

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

OA No. 705/2013

This the 3<sup>rd</sup> day of October, 2018

**Hon'ble Mr. K.N. Shrivastava, Member (A)**  
**Hon'ble Mr. S.N. Terdal, Member (J)**

Sh. Niraj Kumar  
A-116 (GF), Hari Nagar  
Clock Tower, New Delhi – 110064.

....Applicant

(By Advocate : Applicant in person)

Versus

Union of India & Ors. through :

1. The Secretary  
Ministry of Social Justice & Empowerment  
Shastri Bhawan, New Delhi.
2. The Director  
Ministry of Social Justice & Empowerment  
Shastri Bhawan, New Delhi.

....Respondents

(By Advocate :Mr. R.K. Sharma)

**ORDER (ORAL)**

**Mr. K.N. Shrivastava, Member (A)**

The applicant, at the relevant point of time, was posted as Section Officer in the Ministry of Home Affairs (MHA). He was working in the North Eastern (NE) Division of the Ministry. On 08.02.2006 Annexure A-3 impugned charge memo came to be issued to him, in which following articles of charge were levelled against the applicant:-

“Article No. I

That Shri Niraj Kumar, Section Officer, unauthorisedly kept in his possession copies of the minutes of the meeting

taken by Sh. G.K. Pillai, the then Joint Secretary (North-East), MHA on 29<sup>th</sup> September, 1999 and other classified documents, even after his transfer from NE-Division of the Ministry of Home Affairs in October, 1999.

2. By his said act, he has failed to maintain absolute integrity and exhibited conduct unbecoming of a Government servant thereby violating the provisions of Rule 3(1)(i), Rule 3 (1)(iii) and Rule 11 of Central Civil Services (Conduct) Rules, 1964.

#### Article No. II

That Sh. Niraj Kumar, Section Officer, unauthorisedly communicated minutes of the meeting taken by the then Joint Secretary (NE) on 29<sup>th</sup> September, 1999 and other classified documents pertaining to NE-IV section to unauthorised persons.”

2. By his said act, he has violated Rule-11 of Central Civil Services (Conduct) Rules, 1964.”

2. The charge memo accompanied the statement of imputations of misconduct/mis-behaviour in support of the articles of charge framed against the applicant. As could be seen from the records that Mr. Thomas Mathew, IAS, was then heading the NE Division as Director and the charge is that some secret documents of NE Division were passed on to Tehalka Magazine, in which the applicant is purported to have connived with Mr. Mathew. The applicant was subjected to the disciplinary enquiry (DE) proceedings pursuant to the charge memorandum, whereas the co-accused Mr. Thomas Mathew was not proceeded against departmentally, as has been revealed to the applicant by the Department of Personnel and Training (DOPT), vide its letter dated 24.05.2017 (Annexure AA-V) in MA No. 3182/2018, which was issued in response to an RTI query of applicant dated

01.05.2017. Since inordinate delay was taking place in completing the DE proceedings against him, the applicant approached the Tribunal in OA 1126/2011 seeking quashment of the proceedings. The Tribunal disposed of the *ibid* OA vide order dated 18.01.2012 directing the respondents to conclude the proceedings within four months from the date of receipt of the order. However, the respondents have failed to complete the proceedings within the time prescribed. As a consequence thereof, the applicant has approached the Tribunal in the instant OA praying for the following reliefs :-

- “i) To quash and set aside the Charge Memo dated 8<sup>th</sup> Feb 2006.
- ii) To declare the departmental proceedings initiated against the applicant vide charge memo dated 8<sup>th</sup> February, 2006 as abated.
- iii) To direct the respondents to release all consequential benefits consequent upon the quashing of charge memo dated 8<sup>th</sup> Feb. 2006.”

3. Earlier, the OA was disposed of by the Tribunal vide order dated 01.09.2014 with the following directions:-

“14. We, therefore, in consideration of the facts and circumstances in this case, declare that the departmental proceedings initiated against the Applicant vide Charge Memo dated 08.02.2006 is no more sustainable as the Enquiry Officer had no jurisdiction to submit his report after the time prescribed by this Tribunal as well as the Hon’ble High Court of Delhi lapsed on 17.11.2012. Resultantly, we further declare that the Enquiry Officer’s report dated 12.12.2012 is a non-est document. Consequently, the impugned Charge Memorandum dated 08.02.2006 is quashed and set aside. Further, we direct the Respondents to release all consequential benefits withheld from him so far due to the pendency of the

aforesaid Charge Memo dated 08.02.2006. The Respondents are also directed to pass appropriate orders in compliance of the aforesaid direction within a period of 2 months from the date of receipt of a copy of this order. However, there shall be no order as to costs.”

Vide the *ibid* order of the Tribunal, the charge memo dated 08.02.2006 was quashed and so also further proceedings based on that.

4. The respondents challenged the Tribunal’s order before Hon’ble Delhi High Court in WP(C) No. 8955/2014 and CM Appeal No. 20484/2014. The *ibid* WP(C) was disposed of by the Hon’ble High Court vide order dated 20.04.2017 setting aside the Tribunal’s order and remanding the matter back to this Tribunal. The relevant portion of the judgment of Hon’ble High Court is extracted below:-

“It is agreed that on the said aspect, the matter be remanded back in view of the fact that the petitioner’s application to seek extension of time dated 17.11.2012, which had been moved before the tribunal in O.A. No.1126/2011 and also the counter affidavit filed by the petitioner before the tribunal in the present original application, disclosing the reasons for the enquiry not being completed by 17.11.2012, have not been considered in the impugned order.

In view of the aforesaid, the impugned order is set aside. The matter is remanded back to the tribunal for consideration on the aspect of condonation of delay sought by the petitioner for the period after 17.11.2012, since the delay, if any, before the passing of the order dated 18.07.2012 in O.A. No. 1126/2011 (in the conclusion of the enquiry proceedings) stood already condoned when the said order dated 18.07.2012 was passed, granting time of four months for completion of the enquiry.

The tribunal shall examine the proceedings undertaken by the enquiry officer after 18.07.2012 to

decide whether, or not, the request of the petitioner for grant of further time to conclude the enquiry was justified.

The petitioner shall locate the application filed for extension of time in O.A. 1126/2011 on 17.11.2012. However, in case the same is not located, the petitioner shall be at liberty to place another copy of the application on record before the tribunal. The parties shall appear before the tribunal on 02.05.2017.”

5. The contention of the applicant is that no extension of time has been sought by the respondents for completion of the DE proceedings and a false submission was made before the Hon’ble High Court to the effect that the respondents’ MA, seeking extension of time for completion of the DE proceedings, had not been disposed of by the Tribunal and that the Tribunal had passed the order dated 01.09.2014 without disposing of the *ibid* MA.

6. The applicant has also produced a copy of reply furnished to him by the Registry of this Tribunal dated 04.09.2018; a copy of which was placed on record today, to say that no such MA was ever filed by the respondents before the Tribunal.

7. The applicant further drew our attention to Annexure R-17, enclosing therewith reply filed on behalf of respondents, which would indicate that the purported MA, seeking extension of time, was, in fact, sent by the respondents to their counsel, Sh. T.C. Gupta, which was received by him on 20.11.2012. This would indicate that the extension of time was not sought on or before 17.11.2012, within which the DE proceedings were to be completed by the respondents as per the assurance given by the

respondents to the Hon'ble High Court, on the basis of which the Hon'ble High Court had passed order dated 20.04.2017.

8. The applicant submitted that he has secured promotion as Deputy Secretary after the issuance of the charge memo but his promotion to the post of Director has been kept in sealed cover in February, 2018 due to the pendency of DE proceedings. The applicant vehemently argued that the respondents have become absolutely non-serious in completing DE proceedings, because of which his service prospects are getting marred. He further stated that Mr. Thomas Mathews, then Director, NE Division was also a co-accused of the same charge but no action has been taken against him. He has retired from service and has been given all the retiral dues. He, thus, argued that for the reason of parity, the applicant also deserves to be given the relief that he has prayed for and the charge memo should be quashed and set aside and so also any proceeding that has taken place pursuant to that. He, particularly, drew our attention to the judgment dated 26.05.2014 of the Hon'ble Delhi High Court in Criminal Petition No. 34/2013, which was filed by three petitioners, including the applicant and Mr. Thomas Mathew. Relevant portion of the said judgment is extracted below.:

“53. Insofar as Aniruddha Bahal is concerned, the prosecution was required to produce material that the minutes of meeting dated 29.9.1999 were published on the website [tehelka.com](http://tehelka.com) and the same was with the knowledge of accused Aniruddha Bahal. There is no evidence that the minutes of meeting dated 29.9.1999 were displayed on the website. Section 65 B of the Evidence Act lays down the procedure for admissibility of electronic records. Though more than 13 years have passed, the prosecution has not

filed any certificate under Section 65B. It is stated that Sh. Prakash Shokhandia, Under Secretary (Vigilance), MHA, stated that the information was downloaded by the then MHA website incharge but statement of website incharge was not got recorded nor any certificate obtained. In any event there is no material to show that accused Aniruddha Bahal had the knowledge of the fact that minutes were secret document and there was no marking of secret on that document. 54. It has also been argued on behalf of accused Aniruddha Bahal that time and again it held by the Hon'ble Supreme Court that the vicarious liability cannot be attached upon the directors and managing directors of a company just by the virtue of them being directors or managing directors. The basic requirement of impleading a director is to show that the said director was responsible for the day to day affairs of the company. It has to be clearly stated what the role of the director was in the alleged commission of offence and secondly whether the said role was attributable to such criminal intent and intention. It is argued that the absence of specific averments in regard to the role and manner of involvement of the director cannot in any circumstance fasten any liability on the said director. However, but I need not go into all this in view of the fact that there is no sufficient evidence to frame charge against this accused. 55. Against Thomas Mathew again there is no evidence other than alleged confessional statement under Section 164 of accused Niraj Kumar to which reference has already been made.

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55. Against Thomas Mathew again there is no evidence other than alleged confessional statement under Section 164 of accused Niraj Kumar to which reference has already been made. 56. Prima facie there is no material which shows grave suspicion against the accused Thomas Mathew also for commission of any of alleged offences.

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57. In view of above discussion, the order on charge dated 16<sup>th</sup> October, 2012 passed by the Id.Addl. Sessions Judge, Fast Track Court (Central), Tis Hazari, Delhi and the charge framed vide aforesaid order in FIR i.e., RC No.1(S)/2001/SIC.IV New Delhi dated 30.3.2001 against the petitioners/accused persons are set aside. The petitioners stand discharged in the present case."

He, thus, argued that the documents, referred to in the charge memo, were not at all the secret documents.

9. *Per contra*, Mr. R.K. Sharma, learned counsel for respondents stated that the respondents had indeed sought extension of time by four months for completing the DE proceedings by filing MA 1603/2013 in OA 1126/2011. Furthermore, after the respondents realised that the DE proceedings cannot not be completed even within the extended period, they filed another MA seeking further extension of time. Mr. Sharma, however, fairly admitted that it was never listed.

10. When a question was asked to learned counsel for respondents as to why the DE proceedings have not been completed even after 2013, he stated that the respondents were restrained by the Tribunal from proceeding ahead with the DE proceedings vide interlocutory order dated 27.02.2013.

11. We have considered the rival arguments of the parties and have also perused the records.

12. Admittedly, the charge memo was issued on 08.02.2006 to the applicant but even after a lapse of more than 12 years, the DE proceedings have not been completed. It is also not in dispute that the applicant had earlier approached the Tribunal in OA 1126/2012 seeking quashment of charge memo and the DE proceedings started consequent to that. The Tribunal, however, disposed of the OA vide order dated 18.01.2012 with the direction to the respondents to conclude the DE proceedings



within four months. Since the respondents failed to do that, the applicant had no option except to knock the door of Tribunal again, and accordingly, he filed the instant OA in the year, 2013. No doubt, an interim protection was given to the applicant by the Tribunal vide interlocutory order dated 27.02.2013 restraining the respondents to proceed ahead with the DE proceedings. In fact the Tribunal finally disposed of the O.A. vide order dated 01.09.2014 quashing the charge memo. The Hon'ble High Court, in allowing the Writ Petition, accepted the averments of the respondents that the order dated 01.09.2014 was passed by the Tribunal even without considering the MA 1603/2013 of the respondents, seeking extension of time for the completion of the DE proceedings. We find that the MA 1603/2013, seeking extension of time, was filed by the respondents in OA 1126/2011 and not in this OA, which was disposed of by the Tribunal vide order dated 18.07.2012 itself granting the extension prayed for, i.e. four months and accordingly, the respondents were given liberty to complete the DE proceedings by 17.11.2012. A copy of the Tribunal's order dated 18.07.2012 passed in MA 1607/2012 is at pp.53 & 54 of this OA.

13. From the above, it would be clear that at the time when Hon'ble the High Court was adjudicating WP(C) No. 8955/2014 and CM Appeal No. 20484/2014 filed by the respondents challenging the order of the Tribunal dated 01.09.2014 in this OA, there was no MA seeking extension of time pending before the Tribunal.

14. The records would indicate that Mr. Thomas Mathew was one of the co-accused along with the applicant and both were subjected to the criminal proceedings filed on the basis of a complaint of Central Bureau of Intelligence (CBI). The Hon'ble High Court had discharged the applicant as well as Mr. Thomas Mathew from the criminal charge vide order dated 26.05.2017 in Criminal Revision Petition No. 34/2013 referred to hereinabove.

15. The records would further indicate that Mr. Thomas Mathew has never been subjected to any DE proceedings. But, on the other hand, the applicant has been subjected to the DE proceedings, which have been prolonged for no valid reasons. The Hon'ble Apex Court in **Prem Nath Bali v. Registrar, High Court of Delhi & another** (Civil Appeal No.958/2010) decided on 16.12.2015 has held that DE proceedings should be completed as expeditiously as possible and preferably within a maximum period of six months. Similar postulations have been made in Circular No.000-VGL-18 dated 18.01.2016 issued by the Central Vigilance Commission. Even this Tribunal in **U. Das Vs. UOI & Ors.** (OA - 288/15 with connected cases) decided on 08.05.2017 has held that any DE proceedings prolonged for long time without any valid reason is liable to be quashed and set aside.

16. We are not in agreement with the arguments of Mr. R.K. Sharma, learned counsel for respondents that there was any legal hurdle in the way of the respondents in completing the DE

proceedings. As a matter of fact, when Tribunal disposed of this OA earlier vide order dated 01.09.2014 and thereafter the matter was remanded back by the Hon'ble High Court vide order dated 20.04.2014, there was no legal hurdle before the respondents in completing the DE proceedings. More than four years have passed since the Hon'ble High Court passed the *ibid* order. Hence, we are of firm view that the applicant's interest has been severely prejudiced due to this inordinate delay and hence the ends of justice would meet by allowing the relief claimed.

17. In the conspectus of the discussions in the pre-paragraphs, ***we allow this OA. The impugned Annexure A-3 charge memo dated 08.02.2006 is quashed and set aside and so also the DE proceeding pursuant to that. The applicant shall be entitled for all consequential benefits. No costs.***

**(S.N. Terdal)**  
**Member (J)**

**(K.N. Shrivastava)**  
**Member (A)**

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