

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 180/001063 of 2017

Friday, this the 26th day of July, 2019

CORAM

Hon'ble Mr. E.K.Bharat Bhushan, Administrative Member
Hon'ble Mr.Ashish Kalia, Judicial Member

Smt.Sumathi Ravichandran, aged 56 years
W/o.Dr.R.Ravichandran, Postmaster General
Central Region, Kochi, Residing at PMG's Quarters
Kadavanthra P.O, Kochi – 682 020

... Applicant

(By Advocate Mr.Shafik M.Abdulkadir)

Versus

1. Union of India, represented by the Secretary
Department of Posts/Director General, Posts,
Ministry of Communications
New Delhi – 110 001

2. The Asst. Director General (Vig.II)
Ministry of Communications &IT
Department of Posts, Dak Bhawan
Sansad Marg, New Delhi -110 001

..... Respondents

(By Advocate Mr.N.Anilkumar,SCGSC)

The above application having been finally heard on 16.7.2019, the Tribunal on 26.7.2019 delivered the following:

ORDER

*Per: **Mr.E.K.Bharat Bhushan, Administrative Member***

The Original Application 180/001063/2017 is filed by Smt.Sumathi Ravichandran, Postmaster General, Central Region, Kochi aggrieved by the Charge Sheet issued, as per Memorandum No.11-11/CVC/2011-Vig dated 30.8.2017, by the 2nd respondent proposing to initiate a Rule 14 Inquiry against her for violation of Rule 3(1)(i), 3(1)(ii) and 3(1) (iii) of the CCS (Conduct) Rules, 1964 . It is maintained that the incidents leading to the issue of the Charge Memo relate to an old issue which has been investigated by the CBI/ACB Chennai registered under RC/67/A/2009, the charge being possession of disproportionate assets. The CBI itself had come to a finding that there is no disproportionate assets found out in the investigation and requested the CBI Court to close the FIR. The CBI Court, accordingly closed the case. The respondents are trying to revive an old allegation by initiating departmental action as per Annexure A-1.

2. The Applicant, an officer of the Indian Postal Service (Group A) batch, had worked from 2005 to 2009 on deputation with the Ministry of External Affairs as Regional Passport Officer, Chennai. During 2009, she had been subjected to a raid and search by the CBI and three RCs, viz; (i) RC 20/A/2009, (ii)RC 21/A/2009 and (iii) RC 67/A/2009 were registered

against her and other co-accused. Both the first two RCs were closed by the Judicial Magistrate in respective cases whereas RC/67/A/2009 involving alleged possession of disproportionate assets was recommended for closure by the CBI itself, whereupon the Judicial First Class Magistrate Court closed the case.

3. After the Tribunal issued orders in O.A Nos.298/2017 and 278/2017 (Annexure A-10), the respondents issued Annexure A-1 Rule 14 Charge Sheet to the applicant . Applicant submitted a detailed reply to the Charge Sheet on 27.9.2017 denying the charges and pointing out that the Articles of Charges framed against her are not maintainable (Annexure A-11). In the said reply, she had submitted that all Annual Property Returns have been properly submitted to the authority concerned every year without fail, ever since she was appointed to the Postal Department and raking this up several years later, clearly falls within the mischief under Wednesbury Rules. Also, the action of the respondents is violative of the dictum laid down by the Hon'ble Supreme Court in *T.T.Antony v. State of Kerala* reported in (2001) 6 SCC 181 that registration of the second FIR with regard to the same incident is not valid. Following the same logic, issue of second Rule 14 Charge Sheet on the same incident is impermissible in law.

4. It has been maintained that the CBI has pressed for Regular

Departmental Action (RDA for short) against the applicant. It is inconceivable that in a case where the CBI itself has not found any tangible evidence for the proceeding further, their recommendation should be cause of action for Departmental Proceedings. Further, no preliminary Inquiry was conducted before initiation of Departmental Inquiry as is mandated under Postal Manual Volume III. The applicant had given clear answers to the charges contained in Articles I, II & III of the impugned Charge Memorandum in Annexure A-11 reply. Without considering the same and merely basing their conclusion on a letter from CBI, is unheard of procedure. It is not known why a preliminary Inquiry was not undertaken, once the report was received from the CBI. It is submitted that the applicant had been facing criminal cases before the CBI Court in Chennai which has been continuing for the last 7 years. Now the department has started proceedings against her which amounts to harassment and double jeopardy.

5. The reliefs sought in the Original Application are as follows.

“ (i) To call for the records relating to Annexure A-1 to A-17 and to quash A-1 being illegal and arbitrary.

(ii) To pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

(iii) To award costs of this proceedings. ”

6. Respondents have filed a reply statement wherein it is stated that

RC/67/A/2009 was a CBI case registered for amalgamation of disproportionate assets and same has been closed as it was found that the applicant was not in possession of disproportionate assets and it may not be possible to successfully prosecute the case. But the CBI has recommended for departmental action, on which the department has taken CVC's concurrence. It is to be recalled that Article - I is entirely on a different aspect such as giving a false declaration by suppressing the fact about possession of a house by her husband, Article II is for issuing a self certificate and Article III is for failure to intimate the details of immovable property transactions. These are clearly different from the Inquiry conducted by the C.B.I.

7. Heard Mr.Shafik M.A, learned counsel for the applicant and Mr.N.Anilkumar,SCGSC, learned counsel for the respondents. Perused the records.

8. It is seen that the applicant has been subject to three criminal proceedings, two of which ended up in her acquittal while the third came to be closed on the recommendations of the investigating agency. The department has chosen to proceed with departmental action in respect of the charges which broadly formed the basis for CBI investigation in the third case which CBI themselves closed. But it is necessary to consider that the

principles involved in a departmental probe and criminal prosecution are not the same. In *Vasu.K.C v. State of Kerala* in Writ petition © No.33437 of 2009(Y) decided on 29.11.2009,(reported in 2009(4) KHC 931) the Hon'ble High Court stated:

11. The other contention that was urged by the learned counsel for the petitioner is that leading of Ext.P10 recommendation of the Vigilance Tribunal itself show that the Tribunal has relied entirely on hearsay evidence. According to him, hearsay evidence is inadmissible in law and therefore the Tribunal could not have relied on the same. However, the enquiry in question is only into the misconducts alleged against the petitioner in Ext.P1 charge sheet that was issued to him. Unlike a criminal case where the proceedings are regulated by the provisions of the Evidence Act and other statutes, all that is required to be complied with in a disciplinary proceedings is natural justice by ensuring the fairness and reasonable opportunity to the delinquent. There is absolutely no prohibition either in the rules of fairness or natural justice governing disciplinary enquiry or elsewhere, preventing the enquiry officer or disciplinary authority from relying on even hearsay evidence. In *State of Haryana v. Rattan Singh*, 1977(2) SCC 491 it has been held that it is well settled that in a domestic enquiry the strict and sophisticated rules of evidence may not apply and that all materials which are logically probative for a prudent mind are permissible. It is held that “there is no allergy to hearsay evidence provided it has reasonable nexus and credibility”. This principle has been reiterated in the subsequent judgements in *J.D Jain v. Management of State Bank of India*, 1982(1) SCC 143 and *Workmen of Balmadies Estates v. Management, Balmadies Estates and Others*, 2008 (4) SCC 517. Petitioner also has not shown me any judgment which supports his plea that hearsay evidence is inadmissible in a disciplinary proceedings. In such circumstances, I see absolutely no merit in this contention as well.

9. The CBI itself had recommended for departmental action on the ground that the evidence available was needed to be examined through a departmental action. As is known, the application of evidence and burden of proof in criminal case and departmental proceedings widely differ. The decision to institute the departmental inquiry was also supported by the CVC when the matter was referred to CVC.

10. After examining the details of the case and carefully evaluating pleadings made, we come to the conclusion that the Original Application is devoid of merit and we dismiss the same. However, we direct that the Inquiry/action pursuant to Annexure A-1 should be completed within four months from today and should not be prolonged beyond the time limit prescribed. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

List of Annexures

- Annexure A1 - True copy of the Memorandum No.11-11/CVC/2011.Vig dated 30.8.2017 issued by the 2nd respondent
- Annexure A2 - True copy of FIR in RC/20/A/2009
- Annexure A3 - True copy of FIR in RC/67/A/2009
- Annexure A4 - True copy of the complaint dated 24.2.2010 and the Bias Petition from the applicant addressed to the Director CBI, New Delhi
- Annexure A5 - True copy of the complaint dated 11.3.2010 addressed to the Director CBI, New Delhi
- Annexure A6 - True copy of the Closure Report made by the CBI and submitted to the CBI Court
- Annexure A7 - True copy of the Order dated 7.10.2010 passed in Crl.M.P No.6196/2011 in R.C No.67/A/2009 by the Principal Special Judge, Chennai
- Annexure A8 - True copy of the judgment dated 3.3.2017 in CC No.37/2011 of the Principal Special Judge for CBI cases, Ixth Addl.City Civil Court, Chennai
- Annexure A9 - True copy of the Charge Sheet framed on 26.4.2012 by the Principal Special Judge for CBI cases Chennai in C.C No.29/2011 in R.C No.21/A/2009
- Annexure A10 - True copy of the Common Order of this Hon'ble Tribunal passed on 21.7.2017 in O.A 298/2017 & OA 278/2017
- Annexure A11 - True copy of the reply dated 27.9.2017 submitted to A-1 charge memo
- Annexure A12 - True copy of the acknowledgement dated 2.7.2008 of the prescribed authority for property return submitted by the applicant
- Annexure A13 - True copy of letter No.C2/RC/21(a)/2009/CBI/AC/CHEN dated 22.11.2010 sent to the Deputy Director General (Vigilance), Department of Posts

Annexure A14 - True copy of the CBI Letter dated 13.4.2017 sent to the Sr.Deputy Director General (Vigilance), Department of Posts directing initiation of RDA against the applicant

Annexure A15 - True copy of the Order No.11-11/CVC/2011-Vig dated 24.11.2017 appointing the Inquiring Authority

Annexure A16 - True copy of the Order No.11-11/CVC/2011-Vig dated 24.11.2017 appointing the Presenting Officer

Annexure A17 - True copy of the order dated 1.2.2016 of the Hon'ble Supreme Court directing completion of the trial not later than 6 months

Annexure R1 - Copy of Ministry of External Affairs order No.V.Vig.II/843/03/09 dated 5.5.2009

Annexure R2 - Copy of order No.V.Vig.II/843/3/09 dated 20.8.2009

Annexure R3 - Copy of order No.V.IV/575/01/2005 dated 20.8.2009

Annexure R4 - Copy of letter No.C-2/RC(67)/2009/CBI/AC/Chen. Dated 14.9.2011

Annexure R5 - Copy of O.M dated 4.8.2017 of the Cenbtral Vigilance Commission

Annexure R6 - Copy of para 7 of DOP&T OM dated 14.9.1992

Annexure R7 - Copy of the order dated 3.3.2017 of the Hon'ble IX Addl.Special Judge, Chennai

Annexure R8 - Copy of OM No.010/P&T/137-332210 dated 23.12.2016

Annexure R9 - Copy of DoP&T's OM No.11012/6/2007-Estt(A-III) dated 21.7.2017

Annexure R10 - Copy of Memorandum No.11-12/BI/2010-Vig dated 15.3.2017

- Annexure R11 - Copy of letter No.11-11/CVC/2011-Vig dated 30.8.2017
- Annexure R12 - Copy of letter No.11-11/CVC/2011-VIG dated 16.5.2016
- Annexure R13 - Copy of explanation from Smt.Sumathi Ravichandran dated 16.6.2016
- Annexure A-18 - True copy of the extract of Rules 2 and 3 of the Postal Manual Volume III
- Annexure M.A1 - True copy of the interim order dated 18.12.2017
- Annexure A19 - True copy of RTI request letter daed 13.9.2017 addressed to CPIO
- Annexure A20 - True copy of RTI reply dated 27.9.2017 from Asstt. Director General (Vigilance-I) & CPIO
- Annexure A21 - True copy of Appeal dated 5.10.2017 addressed to First Appellate Authority-Director (Vig)
- Annexure A-22 - True copy of the Appellate Order dated 5.1.2018 passed by the First Appellate Authority-Dir
- Annexure A23 - True copy of the 2nd appeal filed on 18.1.2018 before the CIC
- Annexure A24- True copy of the Appellate Order dated 8.6.2018 in the 2nd appeal passed by the Chief Information Commissioner, New Delhi
- Annexure A25 - True copy of complaint filed before CIC against non-compliance of CIC's orders by the CPIO
- Annexure A26 - True copy of the notice and directions contained in CIC's office letter dated 3.8.2018
- Annexure A27 - True copy of the letter dated 29.8.2018 together with the enclosures sent by the CPIO providing information to applicant

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