

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH AT CALCUTTA
CIRCUIT AT PORT BLAIR

O.A. No. 351/878 /A&N/ 2018

In the matter of

An application under Section 19 of the Administrative
Tribunal Act, 1985

And

In the matter of :

Shri Maheshwar Das

S/o Late Jageshwar Das

Working as Junior Engineer (Civil),

Construction Division, No. 1

APWD, Port Blair- 744101.

.....Applicant.

-Versus-

1. The Union of India

Through the Secretary,

Ministry of Urban Development & Poverty Alleviation,

Room Number- 206 C, Maulana Azad Road,

Nirman Bhawan, Delhi- 110108.

2. The Chief Secretary,

Andaman and Nicobar Administration,

Secretariat, Port Blair - 744101.

3. The Principal Secretary (PWD),
Andaman and Nicobar Administration,
Secretariat,
Port Blair - 744101.

4. The Chief Engineer,
Andaman Public Works Department,
Nirman Bhawan,
Port Blair - 744101.

.....Respondents

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A /351/878/AN/2018

Date of order : 21.12.2018

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr.(Ms) Nandita Chatterjee, Administrative Member

MAHESHWAR DAS

VS.

UNION OF INDIA & ORS.(A&N)
(A.P.W.D.)

For the applicants : Mr. A. Prasanth, counsel

For the respondents : Mr.N.A. Khan, counsel

ORDER

Bidisha Banerjee, Judicial Member

This application has been preferred questioning the legality and propriety of the order dated 11.06.2018 which reads as under:-

"WHEREAS, Shri Maheshwar Das, Junior Engineer has filed an OA No.351/299/2018 (Shri Maheshwar Das -vs-The Union of India and Others) which was disposed of by the Hon'ble CAT Circuit Bench of Port Blair vide dated 26/02/2016 with the following observation:-

"The OA is disposed of without going into the other merits of the case by directing the respondents to consider Annexure A-5 representation dated 31/03/2015 of the applicant and to pass appropriate speaking and reasoned orders within 90 days from the date of receipt of a copy of this order."

WHEREAS Shri Maheshwar Das, JE vide represented dated 31/03/2015 contended that he has completed 25 years and 3 months service till date (31/03/2015) and he got 1st Financial Up-gradation under ACP scheme and 2nd Financial Up-gradation under MACP scheme is due since Jan 2010. Further stated that Superintending Engineer, PBCC has informed that No disciplinary/criminal case pending or contemplated against him as per service record.

WHEREAS upon examination of the said representation and as per record it is found that the Anti-Corruption Unit has conducted an enquiry and submitted their report against Shri Jose Mone. A, Executive Engineer, Shri N. Thirunavakarasu, Assistant Engineer(Retd.), Shri Maheshwar Das, Junior Engineer and Shri R.C. Pandey, Junior Engineer. Accordingly, the Charge Sheet was issued to Shri Jose Mone. A, Executive

Engineer, Shri A. Thirunavakarasu, Assistant Engineer(Retd.) and the inquiry is completed and penalty of Censure was imposed upon Shri Jose Mone A.

In respect of Shri Maheshwar Das, Junior Engineer and Shri R.C. Pandey, Junior Engineer the Administration has requested to initiate necessary action to frame the charge sheet against Shri Maheshwar Das, Junior Engineer and Shri R.C. Pandey, Junior Engineer and this office intimated that the case has been investigated by the Anti-Corruption Unit. Hence the Charge Sheet may be framed by the Anti-Corruption Unit.

Further, Assistant Secretary(Vig) vide his letter dated 07/03/2006 has forwarded the CVC OM No.006/04/UTS/002 dated 10/02/2006 and recommended RDA for major penalty proceedings against Shri Maheshwar Das, Junior Engineer. Accordingly a case is contemplated against him and he is not clear from Vigilance angle.

NOW THEREFORE, the case of Shri Maheshwar Das, Junior Engineer regarding grant of 2 MACP will be considered after closure of case and receipt of Vigilance Clearance from Administration."

2. The applicant submitted that that vigilance clearance cannot be withheld due to filing of a complaint unless it is established on the basis of at least a preliminary inquiry or on the basis of any information that the concerned Department may already have in its possession that there is prima facie substance to verifiable allegations regarding (i) corruption (ii) Possession of assets disproportionate to known sources of income (iii) moral turpitude (iv) violation of the Central Civil Services(Conduct)Rules 1964.

3. Ld. counsel for the applicant has drawn our attention to the O.M. dated 14th December, 2007 issued by the DOP&T which stipulates the circumstances under which vigilance clearance shall not be withheld which are as under:-

"2. The circumstances under which vigilance clearance shall not be withheld shall be as under:-

- a) Vigilance clearance shall not be withheld due to the filing of a complaint unless it is established on the basis of at least a preliminary inquiry or on the basis of any information that the concerned Department may already have in its possession that there is prima facie substance to verifiable allegations regarding (i) corruption (ii) Possession of assets disproportionate to known sources of income (iii) moral turpitude (iv) violation of the Central Civil Services(Conduct)Rules 1964.
- b) Vigilance clearance shall not be withheld if a preliminary inquiry mentioned in 2(a) above takes more than three months to be completed.
- c) Vigilance clearance shall not be withheld unless(i) the officer is under suspension (ii) a charge sheet has been issued against the officer in a disciplinary proceeding and the proceeding is pending (iii) orders for instituting disciplinary proceeding against

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the officer have been issued by the Disciplinary Authority provided that the chargesheet is served within three months from the date of passing such order (iv) chargesheet has been filed in a Court by the Investigating Agency in a criminal case and the case is pending (v) orders for instituting a criminal case against the officer have been issued by the Disciplinary Authority provided that the chargesheet served within three months from the date of initiating proceedings (vi) sanction for investigation of prosecution has been granted by the Competent Authority in a case under the PC Act or any other criminal matter (vii) an FIR has been filed or a case registered by the concerned Department against the officer provided that the charge sheet is served within three months from the date of filing/registering the FIR/case and (viii) The officer is involved in a trap/raid case on charges of corruption and investigation is pending.

- d) Vigilance clearance shall not be withheld due to an FIR filed on the basis of a private complaint unless a charge sheet has been filed by the investigating agency provided that there are no directions to the contrary by a competent court of law.
- e) Vigilance clearance shall not be withheld even after sanction for prosecution if the investigating agency has not been able to complete its investigations and file charges within a period of two years. However, such vigilance clearance will entitle the officer to be considered only to be appointed to non-sensitive posts and premature repatriation to the parent cadre in case he is on deputation and not for any other dispensation listed in para 1 of this OM."

4. Citing the above, the Id. counsel for the applicant would submit that it is apparent from the impugned order dated 11.06.2018 that the Anti-Corruption Unit is yet to frame a charge, no departmental proceedings have been initiated against the applicant, he is not under suspension and more than 4 months have expired from the date such order dated 11.06.2018 was issued, meaning thereby, that although a request was made to initiate necessary action to frame the charge sheet, even upon expiry of 4 months no charge sheet has been issued and, therefore, vigilance clearance against the applicant for the purpose of grant of MACP could not be withheld.

5. Per contra Id. counsel for the respondents would submit that the matter has been dealt with by the Anti-Corruption Unit. On 10.02.2006 the Central Vigilance Commission(CVC) advised initiation of major penalty proceedings against the applicant and advised the UT administration to approach the Chief Engineer for comments and recommendations . The matter was dealt with by Anti-Corruption Unit with a direction to frame a

charge sheet. Further on 11.05.2012 documents related to the case were called for. Two persons namely, Jose mone A, Executive Engineer and N. Thirunavakarasu, Assistant Engineer against whom proceedings were drawn up, got completed and penalty of cesure was directed to be imposed. Both the persons were jointly proceeded against along with the present applicant. Although Jose Mone A was imposed a minor penalty, N. Thirunavakarasu was absolved of the charges and proceedings related to the present applicant could not be initiated in absence of fuller particulars and documentary evidence. Ld. counsel would also vociferously submit that the applicant can be considered for 2nd financial upgradation only after his clearance from vigilance angle and that an enquiry has been initiated by Anti Corruption Unit way back in 2006 which is pending final decision.

6. Ld. counsel were heard and materials on record were perused.

7. Having noticed that no documents have been furnished by the respondent authorities in support of their contention that a charge sheet has been framed against the applicant or a departmental proceeding is pending or that the applicant has been under suspension for some time or any sanction for investigation or prosecution has been granted by the competent authority under P.C. Act or an FIR has been lodged. Therefore, we feel it appropriate to remand the matter back to the authorities to consider the case in the light of the O.M. dated 14th December, 2007 and take appropriate action in accordance with law. A speaking order be issued in case the authorities feel that the applicant is not to be allowed MACP benefits due to pending proceedings. Let appropriate orders be issued by 8 weeks.

8. With the above observation and direction the O.A. stands disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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