

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

MA 4773/2018
OA No. 2542/2017
MA 718/2018
MA 719/2018
MA 3125/2018
MA 3916/2018

Reserved on 27.11.2018
Pronounced on 14.12.2018

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

Rabindra Prasad,
S/o Mr. Bindeshwari Prasad,
R/o Flat No. 305,
Golden Height Apartment,
Pocket-8, Sector-12, Dwarka,
New Delhi-110078
Having office at O/o PGM (N),
QA & Inspection Circle, New Delhi
Aged about 49 Group B

... Applicant

(By Advocate: Mr. Girish C Jha)

VERSUS

1. Bharat Sanchar Nigam Limited,
Ground Floor, Eastern Court Complex,
Janpath, New Delhi-110001
2. Shri B.K.Jog
CGM. Inspection & QA Circle
Cum Disciplinary Authority
Bharat Sanchr Nigam Limited,
Jabalpur, Madhya Pradesh.

... Respondents

(By Advocate: Mr. R.V. Sinha)

ORDER

Hon'ble Mr. S.N. Terdal, Member (J):

We have heard Mr. Girish C. Jha, counsel for applicant and Mr. R.V.Sinha, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

"8.1 Pass Order(s) directing the respondents to quash and set aside impugned charge sheet being Memorandum No.TD/VIG/2109/R.PRASAD/10 dated 15.05.2017 was issued against the applicant by respondent no. 2/the Bharat Sanchar Ngam Ltd.

8.2 To pass and other orders that is deem, just, fit and proper to meet the ends of justice as per facts and circumstances of the present case."

3. The relevant facts of the case are that a Memorandum dated 15.05.2017 was issued to the applicant initiating a departmental enquiry under Rule 36 read with Rule 61 of the BSNL CDA Rule-2006 for not adhering to the policy guidelines while processing tenders etc. pertaining to NIT No. TP.NCR /Tender. MW /Tower Erection/T-006/10-11 dated 19.04.2010. In all VIII articles of charge were served on the applicant.

4. Along with the articles of charge, statement of imputation of misconduct, list of documents and list of witnesses were served on the applicant. The applicant filed the present OA challenging the above said memorandum dated 15.05.2017. The counsel for the applicant vehemently submitted that articles of charges are false and baseless and he has been proceeded against in the departmental enquiry because of malice and malafide. In support of his contention, the counsel for the applicant relied on the judgment of Hon'ble High Court of Delhi in the case of **State of Tamil Nadu Vs. UOI & Ors** (W P (C) 6117/2016) decided on 30.11.2016. In para 22 of the said judgment, para 33 of the judgment of Hon'ble Supreme Court in the case of **State of Punjab Vs. V.K.Khanna** reported in (2001) 2 SCC 330 is referred to. The said paragraph 33 is as under:

"33. While it is true that justifiability of the charges at the stage of initiating a disciplinary proceeding cannot possibly be delved

into by any court pending inquiry but it is equally well settled that in the event there is an element of malice or mala fide, motive involved in the matter of issue of a charge-sheet or the authority concerned is so biased that the inquiry would be a mere farcical show and the conclusions are well known then and in that event law courts are otherwise justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a public official. It is not a question of shielding any misdeed that the Court would be anxious to do, it is the due process of law which should permeate in the society and in the event of there being any affectation of such process of law that law courts ought to rise up to the occasion and the High Court, in the contextual facts, has delved into the issue on that score. On the basis of the findings no exception can be taken and that has been the precise reason as to why this Court dealt with the issue in so great a detail so as to examine the judicial propriety at this stage of the proceedings." Malice in law must be distinguished from mala fides, for the former term is more akin to lack of good faith. It does not impute moral obliquity. It should not be treated as apposite of honesty, for it refers to lack of legitimate reasons."

5. The counsel for the respondents equally vehemently and strenuously submitted that the departmental enquiry is at premature stage and the jurisdiction of this Tribunal to entertain the OA at this stage is very much limited. The Tribunal cannot go into the merits of the allegation made against the applicant in the charge sheet and the charges leveled against the applicant is yet to be proved by evidence to be adduced in the departmental proceedings. As such the OA requires to be dismissed. In support of his contention he relied upon the following judgments of the Hon'ble Supreme Court:

- (1) **UOI and Anr. Vs. Ashok Kacker** reported in 1995 Suppl. (1) SCC 180.
- (2) **UOI Vs. Upender Singh** reported in 1994 (3) SCC 357)
- (3) **UOI and Anr. Vs. Kunisetty Satyanarayana** reported in 2006 (12) SCC 28)
- (4) **State of Punjab & Ors Vs. Ajit Singh** reported in 1997 (11) SCC 368)

In para 4 in the case of Ashok Kacker it is states as follows:

"4. Admittedly, the respondent has not yet submitted his reply to the charge-sheet and the respondent rushed to the Central Administrative Tribunal merely on the information that a charge-sheet to this effect was to be issued to him. The Tribunal entertained the respondent's application at that premature stage and quashed the charge-sheet issued during the pendency of the matter before the Tribunal on a ground which even the learned counsel for the respondent made no attempt to support. The respondent has the full opportunity to reply to the charge-sheet and to raise all the points available to him including those which are now urged on his behalf by learned counsel for the respondents. In our opinion, this was the stage at which the Tribunal ought to have entertained such an application for quashing the charge-sheet and the appropriate course for the respondent to adopt is to file his reply to the charge-sheet and invite the decision of the disciplinary authority thereon. This being the stage at which the respondent had rushed to the Tribunal, we do not consider it necessary to require the Tribunal at this stage to examine any other point which may be available to the respondent or which may have been raised by him."

We are of the opinion that as per law laid down by the Hon'ble Supreme Court referred to and relied upon by the counsel for the respondents it is not a fit case for interference in the departmental proceedings at this stage and even regarding malice or male fide also the applicant can adduce evidence in the departmental proceedings.

6. Accordingly, OA is dismissed. In view of the disposal of the OA, no separate order is required to be passed in MAs, accordingly, all MAs stand disposed of. No order as to costs.

(S.N.Terdal)
Member (J)

(K.N.Shrivastava)
Member (A)

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