

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

OA-4124/2015

Reserved on : 02.02.2017.

Pronounced on : 15.02.2017.

Hon'ble Mr. Shekhar Agarwal, Member (A)

Hon'ble Mr. Raj Vir Sharma, Member (J)

Sh. Vivek Kumar,
Aged about : 45 years,
Son of Mr. Sat Pal,
Presently posted as: Assistant Accounts Officer
in Delhi Agricultural Marketing Board,
Government of N.C.T. Delhi,
Resident of : 1431, Delhi Administration
Flats, Gulabi Bagh, Delhi-110007. Applicant

(through Sh. Pardeep Kumar, Advocate)

Versus

1. The Chief Secretary, Government of N.C.T. Delhi,
[Through/service to the effected upon its: Director, At:
Directorate of Vigilance, Government of N.C.T. Delhi,
4th Level, C-Wing, Delhi Secretariat,
I.P. Estate, New Delhi-110002.
2. The Director, Directorate of Family Welfare,
Government of N.C.T. Delhi,
B & C Wing, 7th Floor, Vikas Bhawan-II,
Near Metcalf House, Civil Lines,
Delhi-110054.
3. The Secretary (Finance) Finance(A/cs)
Department, Government of N.C.T. Delhi,
A-Wing, 4th Level, Delhi Secretariat,
I.P. Estate, New Delhi-110002.
4. The Secretary, Delhi Agricultural Marketing Board,
Government of N.C.T. Delhi,
9, Institutional Area, Pankha Road, Janakpuri,
New Delhi-110058. Respondents

(through Mrs. Sumedha Sharma, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The applicant was working as a Statistical Investigator in the Sales Tax Department (now called Value Added Tax Department). He was made an independent witness along with one Sh. Ajay Kumar Mathur in a CBI case in which a trap was laid against one Sh. Bhawan Singh Maan for demanding and accepting bribe of Rs. 2000/-. Applicant was a witness to the trap proceedings and in that capacity had also signed certain documents. It was alleged that later on he turned hostile in trial Court. He was, therefore, served with a Charge Memorandum on 17.01.2011 by the Directorate of Family Welfare. An enquiry was held in which vide order dated 12.07.2011 (page-74 of the paper-book) he was exonerated of the charge. In the meanwhile, the applicant had got promoted on ad hoc basis as Assistant Accounts Officer on 08.10.2009. On 29.09.2015, he was served with another Memorandum signed by Chief Secretary of NCT of Delhi, which contained the same charge. On 16.10.2015, the applicant replied to the aforesaid Memorandum in which he stated that this would amount to punishing him twice for the same charge and would put him under double jeopardy. However, the respondents have not replied to the same forcing him to approach this Tribunal by filing this O.A. seeking the following relief:-

“(a) Calling of the original records of the Case, and

(b) Quashing and Setting aside of memorandum/chargesheet no. F.3/3/2012/DOV/11681 dated 29.09.2015 **[Annexure A-1]** and all other actions, orders and communications of the respondent no.1 with all consequential reliefs and benefits.

(c) Directing respondents to regularize the Applicant to the post of 'AAO' from the date his batch mates/Junior have been regularized with all consequential reliefs and benefits.

(d) Directing respondents to grant to the Applicant with effect from 17.11.2014, his eligible 2nd Financial Benefit under 'MACPS', fix his consequential pay and release/pay to the Applicant his consequential salary, allowances, arrears thereof with interest @ 10% per annum.

(e) Directing respondents not to further harass the Applicant and allow him to serve in peace.

(f) Any other or further order or direction to grant complete relief to the applicant."

2. According to the applicant he was working as a Statistical Investigator on substantive basis and had been promoted as Assistant Accounts Officer only on ad hoc basis. Thus, on 17.01.2011 when the Directorate of Family Welfare served him the charge sheet his substantive post was that of a Statistical Investigator. Pursuant to that charge Memorandum enquiry was held in which he was fully exonerated. There is no reason why he should face another enquiry on the same charge.

3. In their reply, the respondents have not disputed the facts of the case. Their contention, however, is that the applicant was holding the post of Assistant Accounts Officer and, therefore, the

Disciplinary Authority (DA) for him was the Chief Secretary, who is the DA for all Group-B gazetted officers. The enquiry held by Directorate of Family Welfare was void-ab-initio as Directorate of Family Welfare was not competent to act as DA for the applicant who had already been promoted to a higher post. Consequently, a fresh charge Memorandum has been issued to the applicant, which has been signed and approved by the Chief Secretary, who alone is competent to initiate disciplinary proceedings against the applicant.

4. We have heard both sides and have perused the material available on record. The only issue to be decided is as to who is competent authority to initiate disciplinary proceedings against an officer promoted to a higher post on ad hoc basis i.e. DA of the post, which he substantively holds or DA of the higher post, which he holds on ad hoc basis. In this regard neither of the two sides could cite any Instructions or judgments directly relevant to the issue. Learned counsel for the applicant has, however, drawn our attention to judgment of a Co-ordinate Bench of this Tribunal in OA-1622/2015 **(Manjeet Kaur Vs. GNCTD & Ors.)** pronounced on 26.02.2016. In the aforesaid judgment in Para-8 following has been observed:-

“8. Sl. No.4(ii) of the Government of India's Instructions, which pertains to disciplinary proceedings against an employee officiating in a higher post on ad hoc basis, issued by the DoPT vide its OM No.11012/9/86-Estt.(A), dated 24.12.1986, issued under Rule 11 of the CCS (CCA) Rules, 1965, and on which the respondents placed reliance, only provides that where the appointment was required to be made on ad hoc basis purely

for administrative reasons (other than against a short-term vacancy or a leave vacancy), and the Government servant has held the appointment for more than one year, if any disciplinary proceeding is initiated against the Government servant, he need not be reverted to the post held by him only on the ground that disciplinary proceeding has been initiated against him. It does not provide that the Government servant, who was appointed on ad hoc basis in a higher post, can be imposed with a punishment by the disciplinary authority of that higher post, though he was holding a lower post on substantive capacity, for which there is another disciplinary authority. Accordingly, the contention of the respondents, O.A.No.1622/2015 9 that the Lt. Governor is the competent disciplinary authority for the applicant, is unsustainable."

This judgment notices DoP&T O.M. No. 11012/9/86-Estt.(A) dated 24.12.1986 wherein it has been laid down that if disciplinary proceeding is initiated against a person working on ad hoc basis and such a person has held that appointment for more than a year then it would not be necessary to revert him in the event of disciplinary proceedings being initiated against him. From this it can be inferred that if a person has been promoted on ad hoc basis against a short term vacancy or a leave vacancy then he has to be reverted in the event of disciplinary proceedings being initiated against him. Even in cases where ad hoc appointment on a higher post has been held for more than a year, it is not mandatory to revert such a person to lower post even though reversion has not been ruled out totally. From this, it follows that disciplinary proceedings against such a person will be initiated by DA of the post held by him substantive capacity as that DA can continue with the

disciplinary proceedings even after reversion of the officer to his substantive post.

4.1 Applying the aforesaid inference to the present case it would follow that Directorate of Family Welfare was competent to initiate disciplinary proceedings against the applicant since at the time of initiation of the proceedings the substantive post held by the applicant was that of Statistical Investigator in Group-C for which undisputedly Directorate of Family Welfare was the DA. Therefore, the averment of the respondents that the disciplinary enquiry held by Directorate of Family Welfare has to be treated as void- ab-initio is unsustainable. Further, since the applicant has already faced an enquiry on the charge of turning hostile in CBI case, he cannot be subjected to another enquiry, which has been initiated by the impugned Memorandum dated 29.09.2015.

5. Accordingly, we allow this O.A. and quash the Memorandum dated 29.09.2015. We further direct the respondents to consider the applicant for consequential benefits, such as, regularising him on the post of Assistant Accounts Officer from the date his immediate junior was regularized and for grant of 2nd MACP benefit from the due date. The aforesaid relief shall be provided to him within a period of 08 weeks from the date of receipt of a certified copy of this order. Considering the facts and circumstances of this case, we are not

inclined to grant any interest on the arrears arising out of the aforesaid benefits. No costs.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

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