

(2021) 02 DEL CK 0159

In the Delhi High Court

Case No : Civil Writ Petition No. 7948 Of 2018, Civil Miscellaneous No. 30494 Of 2018, 18067 Of 2019, 27778 Of 2020

Sapan Kumar Ram

APPELLANT

Vs

Indira Gandhi National Open University (IGNOU) And Ors

RESPONDENT

Date of Decision : 15-02-2021

Acts Referred:

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 14(14), 14(22), 15(1)
Indian Penal Code, 1860 — Section 409, 420, 468, 471
Prevention Of Corruption Act, 1988 — Section 13(1)(c), 13(1)(d), 13(2)

Citation : (2021) 02 DEL CK 0159

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Tushar Ranjan Mohanty, Varun Jain

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J

1. The present petition has been filed by the petitioner with the following prayers:

â??In view of the facts and circumstances mentioned herein above and the submissions made, the Petitioner prays that the Hon'ble High

Court may be graciously pleased to;

(i) issue notice to the Respondent University to show cause as to why the impugned Charge Sheet dated 14.03.2017 (Annexure: P-1); Order

dated 05.05.2017 (Annexure: P-1) appointing Respondent No.2 as the Inquiring Authority; and all enquiries after 10.11.2017 [Daily Order

Sheets at Annexure: P-3 to Annexure: P-9] be not quashed and set aside by a writ of certiorari or any other appropriate writ or direction;

(ii) direct the Respondent to produce the relevant records pertaining to the present case at the time of hearing of the Petition;

(iii) upon return of the notice and after hearing the parties to the present proceeding and upon perusal of the relevant records, may be

pleased to allow the present Writ Petition;

(iv) quash and set aside the Impugned Charge Sheet dated 14.03.2017 (Annexure P-1); Or, alternatively;

(v) quash and set aside the impugned Order dated 05.05.2017 appointing Respondent No. 2 as the Inquiring Authority (Annexure: P-2);

(vi) consequently, direct the Respondent University to appoint a Commissioner of Departmental Inquiries from the Central Vigilance

Commission or a serving Officer from the Ministry of Human Resource Management of the Central Government as the Inquiring Authority;

(vii) quash and set aside the enquiries held by Respondent No. 2 as the Inquiring Authority and specifically quash and set aside the Daily

Order Sheet dated 11.12.2017 of Respondent No. 2 [Annexure: P-3], the Daily Order Sheet dated 12.12.2017 [Annexure: P-4], the Daily

Order Sheet dated 11.01.2018 [Annexure: P-5], the Daily Order Sheet dated 12.01.2018 [Annexure: P-6], the Daily Order Sheet dated

15.02.2018 [Annexure: P-7], the Daily Order Sheet dated 07.03.2018 [Annexure: P-8], the Daily Order Sheet dated 08.03.2018

[Annexure: P-9], the Daily Order Sheet dated 02.04.2018 [Annexure: P-10], the Daily Order Sheet dated 03.04.2018 [Annexure: P-11], the

Daily Order Sheet dated 04.04.2018 [Annexure: P-12], the Daily Order Sheet dated 05.04.2018 [Annexure: P-13], and the Daily Order

Sheet dated 23.04.2018 [Annexure: P-14];

(viii) consequently, direct the Respondent University to hold the enquiry de novo;

(ix) direct Respondent No. 3 to clear/pay all Pending Bills at Kolkata;

(x) direct Respondent No. 4 to pay TA/DA Advance to the Petitioner well in advance for attending the enquiry and pass the TA/DA Bills of

the Petitioner expeditiously and in no case later than a week of the submission of the Bills;

(xi) allow exemplary costs of the present Writ Petition to the Petitioner against the Respondent; and

(xi) pass such other and further order/(s) as may be deemed just and

appropriate in the facts, circumstances and premises of the present case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER SHALL EVER PRAY??

2. From the aforesaid, it is noted that the petitioner is primarily challenging the charge-sheet dated March 14, 2017 and the order dated May 05, 2017

appointing the respondent No.2 as an Inquiry Officer. That apart, he is also seeking quashing of the order sheets passed by the respondent No.2 on

November 11, 2017 and on different dates thereafter. The only submission made by Mr. Mohanty, learned counsel for the petitioner is that, the

manner in which the Inquiry Officer is proceeded with the inquiry shows his bias attitude and the petitioner is not expected to get justice from him and

as such his appointment be quashed.

3. It is the submission of Mr. Mohanty that the petitioner had made representations in that regard vide his letters dated November 10, 2017, December

02, 2017 and March 7, 2018 to the disciplinary authority / Inquiry Officer. Unfortunately, the disciplinary authority had not decided the said

representations of the petitioner which resulted in the Inquiry Officer submitting his inquiry report which is pending consideration of the Disciplinary

Authority, though no action has been taken in view of the order passed by this Court on April 16, 2019. He states that in view of the instructions issued

by the Cabinet Secretariat dated November 09, 1972, that whenever an application is moved by the Government servant against whom, disciplinary

proceedings have been initiated under the CCS (CCA) Rules 1965 against the Inquiry Officer on the ground of bias, the proceedings should be stayed.

4. He states that in the case in hand, the Inquiry Officer must be replaced by a new Inquiry Officer and the proceedings must be held from the stage

of passing of the order dated November 10, 2017.

5. On the other hand, learned counsel for the respondents would justify the orders passed by the Inquiry Officer. He has drawn my attention to the

responses of the Inquiry Officer on the representations referred to above filed by the petitioner, wherein the Inquiry Officer has clearly stated that the

allegations of the petitioner have no basis. According to Inquiry Officer, the said representations have been made by the petitioner only to delay the

proceedings initiated against him.

6. Having heard the learned counsel for the parties, there is no dispute that the charge sheet has been issued to the petitioner on March 14, 2017

which include the charge that the petitioner while functioning as Assistant Registrar, Kolkata entered into fraudulent transactions by withdrawing huge

sum of public money amounting to Rs.40,84,050/-. I may state an FIR has been registered by the CBI under Sections 409, 420, 468, 471 IPC and

Section 13(2) read with Section 13(1)(c) & 13(1)(d) and Prevention of Corruption Act. It is also noted that the CBI has filed a charge sheet in the

designated Court.

7. The test of bias as held by the Supreme Court is whether the facts demonstrate the 'likelihood of bias' on the part of the Inquiry officer which

shall vitiate the proceedings. In the case of S. Parthasarathi v. State of Andhra Pradesh 1974 (3) SCC 459, the Supreme Court in Para 16 held as

under: -

'16. The tests of 'real likelihood' and 'reasonable suspicion' are really inconsistent with each other. We think that the

reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the

circumstances infer that there is real likelihood of bias. The Court must look at the impression which other people have. This follows from

the principle that justice must not only be done but seen to be done. If right minded persons would think that there is real likelihood of bias

on the part of an inquiring officer, he must not conduct the enquiry; nevertheless, there must be a real likelihood of bias. Surmise or

conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the

inquiring officer will be prejudiced against the delinquent. The Court will not inquire whether he was really prejudiced. If a reasonable

man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision [see per

Lord Denning, H.R. in Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon [(1968) 3 WLR 694 at 707]] We should not, however, be

understood to deny that the Court might with greater propriety apply the 'reasonable suspicion' test in criminal or in proceedings

analogous to criminal proceedings.'

8. The plea of Mr. Mohanty of bias of Inquiry Officer is clearly unsustainable. This, I say so for more than one reason. Firstly, no such foundation has been laid in the petition as the averments in the petition are primarily challenging the charge sheet and the appointment of Inquiry Officer on various grounds, which averments have no relation to the plea of bias of Inquiry Officer. In fact, the petition is a commentary on various judgments in relation to departmental proceedings without any reference as to how the same are relevant to the plea of bias of Inquiry Officer. Be that as it may, assuming the plea of bias of Inquiry Officer has to be inferred from the representations dated November 11, 2017, December 2, 2017 and March 07, 2018 of the petitioner, even then the same also do not depict the bias attitude/ conduct of the Inquiry Officer.

9. A perusal of the representations would reveal the case of the petitioner being, that before the commencement of the proceedings on November 10, 2017 he submitted a letter of the same date to the Inquiry Officer which was not liked by the Inquiry Officer, who commented that "this all will go against you and I will make sure that you are punished by the Authorities of IGNOU". The petitioner also referred to the fact that he signed the order of the same day by putting remark demur was not liked by the Inquiry Officer who tore the said order sheet and threw it in the dustbin. The Inquiry Officer commented that he shall prepare a new order on which he will put a note that the charged officer has refused to sign on the order sheet. The representations also reveal that the charged officer has not been given the original documents as per charge sheet for inspection. Further, the order sheet Nos.2 and 3 do not record the proceedings correctly. Furthermore, the request of the petitioner only the Typist besides, Inquiry Officer, Presenting Officer, Defence Assistant and the charged Officer must only be present has been turned down by the Inquiry Officer on every occasion.

10. The response dated November 10, 2017 of the Inquiry Officer which was shown to me by the learned counsel for the respondents would reveal the following in paragraphs 7 to 12:

"So the hearing on 10.11.2017 was conducted after 04.09.2017. With the sole intention to disrupt the inquiry the CO came with the representation dated 09.11.2017, stating that it was not possible for him to

proceed further until or unless he was shown the original of listed documents contained in Annexure-III. He further alleged that the Inquiring Authority was pressurizing him and threatening him of dire consequences if CO did not agree to sign the incorrect Daily Order Sheet. As per his scheme prolonging the inquiry he did not submit any of these documents.

A. Consent of defence assistant

B. List of defence witnesses

C. List of additional/defence documents

8. The IO took this letter on record in DOS-5 and marked it as D-6. In the DOS-5, the IO recorded on the bald allegations of CO as under:

5. The CO has leveled serious and bald allegations that he was threaten to sign the Daily Order Sheet which is highly deplorable for a

Class-I officer. He had every liberty to give his dissenting note and he will continue to enjoy the same liberty in future also. The fact remains

that the draft of Daily Order Sheet was read by IO, PO and CO before signing it. It is not understood as to, on which para, he had

objection and which he signed under coercion, pressure and threat or use physical force etc. He is again asked to bring on record in clear

terms, as to which para of Daily Order Sheet Nos, 3 and 4, he was made to sign under pressure and threat of dire consequences. He was

given time at 11.45 AM to bring the allegations on records.â??

9. On this point, after waiting for around 45 minutes, the CO recorded as under:-

BY CO: 6. I will consult my Defence Assistant and will submit my reply in due course of time.

10. Thereafter, the CO got it recorded as under in Para 7 of DOS-5 as under:-

7. The CO is advised to refrain from making any allegation against IO, if he has nothing, to prove against him. The principle of law in this

respect is that 'one who alleges, is to prove his allegations'. When CO signed the representation dated 09.11.2017 (D-6) he should have

specifically mentioned the incidents or para nos., which he was forced to sign under threat etc.

11. During hearing held on 10.11.2017, IO gave a ruling in para-10 as under:

10. In view of the complete non-cooperation by the CO, I hold that the

preliminary hearings are closed today. It is made clear that no opportunity to CO shall be given to submit the list/details of defence/additional documents and defence witnesses. For loosing this opportunity, the CO has to blame himself. However, he will be permitted to engage a defence assistant of his choice, within the framework of given rules, at any time during the proceedings. The PO is advised to start his oral presentation (REGULAR HEARING) Sunder Rule 14 (14) of CCS (CCA) Rules, 1965 by way of oral/documentary evidences to substantiate the charge alleged against the CO. The said Rule

reads as under:

14(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined. but not on a new matter without the leave of the inquiry authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

11. The next hearing shall be conducted on two consecutive dates, i.e., at 10.30 Hrs on 11.12.2017 and 12.12.2017 when the CO will start

his oral presentation within the framework of Rule-14 (14) of CCA Rules. It is made clear that no adjournment except on medical grounds

will be allowed. In that case PO or CO had to get the medical certificate only from a Govt. Hospital and shall submit the same along with all

diagnostics reports, receipts of purchase of medicines and other related documents etc. It is not out of context to mention that the CO did

not attend hearing on 13.06.2017 (DOS-1) and 30.06.2017(DOS-2). He further sought adjournment for hearing fixed on 09.10.2017. As

per CVC circular No. 02/01/2016 (F.No. 000.VGL-18) dated 18.01.2016, the Disciplinary Proceedings are to be completed within six

months from the date of appointment of PO/IO is 05.05.2017 in this case. However, literally there is no progress in this case because of non

cooperation of the CO.

12. The minutes were duly prepared and a draft thereof was given to CO. The CO

read the draft and approved it. Thereafter CO went outside at around 3.15 PM on the pretext of washroom and came after 20-25 minutes. He was given a print of DOS-5 and asked to sign. He wrote DEUMUR. He was asked what was the meaning of DEUMUR. The CO replied that DEUMUR means he 'objects'. Thereafter CO was asked that once he has approved the draft the why he was using the word DEUMUR. The CO was repeatedly advised to give his dissenting note on last page of the DOS-5. He refused to give any dissenting note by stating that he has to consult his defence assistant before putting all objections. He was again advised to put the objections during the hearing only as the disciplinary proceedings are quasi judicial in nature. Not signing the DOS-5 amounts to refusal to sign.â??

11. The aforesaid letter of the Inquiry Officer was followed by another response dated November 22, 2017 wherein the Inquiry Officer has in paragraphs 1 to 4 and 6 has stated as under:

â??1. Vide your letter/representation addressed to the VC, IGNOU, New Delhi bearing No. SRK/IGNOU/Inquiry/IO dated 10 Nov 2017

(sent by Speed Post vide EW394973540IN dated 15/11/2017..14:43 Hrs. from NSH Kolkata 700052) you had alleged unsubstantiated

charges of biasness against the Inquiring Authority. However, the fact remains that since the beginning of inquiry, you had been trying to

delay and disrupt the conduct of inquiry, on one ground or the other. The Daily Order Sheets no. 1 to 5 and over ten representations, which

absolutely had no substance, prove your intentions. Till now you had not even given the consent letter of your defence Assistant, though you

attended the 3rd , 4th and 5th hearing.

2 The Rule / legal position regarding production and proving of documents in disciplinary proceedings has already been brought on record

in Paras 7 and 8 of the DOS-4 dated 04 Sep 2017. However, in the fifth hearing held on 10 Nov 2017 (referred to in your representation

dated 09 Nov 2017) you come well prepared to disrupt the inquiry and create unruly scenes so that you refuse to sign the proceedings, on

one ground or the other. Your intentions were absolutely clear as before the start of inquiry on 10th Nov 2017, you sent a speed post letter

bearing No. SRK/IGNOU/Inquiry/9 dated 09 Nov 2017 (sent by Speed Post vide

ED631302435IN dated 10/11/2017 10:08 Hrs. from

IGNOU-110068) at my residential address). Para 3 of said letter read as under:-

3). I further request the Inquiring Authority not to pressurize me (the charged Officer) to sign the Daily order sheet and threaten me of the

dire consequences if I do not agree to sign any incorrect Daily Order Sheet.â??

3. Para 3 of your letter (cited above) which was sent at my residential address, just before the commencement of the inquiry, clearly reveals

your strategy. You had very intelligently planned to Walk out of the inquiry by not signing the daily order sheet and put the blame on the

Inquiring Authority; and later plead that the Inquiring Authority is bias. You prepared a fool-proof plan and you succeeded in the same.

4. In hearing dated 10 Nov 2017/DOS-5, the daily order sheet was prepared with you full participation and its draft was duly approved by

you. You were further given full liberty to write your dissenting remarks, if any, but you refused to so stating that you had to consult your

Defence Assistant. It is for record that till now, you have not given consent letter from any defence assistant. Since you refused to sign, you

were not given attendance certificate. You could have signed the daily order sheet with your dissenting remarks, if any. (Emphasis supplied)

xxxx xxxxxx xxxxx

6. In case you fail to attend the hearing, the hearing shall continue as per directions contained in Paras 11 and 12 of DOS-5 (quoted

above). One cannot be allowed to disrupt and delay the proceedings on any unsubstantiated allegation. Further it is brought on record the

charges are proved on the basis of material brought on record by the PO and CO. The Inquiring Authority cannot help either the PO or CO

as he is bound by the evidence on record. The CO always has the following opportunities to challenge any proceedings, i.e.

(a). He can raise his objections during the conduct of inquiry which are duly recorded in the proceedings. If is objections are not recorded,

he can always given his dissenting Note on the Daily Order Sheet at that point only and not later.

(b). He can raise the illegalities committed during conduct of inquiry while submitting his written brief under Rule 14(22) of CCS (CCA)

Rules, 1965

(c). Highlight the irregularities / illegalities while submitting comments on the findings of inquiry report Rule 15(1) of CCS (CCA) Rules,

1965??

12. From the aforesaid, it is noted, the representations given by the petitioner are primarily alleging the conduct of the Inquiry Officer during the

Inquiry proceedings. The averments are self-serving averments of bias.

13. The contents of the responses of the Inquiry Officer do reflect the circumstances in which, the order sheet dated November 10, 2017 was

prepared. In fact, the Inquiry Officer has stated, that the representations dated November 10, 2017 was sent a day in advance on November 9, 2017,

which revealed the strategy of the petitioner not to sign the order sheet on November 10, 2017 and put the blame on the Inquiry Officer. The view of

the Inquiry Officer that the conduct of the petitioner on November 10, 2017 for not signing the order sheet, as an incorrect and false narration of the

events and was pre-planned is justified.

14. The Inquiry Officer has also stated that despite opportunities the petitioner had not appointed his defence representative. Further, the inspection of

the original documents has to be given by Presenting Officer and not the Inquiry Officer. The same would not reflect the bias of the Inquiry Officer.

15. No doubt, the instructions of the Cabinet Secretariat of the year 1972 relied upon by Mr. Mohanty do suggest when a representation is made

against the Inquiry Officer alleging bias he should stay the proceedings. But I find, the Inquiry Officer has dealt with the issue in his order dated

March 08, 2018, in the following manner:

??4. Regarding stay of inquiry, the IA has made it abundantly clear that the inquiry will continue till any stay order is received from the

Competent Court or any directions is received from the Disciplinary Authority. It is further made clear that in CCS (CCA) Rules 1965, there

is no statutory provision to stay the inquiry, if a representation of bias is alleged against the IA. These are only executive instructions which

do not have the force of law These are not mandatory but directory in nature. It is further retreated no prejudice has been caused to the CO

by not staying the proceedings. This entire inquiry is based on documentary evidences and not on oral evidences. The law on this point is

settled that in proceedings which are based on documentary evidences, the

charges can be proved straight away also.

5. There are also executive instructions issued by the CVC vide circular no 02/01/2016 (F.No.000VGL-18 dated 18.01.2016 to complete the

Disciplinary Proceedings within 06 months from the date of appointment of PO and IO. The executive instructions referred by CO in D-7

dated 07.03.2018 were issued on 09.11.1972 while as the CVC instructions were issued on 18.01.2016 which are the latest instructions and

will prevail over the executive instructions issued on 09.11.1972.

6. In DOS-11, IA has categorically referred to the gist of all DOS and brought on record that there is not even a single instance of bias

alleged by the CO. By simply alleging bias, the inquiry cannot be stayed, till any directions to the contrary have been received. The CO

should have demanded expeditious disposal of the disciplinary proceedings, on the contrary, CO has tried his level best to delay the inquiry

on one pretext or the other. The proceedings recorded in DOS-11 may please be read along with this DOS.â??

16. The above, shows some justification for the Inquiry Officer not to stay the proceedings. This I say so, after the date of hearing of November 10,

2017 the proceedings were further held on 11.12.2017, 12.12.2017, 11.01.2018, 15.02.2018, 07.03.2018, 08.03.2018, 02.04.2018, 03.04.2018,

04.04.2018, 05.04.2018; and in the proceedings dated March 07, 2018 also the Inquiry Officer has dealt with the allegation of bias against him by the

petitioner in the following manner:

â??5 (m) (iii). I have considered D-6 dated 07.03.2018 and am of the view that by simply alleging bias and malice the inquiry cannot be

stopped. CO nowhere has alleged any incidence of bias against the IA. Had there been an iota of bias against the IA, the CO would have

brought it on record by citing specific instances. The fact remains that the IA has gone out of way to accommodate the CO in DOS-3, He

was also granted adjournment for non-payment of advance TA/DA.â??

The above shows, apart from the initial two responses, vide the response dated March 7, 2018 the Inquiry Officer was of the view that he is not bias

and proceeded with the Inquiry. If the petitioner had any grievance, he should have approached the Court immediately after November 10, 2017 or at

least March 7, 2018, but surely not after 8 months, i.e. in July 2018, from the

date of proceedings held on November 10, 2017, by which time, the Inquiry Officer had proceeded ahead with the proceedings.

17. The case of the petitioner is that the Inquiry Officer has not followed the procedure as contemplated in law. The petitioner would be within his right to raise such pleas before the Disciplinary Authority / Appellate Authority and even before a Court of Law but only after a final order is passed.

18. In view of my discussion above, I do not see any merit in the petition, the same is dismissed.

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Dismissed as infructuous.