

(2023) 04 CAT CK 0052
In the Central Administrative Tribunal
Case No : Original Application No. 35 Of 2023

Anil Kumar Sharma

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 24-04-2023

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 19(1)(c)
Central Civil Services (Classification Control And Appeal) Rules, 1965 — Rule 14,
14(2), 14(3), 14(4), 14(4)(b), 14(5)(a), 14(5)(c), 14(6), 15

Citation : (2023) 04 CAT CK 0052

Hon'ble Judges : Rameshwar Vyas, Member (J); Dr. A.K. Dubey, Member (A)

Bench : Division Bench

Advocate : M.S. Rao, R.R. Patel

Final Decision : Partly Allowed

Judgement

Rameshwar Vyas, Member (J)

1. Being aggrieved with initiation of disciplinary inquiry against the applicant, the instant OA has been filed by him with prayer to quash and set aside the order dated 14.07.2022 (Annexure-A/1) issuing show cause notice Order dated 19.12.2022 deciding to initiate departmental proceeding (Annexure-A/2) and order dated 19.12.22 appointing the Inquiry Officer (Annexure-A/3) as also the Presenting Officer (Annexure-A/4) and issuance Memorandum of charges dated 16.01.2023 along with Annexures.

2. Brief facts of the case are as under:-

2.1 The applicant was appointed as Court Master on deputation basis in DRT, Ahmedabad vide letter dated 29.09.1999. Thereafter on 07.06.2005, he was permanently absorbed on that post. In the year 2006, the applicant was granted promotion to the post of Recovery Inspector in DRT, Ahmedabad. In around June, 2007, the applicant was posted as Recovery Inspector in DRT-1 at Ahmedabad. Sometime in the month of June, 2018 in consequence of merger of the cadre of

Recovery Inspectors in DRTs with cadre of Assistants in DRTs in the country, the post of Recovery Assistant which the applicant was holding came to be called Assistant.

2.2 In the month of January, 2009, a complaint dated 15.01.2009 was lodged with the CBI, Gandhinagar against the applicant and one advocate alleging demand of illegal gratification pursuant to which, a trap was laid by CBI on 16.01.2009. During trap the applicant with another person were alleged to have found with amount received by them as part of illegal gratification from the complainant. The appointing authority had accorded sanction for the criminal prosecution of the applicant in the CBI case. After investigation, CBI had filed a charge sheet with Special Judge, Court No.4, Ahmedabad on 26.11.2009. The applicant remained under suspension from 23.01.2009 to 21.04.2010. During suspension period, the applicant was not granted any annual increment and even after revocation of his suspension order, he was not being released any annual increments and had been made to receive salary which he was drawing prior to his suspension from the services in January, 2009. The applicant is being denied the benefit of 7th Pay Commission also.

2.3 In the month of June, 2022, the applicant considering the fact that his retirement which was due on 30.04.2023, was fast approaching and also considering the fact that the accounts section in the respondent department would shortly commence the exercise of determining the exact amount of provisional pension had submitted a formal written representation dated 17.06.2022 (Annexure-A/9) requesting to release his annual increments right from the year 2009 till then and accordingly, prayed to fix his pay as per 7th CPC. Instead of taking remedial steps in this behalf, the respondent no.3 issued a Memorandum dated 14.07.2022 (Annexure-A/1) calling upon the applicant to show cause within 10 days from the date of receipt of the said Memorandum as to why appropriate disciplinary action under CCS (CCA) Rules, 1965 (hereinafter referred to as 'CCS Rules') should not be initiated against him. The applicant had duly submitted his reply dated 25.08.2022 against the aforesaid Memorandum to which there was no response from the respondent no.3. However, on 20.12.2022, the applicant came to be served an endorsement each of two orders both dated 19.12.2022 whereby respondent no.2 had proceeded to nominate respondent no.4 and 5 as the Inquiry Officer and Presenting Officer. On 18.01.2023 the applicant came to be served by hand delivery, a communication issued by respondent no.4 in his capacity as the Inquiry Officer informing the applicant of enclosed Memorandum of Charges dated 16.01.2023 along with enclosures, said to be duly approved by the Disciplinary Authority .

2.4 On receipt of the said communication, the applicant sought legal advice as to the further course of action. Thereafter the applicant had challenged the impugned Charge Memorandum and other related communications on the following grounds:-

(i) The applicant is a Group-B staff and for a Group-B staff the Disciplinary

Authority is the Presiding Officer of DRT-1 Ahmedabad, in terms of Gazette notification dated 21.06.2021 (Annexure-A/12). Therefore, the Registrar, DRT-1, Ahmedabad is not vested with any authority to issue the aforesaid Memorandum.

(ii) The Predecessors in Office of respondent no 2 were not inclined to initiate any disciplinary proceedings against the applicant with regard to alleged incident in view of the fact that they all were of the considered view that the applicant was an honest person with doubtless integrity and had been falsely implicated in the aforesaid criminal case. Impugned Memorandum is nothing but an off shoot on the part of the respondent no.3 to silence the applicant with regard to his right to claim annual increments right from the year 2009. Respondent no.2 in its impugned order dated 19.12.2022 had the audacity to find fault with his Predecessors in his Office by taking a stand that it was highly deprecable that in spite of the approval and directions from the Department of Financial Services, no action had been taken to initiate departmental disciplinary inquiry against the applicant.

(iii) It is well settled principle of law that before the nomination of any inquiry officer by the Disciplinary Authority, there must be a formal issuance of charge Memorandum against the delinquent wherein an opportunity should be afforded to the delinquent to submit his written statement of defence and it is only after that the Disciplinary Authority is not satisfied with the defence submitted by the delinquent, for the reasons to be recorded about his refusal to accept the said defence, he can proceed further either to hold himself the proposed inquiry or nominate any inquiry officer. The respondent no.2 herein, apart from taking a decision to initiate the departmental disciplinary inquiry against the applicant on 19.12.2022, had simultaneously gone to the extent of even nominating inquiry authority and presenting officer. This course of action resorted to by the respondent no.2 without there being issuance of any Memorandum of charge to the applicant and giving him an opportunity to submit his written statement of defence is in violation of CCS Rules. Another noteworthy feature is that the respondent no.2 having taken a decision to initiate a departmental disciplinary inquiry against the applicant had assigned the inquiry officer the duty of preparing the charge Memorandum against the applicant which is absolutely impermissible in law.

(iv) Impugned decision to initiate a departmental disciplinary inquiry suffers from incurable vice of inordinate delay of 13 years. The explanation for the said delay is not tenable in the present case. All the predecessors in office of the respondent after applying had thought it fit not to initiate any departmental disciplinary inquiry against the applicant.

(v) The authority and power to initiate a departmental disciplinary inquiry and issue the formal charge Memorandum lies with the disciplinary authority and this power is an inalienable one.

(vi) The allegations levelled against the applicant are the same and identical with

criminal charge sheet based on the same set of facts, documents and the witnesses. The charges levelled against the applicant in criminal case are of grave nature which involved complicated questions of law and fact and therefore, it is expedient and necessary that the departmental disciplinary proceedings should not be permitted to proceed any further in view of the ruling of the Hon'ble Supreme Court of India in Capt. M. Paul Anthony vs Bharat gold Mines Ltd., (1999) (3) SCC 679.

3. On the above grounds, the instant OA has been filed with prayer to quash and set aside the order of initiation of disciplinary proceedings against the applicant as also the order of nominating the IO and PO and issuance of Charge Memorandum.

4. In reply, it is averred that the applicant had never made any representation for release of increments for the obvious reason that he was facing grave charges in the criminal court. The applicant has woken up from the slumber and made a representation dated 17.06.2022 requesting to release all his increments and to fix his pay as per 7th Pay Commission. It is denied that respondent no.3 has no authority to issue Memorandum. The said Memorandum was duly approved by the Disciplinary Authority. The order of appointing IO and PO were issued as per rules. There is no bar to initiate inquiry at belated stage. Mere delay in initiation of inquiry cannot be looked at with prejudiced mind, especially when charges are grave and for which even criminal proceedings are going on. Respondent while admitting the some factual aspect of the case contradicted the grounds raised by the applicant.

5. Heard learned counsel for the parties and perused the material available on record.

6. Learned counsel for the applicant contended that though the incident related to the year 2009, departmental disciplinary inquiry was not initiated by any predecessors in office of respondent no.2 till 2022. There is inordinate delay of about 13 years in initiating disciplinary proceedings against the applicant who is going to retire on 30th April 2023 and will adversely affect the right of the applicant to defend his case effectively. One of the important defence witnesses has died; others may be unavailable due to passage of long span of time since the incident in 2009. Learned counsel for the applicant further submits that respondent no.2 is not authorized to delegate the power to issue show cause notice or Memorandum of charge to inquiry officer i.e, respondent no.4 the Registrar, DRT who issued charge Memorandum dated 17.01.2023. Disciplinary Authority is also not authorized to delegate the power to the Registrar to prepare charge sheet including corrections, additions. Record does not reveal that the charges framed by the inquiry officer have been approved by the Disciplinary Authority. Learned counsel for the applicant further submits that as per the provisions of Rule 14(4) of the CCS Rules, the stage of appointment of an Inquiring authority and the presenting officer by Disciplinary Authority comes only after considering the written statement of defence filed by the delinquent

officer against the charged Memorandum issued against him. In the present matter, the order of appointment of inquiry authority as also the presenting officer came to be issued on 19.12.2022 by Disciplinary Authority even without issuing the charge Memorandum which was issued in the month of January 2023. The procedure adopted by the Disciplinary Authority is in violation of the established procedure of conducting the disciplinary inquiry against the delinquent officer which further suggests that respondent no.2 is determined to take action against the applicant with a view to punish him without following the procedure of law. Learned counsel for the applicant also submits that departmental inquiry cannot be allowed to continue simultaneously with the proceedings of the criminal case pending against the applicant. In support of his contentions, learned counsel for the applicant has relied upon the judgment passed by the Apex Court in the matter of Union of India vs. B. V. Gopinath [(2014) 1 SCC 351]

7. On the other hand, learned counsel for the respondent submits that decision to initiate departmental disciplinary action has been taken by the disciplinary authority pursuant to which the charge Memorandum had been issued by the inquiring Authority. The case of the applicant has not been prejudiced on account of the fact that charge sheet has not been issued by disciplinary authority itself.

8. It is further contended by learned counsel for the applicant that the delay caused in initiation of disciplinary action cannot be a ground to quash and set aside the charge Memorandum. The charges against the applicant are grave and serious in nature for which criminal trial against the applicant is still pending. Learned counsel for the respondent further submits that in case of any irregularity found in appointment of inquiry officer and presenting officer before issuance of charge Memorandum, the same may be rectified by issuing proper directions to the respondent. This irregularity is not of substantial nature and the same may be corrected at this stage also. However there is no ground to quash and set aside the initiation of disciplinary action against the applicant, therefore he prays to dismiss this OA.

9. Having regard to the submissions made by the learned counsel for the parties and material available on record, it emerges that while the applicant was working as Recovery Officer in DRT-1, Ahmedabad, in the month of January 2009, a criminal case No.27/2009 was registered against him by the CBI, Gandhinagar with allegation of demanding illegal gratification from the complainant. As per allegation made by the prosecution, a trap was laid resulting into recovery of amount of illegal gratification being carried by them in a vehicle in their possession. The criminal case is still pending trial before the criminal court. Before filing of charge sheet in the above matter, prosecution sanction was accorded on 09.11.2009 under section 19(1)(c) of the Prevention of Corruption Act, 1988 by the Presiding Officer of DRT, Ahmedabad. It is also revealed from the record that Ministry of Finance, by its letter dated 28.04.2010 advised initiation of disciplinary action against the applicant. However, no action appears

to have been taken till 19.12.2022. The reasons for not initiating disciplinary proceedings have not been disclosed by the respondent. Order issuing show cause notice dated July, 14, 2022 (Annexure-A/1) was issued by the Registrar, DRT-1, who was not the disciplinary authority of the applicant being a Group-B Officer. The charge Memorandum was issued on 16.01.2023. Before that, the order of appointment of the Inquiring Authority as also the presenting officer were already issued by disciplinary authority on 19.12.2022. From record, it is also the admitted position that the written statement of defence has been filed by the applicant on 15.03.2023 during pendency of this proceeding by the applicant under protest. The copy of the order sheet dated 22.03.2023 prepared by the inquiry officer reveals that prosecution witnesses have also been summoned.

10. After considering the factual aspect of the case, the legal position may be summarised as under:-

As per provisions of Rule 14(4)(b) of CCS Rules 1965, on receipt of articles of charge, the Government servant shall be required to submit his written statement of defence, if he so desires, within a period of 15 days. As per provisions of 14(5)(a), on receipt of the written statement of defence, the Disciplinary Authority may itself inquire into such of the articles of charge as are not admitted, or if it considers it necessary to do so, appoint under sub-rule (2), an Inquiring Officer for the purpose. As per the provisions of Rule 14(5)(c) where the Disciplinary Authority itself inquires into any article of charge or appoints an Inquiring Authority for holding any inquiry into such charge, it may, by an order, appoint a Government servant or a legal practitioner to be known as Presenting Officer to present on its behalf the case in support of the articles of charge. As per the provisions of Rule 14(6) the Disciplinary Authority shall, where it is not the Inquiring Authority, forward to the inquiring authority articles of charges statement of defence and other documents referred in the above mentioned rule.

As per provisions of Rule 14(3) where it is proposed to hold an inquiry against a Government servant under this rule and Rule 15, the Disciplinary Authority shall draw up or cause to be drawn up -

- (i) the substance of imputations of misconduct or misbehaviour into definite and distinct articles of charge;
- (ii) a statement of imputation of misconduct or misbehavior in support of each article of charge,

11. In the matter of Union of India & Ors. vs B.V. Gopinath, the Hon'ble Apex Court in para 41 did not agree with the contention of the learned Additional Solicitor General that once the Disciplinary Authority approved the initiation of disciplinary proceedings, the charge sheet can be drawn up by the authority other than the Disciplinary Authority. The Hon'ble Apex Court further observed that this would destroy the protection guaranteed under article 311 (1) of the Constitution of India.

12. Regarding the scope of Sub-rule 5(a) of Rule 14 of CCS Rules the issue was considered by Principal Bench of the Central Administrative Tribunal in the matter of OA No.2907/2013 decided by judgment dated 03.04.2017 and observed as under:-

"10. The very object of affording opportunity to the charged officer to submit written statement of defence/response to the charge memorandum is to provide him opportunity to furnish his explanation in respect to the charges levelled against him, and if the disciplinary authority is of the opinion that the explanation tendered by the charged officer deserves acceptance, he may drop the charges and any further inquiry. In order to arrive at this decision, it is incumbent upon the disciplinary authority to consider the explanation tendered by the charged officer and then, on consideration of his pleas, the authority may reject or accept the representation and proceed further in the matter. However, if the inquiring authority and presenting officer are appointed without consideration of the defence of the charged officer, it amounts to violation of the principles of natural justice and reflect a predetermined mind of the authority."

Relying upon the above observation, the Principal Bench of the Central Administrative Tribunal, New Delhi in OA No.3685/2014 observed as under:-

"From a perusal of sub-rule (5) (a) of rule 14, we notice that this provision comprises of two parts, the first being: on receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or if it considers it necessary to do so, appoint an inquiring authority for the purpose. The expression, "if it considers it necessary to do so", is a very significant phrase used in the aforesaid provision. It signifies a due application of mind by the disciplinary authority to the written statement of defence where the articles of charge are not admitted by the delinquent official. The obligation to consider it necessary to do so, i.e., to appoint an inquiring authority, solely rests with the disciplinary authority and nobody else. The opinion whether an 17 OA-2907/2013 inquiry needs to be constituted has to be formulated on examination and consideration of the written statement, and not without that. The second part of the aforesaid provision relates to the action to be taken by the disciplinary authority where articles of charge have been admitted by the Government servant in his written statement of defence. Even to ascertain whether the charges have been admitted by the Government servant in his written statement, one needs to examine the contents of the written statement. Thus, in both the situations, whether to order an inquiry or to punish a person on the admission of the charges, the disciplinary authority has to apply its mind to the written statement of defence and proceed with the matter either way. Non-observance of the above provisions renders the entire exercise illusory and contravenes the above mentioned rule. This is also one of the elements of principles of natural justice. Where a person is to be proceeded in an inquiry, which is admittedly an adverse action, due consideration has to be given to the response of the charged officer where charge is not admitted, and in the second

situation, where the charge is admitted, again there has to be consideration of the admission made by the charged officer in the written statement. This also would result into an adverse order. We are of the considered opinion that the provisions of rule 14(5)(a) are also mandatory in nature and one of the relevant component of the doctrine of audi alteram partem.”

13. Coming to the facts, we see that in the present matter, the Disciplinary Authority after taking decision to initiate disciplinary departmental proceedings against the applicant without issuing charge memorandum appointed the inquiry officer and the presenting officer vide two orders dated 19.12.2022 whereas the Disciplinary Authority was required to first issue Charge Memorandum and then give opportunity to the applicant to file written statement of defence. Only after considering the written statement of defence, if any, the Disciplinary Authority could appoint inquiry officer and presenting officer for conducting the inquiry. The Disciplinary Authority also violated the substantial provision relating to right of the applicant to submit written statement of defence against the Charge Memorandum.

14. Record also reveals that the Disciplinary Authority did not frame the Memorandum of Charges itself and the same was framed by the inquiry officer who in our considered opinion was not the proper authority to do so. As per the provisions of Rule 14(3), the Disciplinary Authority was required to draw or cause to be drawn the Memorandum of charges along with the statement of imputations of misconduct in support of each article of charge. In our considered view, the Disciplinary Authority committed grave error in authorizing the inquiry officer to draw up the Memorandum of Charges. In case, the Disciplinary Authority decides not to draw memorandum of charges itself, he has authority to cause the Memorandum of Charges to be drawn by any other competent authority but in any case, this power could not be delegated to the inquiry officer whose appointment can be made only after consideration of written statement of defence. In the present matter the inquiry officer was appointed before issuance of the Charge Memorandum in contraventions of the mandatory provisions of the rules relating to disciplinary proceedings. After perusing the order dated 19.12.2022 (Annexure-A/2) deciding to initiate disciplinary proceedings against the applicant, and simultaneously appointing Inquiring Authority and Presenting Officer, we feel that this illegality was committed by the learned Presiding Officer on account of misinterpretation of the provisions of rule 14 of CCS Rules and not account of any prejudice. It is true that rule 14(2) of the CCS Rules empowers the Disciplinary Authority to inquire the matter itself or appoint an authority to inquire whenever he is of opinion that there are grounds for inquiring into the truth or imputation of misconduct or misbehavior against a Government servant. However, this provisions is required to be read with provisions of Rule 14(5)(a) CCS Rules wherein the stage to appoint an Inquiring Authority under sub-rule (2) has been mentioned. As per Rule 14(5)(a) of CCS Rules the decision to appoint Inquiring Authority is taken only after receipt of the written statement of the defence. The Principal Bench of this Tribunal in the matter of Dr. Gausal Azam

Khan (OA No.3685/2014) held that Disciplinary Authority is required to exercise due application of mind to the written statement of defence where the articles of charge are not admitted by the delinquent official. In view of the above legal position in the present matter, the applicant has been deprived of his substantial right of defence to get his written statement of defence considered by the Disciplinary Authority. In the present matter, substantive provisions have not been complied with by the Disciplinary Authority as also by Inquiring Authority in conducting the disciplinary proceedings against the applicant, so the valuable right of defence provided to the applicant has been violated. Therefore it is expedient and necessary to quash and set aside the order dated 19.12.2012 (Annexure-A2) to the extent of appointment of Inquiring Authority and appointment of Presenting Officer made before consideration of written statement of defence. However, the decision to initiate disciplinary proceedings against the applicant is not interfered with. Charges levelled against the applicant are serious in nature. After setting aside the impugned orders, the applicant will be able to put up his defence against the charge memorandum as per rules. He has no right to restrain the respondent from proceeding further in department inquiry if it does not violate the substantial rules of procedure framed in the CCS Rules.

15. It is not correct to say on the part of the applicant that Predecessors in office of respondent no.2 made a decision not to initiate disciplinary proceedings against the applicant. The reasons are unknown for not complying the order of the Department of Financial Services to initiate disciplinary action against the applicant for the incident relating to demand and recovery of amount of illegal gratification received from the complainant. The applicant cannot take benefit of any inaction on the part of respondent specially when the criminal trial is still pending. In our view, the delay on the part of the respondent in pursuing the departmental inquiry has not prejudiced the interest of the applicant; rather on account of delay, his defence in criminal case has remained free from prejudices. The applicant has also made an alternate plea for staying the disciplinary proceedings initiated against him till completion of the criminal trial pending against him. On account of delay already taken place in departmental inquiry, it will not be in interest of the applicant also for waiting for the outcome of the criminal trial. It is well settled principle of law that there is no bar to proceed against the applicant in departmental disciplinary proceedings simultaneously with criminal trial. Since incident relates to year 2009, we do not deem it just and proper to stay the departmental disciplinary proceedings against the applicant till the decision of the criminal trial.

In the result, while partly allowing this OA, the impugned order dated 19.12.2022 (Annexure-A/2) to the extent of appointing Inquiry Officer as also Presenting Officer and consequential orders DRT-1/AHD/ 01/D.I/22-23/No.340 (Annexure-A/3), DRT-1/AHD/01/D.I/22-23/No.339 (Annexure A/4) both dated 19.12.2022 are quashed and set aside. Since the Memorandum dated 16.01.2023 (Annexure-A/5) along with annexures have been issued by inquiry

officer the same is also quashed and set aside. It is made clear that the Disciplinary Authority is at liberty to take necessary action as per rules pursuant to order (Annexure-A/2) deciding to initiate departmental Disciplinary inquiry against the applicant. No order as to costs.