

**Central Administrative Tribunal
Principal Bench**

OA No.3266/2016

With

OA No.3414/2016

MA No.1866/2019

MA No.592/2018

New Delhi, this the 9th day of July, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mohd. Jamshed, Member (A)**

I. OA No.3266/2016

Sh. Homi Rajvansh
Aged about 52 years
S/o Late R.K. Rajvansh
R/o C-93, 2nd Floor
Greater Kailash-I
New Delhi.
(Working as Commissioner of Income Tax)

...Applicant

(By Advocate: Shri Surinder Kumar Gupta)

Vs.

Union of India through

1. Secretary,
Department of Revenue
Ministry of Finance
North Block, New Delhi.
2. Chairman
Central Board of Direct Taxes
Department of Revenue
Ministry of Finance
North Block, New Delhi.
3. Pr. Director General of Income Tax (Vig.)
First Floor, Dayal Singh Library

1, Deen Dayal Upadhyay Marg
New Delhi.

...Respondents

(By Advocate: Shri Rajesh Katyal)

II. OA No.3414/2016

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ORDER (ORAL)**Justice L. Narasimha Reddy, Chairman :-**

These two OAs are filed by the same officer and subject matter of the OAs is two sets of charge sheets issued to the applicant. Hence, the OAs are disposed of by this common order.

2. The applicant is an Indian Revenue Service (IRS) Officer of the 1985 batch. Between 15.07.2003 and 14.07.2006, he was on deputation to National Agricultural Cooperative Marketing Federation of India Ltd. (for short, NAFED). It appears that the administration of the NAFED noticed certain acts of omission and commission on the part of the applicant, while he was on deputation. They addressed a letter dated 05.09.2007 to the Central Vigilance Commission (CVC), with supporting material, seeking their advice. The CVC, in turn, issued an Office Memorandum dated 01.10.2007, suggesting the initiation of major penalty proceedings. It was also mentioned that the charges referable to the material placed before the CVC, can also be added to the proceedings.

3. The Ministry of Finance, issued a set of five charge sheets dated 22.12.2006 to the applicant. The allegation contained therein was that the primary business of NAFED was diversified by the applicant in defiance of bye laws of NAFED to various Agencies and mis-management of the Organisation. The applicant filed OAs No.1600/2010, 2887/2010 and No.2890/2010, challenging the charge sheets. The principal ground raised therein was that the charge sheets were not approved by the Finance Minister. The OAs were allowed on 20.08.2010 and 11.02.2011, setting aside the charge sheets and leaving it open to the respondents to issue fresh charge sheets, in accordance with law. After the issue pertaining to the approval of the charge sheet assumed finality with the judgment of Hon'ble Supreme Court in ***Union of India & Ors. Vs. B.V. Gopinath*** (2014) 1 SCC 351, the respondents issued a set of fresh charge sheets (five in number) on 11.06.2014, reiterating the same allegations, as contained in the earlier set of charge sheets.

4. Another set of four charge sheets was issued to the applicant on 03.12.2014 with reference to his functioning

on deputation with NAFED. Challenging the same, the applicant filed the OA No.3266/2016.

5. The applicant contends that charge sheets were issued in clear violation of the settled principles of law. According to him, the CVC advice ought to have been obtained by the finance Department, as provided for in the Office Order dated 19.07.2005, and that in the instant case, the advice was sought by the NAFED and on the basis of that the bunch of charge sheets was issued. The second ground raised by the applicant is that criminal proceedings were initiated against him, and the charge sheet filed therein was set aside by the Hon'ble Delhi High Court in Criminal M.C.456/2012, and in that view of the matter, the present set of charges cannot be sustained in law. It is also pleaded that there is inordinate delay in issuance of second set of charge sheets and the same cannot be sustained in law.

6. On behalf of the respondents, separate counter affidavits are filed. It is stated that the advice of the CVC was obtained by the NAFED as soon as the irregularities committed by the applicant were noticed and in view of the procedure contained under Rule 20 of the CCS(CCA)

Rules, it is competent for the Ministry of Finance to continue the proceedings on the basis of the advice tendered by the CVC.

7. As regards the plea as to delay, it is stated that the first set of charge sheets was issued in the right earnest, and in relation to those issued for the first time in 2014, it is stated that certain acts of omission and commission on the part of the applicant, when he was on deputation were noticed at a later stage.

8. Shri S.K. Gupta, learned counsel for applicant advanced extensive arguments. He contends that the advice of the CVC is an essential step in the context of the disciplinary proceedings and in the instant case, it was not complied with in its letter and spirit. It is submitted that Hon'ble Delhi High Court quashed the charge sheet in the Criminal case by recording findings on facts and since the present charge sheets are based on the same set of allegations, they are also liable to be quashed. He further submits that though the charge sheets, which are the subject matter of OA No.3414/2016, can be said to be in continuation of the earlier ones, those challenged in OA No.3266/2016 were

issued for the first time in the year 2014, with reference to working of the applicant in the year 2004. Placing reliance on the decided cases, he submits that the same cannot be sustained in law.

9. Though in the OA, it is pleaded that the charge sheet ought to have been approved by the Appointments Committee of the Cabinet (for short, ACC), the same is not pressed at the time of hearing and we were specifically informed of the same.

10. We heard Shri Surinder Kumar Gupta, learned counsel for applicant and Shri Rajesh Katyal, learned counsel for respondents.

11. With reference to the working of the applicant as Additional Managing Director of NAFED during the years 2003-06, initially a set of five charge sheets was issued on 22.12.2006. A typical chargesheet reads as under :

“Statement of Articles of Charge framed against shri Homi Rajvnash, Commissioner of Income Tax (IRS Civil list code no.85043), (Ex. Additional Managing Director in NAFED) in the matter of Tie up business undertaken by NAFED with M/s Kripa Overseas.

Article-I

During 2004 Shri Homi Rajvansh while functioning as Additional Managing Director in NAFED committed misconduct in as much as he extended the import order which had been approved only for heeng to rolling scrap also without obtaining the approval of the competent authority and thereby exceeded his own powers and acted in an arbitrary and unauthorized manner which ultimately resulted in huge loss to the NAFED.

By his aforesaid acts of omission and commission, Shri Homi Rajvansh failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government servant and thereby violated the provisions of Rules 3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS (Conduct) Rules, 1964.

Article-II

Shri Homi Rajvansh while functioning as Additional Managing Director in NAFED during 2004 exceeded his power and jurisdiction by placing an import order with M/s Kripa Overseas without the approval of the competent authority whereas the competent authority has approved for placing the import order with M/s Pylong Traders Pvt. Ltd.

By his aforesaid acts of omission and commission, Shri Homi Rajvansh failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government servant and thereby violated the provisions of Rules 3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS (Conduct) Rules, 1964.

Article-III

Shri Homi Rajvansh while functioning as Additional Managing Director during 2004 with NAFED committed grave misconduct in releasing Rs. 10.00 crores to M/s Kripa Overseas in an unauthorized and irregular manner and without making any verification of the financial credibility of

M/s Kripa Overseas. By the aforesaid act Shri Homi Rajvansh not only acted in a manner unbecoming of a Government servant but also clearly violated the procedural safeguards before releasing a huge amount of Rs.10.00 crores. Ultimately, M/s Kripa Overseas defaulted in their first ever transaction with NAFED and thereby caused huge financial loss to NAFED. By releasing the said huge amount in the aforesaid unauthorized and irregular manner, Shri Rajvansh clearly demonstrated that he was favouring M/s Kripa Overseas for ulterior motives.

By his aforesaid acts and omission and commission, Shri Homi Rajvansh failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government servant and thereby violated the provisions of Rules 3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS (Conduct) Rules, 1964.

Article-IV

Shri Homi Rajvansh while functioning as Additional Managing Director during 2004 with NAFED committed grave misconduct in as much as he placed an import order with M/s Kripa Overseas without any authorization and further allowed M/s Kripa Overseas to change the terms of import order unilaterally in clear violation of the approved terms for such import order and thereby clearly exhibited that he was in total connivance with M/s Kripa Overseas and therefore wantonly sacrificed the business of NAFED only to cause huge financial gains to M/s Kripa Overseas at the cost of NAFED.

By his aforesaid acts of omission and commission, Shri Homi Rajvansh failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government servant and thereby violated the provisions of Rules 3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS (Conduct) Rules, 1964.

Article-V

Shri Homi Rajvansh while functioning as Additional Managing Director during 2004 with NAFED committed grave misconduct in as much as while executing a Memorandum of Understanding (MOU) with M/s Kripa Overseas on 20.09.2004 fixed the performance target as Rs.50.00 crores without the approval of the competent authority. By the said unauthorized act Shri Homi Rajvansh exposed NAFED to great business risks which ultimately resulted in huge financial loss to the NAFED.

By his aforesaid acts of omission and commission, Shri Homi Rajvansh failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government servant and thereby violated the provisions of Rules 3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS (Conduct) Rules, 1964.

Article-VI

Shri Homi Rajvansh while functioning as Additional Managing Director during 2004 with NAFED committed grave misconduct in as much as he released huge funds of Rs.10.00 crores to M/s Kripa Overseas without taking any worthwhile security from M/s Kripa Overseas thereby putting huge funds of NAFED at great risk. The open cheques given by M/s Kripa Overseas were ultimately dishonoured and thereby caused huge financial loss to NAFED and created great recovery problems for NAFED.

By his aforesaid acts of omission and commission, Shri Homi Rajvansh failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government servant and thereby violated the provisions of Rules 3(1)(i), 3(1)(ii) & 3(1)(iii) of CSS (Conduct) Rules, 1964.

Article-VII

Shri Homi Rajvansh while functioning as Additional Managing Director during 2004 with NAFED committed grave misconduct in as much as he released a fund of Rs.10.00 crores to M/s Kripa Overseas even before received the margin money of Rs. 1 crore. The cheque of margin money of Rs.1 crore vide cheque dated 23.09.2004 was also not deposited till 01.10.2004 while the MOU was signed on 20.09.2004. The sequence of events coupled with the fact that M/s Kripa Overseas had not been approved for the import order and further that M/s Kripa Overseas had never dealt with NAFED in the past and further that M/s Kripa Overseas defaulted in the very first transaction with NAFED clearly shows that Shri Homi Rajvansh was hand-in-glove with M/s Kripa Overseas and acted with malafide intention by violating the approval of the competent authority and thereby caused huge financial loss to NAFED.

By his aforesaid acts of omission and commission, Shri Homi Rajvansh failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government servant and thereby violated the provisions of Rules 3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS (Conduct) Rules, 1964.”

In the other charge sheets, the difference is mostly about the agencies that were involved in the transactions.

12. The first set of charge sheets was challenged on the ground that they were not approved by the Finance Minister. In **B.V. Gopinath** (supra), the Hon'ble Supreme Court has finally laid down that a charge sheet must be approved by the Disciplinary Authority at four stages,

namely, (i) initiation of proceedings, (ii) the draft of charges, (iii) appointment of Inquiry Officer and; (iv) imposition of penalty. It was also held that the Finance Minister happens to be the Disciplinary Authority for officers above the rank of Commissioner of Income Tax. Admittedly, in the instant case, the charge sheets issued on 22.12.2006 were not approved by the Finance Minister. They were accordingly, set aside and it was left open to the respondents to take steps, in accordance with law. A set of fresh charge sheets on 11.06.2014 was issued.

13. The first ground urged by the applicant is that the opinion of the CVC was not obtained, in accordance with law. The record discloses that the NAFED addressed a letter dated 05.09.2007 to the CVC seeking their advice in the light of the various facts that came to light as regards the functioning of the applicant as Additional Managing Director. Responding to the same, the CVC issued an OM dated 01.10.2007 which reads as under :-

“OFFICE MEMORANDUM”

Sub: Departmental action against Shri Homi Rajvansh, IRS, on

deputation to Nafed as Addl Managing Director.

NAFED may please refer their letter No.HQ/VIG/81/2007-08 dated 05.09.2007 on the above cited subject.

2. The reference made by Ministry has been examined in the Commission. Taking into consideration the gravity of irregularities attributed to the officer, the Commission would advise initiation of RDA for major penalty against Shri Homi Rajvansh, the then Additional Managing Director, NAFED, now Commissioner of Income Tax. It is further advised that these charges may be added to the ongoing proceedings against Shri Rajvansh.

3. Receipt of this Office Memorandum may be acknowledged.”

14. The contention of the learned counsel for applicant is that the advice of the CVC ought to have been obtained only by the Chairman, CBDT, as provided for, under Office Order dated 19.07.2005. In this regard, it needs to be noticed that in case the advice was required to be sought from the CVC only by the authorities of Finance Ministry, the Chairman CBDT is certainly the competent authority, for the officers of the rank of Commissioner.

15. In the instant case, the applicant was on deputation to NAFED at the relevant point of time. It is well settled

that the disciplinary proceedings can be initiated either by the borrowing department or the lending department, if an employee who was on deputation is found to have resorted to acts of misconduct. Rule 20 of the CCS (CCA) Rules, 1965 is clear on this aspect, and it reads as under:-

“20. Provisions regarding officers lent to State Governments, etc.

(1) Where the services of a Government servant are lent by one department to another department or to a State Government or an authority subordinate thereto or to a local or other authority (hereinafter in this rule referred to as "the borrowing authority"), the borrowing authority shall have the powers of the appointing authority for the purpose of placing such Government servant under suspension and of the disciplinary authority for the purpose of conducting a disciplinary proceeding against him:

Provided that the borrowing authority shall forthwith inform the authority which lent the services of the Government servant (hereinafter in this rule referred to as "the lending authority") of the circumstances leading to the order of suspension of such Government servant or the commencement of the disciplinary proceeding, as the case may be.

(2) In the light of the findings in the disciplinary proceeding conducted against the Government servant-

(i) if the borrowing authority is of the opinion that any of the penalties specified in clauses (i) to (iv) of rule 11 should be

imposed on the Government servant, it may, after consultation with the lending authority, make such orders on the case as it deems necessary:

Provided that in the event of a difference of opinion between the borrowing authority and the lending authority, the services of the Government servant shall be replaced at the disposal of the lending authority;

(ii) if the borrowing authority is of the opinion that any of the penalties specified in clauses (v) to (ix) of rule 11 should be imposed on the Government servant, it shall replace his services at the disposal of the lending authority and transmit to it the proceedings of the inquiry and thereupon the lending authority may, if it is the disciplinary authority, pass such order thereon as it may deem necessary, or, if it is not the disciplinary authority, submit the case to the disciplinary authority which shall pass such orders on the case as it may deem necessary :

Provided that before passing any such order the disciplinary authority shall comply with the provisions of sub-rules (3) and (4) of rule 15.”

16. Another aspect is that if the proceedings are initiated by the borrowing department, they can be resumed or continued by the lending department from the concerned stage. There is nothing in law which insists that the borrowing department can initiate proceedings only at a time when the deputation of an employee is still in force. Much would depend upon the

time at which the irregularities have been noticed. There is no plea that it was not competent for the NAFED to seek the advice of the CVC, nor it was pointed out that the advice was sought by an authority not competent to do so. Once the advice was sought by NAFED, it certainly constituted the basis for continuation of the disciplinary proceedings by the NAFED. Therefore, we reject the contention advanced by the applicant in this behalf.

16. The second plea raised by the applicant is based upon the judgment of Hon'ble High Court. The CBI initiated criminal proceedings against the applicant and many others. Charge sheets were also filed therein. The applicant filed Criminal M.C.No.3325/2015 before the Hon'ble Delhi High Court under Section 482 Cr.PC, challenging the charge sheet, to the extent, it concerns him. That Criminal M.C. along with Criminal M.C.No.456/2012 filed by Shri Alok Ranjan, were allowed through the judgment dated 04.03.2016. It was held that the allegation of conspiracy against those two officers cannot be sustained in law. The order passed by the

Hon'ble Delhi High Court was upheld by the Hon'ble Supreme Court in SLP No.21328/2016 on 03.01.2017.

17. It is not uncommon that on the same set of allegations, the disciplinary proceedings on the one hand and, the criminal proceedings on the other, against an employee, are initiated. It is also not uncommon that the criminal proceedings end up in favour of the employee. This can be either on a full fledged trial conducted by the Trial Court or on allowing a Petition under Section 482 Cr.PC for quashing, by a superior forum. While in the Trial Court, the acquittal takes place on appreciation of evidence, or on technical grounds, quashing of charge sheet by a superior Court would be when, it finds that even if the contents of the charge sheet are taken as true, no criminal act or crime can be discerned. In the instant case, the applicant availed the remedy under Section 482 Cr.PC.

18. Whether the acquittal is on a full fledged Trial or the quashing of charge sheet is under Section 482, the result thereof cannot, by itself, wipe away the disciplinary proceedings. Reference in this context can be made to

the judgment of the Hon'ble Supreme Court in **Samar Bahadur Singh Vs. State of Uttar Pradesh** [(2011) 9 SCC 94]. In para 11, their Lordships observed as under :-

“11. Acquittal in the criminal case shall have no bearing or relevance to the facts of the departmental proceedings as the standard of proof in both the cases are totally different. In a criminal case, the prosecution has to prove the criminal case beyond all reasonable doubt whereas in a departmental proceedings, the department has to prove only preponderance of probabilities. In the present case, we find that the department has been able to prove the case on the standard of preponderance of probabilities. Therefore, the submissions of the counsel appearing for the appellant are found to be without any merit.”

19. Recently the Hon'ble Delhi High Court in **Union of India & Ors. Vs. P.K. Sharma** WP(C) No.6984/2009 dated 28.06.2017, referred to the various judgments of the Hon'ble Supreme Court on the issue. The discussion undertaken in paragraphs 13, 14 & 15 is useful and relevant to the facts of the present case. The same read as under :-

“13. The first issue which we deem appropriate to settle is whether the respondent once having been acquitted of the charges under the **Customs Act, 1962**

can then be proceeded against in a departmental enquiry under the CCS (CCA) Rules on the same cause of action i.e. giving the false examination report allegedly entered by the respondent in respect to Bill of Entry No.724870 dated 21.12.1998 submitted by M/s Intertrade Incorporated, Noida. The Hon'ble Supreme Court in [South Bengal State Transport Corpn. v. Sapan Kumar Mitra](#), (2006) 2 SCC 584 while dealing with the effect of acquittal in criminal proceedings in disciplinary proceedings on the basis of the same cause of action held as under:-

"10. Similarly in [Senior Supdt. of Post Offices v. A. Gopalan](#) [(1997) 11 SCC 239 : 1998 SCC (L&S) 124] the view expressed in [Nelson Motis v. Union of India](#) [(1992) 4 SCC 711 : 1993 SCC (L&S) 13 : (1993) 23 ATC 382] was fully endorsed by this Court and similarly it was held that the nature and scope of proof in a criminal case is very different from that of a departmental disciplinary proceeding and the order of acquittal in the former cannot conclude the departmental proceedings. This Court has further held that in a criminal case charge has to be proved by proof beyond reasonable doubt while in departmental proceeding the standard of proof for proving the charge is mere preponderance of probabilities. Such being the position of law now settled by various decisions of this Court, two of which have already been referred to earlier, we need not deal in detail with the question whether acquittal in a criminal case will lead to holding that the departmental proceedings should also be discontinued. That being the position, an order of removal from

service emanating from a departmental proceeding can very well be passed even after acquittal of the delinquent employee in a criminal case. In any case, the learned Single Judge as well as the Division Bench did not base their decisions relying on the proposition that after acquittal in the criminal case, departmental proceedings could not be continued and the order of removal could not be passed.

(Emphasis supplied)

14. The Hon'ble Supreme Court while again re-iterating the ratio laid down in South Bengal State Transport Corporation's case (*supra*) in [Samar Bahadur Singh v. State of U.P.](#), (2011) 9 SCC 94 held as under:

"7. Acquittal in the criminal case shall have no bearing or relevance to the facts of the departmental proceedings as the standard of proof in both the cases are totally different. In a criminal case, the prosecution has to prove the criminal case beyond all reasonable doubt whereas in a departmental proceedings, the department has to prove only preponderance of probabilities. In the present case, we find that the department has been able to prove the case on the standard of preponderance of probabilities. Therefore, the submissions of the counsel appearing for the appellant are found to be without any merit.

(Emphasis supplied)

15. Therefore we have no hesitation in holding that there is no bar in initiating disciplinary proceedings if the charged officer is acquitted of criminal proceedings arising out of the same cause of action. The result of one proceeding does not have a bearing on the other proceedings. The CESTAT might have found that the respondent did not collude with the importer and hence was not liable of a penalty under the *Customs Act*, 1962 but that does not mean that he is not guilty of misconduct, maintaining absolute integrity and devotion to duty as per Rule 14 of the CCS (CCA) Rules.”

20. When the acquittal on a full fledged trial cannot constitute the basis for quashing a charge sheet in disciplinary proceedings, the result in a Petition filed under Section 482 Cr.PC cannot also constitute the basis. In a way, the adjudication of a Petition under Section 482 proceeds on the assumption that the allegations against an accused are taken as true. The relief is granted on the ground that they do not constitute any crime. If this subtle distinction is taken into account, the employee has to struggle a lot, in the disciplinary proceedings to overcome the presumption that constituted the basis for quashing the charge. We, however, do not deal with the same in detail. Suffice it to say that the quashing of the charge sheet does not by

itself, constitute the basis for a conclusion that the disciplinary proceedings cannot be sustained in law.

21. The last plea is about delay in initiation of the proceedings. That ground is referable only to the second OA.

22. It is no doubt true that a set of charge sheets issued therein were not preceded by another set, and they are referable to functioning of the applicant in the year 2004. The fact, however, remains that as regards the functioning in the same office, the applicant is facing the disciplinary proceedings ever since the year 2006, and as of now, the set of five charge sheets is pending against him. The respondents wanted to expand the scope of disciplinary proceedings by issuing separate charge sheets. On the question of delay, though there are instances for quashing of charge sheets on the ground of delay, much would depend upon the nature of charges and the extent of delay involved. If the charges are serious and grave in nature and the action against the employee is in continuum, a totally different approach is warranted. The judgment of the Hon'ble Supreme Court

