

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

O.A. No.3352/2016

Order reserved on 15th May, 2018

Order pronounced on 29th May, 2018

**Hon'ble Mr. Justice Dinesh Gupta, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

K S Meena
Aged about 52 years
s/o late Sh. B L Meena
Presently working as
Joint Secretary Urban Development Delhi Secretariat
Govt. of National Capital Territory of Delhi
New Delhi – 110 002

..Applicant

(Mr. M K Bhardwaj, Advocate)

Versus

1. Union of India through Secretary
Ministry of Home Affairs
North Block, New Delhi – 110 001
2. Joint Secretary (Union Territories)
Ministry of Home Affairs
North Block, New Delhi – 110001
3. Chief Secretary, GNCTD
5th Level, Delhi Secretariat
IP Estate, New Delhi – 110 002

..Respondents

(Mr. Deepak Bhardwaj, Advocate)

O R D E R

Mr. K N Shrivastava, M (A):

This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985. During the pendency of the O.A., the respondents issued fresh memorandum of charges dated 15.09.2016 (Annexure A-1A).

In view of this development, the applicant filed M.A. No.3028/2016 seeking leave of the Tribunal to amend the O.A., so as to challenge the freshly issued memorandum of charges dated 15.09.2016. Vide order dated 07.10.2016, the said M.A. was allowed and the O.A. was amended, in which the applicant has prayed for the following reliefs:

“(i) To quash and set aside the charge memo No.14033/10/2007-UTS-II dated 02/07/2007 under rule 16 of CCS (CCA) Rules, 1965 issued on the basis of false and frivolous complaint dated 03.07.2006 and biased report dated 21.08.2006 and direct the respondents to grant all consequential benefits including promotions with arrears of pay withheld on account of said proceedings.

(ii) Set aside and quash the order No.14040/38/2012/UTS-II dated 13/14th May, 2015 addressed to Delhi Govt. to conduct the fresh enquiry in the matter in terms of order dated 06/02/2015 passed by the Hon’ble Central Administrative Tribunal in OA No.2249/2012.

(iii) Set aside and quash the rejection order vide No.14040/38/2012-UTS-II dated 27.01.2016 vide which dated 04.11.2015 representation of applicant was summarily rejected.

(iv) To quash and set aside the charge memo No.14033/10/2007-UTS-II dated 15-9-2016 served on 4-10-2016 (A-1A).”

2. The factual matrix of the case, as noticed from the records, is as under:-

2.1 The applicant belongs to 1993 batch of Delhi, Andaman & Nicobar Islands, Lakshdweep, Dadra & Nagar Haveli and Daman & Diu Civil Service (DANICS). When he was posted as Deputy Director in the Department of Social Welfare in the year 2005, a sexual harassment complaint was made against him by Ms. Neelam Kataria, who was then working as a Care Taker. The complaint addressed to the Director (Admn.), Social Welfare Department, Govt. of NCT of Delhi reads as under:-

“It is requested that the undersigned is a Care Taker and working in the Fax Branch for last 6 years. It is humbly requested that since Shri K.S. Meena has taken over the charge of AD-III, he has started to make my life difficult and started harassing me mentally and physically. He one day came to my seat and said you come to my Delhi Gate Office for a secret talk.

As per direction, when I reached Delhi gate to meet him he said “O meri rani kaisi ho”. When I objected he became angry and started threatening me by saying that if you do not obey what I say I will get your transfer done and if you still do not obey, I will get you dismissed from service. When I refused he made unsuccessful attempt to misbehave with me. Thereafter he has been threatening over my mobile and harassed me mentally. I am very sad with all these events and also hurt mentally. In this regard it is my request that my transfer which has been got done by Shri K.S. Meena may be got cancelled and Shri K.S. Meena be directed to stop misbehaving with the undersigned.”

2.2 The competent authority constituted a Complaints Committee with Mrs. Rashmi Singh, Joint Director (Programmes), Social Welfare as its Chairperson and three other Members. The Committee submitted its Annexure A-7 report dated 18.08.2006 to Chief Secretary, Govt. of NCT of Delhi. The findings of the Committee would read as under:-

“However, as far as terms of reference of this Committee goes we would limit our overall conclusion to whether the allegations of sexual harassment made by Ms. Neelam against Shri K.S. Meena are found correct. Here, based on the analysis of findings, observations already made in the foregoing paras, it is felt that the element of harassment is coming out very strongly specifically in the aspect related to creation of adverse working condition. Whether this would amount to sexual harassment or not has to be seen in consonance with the guidelines on the subject which define sexual harassment of work place to be manifold in many forms and circumstances including creation of difficult working conditions. Moreover as per guidelines the sexual harassment relies on the victim’s interpretation of the behaviour affirming the incidence of sexually being harassed, the victim alone can confirm the incidence and going by that in the instant case to this count the complainant’s grievance due to late filing of the complaint, filing only when affected by transfer, filing only when provoked, not having direct evidence for all her allegations would still not discount the evidence emerging to the effect that sexual harassment has taken place in the instant case.”

2.3 Acting on the report of the Complaints Committee, the disciplinary authority, i.e., President of India, issued the impugned Annexure A-1 memorandum of charges dated 02.07.2007 to the applicant. The statement of imputation of misconduct or misbehaviour on part of the applicant reads as under:-

“Ms. Neelam Kataria, Caretaker in the Department of Social Welfare, Govt. of NCT of Delhi made a complaint of sexual harassment on 3rd July, 2006 against Shri K.S. Meena, an Entry Grade Officer of DANICS and the then Deputy Director in the Department of Social Welfare, Govt. of NCT of Delhi. The allegations of mental and physical harassment made in the complaint related to incidents of repeated calls made by Shri K.S. Meena on her mobile phone, his persuasion upon her to come to his office at Delhi Gate, use of undignified words, forcibly catching her hand in his room, getting the wall fan removed from her pota cabin, her transfer to Drugs Unit and pressure created subsequently upon her and her family for withdrawing the complaint. A news item also appeared in the Hindustan Times on 21st July, 2006 under the caption “DSW worker alleges sexual harassment”. On the same day, an enquiry was entrusted to the Committee for Prevention of Sexual Harassment at Workplace of the Govt. of NCT of Delhi under the chairmanship of Smt. Rashmi Singh, the then Joint Director (Social Welfare) to enquire into the complaint of alleged sexual harassment made by Ms. Neelam Kataria against Shri K.S. Meena.

2. After analyzing the relevant documents/statements and keeping in view the guidelines/norms laid down by the Hon’ble Supreme Court in the Vishakha Judgement in August, 1997 regarding sexual harassment, the Committee came to the conclusion that version of the complainant was apparently true. In this context, the Committee had kept the following points in mind:-

- (i) Shri K.S. Meena kept telephoning on the cell phone of the complainant ostensibly to contact other officials in the Disability Branch. However, the complainant’s cell phone was not only one in the cabin, there were cell phones available with other male staff who could have been contacted and the officer for whom the calls were purportedly meant had denied receiving any such call on the complainant’s phone. Hence, these calls were apparently meant for the complaint only.
- (ii) There were no eye-witnesses for the alleged use of the undignified words and catching the hand of the complainant by Shri K.S. Meena. However, circumstantial evidences in the context of the complainant’s allegation of

physical advances in the end of May, 2006 and her complaint that as she did not comply with Shri Meena he had got her transferred from Curzon Road to Drug Cell at Delhi Gate, is relevant. Further, as the complainant was mentally disturbed by the event, she proceeded on leave. Though Shri K.S. Meena himself was not looking after the work of administration and, therefore, cannot be directly held responsible for her transfer, he might have influenced the same.

- (iii) Shri K.S. Meena made the working conditions of the complainant difficult by getting fan located at her place of work in the Pota Cabin removed on the plea that he had to discharge some work from the Pota Cabin. The said explanation is not convincing as Shri K.S. Meena, having an AC room in Delhi Gate, could have called the files/dak to his office and need not have worked from a Pota Cabin in adverse working conditions.
- (iv) Shri K.S. Meena repeatedly tried to persuade the complainant himself and though Shri Jaibir Singh, UDC to retract on the point of sexual harassment made in the complaint after the inquiry had begun.
- (v) The complainant's transfer from Curzon Road to Drug Cell was cancelled with retrospective effect on 20th July and again on 21st July, 2006 (with two different sets of numbers) and this order was taken to the residence of the complainant by Shri Jaibir Singh, UDC, on directions of Shri K.S. Meena, who had also asked her to withdraw her complaint.

3. The facts of the case indicate that Shri K.S. Meena, Entry Grade Officer of DANICS tried to sexually harass the complainant and when she spurned his advances, he started harassing her mentally by making her working conditions difficult and managing to get her transferred.

4. Shri K.S. Meena, Entry Grade officer of DANICS by his above acts exhibited conduct unbecoming of a government servant and violated the provision of Rule 3 (c) of the Central Civil Services (Conduct) Rules, 1964.”

2.4 The applicant submitted his statement of defence dated 07.01.2008 denying the imputations of misconduct or misbehaviour and asked for regular inquiry in terms of clause (1A) of Rule 16 of CCS (CCA) Rules, 1965 (Annexure A-8).

2.5 The disciplinary authority did not order an inquiry in the matter and vide order dated 27.10.2010, imposed the penalty of “reduction to a lower stage in the time scale of pay by one year without cumulative effect and not adversely affecting his pension”.

2.6 The applicant filed an appeal dated 30.12.2010 under Rule 24 of CCS (CCA) Rules, 1965, which was rejected by the appellate authority vide its order dated 02.02.2012.

2.7 The applicant approached this Tribunal in O.A. No.2294/2012 seeking quashment of the orders passed by the disciplinary and appellate authorities as also the report of the Complaints Committee. The Tribunal, vide order dated 06.02.2015, partly allowed the said O.A. but granted liberty to the respondents to hold fresh inquiry. The operative part of the order reads as under:-

“22. In any case, when the applicant had specifically requested for regular inquiry into the charges leveled against him, in the facts of the case, the Disciplinary Authority ought to have ordered a detailed inquiry into the matter, particularly so for the reason that even after examining 23 witnesses and 14 documents, the Sexual Harassment Committee also not arrived on at a definite conclusion, i.e, whether the applicant had simply harassed or sexually harassed to the complainant. In the circumstances, the orders passed by the Disciplinary Authority as well as the Appellate Authority are quashed. It would be open to the Disciplinary Authority to pass fresh orders, after complying with the requirements of the said OM dated 28.10.1985 (referred to hereinbefore). There shall be no order as to costs.”

2.8 Utilizing the liberty granted, with the approval of Director, Social Welfare, Govt. of NCT of Delhi, a fresh charge sheet dated 13.06.2016 was

issued to the applicant, which was based on the report of the Complaints Committee. The article of charge reads as under:-

“That the said Shri K.S. Meena, Entry Grade Officer of DANICS while functioning as Dy. Director in the Social Welfare Department, Govt. of NCT of Delhi during the period March, 2005 to July, 2006 committed gross misconduct in as much as he sexually harassed one Ms. Neelam Kataria, Care Taker, Social Welfare Department by way of making unsolicited telephonic calls on her mobile phone, calling her with sexually coloured remarks in the office and touching her body or holding her hand with a venal mindset. Not only this, when Ms. Neelam Kataria spurned Shri K.S. Meena’s advances, he started pestering her first by getting the AC removed from her room and thereafter the fan.

Shri K.S. Meena, Entry Grade Officer of DANICS by his above acts exhibited conduct unbecoming of a government servant thereby violating the provisions of Rule 3 (c) of the CCS (Conduct) Rules, 1964.”

2.9 The memorandum of charges was also accompanied with a statement of imputation of misconduct or misbehavior. The memorandum of charges dated 13.06.2016 was withdrawn vide Annexure A-15 order dated 15.06.2016 on the ground that approval of the competent authority was not obtained before issuing it.

2.10 With the approval of the competent authority and in continuation of earlier memorandum of charges dated 02.07.2007, a fresh memorandum of charges dated 15.09.2016 was issued to the applicant, in which the following article of charge was leveled against him:-

“Article-I

That the said Shri K.S. Meena, Entry Grade Officer of DANICS while functioning as Deputy Director in the Social Welfare Department, Govt. of NCT of Delhi during the period March, 2005 to July, 2006 committed gross misconduct in as much as he sexually

harassed Ms. Neelam Kataria, Caretaker, Social Welfare Department at work place.

Thus, the said Shri K.S. Meena, Entry Grade Officer of DANICS by his above acts exhibited conduct unbecoming of a Government servant and violated the provision of Rule 3 of the Central Civil Services (Conduct) Rules, 1964.”

2.11 The statement of imputation of misconduct or misbehavior accompanied with it reads as under:-

“Ms. Neelam Kataria, Caretaker in the Department of Social Welfare, Govt. of NCT of Delhi made a complaint of sexual harassment on 3rd July, 2006 against Shri K.S. Meena, an Entry Grade Officer of DANICS and the then Deputy Director in the Department of Social Welfare, Govt. of NCT of Delhi. The allegations of mental and physical harassment made in the complaint related to incidents of repeated calls made by Shri K.S. Meena on her mobile phone, his persuasion upon her to come to his office at Delhi Gate, use of undignified words, forcibly catching her hand in his room, getting the wall fan removed from her pota cabin, her transfer to Drugs Unit and pressure created subsequently upon her and her family for withdrawing the complaint. A news item also appeared in the Hindustan Times on 21/07/2006 under the caption “DSW worker alleges sexual harassment”. On the same day, an enquiry was entrusted to the Committee for Prevention of Sexual Harassment at Workplace of the Govt. of NCT of Delhi under the chairmanship of Smt. Rashmi Singh, the then Joint Director (Social Welfare) to enquire into the complaint of alleged sexual harassment made by Ms. Neelam Kataria against Shri K.S. Meena.

After analyzing the relevant documents/statements and keeping in view the guidelines/norms laid down by the Hon’ble Supreme Court in the Vishakha Judgement in August, 1997 regarding sexual harassment, the Committee came to the conclusion that version of the complainant was apparently true. In this context, the Committee had kept the following points in mind:-

- (i) Shri K.S. Meena kept telephoning on the cell phone of the complainant ostensibly to contact other officials in the Disability Branch. However, the complainant’s cell phone was not only one in the cabin, there were cell phones available with other male staff who could have been contacted and the officer for whom the calls were purportedly meant had denied receiving any such call on the complainant’s phone. Hence, these calls were apparently meant for the complaint only.

- (ii) There were no eye-witnesses for the alleged use of the undignified words and catching the hand of the complainant by Shri K.S. Meena. However, circumstantial evidences in the context of the complainant's allegation of physical advances in the end of May, 2006 and her complaint that as she did not comply with Shri Meena he had got her transferred from Curzon Road to Drug Cell at Delhi Gate, is relevant. Further, as the complainant was mentally disturbed by the event, she proceeded on leave. Though Shri K.S. Meena himself was not looking after the work of administration and, therefore, cannot be directly held responsible for her transfer, he might have influenced the same.
- (iii) Shri K.S. Meena made the working conditions of the complainant difficult by getting fan located at her place of work in the Pota Cabin removed on the plea that he had to discharge some work from the Pota Cabin. The said explanation is not convincing as Shri K.S. Meena, having an AC room in Delhi Gate, could have called the files/dak to his office and need not have worked from a Pota Cabin in adverse working conditions.
- (iv) Shri K.S. Meena repeatedly tried to persuade the complainant himself and though Shri Jaibir Singh, UDC to retract on the point of sexual harassment made in the complaint after the inquiry had begun.
- (v) The complainant's transfer from Curzon Road to Drug Cell was cancelled with retrospective effect on 20th July and again on 21st July, 2006 (with two different sets of numbers) and this order was taken to the residence of the complainant by Shri Jaibir Singh, UDC, on directions of Shri K.S. Meena, who had also asked her to withdraw her complaint.

The facts of the case indicate that Shri K.S. Meena, Entry Grade Officer of DANICS tried to sexually harass the complainant and when she spurned his advances, he started harassing her mentally by making her working conditions difficult and managing to get her transferred.

Shri K.S. Meena, Entry Grade officer of DANICS by his above acts exhibited conduct unbecoming of a government servant and violated the provision of Rule 3-C of the Central Civil Services (Conduct) Rules, 1964.

Thus, the said Shri K.S. Meena, Entry Grade Officer of DANICS by his above acts exhibited conduct unbecoming of a government servant and violated the provision of Rule 3 of the Central Civil Services (Conduct) Rules, 1964"

2.12 Before the aforesaid memorandum of charges dated 15.09.2016 was issued to him, the applicant had approached this Tribunal in O.A. No.1428/2016 praying for the following reliefs:-

“(i) Set aside, quash and treat the original complaint dated 03.07.2006 as filed/closed made by Ms. Neelam Kataria, Care Taker of Social Welfare Department, GNCTD, alleging harassment.

(ii) Set aside and quash the Committee Report dated 21.08.2006 of the Committee for prevention of harassment against woman at work place wherein the Committee recommended disciplinary action against the applicant.

(iii) Set aside and quash the charge memo No.14033/10/2007-UTS-II dated 02.07.2007 under rule 16 of CCS (CCA) Rules, 1965 whereby it was proposed to take action against the applicant.

(iv) Set aside and quash the order No.14040/38/2012/UTS-II dated 13/14/May, 2015 addressed to Delhi Govt. to conduct the fresh inquiry in the matter in terms of order dated 06/02/2015 passed by the Hon’ble Central Administrative Tribunal in OA No.2249/2012.

(v) Set aside and quash the rejection order vide No.14040/38/2012-UTS-II dated 27.01.2016 vide which dated 04.11.2015 representation of application was summarily rejected.

(vi) Drop the disciplinary proceedings once for all.”

2.13 The Tribunal, however, disposed of the *ibid* O.A. vide its order dated 17.05.2016 with the following directions:-

“7. In the above circumstances, this OA is disposed of with direction to the respondents to commence and conclude the departmental inquiry in respect to memorandum dated 2nd July, 2007 (Annexure A-3) within a period of four months from the date of receipt of copy of this order. On receipt of the inquiry report, the Disciplinary Authority shall proceed to take a final call in accordance with rules within a period of three months thereafter. The outcome of the disciplinary proceedings shall be communicated to the applicant in accordance with law.”

2.14 The grievance of the applicant is that the respondents are deliberately delaying the completion of disciplinary enquiry (DE) proceedings against him, and thus trying to deny him the service benefits, including promotion. It is further stated that the Tribunal, vide its order dated 17.05.2016, had clearly directed to complete the DE proceedings within four months and since that had not been done, the respondents have issued a fresh memorandum of charges dated 15.09.2016 to cover up the illegality committed by them.

Accordingly, the applicant has approached the Tribunal in this O.A. praying for the reliefs as indicated in paragraph (1) above.

3. The applicant, in support of the reliefs claimed, has pleaded the following important grounds:-

a) The Tribunal, vide its order dated 17.05.2016, had specifically prescribed a time period of four months to complete the DE proceedings, but the respondents have failed to do so and hence the DE proceedings are required to be quashed.

b) In an identical case in O.A. No.1236/2006, the Tribunal has granted such reliefs vide order dated 08.06.2007 (**S S Malik v. Kendriya Vidyalaya Sangathan & others**).

c) The four months' period set by the Tribunal for conclusion of the DE proceedings ended on 23.09.2016. Hence, the respondents have no jurisdiction to proceed against the applicant. Even the instructions of

Central Vigilance Commission (CVC) prescribing the time frame for conclusion of DE proceedings have not been adhered to.

d) The sexual harassment complaint against the applicant was a motivated one. The complainant was not even working directly under the control of the applicant. The prolong delay in completion of DE proceedings has severely prejudiced the interest of the applicant.

4. Pursuant to the notices issued, the respondents entered appearance and filed their reply, in which they have made the following important averments:

4.1 The memorandum of charges dated 15.09.2016 has been issued by the Ministry of Home Affairs, Government of India under Rule 16 (1) (b) of CCS (CCA) Rules, 1965 and the applicant has been asked to submit his reply within ten days.

4.2 The allegation of prejudice and bias made by the applicant against Mrs. Rashmi Singh, Joint Director (Programmes) and Chairperson of the Complaints Committee is absolutely baseless.

4.3 The Complaints Committee had conducted the inquiry in a fair manner and opportunity was given to the applicant to defend himself.

5. On completion of pleadings, the case was taken up for hearing the arguments on 15.05.2018. Arguments of Mr. M K Bhardwaj, learned counsel for applicant and that of Mr. Deepak Bhardwaj, learned counsel for respondents were heard.

6. Mr. M K Bhardwaj, learned counsel for applicant, besides reiterating the averments made in the O.A., submitted that the applicant has been subjected to deliberate harassment. The first memorandum of charges was issued to the applicant on 02.07.2007 but even after lapse of more than a decade, the DE proceedings have not been completed. As a consequence thereof, the applicant has been denied of his legitimate service benefits. He vehemently argued that this Tribunal in O.A. No.1428/2016 vide order dated 17.05.2016, filed by the applicant, had specifically granted four months' time for the respondents to conclude the DE proceedings, but they have failed to do so. They have not even sought extension of time for concluding the DE proceedings. Hence, their continuing with the DE proceedings against the applicant is absolutely illegal.

7. Mr. Bhardwaj further submitted that the memoranda of charges dated 02.07.2007 and 15.09.2016 are identical. He argued that issuance of fresh charge sheet for the same offence is impermissible in law. He submitted that in an identical case of **U Das v. Union of India & another** (O.A. No.288/2015 with connected cases) decided on 08.05.2017, this Tribunal has quashed the DE proceedings on the ground that the respondents therein had failed to complete the proceedings within the prescribed time frame.

8. Mr. Deepak Bhardwaj, learned counsel for respondents, on the other hand, argued that the respondents have not been able to complete the inquiry, as 28 prosecution witnesses are required to be examined, and considering the fact that the defence witnesses, including the charged

official (CO) and presenting officer, are also required to be examined, it is going to take some time. Accordingly, the respondents have filed an M.A. on 07.11.2017 before this Tribunal seeking extension of time of six months.

9. We have considered the arguments of learned counsel for the parties and have perused the pleadings.

10. It is noticed from the records that the Complaints Committee submitted its Annexure A-7 report dated 18.08.2006 to Chief Secretary, Govt. of NCT of Delhi. In terms of Rule 14 (2) of CCS (CCA) Rules, 1965, where there is a complaint of sexual harassment within the meaning of Rule 3 C of CCS (CCA) Rules, 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 and its report shall hold, if separate procedure has not been prescribed 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. Accordingly, the disciplinary authority vide its order dated 27.10.2010 imposed the penalty of "reduction to a lower stage in the time scale of pay by one year without cumulative effect and not adversely affecting his pension", which was confirmed by the appellate authority vide its order dated 02.02.2012. The said Rule is extracted below:-

"14. Procedure for imposing major penalties

(1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and rule 15, or in the

manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(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 Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, 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 C of the Central Civil Services (Conduct) Rules, 1964, 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 prescribed for the complaints committee for holding the inquiry into the complaints of sexual harassments, the inquiry as far as practicable in accordance with the procedure laid down in these rules."

(emphasis supplied)

11. As provided under *ibid* Rule, on the insistence of the applicant that a formal inquiry should be conducted against him, the respondents issued the memorandum of charges dated 13.06.2016 with the approval of the Director, Social Welfare, Govt. of NCT of Delhi. Since the applicant is a DANICS officer, his disciplinary authority is President of India, whose delegatee, in the present, case is Home Minister, Government of India. The respondents realized their mistake and hastily withdrew the memorandum of charges dated 13.06.2016 issued a fresh memorandum of charges dated 15.09.2016 duly approved by the competent authority.

12. From the perusal of the first memorandum of charges dated 02.07.2007 and freshly issued one dated 15.09.2016, it is quite clear that these memoranda are verbatim the same. We fail to understand as to why

the respondents chose to issue the memorandum of charges dated 13.06.2016, which they withdrew, and decided to issue a fresh one on 15.09.2016. After all, the Tribunal, vide its order 17.05.2016 in O.A. No.1428/2016, filed by the applicant, had only directed the respondents to commence and conclude the departmental inquiry on the basis of O.M. dated 28.10.1985 issued by the Department of Personnel & Training. Since the applicant had specifically prayed for such an inquiry, there was no necessity for issuing any fresh memorandum of charges. A formal inquiry in terms of O.M. dated 28.10.1985 could have been started on the basis of the earlier memorandum of charges dated 02.07.2007 itself.

13. From the actions of the respondents, one would get a clear impression that the intention of the respondents is not to reach at the bottom of truth, rather to perpetuate harassment to the applicant. The Tribunal's *ibid* order dated 17.05.2016 in O.A. No.1428/2016, filed by the applicant, had set a clear cut time frame of four months for concluding the inquiry. The records would indicate that the respondents have miserably failed to do that within the given time frame. Even the Application seeking extension of time of six months has not been filed within time.

14. The Tribunal, relying on the judgment of Hon'ble Apex Court in **Prem Nath Bali v. Registrar, High Court of Delhi & another**, (2015) 16 SCC 415, in an identical case of **U. Das** (*supra*), has quashed the disciplinary proceedings for the reason of not completing the proceedings within the time frame given by the Tribunal. We find that the present case

is no different and identical kind of order is required to be passed in this case too.

15. In the conspectus, we come to the inescapable conclusion that the applicant has been put to prolong harassment by the respondents, which has prejudiced his interest and has denied him the service benefits for almost a decade. The respondents have neither shown any alacrity to accomplish the DE proceedings in accordance with the time frame prescribed by the CVC, nor have they adhered to the time limit of four months granted by the Tribunal in its order dated 17.05.2016 in O.A. No.1428/2016.

16. Hence, in accordance with the judgment of this Tribunal in **U. Das** (supra), we quash the memoranda of charges dated 02.07.2007 and 15.09.2016. The O.A. is thus allowed. As a corollary thereto, the applicant is entitled to all consequential benefits. No order as to costs.

17. In view of this, all ancillary Applications stand disposed of.

(K.N. Shrivastava)
Member (A)

(Justice Dinesh Gupta)
Chairman

/sunil/