

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA No. 4189/2017

This the 18th day of September, 2019

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

Shri Gautam Arora
Son of Shri Khushi Ram
Resident of B-1/56, Janakpuri,
New Delhi-110 058.

....Applicant

(By Advocate : Mr. Atul Verma and Mr. Sanjeev Ralli)

Versus

1. Govt. of NCT Delhi
Through Special Secretary,
Directorate of Vigilance
4th Floor,
Delhi Sachivalaya, I.P. Estate,
New Delhi-110 002.
2. The Lt. Governor of Delhi
Raj Niwas,
Delhi-110 054.
3. Election Commission of India
Through the Chief Election Commissioner
Nirvachan Sadan, Ashoka Road,
New Delhi -110 001.
4. The Chief Electoral Officer, Delhi
Old St. Stephen's College Building
Kashmere Gate
Delhi-110 006.
5. Shri R. L. Srivastava
Inquiry Officer/Inquiring Authority
Directorate of Vigilance
6th Floor,
Delhi Sachivalaya, I.P. Estate,
New Delhi-110 002.

...Respondents

(By Advocate : Mr. Amit Anand with Mr. Sunil Bansal for R-1 & 2)

O R D E R (ORAL)

Justice L. Narasimha Reddy, Chairman :

The applicant is an Administrative Officer in the Deen Dayal Upadhyay Hospital under the administration of GNCTD-1st respondent. On April, 2013, he was assigned the duties of Assistant Electoral Revision Officer (AERO) and in the next year, he was designated as Electoral Registration Officer (ERO). His association with the Election Commission of India came to an end in July, 2016.

2. The Lt. Governor of Delhi, the 2nd respondent issued a charge memorandum dated 16.04.2014 to the applicant. It was alleged that the applicant, while functioning as AERO, AC-31, Vikas Puri, New Delhi, between April and September 2013, failed to discharge his duties as controlling officer and maintaining the record at the Voter Centre of AC-31. The second allegation was that he failed to get the 46 Election Photo Identity Cards (EPICs) delivered to the rightful applicants. On receipt of the charge memorandum, the applicant raised certain objections as to the very competence of the 2nd respondent, to issue charge memorandum. According to the applicant, the Election Commission the 3rd respondent alone is the authority, competent to initiate disciplinary proceedings against an

official, drawn for discharge of duties. Reference was made to Section 13CC of the Representation of the People Act, 1950. The second respondent has undertaken correspondence with the 3rd respondent in this behalf. The latter issued a clarification dated 22.09.2017 permitting the former to take action against the applicant as well as all others involved in the matter. This O.A is filed challenging the charge memo dated 16.04.2014 and the letter dated 22.09.2017 addressed by the 3rd respondent.

3. The applicant contends that two alleged acts of indiscipline attributed to him are referable to the duties assigned to him by the third respondent and that the second respondent has no jurisdiction to deal with the same. It is also stated that the subsequent correspondence, that ensued between respondents no. 2 and 3 would not justify the issuance of a charge memo, which was illegal at the inception itself. Various other grounds are also raised.

4. On behalf of respondents no. 1 and 2, a detailed counter affidavit is filed. It is stated that the applicant committed certain irregularities in the course of discharge of duties as AERO and ERO and taking note of the same, the impugned charge memo was issued. It is also stated that the inquiry officer was appointed and he, in turn, has taken a view that the 3rd respondent needs to be addressed

in this behalf and the proceedings cannot be continued without its approval. It is mentioned that having regard to the view expressed by the inquiry officer, the correspondence ensued and ultimately the 3rd respondent accorded permission for continuing the proceedings.

5. We heard Mr. Atul Verma with Mr. Sanjeev Ralli, learned counsel for applicant, Mr. Amit Anand for respondent no. 1 and Mr. Sunil Bansal for respondent no. 2, at length and perused the entire record.

6. The 3rd respondent takes up various steps for the purpose of conducting elections. They include preparation of electoral roll, conducting of elections and counting of votes. Since quite large numbers of persons were needed for this purpose, the employees of State and Central Governments and other Government agencies are drawn for this purpose, as and when needed. The control, which the 3rd respondent holds on the employees so drawn, is indicated in Section 13CC of the Act which reads as under:-

“[13CC. Chief Electoral Officers, District Election Officers, etc., deemed to be on deputation to Election Commission.- The officers referred to in this Part and any other officer or staff employed in connection with the preparation, revision and correction of the electoral rolls for, and the conduct of, all elections shall be deemed to be on deputation to the Election Commission for the period during which they are so employed and such officers and staff shall, during that period, be subject to the control, superintendence and discipline of the Election Commission.]

7. For all practical purposes, the employees drawn on

election duties are treated as being on 'deputation'. It is fairly well settled that if an employee who is on deputation, resorts to any act of indiscipline, it shall be competent both for the borrowing department as well as the parent department, to initiate action. The punishment however, can be imposed only by the parent department.

8. In the context of the exercise of powers by the Election Commission vis-a-vis the employees who are assigned electoral duties, not only unanimity was missing but also a semblance of conflict seems to have arisen. That was referred to by the Hon'ble Supreme Court in Writ Petition No. 606/1993 (**Election Commission of India Vs. Union of India and Ors.**) The gist of the direction issued therein is as under :-

"The disciplinary functions of the Election Commission of India over officers, staff and police deputed to perform election duties shall extend to –

- a) Suspending any officer/official/police personnel for insubordination or dereliction of duty;
- b) Substituting any officer/official/police personnel by another such person and returning the substituted individual to the cadre to which he belongs, with appropriate report on his conduct;
- c) Making recommendation to the competent authority, for taking disciplinary action, for any act of insubordination or dereliction of duty, while on election duty. Such recommendation shall be promptly acted upon by the disciplinary authority, and action taken will be communicated to the Election Commission, within a period of six months from the date of Election Commission's recommendations;
- d) The Government of India will advise the State Governments that they too should follow the above principles and decisions, since a large number of election officials are under their administrative control."

9. The Ministry of Personnel, Public Grievances and Pensions has also issued O.M. dated 07.11.2000 incorporating the guidelines issued by the Hon'ble Supreme Court, in the form of clarifications under Rule 35 of the CCS (CCA) Rules.

10. From a perusal of the guidelines issued by the Hon'ble Supreme Court it becomes clear that the 3rd respondent shall have the power to suspend the official/officer or police official and even can substitute such official, with another. If it becomes necessary that disciplinary proceedings are to be initiated against such an employee, the recommendation has to be made to the parent department. In the instant case, the 2nd respondent did not receive any recommendation from the 3rd respondent for initiation of disciplinary proceedings, by the time the impugned charge memo dated 16.04.2014 was issued.

11. Things would have been different altogether, had the subject matter of the proposed inquiry been, into the matter which concerns the discharge of duties on the part of the applicant within the department and not related to the functions referable to the 3rd respondent. The Articles of charge memo reads as under :-

“STATEMENT OF ARTICLES OF CHARGE FRAMED
AGAINST SH. GAUTAM ARORA, ADHOC DANICS, GNCTD.

Article-I

That Sh. Gautam Arora, adhoc DANICS, while functioning as Asstt. Electoral Registration Officer, AC-31, Vikas Puri, New Delhi, during the period w.e.f. April 2013 to September 2013, committed gross negligence and dereliction of duty, as he failed to discharge his duties as a controlling officer, in as much as he failed to maintain record at the voter centre of AC-31, Vikas Puri in a proper manner.

By the aforesaid acts and omission and commission, the said Sh. Gautam Arora, adhoc DANICS, committed gross negligence and dereliction of his duty, exhibiting conduct unbecoming of a government servant, thereby violating the provisions of Rule 3 of CCS (Conduct) Rules, 1964.

Article-II

That the said Sh. Gautam Arora, adhoc DANICS, the then AERO, AC-31, Vikas Puri, during the aforesaid period and while functioning in the aforesaid post, committed gross negligence and dereliction in duty, in as much as he failed to get the 46 election photo identity cards (EPICs), delivered to the rightful applicants, which were found available pending at the voter centre. He also failed to ensure the safety and security of EPICs.

By the aforesaid acts of omission and commission, the said Sh. Gautam Arora, adhoc DANICS, committed gross negligence and dereliction of his duty, exhibiting conduct unbecoming of a government servant, thereby violating the provisions of Rule 3 of CCS (Conduct) Rules, 1964.”

12. In both of them, the reference is only to the acts and omissions on the part of the applicant as the AERO and ERO. There is not even a reference of the duties referable to his parent department. Therefore, the impugned charge memo cannot be sustained in law.

13. The inquiry officer appointed in the case was wise enough to point out that the proceedings cannot be continued without the permission and approval of the 3rd

respondent. The view expressed by him was respected and legal opinion was sought. The legal advice was in favour of obtaining the concurrence and approval from the 3rd respondent. It is in this process that the letter dated 22.09.2017 was issued which reads as under :-

“I am directed to refer to your letters No. CEO/Admn./Vig./118(10)/2013/22767 dated 06.07.2017, & No. CEO/Ddmn./Vig./118(10)/2013/29642 dated 01.09.2017, on the subject cited, and to state that the Commission had considered the matter and has instructed that the Directorate of Vigilance, NCT of Delhi, may be asked to proceed with disciplinary action against all officials involved including Sh. Gautam Arora, Adhoc DANICS.

Action taken in this regard may be intimated to the Commission from time to time.”

This was preceded by some other correspondence wherein reference was made to the report of a serious incident; on consideration of the representation submitted by none other than the applicant himself. Though the applicant had challenged the letter dated 22.09.2017, we are of the view that it can be treated as a communication recommending the disciplinary action instead of the one, approving what has already taken place. In our view, this would accord with the language employed in Section 13CC, the decision of the Hon'ble Supreme Court, and the guidelines contained in O.M. dated 07.11.2011. We, therefore, :

(a) partly allow the O.A and set aside the charge memo dated 16.04.2014.

(b) the communication dated 22.09.2017 from the 3rd respondent shall be treated as the one, recommending the disciplinary action against the applicant.

(c) it is left open to the second respondent to take necessary steps in view of the correspondence that ensued between them.

There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/Mbt/