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CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

OA 2411/2003

New Delhi, this the 2nd day of April, 2004

Hon'ble Sh. Shanker Raju, Member (J)
Hon'ble Sh. Sarweshwar Jha, Member (A)

Sh. Pooran Lal, S/o Sh. Dhakan Lal
R/o H.No.31, B -Block
C/o Mr. Chokhe Singh (AOO)
Sainik Vihar, Nagla Tashi
Sardhana Road, Meerut.

(By Advocate Sh. M.K.Bhardwaj)

...Applicant

V E R S U S

Union of India through

1. Secretary
Ministry of Defence
South Block, New Delhi.
2. Chief of Army Staff
Army Headquarter
New Delhi.
3. Maj. General
K.T.G.Nambiar, VSM
I.G., Assam Rifles
Shillong.
4. Brig. Rana Goswami
Commander, Meerut Sub Area
Meerut Cantt.
5. Colonel Yashpal Yadav
O.C.Details, Hq. Meerut Sub Area
Meerut Cantt.

...Respondents

(By Advocate Mrs. Shail Goel)

O R D E R (ORAL)

Shri Shanker Raju,

The applicant has assailed Memorandum dated 2-7-2003 issued under Rule 14 of the CCS (CCA) Rules, 1965 initiating disciplinary proceedings.

2. By an order dated 3-10-2003, although it is directed that the enquiry may continue but final orders shall not be passed.

3. Brief factual matrix leading to filing of this OA is that the applicant while working as Steno Gr.I functioning as PA to Sub-Area Commander, has been alleged to

have obtained illegal gratification from one Smt. Saraswati Bisht of Rs. 40,000 which was returned vide three cheques. The enquiry proceeded by examination of witnesses and is at the concluding stage.

4. Lt. counsel for the applicant Sh. M.K.Bhardwaj assailed the chargesheet on the following grounds :-

(i) According to him, the chargesheet issued by the Brig. Commander is without jurisdiction as he is not the competent authority and he is not the disciplinary/appointing authority of the applicant. According to Sh. Bhardwaj, the above authority is inferior to his appointing authority. Placing reliance on part II Schedule attached to CCS (CCA) Rules, 1965 relating to civil post in defence services, he states that applicant being holder of group 'B' non-gazetted post in the lower formation while posted at Headquarters, his appointing authority is Deputy Chief of Staff as such chargesheet issued by an incompetent authority, is nullity in law.

(ii) Sh. Bhardwaj further states that from the perusal of the imputation along with particular of the charge, no mis-conduct is made out against the applicant and the charges framed are contrary to law. According to him, he has taken a loan from Smt. Bisht much earlier to the complaint filed by her and had returned it back. The complaint made by Smt. Bisht pertains to one Madan Lal and as the applicant is a witness in the CBI case against one officer named Nambiar, the authorities have pre-determined the issue and are tantamount to remove him from service. According to him, the allegations do not constitute misconduct.

5. On the other hand, respondents' counsel vehemently opposed the contentions stated that Brig. Commander is the

competent, disciplinary as well as the appointing authority of the applicant. It is further stated that at this interlocutory stage, once there is an evidence against the applicant and the allegations do constitute misconduct, in a judicial review, it is not open for the Tribunal to interfere and assume the role of disciplinary authority to reappraise the evidence.

6. In the rejoinder, the contentions of the respondents that the Brig. is the appointing authority has not been specifically rebutted.

7. In a judicial review, wherein the disciplinary proceedings are assailed at the interlocutory stage, examination of correctness of charge is beyond the jurisdiction of the Tribunal. The only interference would be permissible if the charges read with imputation of particulars constitute no mis-conduct or any other irregularities have been made out or charges are contrary to law. The following observations have been made by the Apex Court in UOI & Ors. v. Upendra Singh (1994 (3) SCC 357) :-

"In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B.Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal v. Gopi Nath & Sons. The Bench comprising M.N.

Venkatachalliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus : (SCC p.317, para 8)

"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".

7. Now, if a court cannot interfere with the truth or correctness of the charges even in a proceeding against the final order, it is ununderstandable how can that be done by the tribunal at the stage of framing of charges ? In this case, the Tribunal has held that the charges are not sustainable (the finding that no culpability is alleged and no corrupt motive attributed), not on the basis of the articles of charges and the statement of imputations but mainly on the basis of the material produced by the respondent before it, as we shall presently indicate.

8. If one has regard to the above, in the conspectus of the present case, the charges of gratification alleged against the applicant are to be proved on the basis of documents as well as the deposition of witnesses. From the perusal of the charges as well as annexures, we cannot hold that the present is a case of no mis-conduct. We cannot go into the correctness of the truth of the charges alleged. If no evidence comes against the applicant to substantiate the charges, law shall take its own course.

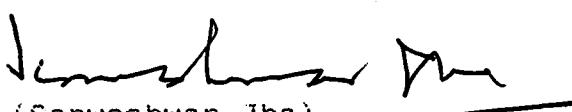
9. In so far jurisdiction and competence of Commander/Brig. as disciplinary authority is concerned, as this fact is alleged by the applicant, the burden is on him

to establish it. The appointment letter of the applicant has not been annexed, moreover as per the schedule ibid, in group 'B' non-gazetted post in lower formation, it is only Chief Administrative Officer who is the competent authority being the appointing as well as disciplinary authority. It is stated by the respondents that Brig. is the appointing as well as disciplinary authority of the applicant and this contention has not been rebutted by the applicant in his rejoinder. May that be so as held by the Apex Court in **Inspector General of Police v. Thavsiappan** (1996 (2) SCC 145) as well as **State of UP v. Chander Pal Singh** (2003 (2) SCSLJ 84), initiation of enquiry by incompetent authority when dismissal is by the competent authority would not invalidate the proceedings. Having failed to establish that the Brig./Commander is not the appointing authority of the applicant, the plea put forth is without substance.

10. Ed. counsel for the applicant further states that both Enquiry Officer as well as the disciplinary authority are biased and the chargesheet is an out come of malafides is concerned, nothing precludes the applicant from raising this grievance before the competent authority and the law shall take its own course.

11. In the result, in judicial review, no interference is warranted. Enquiry shall be completed. The applicant shall have a right to raise all his grievance before the competent authority who will take care of the same.

12. OA is dismissed being bereft of merit. Interim order is vacated.


(Sarweshwar Jha)
Member (A)

/vikas/


(Shanker Raju)
Member (J)