2)(b) without providing them any opportunity and not gone into the other grounds on which **R.D.Bohet case** (supra) was allowed, including the issue of competency of the Chief Secretary to issue the dismissal order.

16. In **B.S.Jarial** (supra), the applicant, a Deputy Superintendent, Grade I, Central Jail, Tihar, Delhi, had assailed the issuance of Chargesheet in respect of common departmental proceedings, on the ground of incompetency of the Chief Secretary, besides other grounds. A Coordinate Bench of this Tribunal by its Order dated 28.08.2015 considered **R.D.Bohet** (supra) but following the ratio in **Anant R. Kulkarni** (supra), with respect to the delay in initiation of the disciplinary proceedings, dismissed the OA. However, the Hon'ble High Court of Delhi in WP(C) No.10297/2015 filed against the aforesaid decision, by its Order dated 14.07.2016, while setting aside the order dated 28.08.2015 of this Tribunal in OA No.4261/2013 (B.S.Jarial) held as under:

"2. It may be noticed that in the order dated 18.11.2015, it has been noticed by us that the only ground urged before us is that the charge sheet has been issued by a person who was not duly authorised.

3. Mr. Saini, learned counsel for the petitioner submits that for the alleged misconduct in the year 2003, the charge sheet has been issued by an incompetent authority. It is the case of the petitioner that the competent disciplinary authority in the case of the petitioner is the Lt. Governor and not the Chief Secretary.

4. Mr. Saini further submits that the counsel, who had appeared before the Tribunal on behalf of the petitioner, had brought to the notice of the Tribunal a decision rendered by a Coordinate Bench of the Tribunal in O.A.No.778/2006 titled as **R.D. Bohet v. Lieutenant Governor of Delhi And Ors.** Mr. Saini further submits that the judgment rendered in **R.D. Bohet (supra)** was upheld by the High Court and the SLP filed has also been dismissed.

5. Counsel for the respondent however, disputes the submission of the counsel for the petitioner. She submits that the charge sheet has been issued by a competent authority which is the Chief Secretary. She further submits that the Tribunal has considered the judgment in the case of **R.D. Bohet (supra)**. Counsel for the parties, however, are in agreement that after noticing the submissions of the petitioner, no finding on this issue has been returned by the Tribunal. As jointly prayed, the impugned order is set aside. The matter is remanded back to the Tribunal. The Tribunal shall render a specific finding whether the charge sheet has been issued by a competent person or not. We make it clear that we have not expressed any opinion on the merits of the matter.

6. Parties to appear before the Tribunal on 17.08.2016, as prayed by the counsel for the petitioner.

7. Writ petition and the application stand disposed of."

17. As a result, the decision in **R.D. Bohet (supra)** has attained finality, whereas the decision in **B.S. Jarial (supra)** was set aside by the Hon'ble High Court of Delhi vide its order dated 14.07.2016.

18. In the circumstances and for the aforesaid reasons, the OA is allowed and the impugned orders are quashed with all consequential benefits. The respondents shall release all the retiral benefits of the applicant, within 90 days, as per rules. No costs.

(Dr. Birendra Kumar Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)