
(2019) 03 CAT CK 0124

In the Central Administrative Tribunal

Case No : Original Application No. 3166 Of 2018

Kaptan Singh

APPELLANT

Vs

Commissioner, Navodaya Vidyalaya Samiti

RESPONDENT

Date of Decision : 19-03-2019

Acts Referred:

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 14

Citation : (2019) 03 CAT CK 0124

Hon'ble Judges : Nita Chowdhury, J;S.N. Terdal, J

Bench : Division Bench

Advocate : Kumar Rajesh Singh, Punam Singh, S. Rajappa

Final Decision : Dismissed

Judgement

Nita Chowdhury, J

1. Heard learned counsel for the parties.

2. By filing this OA, the applicant is seeking the following reliefs:-

"(a) Quash the charge sheet dated 24.5.2018 along with the disciplinary proceedings emanating from the said purported charge sheet.

(b) Quash the orders passed by the respondent no. 2 to the extent that applicant be transferred to his permanent posting i.e. JNV Jaffarpur Kalan.

(c) pass such order or further orders as this Hon'ble

Tribunal may deem fit and proper in the facts and circumstances of the case."

3. This is a case in which the applicant is alleged to have indulged in the illegal activity of installing unauthorized electricity connection from the transformer and to this effect, a complaint was made by one Shri Premvir Singh, Civil Defense Volunteer. A committee to inquire into the matter was constituted on 6.5.2017. The committee conducted a preliminary inquiry and it was accepted and proved that the applicant was at fault. The Committee submitted the report on

10.5.2017. When the fact was came to the notice of the applicant that inquiry was conducted on the basis of complaint made by Shri Premvir Singh, family members of the applicant (two sons and wife) abused and beaten up to Shri Premvir Singh while he was on duty at the main gate of Vidyalaya. The incident was support by the applicant, who subsequently joined the scene/incident. The said Shri Premvir Singh reported that matter to Jaffarpurkalan Police Station. After apology from the applicant, he (Premvir Singh) withdrew his complaint. Further the said Shri Premvir Singh submitted a complaint expecting departmental action against the applicant.

4. A preliminary inquiry was conducted by a duly constituted committee to enquire into the alleged misconduct committed by the applicant. The inquiry committee in its report concluded that misbehavior and mishandling was committed by the applicant and his family members against the said Shri Premvir Singh.

5. Further an undersired incident also took place on 16. 5.2017 when the car shed was set on fire by unidentified person(s) which is attached to the quarter of one Shri Rajender Prasad, PGT/Senior Teacher. A preliminary inquiry was conducted on 10.6.2017 and on the basis of the inquiry report, the applicant was placed under suspension, as he was prima facie found guilty. To have fair disciplinary proceedings, the applicant was attached at JNV, Poata, Jaipur.

6. Being aggrieved with the aforesaid actions, the applicant filed OA 3407/2017 before this Tribunal and this Tribunal vide Order dated 28.9.2017 dismissed the OA at the admission stage, the operative part of the said Order reads as under:-

"7. Thus seen from any angle, as the enquiry is still continuing and applicant cannot claim that he should be posted at a particular place/station of his choice which is totally against the rules. Since, he has come to the court at the interlocutory stage, we find no merit in this OA which is dismissed at the admission stage itself.

8. However, he is given the liberty to challenge the final order passed in the disciplinary enquiry, if so advised."

7. Aggrieved by the aforesaid Order of this Tribunal, applicant preferred a Writ Petition (Civil) No.9291/2017 before the Hon'ble Delhi High Court and the High Court vide Order dated 24.7.2018 disposed of the said Writ Petition with the following observations:-

1. Mr. Rajappa, learned counsel for the respondents states that pursuant to the report dated 24.11.2017 submitted by the Fact Finding Committee, the Disciplinary Authority has decided to initiate disciplinary proceedings against the petitioner under Rule 14 of the CCS (CCA) Rules, 1965 and a charge sheet has been issued to him vide the Memorandum dated 25.4.2018. He further states that in response to the said charge sheet, the petitioner has submitted a reply on 14.6.2018. After going through the said reply, vide order dated 17.7.2018, the

Disciplinary Authority has appointed an Inquiry Officer to inquire into the charges framed against the petitioner and a Presenting Officer has also been appointed.

2. Learned counsel for the respondents states that inquiry is being conducted at the place where the petitioner stands transferred and if he cooperates, the said inquiry can be concluded at the earliest.

3. Learned counsel for the petitioner states that he is unaware of the subsequent developments referred to above by learned counsel for the respondents.

4. In view of the said developments, we deem it appropriate to dispose of the present petition with liberty granted to the petitioner to seek legal recourse against the disciplinary proceedings initiated against him, as may be advised.

5. The petition is disposed of along with the pending application."

8. In compliance of the aforesaid orders of the Hon'ble Delhi High Court, efforts are being made to conclude the regular disciplinary proceedings under CCA (CCA) Rules, 1965 expeditiously but applicant filed the instant OA before this Tribunal at premature stage as the disciplinary proceedings are on the way for conclusion.

9. In this case, the applicant is again challenging the initiation of the disciplinary proceedings initiated against him vide Memorandum dated 24.5.2018.

10. Counsel for the respondents placed reliance on the decision of the Apex Court in the case of Secretary, Min. of Defence & Ors. vs. Prabhash Chandra Mirdha in Civil Appeal No.2333/2007 decided on 30.4.2007. The relevant portion of the said judgment reads as under:-

"9. Law does not permit quashing of chargesheet in a routine manner. In case the delinquent employee has any grievance in respect of the chargesheet he must raise the issue by filing a representation and wait for the decision of the disciplinary authority thereon. In case the chargesheet is challenged before a court/tribunal on the ground of delay in initiation of disciplinary proceedings or delay in concluding the proceedings, the court/tribunal may quash the chargesheet after considering the gravity of the charge and all relevant factors involved in the case weighing all the facts both for and against the delinquent employee and must reach the conclusion which is just and proper in the circumstance. (Vide: The State of Madhya Pradesh v. Bani Singh & Anr., AIR 1990 SC 1308; State of Punjab & Ors. v. Chaman Lal Goyal, (1995) 2 SCC 570; Deputy Registrar, Cooperative Societies, Faizabad v. Sachindra Nath Pandey & Ors., (1995) 3 SCC 134; Union of India & Anr. v. Ashok Kacker, 1995 Supp (1) SCC 180; Secretary to Government, Prohibition & Excise Department v. L. Srinivasan, (1996) 3 SCC 157; State of Andhra Pradesh v. N. Radhakishan, AIR 1998 SC 1833; Food Corporation of India & Anr. v. V.P. Bhatia, (1998) 9 SCC 131; Additional Supdt. of Police v. T. Natarajan, 1999 SCC (L&S) 646; M.V. Bijlani v. Union of India & Ors., AIR 2006 SC 3475; P.D. Agrawal v. State Bank of India & Ors., AIR 2006 SC 2064; and Government of A.P. & Ors. v. V. Appala Swamy,

(2007) 14 SCC 49).

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11. Ordinarily a writ application does not lie against a chargesheet or show cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, chargesheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a chargesheet or show cause notice in disciplinary proceedings should not ordinarily be quashed by the Court. (Vide : State of U.P. v. Brahm Datt Sharma, AIR 1987 SC 943; Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh & Ors., (1996) 1 SCC 327; Ulagappa & Ors. v. Div. Commr., Mysore & Ors., AIR 2000 SC 3603 (2); Special Director & Anr. v. Mohd. Ghulam Ghouse & Anr., AIR 2004 SC 1467; and Union of India & Anr. v. Kunisetty Satyanarayana, AIR 2007 SC 906)."

11. Counsel for respondents also placed reliance on the decision of Jabalpur Bench of this Tribunal in OA No.505/2011 (Azim Baksh vs. GM, Western Railways) decided on 5.10.2016, the relevant portions of the same read as under:-

"3. In this case, interim stay was granted by order dated 12.07.2011, which is still continuing.

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9. The matter before us is very simple. The charge against the applicant is of misbehavior with office staff, who were trying to deliver him a letter of allotment of his quarter. It also appears that there have been quarrels between applicant and different employees, which has resulted in the respondents deciding to change his quarter. There has also been cases and counter cases between the applicant and other employees. It is impossible for the Tribunal to adjudicate at the stage of charge-sheet whether it is correct or motivated. The truth can be ascertained only by the departmental authorities if the departmental action is allowed to proceed unimpeded."

12. After hearing the learned counsel for the parties and having carefully perused the material placed on record, we are of the considered opinion having regard to the nature of the charges levelled against the applicant, and the fact that similar issue of challenge to the charge sheet has also been adjudicated by this Tribunal in OA No.364/2013 in which this Tribunal vide Order dated 4.12.2018 held as under:-

"26. We do not find any basis to interfere with the charge memorandum dated

12.01.2007, or the order dated 22.02.2010. The matter has already been delayed almost by a decade, and it cannot brook any further delay. It is in the interest of the applicant also that the matter is given a quietus, so that, if he emerges as innocent, his avenues of promotions and upward movement are not adversely affected. We also take note of the fact that the criminal proceedings are yet to take a final shape. Even if they are said to be pending in any manner, that would not come in the way of the disciplinary proceedings, in view of the judgment of the Hon'ble Supreme OA-364/2013 23 Court in Capt. M. Paul Anthony v Bharat Gold Mines Ltd. [(1999) 3 SCC 679], wherein it was held that if the criminal proceedings are likely to take much time for conclusion, the disciplinary proceedings can be continued.

27. We, therefore, dismiss the OA, and direct the disciplinary authority to expedite the disciplinary proceedings, and conclude them within a period of six months from the date of receipt of this order. There shall be no order as to costs."

and also having regard to the aforesaid observations of the Hon'ble Delhi High Court (supra), we do find any basis to interfere with the charge memorandum dated 24.6.2018 at this stage, as it is impossible for the Tribunal to adjudicate at the stage of charge-sheet whether it is correct or motivated. The truth can be ascertained only by the departmental authorities if the departmental action is allowed to proceed unimpeded and as such the present OA is accordingly dismissed. However, we direct respondents to complete the disciplinary inquiry proceedings without any further delay as expeditiously as possible within a maximum period of six months.

13. Accordingly, interim order granted earlier stands vacated. There shall be no order as to costs.