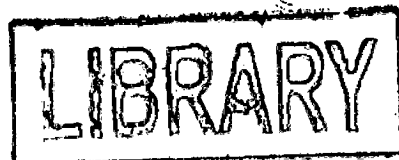


CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH



No. OA 924 of 2013

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Ms. Jaya Das Gupta, Administrative Member

MANINDRA CHANDRA BISWAS

VS

UNION OF INDIA & ORS.

For the applicant : Mr. S. Samanta, counsel

For the respondents : Mr. B. Nandy, counsel

Order on : 11.7.16.

O R D E R

This OA has been filed seeking the following reliefs :

- a) Direction do issue setting aside and quashing the charge memorandum No. 750-For/G/Viz.I/2012 dated 12.4.13, being Annexure A/1 hereto and notification No. 1474-For/FR/O/G/Viz.-1/2012 dated 23.7.13 being Annexure A/3 hereto and thereupon it be deemed that there is no departmental proceeding pending against the applicant and the respondent authorities be directed to grant the applicant all consequential benefits including promotion as has been granted to juniors to the applicant;
  - b) Injunction do issue restraining the respondent authorities from acting in any manner or any further manner on the basis of the charge memorandum No. 750-For/G/Viz.I/2012 dated 12.4.13, being Annexure A/1 hereto and notification No. 1474-For/FR/O/G/Viz.-1/2012 dated 23.7.13 being Annexure A/3 hereto;
  - c) direction in the nature of certiorari do issue upon the respondent authorities directing them to produce and/or cause to be produced the entire records of the case and thereupon to pass necessary orders for rendering conscionable justice;
2. Ld. Counsels were heard and materials on record were perused.
  3. During the course of hearing it transpired that the following order was passed on 17.9.13 by this Tribunal :

"4. In the meantime the order dated 23.7.13 is stayed and the respondents are directed to consider the statement of defence along with 16 documents submitted by the applicant before the respondents and pass a detailed speaking and reasoned order within 2 weeks from the date of receipt of the order. List on 7.10.2013."

4. Pursuant to the said direction of this Tribunal, on 14.11.13 the respondents passed the following detailed reasoned and speaking order :

**"GOVERNMENT OF WEST BENGAL**  
**Department of Forests**  
**Aranya Bhawan, LA-10A, Sector III**  
**Salt Lake City, Kolkata - 700098**

In OA 924 of 2013 in the matter of Manindra Ch Biswas -vs- Union of India & Ors., Hon'ble Jasmine Ahmed, Judicial Member and Hon'ble Ms. Ranjana Chowdhury, Administrative Member of the Central Administrative Tribunal, Calcutta Bench has been pleased to pass the order on 17.9.13, inter alia, "4. In the meantime the order dated 23.7.13 is stayed and the respondents are directed to consider the statement of defence along with 16 documents submitted by the applicant before the respondents and pass a detailed speaking and reasoned order within 2 weeks from the date of receipt of the order. List on 7.10.2013."

After receipt the said order dated 17.9.13 of the Hon'ble Central Administrative Tribunal, Calcutta Bench, this Department perused all relevant files and records related to Shri Manindra Chandra Biswas. Shri Manindra Chandra Biswas has submitted his written statement and has, in the statement of defence, not admitted the articles of charge drawn up by the Memo No.750-For/G/Viz.I/2012 dated 12.4.13.

**Decisions with Reasons :**

- a) Regarding Article of Charge I : It appears that Shri Manindra Biswas, IFS acted beyond his jurisdiction. He had no authority to authorize his subordinate to issue an order for supply of 3000 CDs @ Rs.130/- each, amounting to Rs.390,000/- in total. No approval of higher authority was taken by Sri Biswas, Sri Biswas in his reply could not produce any document indicating that he had approval of higher authority.
- b) Regarding Article of Charge II : Sri Biswas, IFS has denied the charge. It transpires prima facie that Sri Biswas issued the supply order without any agreement. Sri Biswas in his reply could not establish that he entered into any agreement.
- c) Regarding Article of Charge III : Sri Biswas in his reply could not establish that he had approval of higher authority to sell 3000 CDs using Government Sale Counter.

Sri Biswas in his written statement of defence could not establish that there was no irregularity. On scrutiny of the views and his written statement along with enclosed documents, I am of the view that there are grounds for inquiry into the truth in respect of Article of Charges I, II and III."

The said speaking order has been brought on record by way of an amended application and incorporated in the main OA as amended OA.

5. The statement of imputation and the charges indicted against the applicant vide charge memo dated 12.4.13, were as under :

"It appears that Shri Manindra Chandra Biswas, IFS, during his incumbency as Divisional Forest Officer, Coochbehar Division, authorised his subordinate to issue an order for supply of 3000 CDs @ Rs.130/- each, amounting to Rs.3,90,000/- in total, containing the video film namely "Wild Bengal (Ver.-III) and Jaldapara Wild Life" to Mr.J.N.Guha, the Producer of the Film without having prior approval of the competent authority.

Thus, it appears that the acts or omission and the things, as aforesaid, of Shri Biswas were done by him acting mala fide that is,

*undertaking the aforesaid jobs exceeding his power and without prior sanction of the competent authority inter alia constitute deliberate contravention of the Notification No. 242-JL, dated 3.7.03 issued by the Judicial Department of this Govt."*

6. During the course of hearing Id. Counsel for the applicant vociferously submitted that the charge sheet, challenging whereof the present OA has been filed, is vitiated by malafide as no public fund was involved in the transaction and an erstwhile DFO, who acted in the same manner as the present applicant, was never proceeded with.

7. Id. Counsel argued that the charges levelled against the applicant, the statement of imputation of misconduct in the impugned charge memo does not depict commission of any misconduct warranting initiation of any departmental proceeding. He submitted with much force that the applicant acted bonafide, guided by the rules and regulations in vogue to protect the interest and reputation of the department and there was no loss to the Government and no gain on the part of any individual.

8. Id. Counsel for the applicant further, while drawing our attention to the charge memo which said that "the acts or omission of Sri Biswas constituted a deliberate contravention of notification No. 242 JL dated 3.7.03 issued by the judicial department of the Government". Id. Counsel, would submit that there was no question of violation of any Government order dated 3.7.03 as the notification simply pointed out to a financial limit. He invited our attention to the contents of the said notification which said with reference to notification No. 2174 J dated 22.4.52 that there was an amendment to the schedule to the said notification against Sl. No. 19 to the effect that

- "(a) In column 2, after the words, 'Additional Chief Conservator of Forests and Chief Conservator of Forests', insert the words, 'Principal Chief Conservator of Forests, West Bengal ex-officio Principal Secretary, Forest Department.'"*
- (b) In column 3, after clause (c) insert the following clause :  
"(d), where the value of the property to which the contract or instrument relates or the expenditure involved exceeds Rs.1,00,000 but does not exceed Rs.20,000,000."*

Ld. Counsel would vociferously submit that the notification said about value of property to which the contract or instrument relates or the expenditure involved exceeded Rs.2 lakhs but not Rs.20 lakhs. It neither

conferred nor took away the right of any officer to transact on behalf of the State Government.

9. Dispelling the claim, Id. Counsel for the respondents drew our attention to the notification dated 27.9.86 which would read as under : (extracted with supplied emphasis for clarity)

**"19(b) Conservator of Forests -**

*Where the value of the property to which the contract or instrument relates or the expenditure involved exceeds :-*

- (i) *Rs.2,000/- in the case of leases;*
- (ii) *Rs.50,000/- in the case of sale of forest coupes and other cases but does not exceed Rs.1,00,000/-*
- (c) *Additional Chief Conservator of Forests and Chief Conservator of Forests - Where the value of property to which the contract or instrument relates or the expenditure involved exceeds Rs.1,00,000/- - but does not exceed Rs.2,00,000/-.*

Ld. Counsel submitted that this limit of Rs.2 lakhs as in para 19(c) of the notification dated 27.9.86 was amended and substituted by Rs.2 lakhs to Rs.20 lakhs vide notification No. 2174J dated 22.4.52. The notification is extracted hereinbelow for clarity :

*"Extract from the Government of West Bengal, Judicial Department, Judicial Branch, Notification No. 2174J, dated the 22<sup>nd</sup> April 1952.*

*In exercise of the power conferred by clause (1) of Article 299 of the Constitution of India and in supersession of Notification No. 467J, dated the 26<sup>th</sup> January 1950 and 2266J, date the 4<sup>th</sup> June 1943, as subsequently amended, the Governor is pleased to direct and authorise the persons mentioned in column 2 of the Schedule to allow to execute, on behalf of the Governor, the contracts and assurances mentioned in the corresponding articles in column 3 of that Schedule made in the exercise of the executive power of the State and expressed to be made by the Governor.*

**The Schedule**

Sl.No.	Persons	Contracts and Assurance
1	2	3
	Secretaries, Additional Secretaries, Joint Secretaries, Deputy Secretaries, Under Secretaries, Assistant Secretaries and Additional Assistant Secretaries to Government. (a) Officers appointed to hold charge of Forest Divisions where the value of the property to which the contract or instrument relates, or the expenditure involved does not exceed Rs.2000 in the case of leases or Rs.17,500 in the case of sale of forest coupes or Rs.5000 in other cases.	All contracts and assurances relating to matters concerning their respective departments.  Contracts and assurances in matters connected with the administration and working of forests and with the business of the Forest Department - generally, including leases of land, but not including contracts relating to the purchase or sale or permanent acquisition of land.

	<p>(b) <i>Conservator of Forests where the value of the property to which the contract or instrument relates or the expenditure involved exceeds Rs.2000 in the case of leases or Rs. 17,500 in the case of sale of forest coupes or Rs.5000 in other cases, but does not exceed Rs.40,000 in any case (No. 4293-J, dated the 5<sup>th</sup> July, 1954.</i></p> <p>(c) <i>*Conservator General of Forests where the value of the property to which the contract or instrument relates, or the expenditure involved, exceeds Rs.40,000.</i></p> <p><i>*At present, designated as Chief Conservator of Forests.</i></p>	
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*The authority conferred under item 1 on the Secretaries, Additional Secretaries, Joint Secretaries, Deputy Secretaries, Under Secretaries, Assistant Secretaries and Additional Assistant Secretaries to Government.....to, and does not in any way restrict, the authority conferred on other persons under other items."*

Therefore the notification dated 27.9.86 could not be read in isolation. It had to be read along with notification dated 22.4.52, the combined effect of both would specifically debar a DFO to transact on behalf of the State Government, all by himself without seeking approval of the Additional Chief Conservator of Forest (ACCF) or Chief Conservator of Forest (CCF) where value involved was more than Rs.2,00,000/.

The act of transaction against a contract relating to an amount above Rs.2 lakhs fell within the ambit of notifications dated 22.4.52 and 27.9.86 which specifically debarred any transaction involving an amount of Rs.2 lakhs and above without the approval of ACCF or CCF. The applicant having allowed his subordinate to violate the mandatory provisions of the circulars by entering into a contract that involved the State Government and involved an amount of Rs.2 lakhs and above was rightly charge sheeted by the department. Further the Id. Counsel would submit that the applicant never denied of having transacted without such approval. He has simply attempted to justify the same on the ground that there was no loss of Government money.

10. Furthermore Id. Counsel would draw our attention to Rule 47 of West Bengal Financial Rules which laid down the following : (supplied emphasis for clarity)

"47. (1) No contract shall be made by a subordinate authority which has not been directed or authorised to do so by or under the orders of the Governor in terms of Clause (1) of Article 299 of the Constitution. The Governor shall be made a party to every contract of the Government and the words "for and on behalf of the Governor of West Bengal" should follow the designation of the officer authorised in this behalf under Article 299 of the Constitution and executing the contract appended below his signature.

**Note-1.** - The various classes of contracts and assurances of property, authorised by the Governor in exercise of the powers conferred by Clause (1) of Article 299 of the Constitution which may be executed by different subordinate authorities of the Government are specified in the notification issued by the Judicial Department from time to time.

**Note-2.** - The limitations upon the powers of subordinate authorities, the condition under which such power should be exercised and the general procedure prescribed with regard to various classes of contracts and assurances of property, such as calling for and acceptance of tenders, etc. are laid down in Delegation of Financial Power Rules, 1977, and the appropriate Departmental regulations and orders.

(2) The following general principles shall be observed by all offices empowered to enter into contracts or agreements for obtaining supply and execution of works and services on behalf of the Government and involving expenditure from public fund: -

- (a) The terms of contract must be precise and definite and there must be no room for ambiguity or misconstruction therein.
- (b) As far as possible, legal and financial advice should be taken in the drafting of contract and before they are finally entered into.
- (c) Standard forms of the contract should be adopted wherever possible and the terms should be subject to adequate prior scrutiny."

(emphasis added)

11. The applicant having admittedly and inarguably allowed his subordinate to enter into a contract with Producer of a film namely Mr.J.N.Guha for supply of 3000 CDs @ Rs.130/- each amounting to Rs.3,90,000/- etc. as a DFO. It could not be said that he acted within the parameters of the notifications supra and therefore ought not to have been charge sheeted.

12. The contention of the Id. Counsel for the applicant that no Government money was involved would not hold any water since the applicant was acting on behalf of the Government while entering into a contract with the said Producer to supply 3000 CDs, during his incumbency as Divisional Forest

Officer, Cooch Behar Division when he authorised his subordinate to issue an order for such supply without prior approval of the competent authority.

13. We would notice that the scope of interference with a charge sheet is very limited. The power of the Court or Tribunal to examine the correctness of the charge and to interfere with the charge sheet has been laid down in **UOI -vs- A.N. Saxena [AIR 1992 SC 1233]** followed by **UOI -vs- Upendra Singh [1994 (3) SCC 357]**, by the Hon'ble Apex Court.

The Apex Court further highlighted the scope of judicial review in **H.B.Gandhi, Excise & Taxation Officer cum-Assessing Authority, Karnal -vs- Gopinath & Sons [1992 Supp (2) SCC 312]** as under -

*"Judicial review, it is trite, is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision, but a review of the manner in which the decision is made. It will be erroneous to think that the court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."*

In **Special Director -vs- Md. Gulam Ghouse [2003 (3) SCC 440]** the Supreme Court in no uncertain terms laid down that the Courts should not interfere at the stage of show cause unless the show cause is totally non est in the eye of law. (emphasis supplied)

In **UOI -vs- Kunisetty Satyanarayana [2007 AIR SCW 607]** the Hon'ble Apex Court held that -

*"A mere charge sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show cause notice or after holding an enquiry the authority considered may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show cause notice or charge sheet does not infringe the right of any one. It is only a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance."*

(emphasis supplied)

In a comparatively recent judgment in **Secretary, Ministry of Defence & Ors. -vs- Prabhas Chandra Mirdha [(2012) 11 SCC 565]** Hon'ble Apex Court succinctly pointed out when a "Charge sheet/ Show cause notice" "can be quashed by Court/ Tribunal". It held

"Normally not liable to be quashed as it does not adversely affect rights of delinquent employee and does not give rise to any cause of action - However, it can be quashed on ground of issuing authority being not competent to issue the same - Ground of delay in initiating or concluding enquiry proceedings causing prejudice to delinquent can also be considered for quashing charge sheet having regard to gravity of charge and all other relevant facts and circumstances."

(emphasis supplied)

14. In the aforesaid backdrop and in view of the fact that the respondents have issued a speaking order in terms of the directions of this Tribunal on the reply filed by the applicant adequately justifying issuance of charge memo, we find no scope of interfering with the charge memo issued to the applicant.

15. Accordingly the OA stands dismissed. No order is passed as to costs.

(JAYA DAS GUPTA)  
MEMBER (A)

(BIDISHA BANERJEE)  
MEMBER (J)

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