

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

ORIGINAL APPLICATION NO.200/00302/2011

Jabalpur, this Friday, the 10th day of May, 2019

HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER

Anil Kumar Tiwari, S/o Shri Kapil Muni Tiwari,
Date of Birth 01.01.1973, R/o Flat No.402, 4th Floor
Marble Heights Apartments, South Civil Lines,
Near Delite Cinema, Jabalpur (MP)-482001

- APPLICANT

(By Advocate –Shri Vijay Tripathi)

Versus

1. Union of India through its Secretary, Ministry of Defence
(Finance), 139 South Block, New Delhi-110 001

2. Controller General of Defence Accounts, Ulan Batar Road,
Cantt. Delhi-110 010

3. Controller of Defence Accounts, Pachpedi Road, Civil Line,
Jabalpur-482001

4. Shri P.N.Muley (Inquiry Officer), IDAS, ACDAPAO(Ors)
GRC Jabalpur, Jabalpur-482001

- RESPONDENTS

(By Advocate – Shri S.K.Mishra)

(Date of reserving the order:29.11.2018)

ORDER

By Navin Tandon, AM.-

This Original Application has been filed challenging the legality, validity and propriety of charge-sheet dated 11.01.2011 (Annexure A-1).

The applicant is also aggrieved by an order dated 12.04.2010 (Annexure A-2) whereby he was placed under suspension.

2. The brief facts of the case as submitted by the applicant are as under:-

2.1 He was initially appointed as Clerk on 09.11.1998 and in due course of time he was promoted as Assistant Accounts Officer (for brevity 'AAO') on 02.04.2007.

2.2 He was placed under suspension vide order dated 12.04.2010 (Annexure A-2). The reasons for suspension were assigned by the respondents vide their letter dated 23.06.2010 (Annexure-A-4) mentioning that it has since been intimated by SBI Main Branch Jabalpur that a sum of Rs.5,61,000/- found credited in the Savings Bank Account held in the name of her wife Smt.Poonam Tiwari.

2.3 Against the order of suspension, he preferred an appeal on 14.07.2010 (Annexure A-8), which was rejected vide order dated 11.01.2011 (Annexure A-2).

2.3 A memorandum of charge dated 11.01.2011 (Annexure A-1) was also served upon the applicant.

2.4 The CBI has also taken cognizance of the same incident of fraud committed by Shri Ranjan Kumar Rout and some other persons. The wife

of the applicant Smt.Poonam Tiwari has been made accused in the charge-sheet.

2.5 There is no material to establish that he was involved in the fraud committed by said Shri Ranjan Kumar Rout in any manner; no material has also been enclosed along with the charge-sheet to establish that he had received any money from Shri Ranjan Kumar Rout or he has paid any amount to Shri Ranjan Kumar Rout.

2.6 The charge sheet issued against the applicant is totally vague and ambiguous which does not constitute any misconduct against the applicant under the Conduct Rules.

3. The applicant has sought for the following reliefs in this Original Application:-

- “7(i) Summon the entire relevant record along with preliminary Enquiry Report from the respondents for its kind perusal.*
- (ii) Quash and set aside the impugned charge-sheet dated 11.1.2011 Annexure A/1 and the suspension orders dated 12.4.2010 Annexure A/2 and 11.1.2011 Annexure A/3 whereby the appeal against the suspension has been rejected.*
- (iii) Consequently command the respondents to reinstate the applicant with all consequential benefits as if the impugned orders aforesaid are never passed;*
- (iv) Any other order/orders, which this Hon’ble Court deems fit and proper may also be passed;*
- (v) Award cost of the litigation in favour of the applicant”.*

4. The respondents in their reply have submitted as under:-

4.1 A case of fraudulent payment of final settlement of Armed Forces Personnel Provident Fund/ Death Linked Insurance (for brevity

AFPPF/DLI) of PBORs of Corps of Signals was noticed in 12/2009. On investigation, the State Bank of India, Civil Lines Branch, Jabalpur vide their letter dated 16.03.2010 (Annexure R-1) inter-alia intimated that a sum of Rs.91,09,280/- against a Defence cheque bearing No.163751 dated 30.09.2009 was credited into 15 Savings Bank Accounts.

4.2 In the letter dated 16.03.2010 of SBI Jabalpur it has been further stated that a sum of Rs.5,61,000/- was found credited on 07.01.2009 into Savings Bank Account No.30491306842 held in the name of the applicant's spouse Smt.Poonam Tiwari amongst other officials of PAO(ORS) Corps of Signals, Jabalpur. Thus, she obtained a wrongful gain from the government exchequer through a Defence cheque mentioned above to which she was not legally entitled.

4.3 The applicant was posted in the office of PAO(Ors) Corps of Signals, Jabalpur. He has good relations with said Shri Ranjan Kumar Rout, AAO posted in the PAO(Ors) Corps of Signals, Jabalpur, who is one of the illegal beneficiaries. The applicant thus misused his official position while serving in the Office of PAO(Ors) Corps of Signals, Jabalpur in collusion with other beneficiaries for wrongful pecuniary gain.

4.4 Since a prima facie case of involvement of applicant in a fraudulent payment was made out, he was placed under suspension vide order dated

12.04.2010 (Annexure A-2). Taking into consideration the seriousness of the misconduct committed by the applicant a memorandum of charge dated 11.01.2011 (Annexure A-1) was also served upon him. After considering the applicant's appeal against the order of suspension, the same was rejected by the appellate authority.

5. The learned counsel for the respondents through M.A.No. 200/00473/2018 has submitted subsequent developments on record as under:-

5.1 During the pendency of OA, enquiry pursuant to above charge-sheet has been completed and penalty order dated 22.05.2015 (Annexure MA/1) has been issued against the applicant imposing penalty of reduction to a lower stage of time scale of pay by three stages for a period of four years with effect from 01.06.2015. Feeling aggrieved by the punishment order, the applicant preferred an appeal, which was also rejected vide order dated 10.01.2017 (Annexure MA-2).

5.2 The applicant has challenged the penalty order dated 22.05.2015 and appellate order dated 10.01.2017 by filing a separate Original Application No.200/00359/2017. The suspension of the applicant has been revoked and the applicant was reinstated in service vide order dated 16.12.2014.

5. Heard the learned counsel of parties and carefully perused the pleadings of the respective parties and the documents annexed therewith.

6. We find that the order of suspension challenged in this Original Application has already been revoked by the respondents during the pendency of this Original Application. Now, the question which remains for determination in this Original Application is whether at this stage the charge sheet can be quashed.

7. In the matters of *Union of India Vs. Kunisetty Satyanarayana*, (2006) 12 SCC 28, the Hon'ble Supreme Court has held that a mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

8. In the instant case we find that the applicant had already submitted his reply to the charge sheet and after holding full-fledged enquiry the disciplinary authority has already passed the penalty order dated 22.05.2015 (Annexure MA-1). The applicant had also preferred an appeal

against the said punishment order, which was also rejected vide order dated 10.01.2017 (Annexure MA-2). The applicant has also filed a separate Original Application No.200/00359/2017 against the aforesaid order of punishment and the appellate order, which is pending for consideration. The applicant has failed to point out any infirmity in issuing the charge sheet. Therefore, we find no ground to quash the impugned charge sheet.

9. The order of suspension has already been revoked by the respondents and the applicant has been reinstated in service vide order dated 16.12.2014. Therefore the relief sought for by the applicant for revocation of suspension has already been granted by the respondents.

10. Accordingly, we do not find any merit in this Original Application. The same is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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