
(2019) 03 CAT CK 0154

In the Central Administrative Tribunal

Case No : Original Application No. 100, 1075 Of 2018

Dr. Bipin Batra

APPELLANT

Vs

National Board Of Examinations And Ors

RESPONDENT

Date of Decision : 18-03-2019

Acts Referred:

Citation : (2019) 03 CAT CK 0154

Hon'ble Judges : L. Narasimh Reddy, J; Mohd. Jamshed, J

Bench : Division Bench

Advocate : M.K. Bhardwaj, A.K. Behera, Kirtiman Singh, Waize Ali

Final Decision : Dismissed

Judgement

1. The applicant was appointed as Assistant Controller in the National Board of Examination (NBE) under the second respondents' organization in the year 2004.

Thereafter, he earned number of promotions and was appointed as Additional Director in the year 2009. He states that from 7.12.2010 onwards, he started functioning as Acting Executive Director. Through order dated 27.09.2017, the applicant was placed under suspension pending initiation of disciplinary proceedings. This was followed by issuance of charge memorandum dated 12.02.2018, wherein 15 Articles of charges were framed against the applicant.

2. In this OA, the applicant challenges the order of suspension dated 16.08.2017 and extension thereof by subsequent orders. In addition to that, the applicant challenges charge sheet dated 12.02.2018 issued to him.

3. The applicant contends that he was not involved in any act of indiscipline and just by digging into the past, the President of the Board got issued the order of suspension as well as the charge memorandum. Reference is made to events that have taken place over the past several years. He contends that the suspension was totally unwarranted and no specific incidents were pointed out. According to him, the charges framed are frivolous, obsolete and baseless.

4. The applicant further contends that though his appointment and promotion were strictly in accordance with the relevant rules, they too are made the subject matter of article of charge. As regards other similar issues, he submits that there was absolutely no complaint against him whatsoever and that past events were dug up and charge memo containing 15 charges was issued. It is also pleaded that though the rules in this behalf were framed in the respondent organization, they were not officially notified, and the action relying on those rules is illegal.

5. On behalf of first respondent, a detailed reply is filed. It is stated that the applicant misused his position at various stages and caused extensive loss and damage to the reputation of the organization. It is further stated that the applicant can face disciplinary proceedings and he cannot challenge the charge memo at this stage. According to the respondents, the suspension of the applicant was warranted on account of his overreaching attitude including the one of taking away the files.

6. The applicant made efforts to get the disciplinary proceedings stalled both at the initial stage and thereafter, by filing an MA. He challenged the very appointment of Inquiry Officer (IO) also. On both the occasions, relief was declined. Thereupon, the applicant filed Writ Petition No.9048/2018. The same was dismissed on 28.08.2018. It is stated that the applicant did not participate in the disciplinary proceedings despite rejection of prayer for stay. Left with no alternative, the IO completed the inquiry and submitted the report. The applicant filed SLP No.27528/2018 before the Hon'ble Supreme Court, and it was rejected on 26.11.2018. Their Lordships relegated the matter to us with an observation that the OA be disposed of at an early stage. Accordingly we have taken up the OA, for hearing.

7. Heard Shri M.K. Bhardwaj, learned counsel for the applicant and Shri A.K. Behera, Shri Kirtiman Singh and Shri Waize Ali, learned counsel for respondent no.1.

8. The applicant challenges the order of suspension as well as the memorandum of charge. The suspension has been extended from time to time. Except that the applicant has pleaded that the suspension is totally unwarranted, he did not raise any fundamental question that vitiates the exercise of power by the disciplinary authority to place him under suspension. The plea of the applicant that there is no serious charge against him is noted only to be rejected. From the contents of the charges, it is difficult to come to a conclusion that the suspension was unwarranted.

9. It is no doubt true that truth or otherwise of the charges needs to be gone into in the disciplinary inquiry. However, the allegation that the applicant has taken away quite a large number of sensitive files from the office, cannot be ignored in the context of placing the applicant under suspension.

10. As regards extensions also, the applicant is not able to point out infraction of any specific provision of law. Therefore, we are not inclined to interfere with the

order of suspension or extension thereof.

11. Coming to the charge memo, it is evident that as many as 15 charges are framed against the applicant. We are not reproducing them here, lest the size of this order becomes unduly large. However, the gist of some of the charges is worth being mentioned. In Article-1, the applicant is alleged to have taken away many bags of files and papers in the night of 14.08.2017 despite the objection by the security staff. Another charge is that the applicant made 40 trips of foreign countries without submitting any voucher or document. The misuse of funds of the organization is also mentioned in one of the charges. The occasion for the Tribunal, or for that matter any Court, to interfere in such a charge sheet, would arise only when -

(a) it is issued by an authority not vested with the power; and

(b) even if the charges are taken on their face value, no act of misconduct can be said to have been made out.

12. Except stating that the proceedings are not in accordance with law, the applicant did not mention as to which authority, according to him, is the competent authority and which is the other authority that issued the charge memo. Secondly, the charges against the applicant are so serious that even a part of them, if proved, would establish the misconduct on his part.

13. We do not find any merit in the OA, on the two aspects namely the order of suspension and validity of charge memo.

14. Learned counsel for the applicant made an effort to convince us to examine the report of the IO. We are not inclined to entertain the plea. The report has already been taken note of by the Hon'ble Supreme Court. The applicant is said to have submitted his explanation in response to the inquiry report. If the applicant so desires, he can submit an additional explanation to the respondents taking all legal and factual pleas available to him, and the same need to be considered by the respondents.

15. We accordingly dismiss the OA leaving it open to the applicant to submit an additional explanation within a period of three weeks. The disciplinary authority shall take into account the same, before he passes a reasoned order. In case the applicant suffers any detriment in the disciplinary proceedings, it shall be open to him to pursue remedy in accordance with law.

There shall be no order as to costs.