

(2023) 05 DEL CK 0095

In the Delhi High Court

Case No : Civil Writ Petition No. 1308 Of 2020, Civil Miscellaneous Application No. 4545 Of 2020, 3755, 4292, 7882 Of 2023

Shashi Mohan

APPELLANT

Vs

Union Of India And Ors.

RESPONDENT

Date of Decision : 15-05-2023

Acts Referred:

Constitution of India, 1950 — Article 311(1)
Central Civil Services (Classification, Control and. Appeal) Rules, 1965 — Section 10(1), 12(2), 14

Citation : (2023) 05 DEL CK 0095

Hon'ble Judges : V. Kameswar Rao, J;Anoop Kumar Mendiratta, J

Bench : Division Bench

Advocate : Dr. K. S. Chauhan, Ravi Prakash, Murari Lal, Ajit Kumar Ekka, R.S.M. Kalky, Dr. K. Elumalai, Gigi C. George, Dheeraj Singh, Anil Kumar Singh

Final Decision : Disposed Of

Judgement

V. Kameswar Rao, J

1. The challenge in this petition is to an order dated August 6, 2019 passed by the Central Administrative Tribunal ('Tribunal', for short) in the Original Application being OA 2293/2019 ('OA', for short) whereby the Tribunal had dismissed the OA filed by the petitioner. The challenge in the OA by the petitioner was to the charge sheets dated October 06, 2017 and February 21, 2019 and order of suspension dated January 11, 2019.

2. The facts which lead to the filing of the present petition are that petitioner is working as a Deputy Director (Group 'A' post) in the erstwhile Council for Advancement of People's Action in Rural Technology ('CAPART', for short). He had earlier filed an OA 1143/2019 by raising two grounds. The first one was that the then incumbent Director General was only looking after the charge of Director General and as such not competent to issue the charge sheet. The second ground was that the Director General, who was given the look-after charge, was

not delegated with the powers of disciplinary authority. The Tribunal rejected the aforesaid OA on both the grounds vide order dated April 09, 2019. However, it was made clear by the Tribunal that in case the petitioner is able to get hold of any material in support of his contentions, then it shall be open to him to take necessary steps in that regard.

3. In the OA being 2293/2019, the case of the petitioner was that the Director General is only a delegatee of the Executive Committee of CAPART and as per clause 36 (c) of the Memorandum of Association of the CAPART, the Executive Committee can delegate its powers to Chairman, Standing Committees, Director General or any other Officer, but the action taken by such authorities shall be subject to confirmation at the next meeting of the Executive Committee. His case was also that the Director General, CAPART did not seek approval of his action as regards initiation of disciplinary proceedings or passing order of suspension from the Executive Committee, let alone, approved by it. One of the contention before the Tribunal was also that the discharge of powers by the Director General was contrary to the law laid down by the Supreme Court in *Union of India and Ors. v. B.V. Gopinath*, (2014) 1 SCC 351.

4. In so far as the first contention made on behalf of the petitioner by relying upon Clause 36 (c) of the Memorandum of Association is concerned, the Tribunal was of the view that the said Clause applies only when the powers are indeed delegated to the Director General. It was held by the Tribunal that the Director General himself was conferred with the powers of disciplinary authority in the year 2004, through an order dated December 15, 2004. The Tribunal was also of the view that even otherwise the occasion for delegatee to seek approval of the Executive Committee arises only when any action is taken by the Director General as a delegatee. In the disciplinary proceedings, action can be said to have been taken only when the proceedings are dropped or punishment is imposed. On the aforesaid, the contention made on behalf of the petitioner herein was not accepted.

5. Even before us, the submissions made by Dr. K.S. Chauhan, learned Sr. Counsel appearing for the petitioner is almost similar inasmuch as it was his contention that the discharge of powers by the Director General was contrary to Clause 36(c) of the Memorandum of Association as it is stipulated in that clause that the action taken by the delegatee whilst discharging the powers so delegated shall be subject to confirmation at the next meeting of the Executive Committee.

6. He submitted that the Tribunal has wrongly held that the action taken by the Director General, i.e., passing of suspension orders / issuance of charge sheets did not require approval of the Executive Committee. In other words, it is his submission that the Tribunal ignored the fact that such an action was required to be approved by the Executive Committee.

7. He also stated that the charge sheets dated October 06, 2017, February 21,

2019 and the suspension order dated January 11, 2019 have not been approved by the Executive Committee before the same were issued against the petitioner under Clause 36 (c) of the Memorandum of Association. According to him, protection given to a civil servant against dismissal or removal under Article 311 (1) of the Constitution of India, 1950 which contemplates that no such person shall be dismissed or removed by an authority subordinate to the appointing authority is equally applicable to the facts of this case. Hence, the charge sheets and order of suspension are required to be set aside. During the course of his submissions, he has drawn our attention to page 195 of the paper book, wherein Clause 36(c) of the Memorandum of Association is depicted. The Clause 36 (c) of the Memorandum of Association reads as under:

"The Executive Committee may, by resolution delegate such administrative, financial and other powers to its Chairman, Standing Committees; Director General or any other officer of the Society as it may consider necessary and proper subject, if deemed necessary, to the condition that action taken by them under the power so delegated, shall be subject to confirmation at the next meeting of the Executive Committee."

8. He has also referred to page 218 of the paper book wherein an information was sought under the provisions of the Right to Information Act, 2005 ('RTI Act', for short) in respect of the memorandum dated February 21, 2019 and October 6, 2017, wherein it was stated that the above memorandums are not required to be placed before the Executive Committee as Director General, CAPART is the disciplinary authority for Group-A level Officers. Similarly, he has also referred to an Office Order dated December 15, 2004 issued by the erstwhile CAPART wherein an amendment has been effected with respect to imposition of major penalty by the disciplinary authority and appellate authority in respect of Group-A, B, C and D posts in the erstwhile CAPART in the following manner:

"With the approval of the F&A Committee as well as Executive Committee in its meeting held on 29/09/2004 and 06/10/2004 respectively, in exercise authority under By-laws-6 and 35, the following officers will be disciplinary authority and Appellate authority in respect of Group 'A', 'B', 'C and, 'D' posts in the council for imposing major penalty

Description Postal Service Grade

Disciplinary Existing

Authority

Disciplinary

Amended

Authority

Appellate Authority Existing

Appellate Authority Ammended

Authorities

Penalties

Authorities

Penalties

1

2

3

4

5

6

7

Group

"A" posts

Executive Committee

Major Penalties

Director General

Major Penalties

No provision

Chairman, EC, CAPART

Group

"B" posts

Director General

Major Penalties

Director General

Major Penalties

Executive Committee

Chairman, EC, CAPART

Group

"C" posts

Director General

Major Penalties

Dy. Director General

(Admn.)

Major Penalties

Executive Committee

Director General

Group

"D" posts

Director General

Major Penalties

Dy. Director General

(Admn.)

Major Penalties

Executive Committee

Director General

9. His other submission was also a similar one as was taken before the Tribunal that the charge sheets and the order of suspension have been issued by an authority having no jurisdiction and competency and as such, in view of the judgment in the case of B.V. Gopinath (*supra*) the charge sheets and the suspension order stand vitiated. He has also relied upon the judgment in the case of Union of India v. Kunisetty Narayana, (2007) 2 SCC L&S 304 to state that the charge sheet, in a judicial review, could be interfered with at an interlocutory stage, if the same is issued without jurisdiction or contrary to the provisions of law.

10. In substance, it is his plea that drawing up of charge sheets for a misconduct is a crucial function for conducting an inquiry and which requires independent and unbiased application of mind and also requires approval by the Executive Committee and not by any other subordinate authority, i.e., Officiating Director General in the case of the petitioner.

11. He has also sought to rely upon an instance wherein, the suspension order of one P.K. Gupta, the then Assistant Director, Group-A (CAPART) dated May 14, 2010 was issued by the Minister of Rural Development and Chairman, Executive Committee, CAPART, wherein in the case of the petitioner, it was not issued by the Minister of Rural Development & Chairman of the Executive Committee

(CAPART).

12. In fact, he has heavily relied upon the response received on the application filed under the RTI Act on April 10, 2019 to state that the response confirmed that the impugned charge sheets / suspension order were not even placed before the Executive Committee let alone they were approved by it before the same were issued. It is only to cover up the lapse committed by the respondents, they replied that the charge sheets were not required to be placed before the Executive Committee as the Director General, CAPART is the disciplinary authority. That, he seeks the prayer as made in the writ petition.

13. On the other hand, stand of the respondents is that the CAPART has been merged into another government society i.e., National Institute of Rural Development and Panchayati Raj on May 1, 2020. It has been represented that the petitioner who is working as Deputy Director, challenged the two charge sheets issued against him on October 6, 2017 and February 21, 2019 along with the suspension order dated January 11, 2019, which have been upheld by the Tribunal.

14. Learned counsel appearing for the respondent (s) would submit that the disciplinary authority in respect of Group-A Officers is the Director General and therefore, the action of the respondent (s) in initiating disciplinary proceedings against the petitioner and placing him under suspension with the concurrence of the Chairman, Executive Committee is completely in accordance with the Service bye-laws and Memorandum of Association and as such there was no requirement for the petitioner to again approach the Tribunal on similar issue.

15. The counsel also clarifies that upon superannuation of Mr. M.L. Meena, erstwhile Director General of CAPART on March 31, 2017, Dr. Nagesh Singh Additional Secretary was appointed to look after the charge of the post of Director General (CAPART) w.e.f. April 1, 2017. The said Office Order was approved by the Minister of Rural Development, Chairman of the Executive Committee of the CAPART.

16. Accordingly order appointing the Additional Secretary as Director General of CAPART was issued by the Ministry. He also submits that the Director General was conferred with the powers of disciplinary authority in the year 2004 through an order dated December 15, 2004. The said Office Order was also issued with the approval of F & A Committee as well as the Executive Committee in its meetings held on September 29, 2004 and October 6, 2004 respectively in exercise of its powers under 6 and of the By-laws 35.

17. Additionally, he submits that Director General, CAPART was the disciplinary authority in the case of the petitioner and he took the approval of Minister for Rural Development and Chairman, Executive Committee of CAPART for placing the petitioner under the suspension w.e.f January 11, 2019, issuing memorandums of charges dated February 21, 2019 under Rule 14 of the CCS (CCA) Rules, 1965. Moreso, the filing of the FIR against the petitioner was also

issued by the competent authority.

18. He contests the submissions made by Dr. K. S. Chauhan appearing on behalf of the petitioner that as per Clause 39 of the Memorandum of Association, a person who is performing functions under look after charge cannot exercise statutory powers is an untenable argument. According to him, there is no such stipulation under Clause No. 39 of the Memorandum of Association, CAPART. However, Clause 39 of MoA of CAPART says that the Director General shall be appointed by the Executive Committee.

19. It is respondent's case that in the instant case, Minister in charge, who was the ex-officio Chairman of the Executive Committee had appointed the Additional Secretary to hold the charge of Director General, CAPART. The Addition Secretary was appointed by the ACC and was given the additional charge of Director General, CAPART. It is the same person who was holding dual charge of both the posts. Reliance has also been placed on the Judgment of the Andhra Pradesh High Court in the case of G. Krishnam Raju vs. K.A. Parvathi and Anr. (1991) 2 ALT 12, 1991 to contend that a person who has been given an additional charge of another post is entitled to discharge all duties including the statutory functions of both the posts.

20. His submission is that the Additional Secretary was given the additional charge of Director General and not to look after the current duties of the Director General as stated by Dr. Chauhan. In this regard, reliance has been placed to sub-rule 2 of Rule 12 of the CCS (CCA) Rules, 1965. It has also been highlighted that the petitioner had raised an issue of bias against the Inquiry Officer and had requested the disciplinary authority that some other Inquiry Officer should be appointed. Accordingly, the request of the petitioner was placed before the Executive Council of the NIRD&PR, which in its meeting held on August 23, 2022 perused the records and facts of the case and decided to conduct the inquiry at headquarters of NIRD&PR Hyderabad by appointing a retired Officer who was empanelled as Inquiry Officer not related to the Department in order to conduct the proceedings in a fair and transparent manner.

21. In so far as the suspension is concerned, it is the submission of the counsel appearing for the respondent was the petitioner was placed under suspension under Rule 10(1) of the CCS (CCA) Rules, 1965 as disciplinary proceedings are pending against him. That apart, he has also stated that in respect of a criminal offence, trial is pending against the petitioner in the Court of Chief Metropolitan Magistrate, Saket Court in FIR No. 7/2019. Moreover, the suspension of the petitioner is being reviewed from time to time under the Rules and has been extended as the petitioner is still under Trial in the criminal case pending against him. Moreover, two charge sheets are pending against the petitioner, wherein petitioner is not extending any cooperation to conclude the proceedings. So, it is his submission, in the facts of this case, the charge sheets which have been issued to the petitioner should be not interfered with and as such the present petition filed by the petitioner must be dismissed.

ANALYSIS

22. Having heard the learned counsel for the parties, the short issue which arises for consideration is whether the charge sheets have been issued by the Additional Secretaries holding look-after charge of Director General, to the petitioner are liable to be quashed on the ground alleged by the petitioner that they are not competent to issue the same. Clause 36 (c), on which reliance has been placed by Mr. Chauhan has already been reproduced above.

23. It is the case of the respondents that an office order dated December 15, 2004 has been issued by the CAPART whereby the schedule of Disciplinary Authority and Appellate Authority in respect of Group-A, B, C and D posts viz-a-viz imposition major penalty has been amended. Earlier, the Disciplinary Authority with regard to Group-A post in imposing major penalty was the Executive Committee, now with the amendment, it is the Director General, who can impose major penalty.

24. There is no challenge to the office order dated December 15, 2004. The issue in hand, need to be proceeded on the premise that the Director General is the Disciplinary Authority with regard to Group-A post. In the case in hand, two charge sheets dated October 6, 2017 and February 21, 2019 have been issued under the Signature of Dr. Nagesh Singh and Mr. Sanjeev Kumar both as the Director General, CAPART.

25. Similarly, the order of suspension was also issued under the signatures of Mr. Sanjeev Kumar as Director General of erstwhile CAPART.

26. The issue that has been raised is that Dr. Nagesh Singh was working as Additional Secretary (RD) and vide office order dated March 30, 2017 was given the look after charge of the post of Director General, CAPART w.e.f. April 1, 2017. Similarly, Mr. Sanjeev Kumar, who was also working as Additional Secretary (RD) was also given the look after charge of the post of Director General, CAPART in addition to his existing assignment as Additional Secretary (RD). So, in that sense, the plea of Dr. Chauhan was that the incumbents having been officiating as Director General, CAPART and looking after the current duties of the post of Director General, were not authorised to issue charge sheets to the petitioner.

27. Suffice to state that the order of appointment of Dr. Nagesh Singh and Mr. Sanjeev Kumar dated March 30, 2017 and May 25, 2018 are reproduced as under:

"OFFICE ORDER

Consequent upon retirement on superannuation of Shri M.L. Meena, DG, CAPART on 31.03.2017 (AN), it has been decided with the approval of Hon'ble Minister (RD, DWS&PR) that Dr. Nagesh Singh, Addl. Secretary (RD) will look after the charge of the post of DG, CAPART w.e.f. 01.04.2017 in addition to this existing assignment, until further orders."

"OFFICE ORDER

Consequent upon appointment of Additional Secretary in this Department vide this Department's Office Order No.?-2012/04/2016-????-I dated 21.5.2018, it has been decided with the approval of Hon'ble Minister (RD) that Shri Sanjeev Kumar, AS (RD) will look after the charge of the post of DG, CAPART in addition to his existing assignment with immediate effect and until further orders."

28. The issue which falls for consideration is whether Dr. Nagesh Singh and Mr. Sanjeev Kumar working as Additional Secretaries in the erstwhile RD having been given the look after charge of the post of Director General, CAPART could exercise the statutory functions under the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

29. From perusal of the impugned order, we find that one of the issue which has been decided by the Tribunal is with regard to Clause 36 (c) of Memorandum of Association. The submission in that regard was that the Director General is only a delegatee of the Executive Committee of the CAPART and as per Clause 36 (c) of the Memorandum of Association, the Executive Committee can delegate its power to the Chairman, Standing Committee, Director General or any other Officer, but the action taken by such authorities shall be subject to a confirmation at the next meeting of the Executive Committee. The Tribunal has rightly concluded that the powers to act as a disciplinary authority and impose major penalty have been rightly conferred upon the Director General by way of an amendment. It had also concluded that the occasion for a delegatee to seek approval of the Executive Committee arises only when an action is taken by the Director General as a delegatee. As in the disciplinary proceedings, the action can be said to have been taken only when the proceedings are dropped or punishment is imposed. Therefore, the contention of the Dr. Chauhan in that behalf was not accepted.

30. On the aspect that the action taken by Director General, CAPART was not in terms of the Judgment in B.V. Gopinath (supra), the Tribunal has in paragraph 8 noted as under:

"8. The second contention urged by the applicant is that the action taken by the 3rd respondent is not in accordance with the judgment of Supreme Court in B.V. Gopinath's case (supra). That was a case in which the Appointing Authority was Finance Minister and the various steps were being taken by an authority under him. The Supreme Court held that the approval of the Appointing Authority is necessary at the stages of initiation of disciplinary proceedings, framing of the charge sheet and imposition of punishment. In the instant case, the disciplinary authority himself is taking various steps. Therefore, the question for getting approval of any other authority does not arise."

31. What is pertinent here is despite specific ground taken by the petitioner

herein in ground (b) of O.A. 2293/2019, which reads as under, the Tribunal failed to consider the same:

"BECAUSE as per Article 311(1) of the Constitution of India no person shall be dismissed or removed by an authority subordinate to the Appointing Authority. However, in the case of the Applicant the charge-sheets and the suspension order have been issued by the Respondent No.3 that is the officiating Director General who is subordinate to the Appointing Authority that is Executive Committee (Respondent No.2) and hence the charge-sheets and the suspension letter are without authority of law and therefore non-est in the eyes of law."

32. The ground (b) in substance is that Dr. Nagesh Singh and Mr. Sanjeev Kumar who had issued the charge sheets / suspension order were substantively holding the post of Additional Secretary, in the Ministry of Rural Development and were given the look-after charge, hence, they could not have issued the charge sheets or the suspension order. We find that the Tribunal has not dealt with this issue. Though, Dr. Chauhan has relied upon Annexure A-2 (filed along with the application seeking permission to file additional documents on record) which is the instruction issued by the Government of India, concerning the issue. It may be necessary to state here, the same was not on the record of the Tribunal in the O.A. The issue raised by the petitioner about the competency of functionaries, such an Additional Secretaries, having been given a look after charge, could have exercised the statutory function under the provisions of CCS (CCA) Rules, 1965 is an important issue, on which we are of the view, should necessarily be first decided by the Tribunal as such an issue would go to the root of the maintainability of the charge sheets / order of suspension issued against the petitioner.

33. Appropriate shall be that the matter is remanded back to the Tribunal by reviving the O.A. 2293/2019 on the board of the Tribunal for a fresh decision on the above issue. We also grant liberty to the counsel for the petitioner and also the counsel for the respondents to file additional documents before the Tribunal in support of their case on the aforesaid issue.

34. While we remand back the matter we do not disturb the finding of the Tribunal on the two issues. The Tribunal, whilst deciding the aforesaid issue, shall consider the challenge of the petitioner and effect of the issue on the prayers made by the petitioner in the O.A. Since, there is an interim order passed by us directing the Inquiry Officer to defer the proceedings of the inquiry to a date beyond the date fixed by this Court in these proceedings, we deem it appropriate to direct that till the Tribunal decides the issue for the purpose we are remanding the matter back to the Tribunal, the Inquiry Officer shall not conduct the proceedings till a decision by the Tribunal. The Tribunal shall decide the issue within a period of three months from today as an outer limit. The petition is disposed of on the aforesaid terms.

35. No costs.