

(2012) 01 DEL CK 0264

In the Delhi High Court

Case No : Writ Petition (C) 2444 of 2010, CM 18389 of 2011 and CM 19487 of 2011

Mohammad Rizwanul Haque

APPELLANT

Vs

Central Wakf Council and Ors

RESPONDENT

Date of Decision : 04-01-2012

Acts Referred:

Citation : (2012) 186 DLT 421

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : V.K. Rao, with Mr. Irshad Hanif, for the Appellant; A.S. Chandhiok, ASG with Mr. Jatan Singh, Ritesh Kumar and Mr. Piyush Sanghi, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.—The petitioner, who is presently working as Secretary of Central Wakf Council, was initially appointed to the present position on deputation with effect from 3rd July, 1997 and was absorbed as Secretary with effect from 21st August 2000. The petitioner was also appointed as Administrator of Punjab Wakf Board, in addition to his charge as Secretary, Central Wakf Council. The petitioner handed over charge of Punjab Wakf Board to his successor on 1st October, 2002.

2. Vide show cause notice dated 12th August, 2002, the petitioner was informed that Government of India, Ministry of Social Justice and Empowerment had received a number of complaints against him with respect to irregular appointments and other irregularities in Punjab Wakf Board, and that the Enquiry Officer appointed by the Government to investigate into those complaints had found the lapses, noted at Serial No.1 to 7 in the show cause notice, in the management of Punjab Wakf Board. He was required to show cause as to why disciplinary action be not initiated against him for committing irregularities mentioned in the notice. The petitioner replied to the show cause on 4th

September, 2002. It appears that CBI also received complaint dated 20th June, 2002 against the petitioner from one Mr. Fardeen Iqbal, forwarded to it by Central Vigilance Commission(CVC), and a preliminary enquiry was registered by it on 29th January, 2004. CBI made a recommendation to Ministry of Social Justice and Empowerment on 22nd December, 2004 to initiate major penalty proceedings against the petitioner. Pursuant thereto, a charge sheet dated 5th December, 2008 was issued to the petitioner by the Chairman of Central Wakf Council. The petitioner, instead of giving a parawise reply to the charge sheet, sent a letter dated 17th December, 2008, denying the charges made against him but also seeking to submit pointwise reply to those charges. He sought personal inspection of original files relating to appointment of 19 persons mentioned in the reply and also sought a copy of the enquiry report of the CBI, so that he could submit pointwise reply to the memo of charge. The respondents have not supplied the copy of the CBI report to the petitioner though inspection of the files mentioned in the reply has been given to him.

3. In this Writ Petition the petitioner is seeking quashing of the charge and enquiry proceedings initiated against him.

4. The learned Senior Counsel appearing for the petitioner has assailed the inquiry proceedings initiated against the petitioner on the following grounds:-

1. The enquiry is sought to be conducted under Rule 14 of CCS/CCA Rules without those Rules having been adopted by Central Wakf Council.

2. The enquiry is sought to be conducted without supplying copy of CBI report to the petitioner.

3. There is delay in instituting the enquiry proceedings.

5. Coming to the first ground, the learned Senior Counsel for the petitioner has drawn my attention to Rule 7 of the Central Wakf Council Rules which inter alia provides that the Secretary to the Council shall be appointed by the Chairperson on such terms and conditions as may be fixed by the Council. The contention is that since the terms and conditions for appointment of the Secretary are to be fixed by the Council, the Rules under which disciplinary proceedings can be held against the petitioner have also to be either prescribed or adopted by the Council and since there is no decision taken by the Council to adopt CCS(CCA) Rules for conducting enquiry against the petitioner, the proposed enquiry is bad in law. The learned Additional Solicitor General, who appears for the respondent no.2 and 3, on the other hand, relying upon Rule 13 of the aforesaid Rules has contended that in view of the provisions contained in sub Rule 3 of the aforesaid Rule, the CCS(CCA) Rules, which apply to officers and servants of Central Government would also apply to the persons holding posts in the Council and that would include the Secretary of the Council. This is controverted by the learned Senior Counsel for the petitioner, who submits that Rule 13 refers to only the members of the staff who are to be appointed either by the Chairperson or by the Secretary and who hold the posts created on the recommendations of the

Secretary and therefore the Secretary does not come within the purview of Rule 13.

6. For the purpose of deciding this petition I proceed on the assumption that Rule 13 of the Central Wakf Council Rules, 1998, does not apply to the Secretary of the Council. Admittedly, in view of Rule 7 of the aforesaid Rules, Chairperson of the Council is the Appointing Authority of the Secretary. It cannot be disputed and in fact has not been disputed that a person who has the power to appoint also has the power to remove a person from service. In my view, if the Chairperson has the power to remove the petitioner from service, he also possesses power to prescribe the procedure which would be adopted to hold an enquiry against him. Such a power is implicit in his power to remove the person concerned from service, and need not be specifically conferred. Of course the procedure to be adopted by him needs to be fair, reasonable and in consonance with the principles of natural justice. The Chairperson of the Council, therefore, was competent to adopt CCS(CCA) Rules for the purpose of holding an enquiry against the petitioner. The issue of charge sheet to the petitioner, by the Chairperson, purporting to act under Rule 14 of CCS(CCA) Rules clearly shows that the Chairperson has adopted CCS/CCA Rules for the purpose of holding enquiry against the petitioner. The very first sentence of the Memorandum dated 5th December, 2008 indicates adoption of CCS(CCA) Rules 1965 for the purpose of holding enquiry against the petitioner. This is not the case of the petitioner that the procedure prescribed in CCS(CCA) Rules for conducting inquiry is not fair and reasonable or contravenes the basic principles of natural justice. I therefore find no merit in the first contention raised by the learned Counsel for the petitioner.

7. Coming to the second ground, a perusal of the reply filed by the respondents would show that they are not seeking to rely upon CBI report in order to sustain the charges against the petitioner. It is clearly stated in the reply that it is CBI registration report, which is listed as one of the documents in Annexure 3 of the charge sheet and a copy of which has already been provided to the petitioner. Even during the course of arguments the learned Additional Solicitor General categorically stated that the respondents are not seeking to place any reliance upon the enquiry report of the CBI, reference in the charge sheet being only to the registration report, a copy of which was earlier supplied to the petitioner and has also been supplied again, as annexure to the reply. A perusal of the charge sheet confirms that CBI registration report and not CBI Enquiry Report is one of the documents being relied upon by the respondents in respect of the articles of charge framed against the petitioner. The learned Senior Counsel for the petitioner points out that the counter affidavit has been filed by respondent no.2 and 3, i.e., Union of India and Chief Vigilance Officer and there is no reply filed by respondent no.1, Central Wakf Council. However, the facts remains that the Chairperson of Central Wakf Council also happens to be the concerned Minister and in any case, a perusal of the charge sheet itself makes it evident that no reliance upon CBI Enquiry Report is being placed by the Disciplinary Authority.

8. The learned Counsel for the petitioner, in support of his contention that respondent needs to supply the CBI report to the petitioner, has placed reliance upon the decision of the Supreme Court in Union of India (UOI) and Others Vs. S.K. Kapoor, . A perusal of the judgment would show that in the case before Supreme Court, copy of report of Union Public Service Commission(UPSC) was not made available to the respondent and therefore Central Administrative Tribunal when approached by him quashed the dismissal order passed against him and directed the Disciplinary Authority to make available a copy of the report to the respondent and proceed from the stage of making available the copy of the report to him. Rejecting the appeal filed by Union of India against the order of the Tribunal, Supreme Court inter alia held as under:

6. Mr. Qadri, learned Counsel for the Appellant submitted that the copy of the Report of the Union Public Service Commission was supplied to the respondent-employee along with the dismissal order. He submitted that this is valid in view of the decision of this Court in Union of India (UOI) and Another Vs. T.V. Patel, . We do not agree.

7. In the aforesaid decision, it has been observed in para 25 that "the provisions of Article 320(3)(c) of the Constitution of India are not mandatory". We are of the opinion that although Article 320(3)(c) is not mandatory, if the authorities do consult the Union Public Service Commission and rely on the report of the commission for taking disciplinary action, then the principles of natural justice require that a copy of the report must be supplied in advance to the employee concerned so that he may have an opportunity of rebuttal. Thus, in our view, the aforesaid decision in T.V. Patel's case is clearly distinguishable.

8. There may be a case where the report of the Union Public Service Commission is not relied upon by the disciplinary authority and in that case it is certainly not necessary to supply a copy of the same to the concerned employee.

However, if it is relied upon, then a copy of the same must be supplied in advance to the concerned employee, otherwise, there will be violation of the principles of natural justice. This is also the view taken by this Court in the case of S.N. Narula Vs. Union of India (UOI) and Others, .

It would be seen that in the case before Supreme Court the Disciplinary Authority had taken into consideration and relied upon the report of the UPSC. That precisely was the reason why the Tribunal directed the Government to make copy of the report available to the respondent. The Supreme Court was of the view that where report of UPSC is not relied upon by the Disciplinary Authority in that case it would not be necessary to supply the copy of the same to the concerned employee. In the case before this Court since the Disciplinary Authority is not seeking to rely upon the Enquiry Report of the CBI, it would not be necessary for him to supply a copy of that report to the petitioner. I therefore find no merit in this ground as well.

9. Coming to the last ground taken by the petitioner before this Court, a perusal

of the petition would show that though in Para 2.5 of the Petition it is stated that after a gap of six years, from the date the petitioner relinquished charge of the Office of the Administrator, Punjab Wakf Board, a memorandum dated 5th December, 2008 was received in the office of the Central Wakf Council, containing charges against the petitioner, delay in initiating disciplinary proceedings is not one of the grounds taken in the petition for quashing the charge sheet against him. There is no averment in the Petition that the petitioner has been prejudiced on account of the delay in initiating disciplinary proceedings. There is no submission in the petition that the disciplinary proceedings have been got vitiated on account of delay in initiation by the disciplinary proceedings. Even otherwise, I find from the reply filed by respondent no.2 and 3 that CBI made a recommendation on 22nd December, 2004 to Ministry of Social Justice and Empowerment to initiate major penalty proceedings against the petitioner. It is further stated in the reply that Ministry of Minority Affairs which is the concerned administrative Ministry supervising the affairs of the Central Wakf Council at present, came into existence only on 29th January, 2006 and it was after creation of this Ministry that the work relating to minorities was allocated to it. It is also stated in the reply that initially the Ministry was in a nascent stage without necessary staff and infrastructure. The Ministry made a reference to the CVC on 22nd August, 2006 to obtain first stage advice regarding initiation of disciplinary proceedings against the petitioner. CVC rendered its advice on 3rd October, 2006 recommending major penalty proceedings against the petitioner. Based on the recommendations of the CVC disciplinary authority took a decision on 4th December, 2008 to initiate disciplinary proceedings against the petitioner under Rule 14 of the CCS(CCA) Rules, 1965.

10. In my view, even after giving show cause notice to the petitioner, the disciplinary authority was justified in awaiting the outcome of enquiry which was being separately conducted by CBI, on receipt of complaint from Mr. Fardeen Iqbal. In all probability, had CBI given a clean chit to the petitioner, the Disciplinary Authority would not have even initiated disciplinary proceedings against him. Therefore the period up to submission of CBI report stands adequately explained. Though it can hardly be disputed that there is some delay on the part of the respondents in processing the matter since CBI report was received on 22nd December, 2004 whereas Ministry of Minority Affairs was set up on 29th January, 2006 and in the interregnum period, the Ministry of Social Justice and Empowerment could have processed the matter and there was some delay even after receipt of the advice of CVC, the delay, in the facts and circumstances of the case, including the nature of the charges leveled against the petitioner, cannot be said to be so abnormal as to vitiate the enquiry. This is more so when the petitioner has not alleged any prejudice to him on account of delay in initiating enquiry and there is no allegation that the delay was actuated by any mala fide or was on account of some extraneous reasons.

11. The learned Counsel for the petitioner has relied upon the decision of the Supreme Court in P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, , in

support of his contention on delay in initiating the enquiry. In the case before Supreme Court, no action was taken against the appellant for about 10 years and there was absolutely no explanation whatsoever by the Housing Board which was the employer of the appellant, for such inordinate delay in initiating the disciplinary action. Relying upon its earlier decisions in *The State of Madhya Pradesh Vs. Bani Singh and another*, and *State of Andhra Pradesh Vs. N. Radhakishan*, , the Supreme Court held that allowing the respondent to proceed further with the departmental proceedings at that distance of time would be very prejudicial to the appellant. It would be appropriate at this stage to refer to certain observations made by Supreme Court in the case of *N. Radhakishan* (Supra). Supreme Court in the above referred case *inter alia* observed as under:-

19. It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all relevant factors and to balance and weight them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.

12. In *U.P. State Sugar Corporation Ltd. and Others Vs. Kamal Swaroop Tondon*, , Supreme Court, after considering its decision in the case of *P.V. Mahadevan* (Supra), *inter alia*, held as under:-

30. In our opinion, Mahadevan does not help the respondent. No rigid, inflexible or invariable test can be applied as to when the proceedings should be allowed to be continued and when they should be ordered to be dropped. In such cases

there is neither lower limit nor upper limit. If on the facts and in the circumstances of the case, the Court is satisfied that there was gross, inordinate and unexplained delay in initiating departmental proceedings and continuation of such proceedings would seriously prejudice the employee and would result in miscarriage of justice, it may quash them. We may, however, hasten to add that it is an exception to the general rule that once the proceedings are initiated, they must be taken to the logical end. It, therefore, cannot be laid down as a proposition of law or a rule of universal application that if there is delay in initiation of proceedings for a particular period, they must necessarily be quashed.

In the case before this Court, considering the quantum of delay, and the fact that delay in initiating the enquiry has neither been made a ground for quashing the charge sheet nor has the petitioner has alleged any prejudice or vitiation of enquiry on account of delay, I find no ground to quash the charge sheet on this ground alone.

13. The learned Counsel for the respondents has also contended that the Writ Petition is rather premature at this stage when the petitioner having not even filed parawise reply to the charge sheet. This is not the case of the petitioner that he does not propose to file a detailed parawise reply to the memorandum of charge delivered to him. Though he generally refuted the allegations against him, he reserved to him the right to file a detailed reply when he responded to the charge sheet vide his letter dated 17th December, 2008. It is possible that after considering the detailed parawise reply of the petitioner, the Disciplinary Authority may be satisfied with the explanation offered by him and may decided to drop the disciplinary proceedings initiated against him.

In *Union of India v. Ashok Kacker*, 1995 Supp (1) SCC 180 , the respondent filed a petition before the Central Administrative Tribunal without replying to the charge sheet and waiting for the decision of the Disciplinary Authority thereon. The charge sheet was quashed by the Tribunal. In appeal, setting aside the order of the Tribunal, Supreme Court inter alia held as under:-

4. Admittedly, the respondent has not yet submitted his reply to the charge-sheet and the respondent rushed to the Central Administrative Tribunal merely on the information that a charge-sheet to this effect was to be issued to him. The Tribunal entertained the respondent's application at that premature stage and quashed the charge-sheet issued during the pendency of the matter before the Tribunal on a ground which even the learned counsel for the respondent made no attempt to support. The respondent has the full opportunity to reply to the charge-sheet and to raise all the points available to him including those which are now urged on his behalf by learned counsel for the respondent. In our opinion, this was not the stage at which the Tribunal ought to have entertained such an application for quashing the charge-sheet and the appropriate course for the respondent to adopt is to file his reply to the charge-sheet and invite the decision of the disciplinary authority thereon. This being the stage at which the

respondent had rushed to the Tribunal, we do not consider it necessary to require the Tribunal at this stage to examine any other point which may be available to the respondent or which may have been raised by him.

In Union of India (UOI) and Another Vs. Kunisetty Satyanarayana, , a charge sheet was issued to the respondent who, instead of reply to the charge memo, filed an OA before the Central Administrative Tribunal which disposed of the petition by directing him to file reply to the charge memo and further directing that on submission of the reply the same would be considered by the Disciplinary Authority. Instead of filing a reply the respondent filed a writ petition in the High Court which was allowed. On Union of India approaching Supreme Court, the order passed by the High Court in the writ petition was set aside. While allowing the appeal Supreme Court inter alia held as under:

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.

14. It would thus be seen that normal rule is that the court should not quash a show cause notice or a charge sheet and it is only in exceptional cases such as the charge sheet having been issued without jurisdiction or being otherwise illegal that the court can interfere at the interim stage. In the present case, it cannot be said that the disciplinary proceedings has been initiated by an authority which did not have jurisdiction to do so. The petitioner was appointed by the Chairperson of the Central Wakf Council and disciplinary proceedings have been initiated by that very authority. The petitioner has failed to show that the charge sheet issued to him or the disciplinary proceedings initiated against him are otherwise illegal. Hence, applying the normal rule the court should not interfere in the disciplinary proceedings at this initial stage.

15. No other point is urged. Since I find no merit in the Petition the same is dismissed. There shall be no order as to costs.

16. It is made clear that if the petitioner replies to the charge sheet within four weeks from today the, same will be duly considered by the Disciplinary Authority.