Central Administrative Tribunal
Principal Bench
New Delhi

OA No.364/2013
MA Nos.360/2017 & 1253/2018

Reserved on : 22.11.2018
Pronounced on : 04.12.2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Pradeep Kumar, Member (A)

S. R. Mohanty S/o late P. C. Mohanty,
Aged about 50 years,
Secretary, Health & Family Welfare,
Government of MP,
Bhopal (MP)-462003. … Applicant

(By Mr. Sunil Kumar, Sr. Advocate, assisted by Mr. Apoorv Kumar, Mr. G. Kaushal and Mr. A. C. Boxipatro, Advocates)

Versus

1. Union of India through Secretary,
Department of Personnel and Training,
New Delhi-110001.

2. State of Madhya Pradesh through
Secretary, General Administration Department,
Vallabh Bhawan,
Bhopal (MP)-462003. … Respondents

(By Mr. Sanjay Hegre, Sr. Advocate, assisted by Mr. V. K. Shukla and Mr. Pranjal Kishore, for Respondent No.2; Mr. Gyanendra Singh, for Respondent No.1, Advocates)

O R D E R

Justice L. Narasimha Reddy, Chairman :

The applicant is an IAS officer of the 1982 batch and is in the MP cadre. He held various positions in the administration.

For a period of four years between January, 2000 and January, 2004, he functioned as Managing Director of Madhya Pradesh Industrial Development Corporation (for short, the Corporation), Bhopal.

2. An FIR, bearing No.25/2004 was registered against the applicant and certain other officers of the Corporation on 24.07.2004 by the Economic Offences Wing (EOW) of the State, alleging acts and omissions referable to the relevant provisions of the Indian Penal Code (IPC), and the Prevention of Corruption Act. The applicant filed a petition under Section 482 of the Code of Criminal Procedure (Cr.PC) before the Madhya Pradesh High Court, with a prayer to quash the FIR. The petition was allowed and the FIR was quashed. The Government of Madhya Pradesh, the 2nd respondent herein, filed an SLP before the Hon'ble Supreme Court.

3. The State Government issued a charge memorandum on 12.01.2007 to the applicant alleging various acts and omissions. On receipt of the same, the applicant submitted his reply on 23.03.2007. On a consideration of the same, the 2nd respondent decided to proceed with the matter, and accordingly, issued order dated 22.02.2010, proposing to hold disciplinary inquiry, and decided to appoint inquiry

officer and presenting officer. The applicant filed OA No.267/2010 before the Jabalpur Bench of the Central Administrative Tribunal, challenging the charge memorandum dated 12.01.2007, and the order dated 22.02.2010. The OA was transferred to this Bench and was re-numbered as OA No.364/2013.

4. During the pendency of this OA, the Hon'ble Supreme Court allowed the SLP filed by the State Government, and has set aside the order of the MP High Court, through which the FIR was quashed. It was left open to the prosecution to proceed with the matter, in accordance with the guidelines issued in the said order.

5. The applicant contends that the very issuance of the charge memorandum is vitiated on account of the fact that the procedure prescribed under the All India Services (Discipline and Appeal) Rules, 1969 (for short, the Rules) was not followed. According to him, it was mandatory under the Rules to call for the explanation of an officer before a charge memorandum is issued, and that such a procedure was not followed in his case. The applicant further contends that the disciplinary authority has virtually abdicated its power, and the charge memorandum was issued just on the dictates of the authorities of the EOW of

the State Government. It is also pleaded that the charge memorandum and other connected proceedings are tainted with malice, in exercise of power.

6. The respondents filed counter-affidavit, denying the allegations made, and the contentions advanced by the applicant. It is stated that the charge memorandum was issued in accordance with the prescribed procedure, and in particular, rule 8 of the Rules, and the issuance of a show cause notice before the service of charge memorandum is not contemplated. It is further stated that a draft charge sheet was prepared by the disciplinary authority, i.e., General Administration Department (GAD) of the State Government, and with a view to avoid any inconsistency in the charges, or mis-statement of facts, the EOW was consulted, and ultimately the charge sheet was issued by the GAD itself, in exercise of the power under the relevant rules. The allegation as to abdication of power is flatly denied. The respondents have also stated that there is no malice in the entire exercise, and that the charge sheet was issued on the basis of specific information borne out by record, and on finding *prima facie* dereliction of duties on the part of the applicant. It is also stated that the truth or otherwise of the charges, would emerge, only in the disciplinary inquiry.

7. Shri Sunil Kumar, learned Sr. Counsel, for the applicant contends that the charge sheet issued by the EOW was quashed by the MP High Court, and though the Hon'ble Supreme Court reversed the judgment of the High Court, and permitted the agency to proceed in a particular manner, such directions were observed only in breach, and that the criminal case is yet to take a shape. He contends that the very issuance of the impugned charge sheet, under those circumstances was untenable and motivated. The learned Sr. Counsel submits that rule 8 of the Rules makes a specific reference to rule 10, which, in turn, contemplates the issuance of a notice, calling for explanation, and such a mandatory step was not followed in this case, before the charge sheet was issued. According to him, the very issuance of the charge sheet visits an officer with civil consequences, and unless such a step is taken strictly in accordance with law, it cannot be sustained at all.

8. Another facet of the argument of the learned Sr. Counsel is that it is only after the FIR was filed by the EOW, that it occurred to the GAD of the State Government to issue a charge sheet, and even the charge sheet was just dictated, if not prepared, by the EOW. It is stated that the correspondence that

ensued in this behalf, would make this aspect clear, and the entire process becomes illegal.

9. The third important contention advanced by the learned Sr. Counsel is that there is any amount of malice in the entire exercise, and the power that is conferred under the statute was grossly misused, just to deprive the applicant of his promotions, which became due at the advance stage of his career. He placed reliance upon the relevant precedents in support of his argument.

10. Shri Sanjay Hegre, learned Sr. Counsel, for the respondents, on the other hand, submits that the occasion to issue a memorandum, calling for explanation under rule 10(a)(i) of the Rules would arise only when the proceedings are initiated proposing minor penalty, and that in the instant case the initiation was for major penalty. He further submits that the State Government had to tread carefully in the matter, since the criminal proceedings have already been initiated against the applicant. He submits that except that the GAD wing has consulted another wing of the State Government, i.e., the EOW, to ensure that no inconsistency or inaccuracy takes place in the context of framing charges, and that no authority has surrendered its power to any other. It is also argued that the

charges levelled against the applicant are serious in nature, and huge public funds were involved. He contends that the plea of the applicant that the proceedings were initiated just to deny him the promotion is baseless. He too relied upon certain precedents.

11. In a way, this case demonstrates the weakness of the adjudicatory system, and in particular, its inability to give finality, at least, to the preliminary steps in the disciplinary proceedings, though more than a decade has lapsed since their initiation. The FIR against the applicant was filed way back on 24.07.2004, and a formal case is yet to be registered. Though the Hon'ble Supreme Court held in favour of the State Government in the year 2011, the proceedings are yet to take a concrete shape. The present OA is languishing in the Tribunal for the past eight years. It also reflects the vulnerability of the entire system.

12. The applicant was issued the charge memorandum dated 12.01.2007. It contains as many as eight articles, all of which are referable to the functioning of the applicant as the Managing Director of the Corporation between January, 2002 and January, 2004. It is issued in Hindi. The gist of the charges is that the applicant had disbursed Rs.91.58 crores, as loan to 18

institutions, in the form of inter-corporate deposits, unauthorisedly and without obtaining the proper security, and thereby the financial condition of the Corporation was adversely affected (charge No.1). Charges 2 to 5 deal with the individual transactions, which are to the tune of several crores. In article 6, it is alleged that the applicant had secured loan of Rs.158.67 crores from various agencies without there being any prior approval, and though the said amount was distributed, it remained unrecovered. In article 7, it is alleged that the applicant issued several post dated cheques for re-payment of loans to various agencies, on their being presented, they were dishonoured, and thereby the reputation of the Corporation suffered a serious dent. In article 8, it was alleged that during his tenure, the post dated cheques received from several agencies, such as Bhaskar Industries, N.B. Industries, G.K. Exim, Som Distillery, Surya Agro Oil, and Western Tobacco Ltd., for re-payment of the inter-corporate deposits, were dishonoured, and due to that the Corporation suffered financial loss.

13. The details of the transactions in a tabular form were furnished to the applicant along with the charge

memorandum. On receipt of the charge memorandum, the applicant submitted a detailed explanation on 23.03.2007.

14. In view of the various points raised by the applicant, the Government thought it fit to obtain the opinion of the Advocate General. It appears that there was change of guard, and the opinion of another Advocate General was taken. In the meanwhile, the criminal proceedings became subject matter of challenge before the MP High Court and the Supreme Court.

15. The applicant felt the necessity to approach the Tribunal and challenge the proceedings only when the 2nd respondent decided to proceed with the matter, and to appoint the inquiry and presenting officers through its order dated 22.02.2010. In other words, he did not feel that necessity when the charge memorandum was issued in January, 2007.

16. Though it was sought to be argued that there was enormous delay in initiation of the proceedings, and the applicant cannot be subjected to mental agony on account of such prolongation, it was not pressed beyond a point, and in fact, rightly. The only spell of delay, according to the applicant, is the one between the date of submission of explanation by

him, and the date on which the 2nd respondent decided to proceed with the matter. In the counter affidavit, a detailed account of the various steps that have been taken in between, is furnished. The applicant cannot be said to have suffered any detriment or prejudice on account of such delay.

17. The first contention urged on behalf of the applicant is that the charge memorandum is not preceded by a show cause notice. In this behalf, reliance is placed upon rules 8 and 10 of the Rules. Part IV of the Rules, comprising rules 8 to 14, deals with the procedure for imposing penalties. Rule 8 stipulates the procedure for imposition of major penalties, while rule 10 prescribes the one, for imposition of minor penalties. To the extent they are necessary for the purpose of this case, the relevant portion of the said rules, read as under:

> "8. **Procedure for imposing major penalties**
>
> 8(1) No order imposing any of the major penalties specified in rule 6 shall be made except after an inquiry is held as far as may be, in the manner provided in this rule and rule 10 or provided by the Public Servants (Inquiries) Act 1850 (37 of 1850) where such inquiry is held under that Act.
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> 8(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a member of the Service, it may appoint under this rule or

under the provisions of the Public Servants (Inquiries) Act 185037, as the case may be, an authority to inquire into the truth thereof.

Provided that where there is a complaint of sexual harassment within the meaning of rule 3 of the All India Services (Prevention of Sexual Harassment) Regulations, 1998, the Complaints Committee established in each Ministry or Department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been made for the Complaints Committee for holding the inquiry into the complaints of sexual harassment, the inquiry as far as practicable, in accordance with the procedure laid down in these rules.

8(3) Where a Board is appointed as the inquiring authority it shall consist of not less than two senior officers provided that at least one member of such a Board shall be an officer of the Service to which the member of the Service belongs.

8(4) Where it is proposed to hold an inquiry against a member of the Service under this rule and or rule 10, the disciplinary authority shall draw up or caused to be drawn up—

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain—

(a) a statement of all relevant facts including any admission or confession made by the member of the Service;

(b) a list of documents by which, and a list of witness by whom the articles of charge are proposed to be sustained.

8(5) The disciplinary authority shall deliver or cause to be delivered to the member of the Service a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the member of the Service to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person."

Rule 8(6) to rule 8(24), and rule 9, omitted, as not necessary for this case.

"10. **Procedure for imposing minor penalties—**

10(1) Subject to the provision of sub-rule (3) of Rule 9 no order imposing on a member of the Service any of the penalties specified in clauses (i) to (iv) of rule 6 shall be made except after:—

(a) informing the member of the Service in writing of the proposal to take action against him and of the imputations of misconduct or misbehavior on which it is proposed to be taken and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal;

(b) holding an inquiry, in the manner laid down in sub-rules (4) to (23) of rule 8, 45(in every case in which it is proposed to withhold increments of pay for a period exceeding three years, or with cumulative effect for any period, or so as to adversely affect the amount of pension

payable to him, or in which the disciplinary authority is of the opinion that such inquiry is necessary.

(c) taking the representation, if any submitted by the member of the Service under clause (a), and the record of inquiry, if any, held under clause (b) into consideration;

(d) recording a finding on each imputation of misconduct or misbehavior, and

(e) consulting the Commission.

10(2) The record of proceedings in such cases shall include:—

(i) a copy of the intimation to the member of the Service of the proposal to take action against him;

(ii) a copy of the statement of imputations of misconduct or misbehavior delivered to him;

(iii) his representation, if any;

(iv) the evidence produced during the inquiry;

(v) the advice of the Commission;

(vi) the findings on each imputation of misconduct or misbehavior; and

(vii) the orders on the case together with the reasons therefor."

(Remaining part of rule 10 is not extracted).

Rule 14 is similar to second proviso to Article 311 (2) of the Constitution of India, which provides for imposition of punishment without the necessity of conducting inquiry.

18. From a perusal of rule 8, on the one hand, and rule 10, on the other, it becomes clear that they govern different sets of proceedings, namely, those initiated for major penalty and minor penalty, respectively. Much emphasis is laid by the learned Sr. Counsel upon rule 8(1), which makes reference to rule 10. In this regard, it needs to be noted that the procedure prescribed under rule 8(2) onwards, which contemplates issuance of charge memorandum, appointment of the inquiry officer, submission of inquiry report, and obtaining the opinion of UPSC, is specific to major penalty proceedings. A perusal of rule 10 discloses that for imposition of minor penalty, it is not necessary to issue any charge memorandum, and it would be sufficient if the imputations of misconduct or misbehaviour alleged against an officer is communicated to him to provide a reasonable opportunity of making representation. However, if on adopting such course, the disciplinary authority feels that a penalty of withholding of increments of pay for a period exceeding three years, or with cumulative effect, becomes necessary, he is under an obligation to take recourse to the procedure prescribed for imposition of major penalty. That is evident from rule 10(1)(b).

19. Therefore, rule 8(1) takes in its fold, not only the cases which are initiated for imposition of major penalty straightway, but also those that were commenced for imposition of minor penalty, but came to be transformed to the major penalty proceedings, as provided for under rule 10(1)(b). Once, the minor penalty proceedings assume the shape of major penalty proceedings, naturally the procedure prescribed for the latter becomes applicable, in all respects. Without keeping this subtle distinction in view, it is argued that even in respect of major penalty proceedings, the communication of imputations of misconduct or misbehaviour provided for under rule 10(1)(a) is necessary. A plain reading of the rule makes such a contention untenable.

20. Reliance is placed upon the judgment of the Hon'ble Supreme Court in ***Nawabkhan Abbaskhan*** *v* ***State of Gujarat*** [(1974) 2 SCC 121]. That was a case relating to externment of a citizen under the provisions of the Bombay Police Act. Section 56 thereof mandated that before an order of externment is passed against a citizen, he must be issued a notice to explain. The violation of the order of externment was to result in punishment. In that context, the Hon'ble Supreme

Court examined whether there was compliance with the requirement under the statute. In para 14, it was observed:

> "14. Where hearing is obligated by a statute which affects the fundamental right of a citizen, the duty to give the hearing sounds in constitutional requirement and failure to comply with such a duty is fatal. Maybe that in ordinary legislation or at common law a tribunal, having jurisdiction and failing to hear the parties, may commit an illegality which may render the proceedings voidable when a direct attack is made thereon by way of appeal, revision or review, but nullity is the consequence of unconstitutionality and so without going into the larger issue and its plural divisions, we may roundly conclude that the order of an administrative authority charged with the duty of complying with natural justice in the exercise of power before restricting the fundamental right of a citizen is void and *ab initio* of no legal efficacy….."

From this, it is evident that the necessity to issue a notice was referable to Section 56 of the Bombay Police Act, and non compliance with that, naturally vitiated the proceedings. In this case, the applicant is not able to draw our attention to any rule or a precedent to the effect that before a charge-sheet is issued to an officer, his explanation must be sought.

21. The judgment of the Hon'ble Supreme Court in ***State of Uttar Pradesh v Singhara Singh & others*** [AIR 1964 SC 358], is equally of not much help to the applicant. In that case,

it was held that if a statute conferred a power upon an authority to do an act, and prescribed the manner therefor, it must be exercised only in that manner, and any other method is prohibited. This is too well known a proposition, which held the field for the past several decades. However, it has no application to the facts of the present case.

22. The second contention is that the State Government in its GAD department has abdicated its power in the context of issuing the charge memorandum. Firstly, the ground becomes a bit untenable, once the applicant has submitted his explanation to the charge memorandum. Even otherwise, there is nothing in the record to disclose that the Government, in its GAD department had abdicated its power. The starting point for the action against the applicant was the filing of the FIR. Thereafter, the Government, in its Industries Department started verifying its records, and in consultation with the Legal Department, prepared a draft charge memorandum. With a view to avoid any inconsistency or deficiency in comparison to the details contained in the FIR, a letter was addressed to the EOW on 26.10.2006, enclosing the draft charge memorandum. This became necessary since the entire record was with them. In reply thereto, the concerned authority of the EOW addressed

a letter dated 10.11.2006 indicating certain changes. Ultimately, the charge memorandum was finalized and issued to the applicant by the GAD.

23. There is a reference to a confidential letter dated 23.01.2006 in the letter dated 10.11.2006. On the basis of this, the learned Sr. Counsel for the applicant contends that the very charge memorandum has its origin in the letter dated 23.01.2006, and thereby a clear abdication of power was there on the part of the GAD. The applicant who is so resourceful and had access to all confidential records at every stage, however, is unable to place before us, copy of the letter dated 23.01.2006. It is only on the basis of an inference, that such a plea is raised. When the challenge is to a charge memorandum on the ground that the authority abdicated the power vested in it, the factual basis must be clear and beyond any pale of doubt. Surmises, inferences and speculations have no place in such matters.

24. Though reliance is placed upon the judgments of the Hon'ble Supreme Court in ***The Purtabpore Co. Ltd.*** *v* ***Cane Commissioner of Bihar & others*** [(1969) 1 SCC 308], and ***Union of India & others*** *v* ***B. V. Gopinath & others*** [(2014) 1 SCC351], we are of the view that they have no application to the facts of

this case. In ***Purtabpore Co. Ltd.***, the record clearly disclosed that though the Cane Commissioner was vested with the power whether or not to reserve villages in favour of a sugar factory, in the context of purchase of sugar cane, he had to change his opinion and follow the dictates of the Chief Minister. The relevant provisions of the Sugar Cane (Control) Order, 1966, conferred power upon the Cane Commissioner and not in the Chief Minister. The fact that the decision of the Cane Commissioner was affected and influenced by the dictate of the Chief Minister is evident from the following part of the judgment:

> "11. ... It is true that the impugned orders were issued in the name of the Cane Commissioner. He merely obeyed the directions issued to him by the Chief Minister. We are unable to agree with the contention of Shri Chagla that though the Cane Commissioner was initially of the view that the reservation made in favour of the appellant should not be disturbed, he changed his opinion after discussion with the Chief Minister. From the material before us, the only conclusion possible is that the Chief Minister imposed his opinion on the Cane Commissioner. The power exercisable by the Cane Commissioner under Clause 6(1) is a statutory power. He alone could have exercised that power. While exercising that power he cannot abdicate his responsibility in favour of anyone — not even in favour of the State Government or the Chief Minister...."

Not even traces of this proposition of law are present in the case on hand. It is not uncommon that before a charge is framed, the opinions of various authorities of the Government are taken, to ensure that no illegality creeps into the same. If the contention of the applicant is to be accepted, each department of the State Government must function in a complete secluded and sealed atmosphere, and any inter-departmental communication or consultation would vitiate the entire exercise. Howsoever attractive the proposition may be, the Governments cannot function on such utopian lines.

25. The last contention is that there is malice in law, in the entire process of issuance of the charge memorandum. At the outset, it needs to be observed that the malice in law would arise mostly when a power, which is vested for a particular purpose, is used to achieve a different goal. The proposition of law in this regard is explained in the judgment of the Supreme Court in ***Smt. S. R. Venkataraman v Union of India*** [(1979) 2 SCC 491], relied upon by the applicant. In paras 5 and 6 of the judgment, their Lordships summed up the purport thereof as under:

> "5. We have made a mention of the plea of malice which the appellant had taken in her writ petition. Although she made an allegation of

malice against V.D. Vyas under whom she served for a very short period and got an adverse report, there is nothing on the record to show that Vyas was able to influence the Central Government in making the order of premature retirement dated March 26, 1976. It is not therefore the case of the appellant that there was actual malicious intention on the part of the Government in making the alleged wrongful order of her premature retirement so as to amount to malice in fact. Malice in law is however, quite different. Viscount Haldane described it as follows in *Shearer* v. *Shields* [(1914) AC 808, 813] :

> "A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far the state of his mind is concerned, he acts ignorantly, and in that sense innocently."

Thus malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause.

6. It is however not necessary to examine the question of malice in law in this case, for it is trite law that if a discretionary power has been exercised for an unauthorised purpose, it is generally immaterial whether its repository was acting in good faith or in bad faith. As was stated by Lord Goddard. C.J. in *Pilling* v. *Abergele Urban District Council* [(1950) 1 KB 636 : (1950) 1 All ER 76] where a duty to determine a question is conferred on an authority which state their reasons for the decision,

> and the reasons which they state show that they have taken into account

> matters which they ought not to have taken into account, or that they have failed to take matters into account which they ought to have taken into account, the court to which an appeal lies can and ought to adjudicate on the matter."

The principle comes into play where the discretion vested into an authority is exercised for an unauthorized purpose. When the entire power under the rules is meant to be exercised for initiation and conclusion of the disciplinary proceedings against the officers of a particular category, it is just un-understandable as to how the plea of malice can arise, when it is used only for that purpose.

26. We do not find any basis to interfere with the charge memorandum dated 12.01.2007, or the order dated 22.02.2010. The matter has already been delayed almost by a decade, and it cannot brook any further delay. It is in the interest of the applicant also that the matter is given a quietus, so that, if he emerges as innocent, his avenues of promotions and upward movement are not adversely affected. We also take note of the fact that the criminal proceedings are yet to take a final shape. Even if they are said to be pending in any manner, that would not come in the way of the disciplinary proceedings, in view of the judgment of the Hon'ble Supreme

Court in ***Capt. M. Paul Anthony v Bharat Gold Mines Ltd.*** [(1999) 3 SCC 679], wherein it was held that if the criminal proceedings are likely to take much time for conclusion, the disciplinary proceedings can be continued.

27. We, therefore, dismiss the OA, and direct the disciplinary authority to expedite the disciplinary proceedings, and conclude them within a period of six months from the date of receipt of this order. There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/as/