

**Central Administrative Tribunal
Principal Bench**

OA No.4263/2017

New Delhi, this the 7th day of November, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Nita Chowdhury, Member (A)**

Anand Mohan Sharan,
S/o Shri K.M. Sharan,
Aged about 52 years,
R/o-7/15, DDA officers colony,
Bhagwan Das Road,
New Delhi-110001.

...Applicant

(By Advocate : Shri A.K. Behera)

Versus

1. Union of India,
Through the Secretary,
Ministry of Personnel & Public Grievances &
Pensions, Department of Personnel & Training,
North Block, New Delhi-110001.

2. Arun Kumar Mishra,
Inquiry Officer,
Delhi Development Authority,
Office of the Inquiry Officer,
4th Floor, Vikas Minar,
ITO, New Delhi.

...Respondents

(By Advocate : Shri Satish Kumar)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman :-

The applicant is an IAS Officer of Haryana Cadre of 1990 batch. He was on deputation between 2001 and

2003 with the Delhi Development Authority (DDA). A charge memo was issued to him by the Cadre Controlling Authority, the first respondent herein, on 30.03.2005, under Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969 (for short, the Rules). The allegation was that the applicant a) received CDMA mobile phone from one Mr. Dharambir Khattar on 28.02.2003; and b) entered into unauthorised discussion of official matters of DDA with said Shri Dharamvir Khattar.

2. The applicant submitted his explanation to the same. Not satisfied with that, the first respondent appointed the Inquiry Officer. In his report dated 13.05.2011, the Inquiry Officer held that the part a) of the charge is 'partly proved' and part b) is 'not proved'. The first respondent in turn, forwarded the report to the CVC, as required under the prescribed procedure. On its part, the CVC tendered its advice through a letter dated 26.07.2012. The report of Inquiry Officer and the advice of CVC were made available to the applicant. He submitted his detailed representation, thereto.

3. The first respondent passed an order dated 23.12.2016, remitting the matter to the Inquiry Officer for further inquiry, under Rule 9(1) of the Rules. The said order is challenged in this OA.

4. The applicant contends that the report of the Inquiry Officer was submitted, way back on 13.05.2011, and almost as a gesture of acceptance of the report, the first respondent forwarded the same to the CVC for its advice. He contends that once the CVC gave its advice, the only course open to the first respondent was to pass a final order and it was not at all, competent or open to them, to take recourse to the Rule 9(1) of the Rules. Another contention of the applicant is that no reasons, whatsoever, were recorded for exercise of power under Rule 9.

5. The first respondent filed a detailed counter affidavit. The various steps taken in the entire proceedings are furnished in a descriptive and tabular form. It is stated that the first respondent has exercised the power under Rule 9 and directed fresh inquiry, in view of the opinion, that was tendered by the Department

of Legal Affairs, as well as CBI. It is stated that issue is grave in nature and it needs to be inquired into thoroughly so that the public interest is protected.

6. We heard Shri A.K. Behera, learned counsel for applicant and Shri Satish Kumar, learned counsel for respondents, at length.

7. The applicant was on deputation for a period of two years to the DDA. He was repatriated to his parent cadre in the year 2003 and nearly, two years thereafter, the charge memo was issued to him, under Rule 8 of the Rules.

8. Article of charge enclosed to the charge memo, reads as under :-

“Article of charge against Shri Anand Mohan Sharan, IAS (HR:90), the then Commissioner (Land Disposal), Delhi Development Authority, Ministry of Urban Development, New Delhi.

That Shri Anand Mohan Sharan, IAS, (HY:90) while posted as Commissioner (Land Disposal) in Delhi Development Authority, New Delhi during the period from July, 2001 to March, 2003

committed official misconduct in as much as –

(a) he accepted Tata CDMA Mobile set with Phone No.56028644 registered in the name of Shri Kamal Khatter s/o Shri Dharambir Khattar from Shri Dharambir Khattar, on 28/2/2003; and

(b) Entered into unauthorized discussion of official matters of DDA with Shri Dharambir Khattar.

2. By his above acts, Shri Anand Mohan Saran IAS failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a member of the Service and contravened Rules 3(1) and 9 of the All India Services (Conduct) Rules, 1968.”

9. The applicant submitted his explanation to the charge memo. The first respondent was not satisfied with the explanation, offered by the applicant and, accordingly, appointed an Inquiry Officer through order dated 14.10.2008. Evidence was adduced before him and arguments were advanced. On a consideration of the same, the Inquiry Officer submitted his report on 13.05.2011. The findings were recorded on two components of the charge. As regards, the first component, the Inquiry Officer observed as under :-

“In view of the above, it is established that CO was in possession of a TATA

CDMA mobile phone which was seized by the CBI during the search at his residence. However, prosecution has not put forth any tangible evidence to establish that the mobile in question was provided by Sh. Dharambir Khattar to the CO through Sh. Mukesh Saini. Further, no evidence has been put forth by the prosecution to corroborate their case with regard to alleged tele-conversation between the CO and Sh. Dharambir Khattar. As such, this part of the charge is held as '**partly proved**' to the extent as mentioned above."

As regards the second component, finding is as under:-

"It is alleged that CO had received the mobile phone in question from Sh. Khattar, as illegal gratification for sharing and divulging other official matters unauthorizedly for DLF and other matters. However, as mentioned above, the prosecution has not been able to prove that the ibid phone was provided by Sh. Khattar to the CO through Sh. Mukesh Saini. Further, the prosecution has not been able to corroborate the alleged conversations made between the CO and Sh. Dharambir Khattar. Prosecution witness has deposed that no decision was taken on file regarding grant of additional FAR to M/s DLF. Moreover, prosecution could not produce any document that CO made any recommendation for grant of additional FAR in favour of M/s DLF. In view of the above facts and circumstances of the

case, this part of the charge is, therefore, held as '**not proved**' against the CO."

10. A perusal of the same discloses that while the first component was held 'partly proved', the second component was held as 'not proved'.

11. Except for certain minor details, the procedure prescribed under the Rules on the one hand, and the CCS Rules on the other, is broadly the same, on certain important aspects. Wherever, the inquiry is conducted by an officer, other than the Disciplinary Authority, three options are open to the Disciplinary Authority on receipt of Inquiry Report. Here itself, it needs to be added that the report may be the one in which, the charges are held as proved or held as not proved or held as partly proved. Depending on the purport of the report of Inquiry Officer, the Disciplinary Authority may (a) accept the inquiry report as it is; (b) he may choose to disagree, by issuing a disagreement note to the charged employee; or (c) he may order fresh inquiry, recording reasons therefor. It is also necessary to mention that after the CVC was constituted, it is made mandatory in the disciplinary proceedings to take the second stage opinion of the CVC, before the

report of the Inquiry Officer is communicated to the employee concerned.

12. In the instant case, the first respondent forwarded the report of the Inquiry Officer to the CVC, vide their note dated 23.05.2012. Taking the same into account, the CVC issued an Office Memorandum on 26.07.2012. It reads as under :-

OFFICE MEMORANDUM

Sub: Case against Shri Anand Mohan Sharan, IAS the then Commissioner (P)/DDA.

DoPT may refer to their note dated 23.05.2012 in file No. 106/4/2005-ABD-I on the subject cited above.

2. The reference made by DoPT has been examined by the Commission. Commission has observed that since DoPT is of the view that part I of the charges is not conclusively established during the course of enquiry and part II is also held as not proved, the Commission would, therefore, advise for dropping of the charges against him without prejudicing the outcome of criminal case against him.

3. DoPT's case files are returned herewith. The receipt of the same may please be acknowledged."

13. In this context, it becomes necessary to take note of certain provisions of Rules. Rule 9 of the Rules reads as under :-

“9. Action on the inquiry report-

9(1) The disciplinary authority may, for reasons to be recorded by it in writing, remit the case to inquiring authority for further inquiry and report, and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of rule 8 as far as may be.

9(2) The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority together with its own tentative reasons for disagreement, if any with the findings of inquiry authority on any article of charge to the Member of the Service who shall be required to submit, if he so desires, his written representation of submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Member of the Service.

9(2-A) The disciplinary authority shall consider the representation, if any, submitted by the Member and record its findings before proceeding further in the matter as specified in sub-rules (3) and (4).

9(3) If the disciplinary authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clause (i) to (iv) of rule 6 should be imposed on the member of the Service , it shall notwithstanding anything contained in rule 10, make an order imposing such penalty:

Provided that, in every case the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the member of the Service.

9(4)If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in clause (v) to (ix) of rule 6 should be imposed on the member of the Service, it shall make an order imposing such penalty and it shall not be necessary to give the member of the Service any opportunity of making representation on the penalty proposed to be imposed:

Provided that in every case, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the member of the Service.”

14. From a perusal of provision extracted above, it becomes clear that the option to direct the further inquiry under Rule 9(1) is to be exercised before the copy of the report of the Inquiry Officer is forwarded to the employee under Rule 9(2). The very fact that the report was first forwarded to the CVC and its second stage advice was sought, discloses that the first respondent has chosen to act upon the report dated 13.05.2011, without exercising the option of disagreeing with it or to order further inquiry. Further, the report of the Inquiry Officer, together with the advice of the CVC was forwarded to the applicant. Thereby, the option for ordering further inquiry is deemed to have been given up.

15. Once, the report was made available to the applicant under Rule 9(2) and on his part, he submitted representation under Rule 9(2-A), what remains to be done was only to take a decision as to imposition of penalty under Rule 9(3). In the instant case, the decision to order further inquiry under Rule 9(1) was taken, after the applicant submitted his explanation to the report of the Inquiry Officer and the advice of the CVC. The same is contrary to the very scheme under Rule 9.

16. Even otherwise, remitting a case for further inquiry is not a matter of course. The Disciplinary Authority has to record reasons before taking such steps. In the instant case, except observing that the non production of crucial piece of evidence has been the material reason for charges not being proved in the inquiry, nothing whatever is stated. if the department has failed to produce the crucial evidence, it cannot be treated as a lapse in the inquiry, or a default on the part of the applicant. Finding recorded in the inquiry cannot be ignored just like that.

17. We, therefore, allow the OA and set aside the impugned order. However, it is left open to the respondents to take further steps contemplated under Rule 9(3) of the Rules, in accordance with the law.

There shall be no orders as to costs.

(Nita Chowdhury)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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