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Union of India & Anr.

through :

Vineet Ohri

through :

THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE SURESH KAIT

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. Before we spell out the issue involved in this writ petition, it would be appropriate to take note of few facts.
2. The respondent herein is working as Commissioner in Customs and Excise in the Department of Revenue, Ministry of Finance, Government of India. He was deputed to Vienna along with certain other members of the team in connection with a Commission on Narcotic Drugs sometime in February/March 2004. An OM dated 27.2.2004 was issued in this behalf clarifying that entire expenditure on the tour was to be borne by the hosts. No Objection Certificate was given by the Ministry of External Affairs on 5.3.2004 and

Presidential sanction was also accorded on 10.3.2004. An advance of transfer allowance of Rs.16,000/- was disbursed to the respondent.

3. After coming back, orders dated 6.4.2004 were passed transferring the respondent to Kolkata as Commissioner. He was granted 130 days commuted leave followed by earned leave. While on leave, the respondent submitted a bill claiming TA on account of tour to Vienna and it was stated in the bill that the TA could be remitted directly to Air India. After availing the leave, he joined as Commissioner in Kolkata on 17.10.2004 and sought six months time to shift his family, which time was granted by the Chief Commissioner. The respondent engaged M/s. Nitco Roadways Pvt. Ltd. for transporting his household things. He submitted advance proforma bill raised by M/s. Nitco Roadways for an amount of Rs.48,000/-. Against this, a sum of Rs.38,425/- was sanctioned on 24.10.2005. On receiving this advance, the respondent issued a cheque dated 24.11.2005 to M/s. Nitco in the sum of Rs.48,000/-. However, due to some difficulties, he was unable to move his family to Kolkata. Therefore, on 8.12.2005, he wrote to the Chief Commissioner about non-transportation of goods to Kolkata and returned the amount of Rs.38,425/- through cheque. Amount of Rs.48,000/- given by him to M/s. Nitco was also returned by them to the respondent on 10.12.2005.
4. It so happened that a pseudonymous complaint was received in the Department on 7.7.2005 alleging irregularities on the part of the

respondent on the aforesaid two counts, namely, withdrawal of transfer allowance of Rs.16,000/- on visit to Vienna and claiming an advance of Rs.38,425/- for transportation of household goods. On that basis, the respondent was issued memo dated 7.9.2006 asking him to give his explanation as to the TA advance of Rs.16,000/- and another memo dated 22.9.2006 about the drawal of advance against transportation of household goods. After eliciting his explanation, processing the matter further and obtaining the CVC advice, ultimately the respondent was issued charge memo dated 10.5.2007 levelling two articles of charges, which are as under:-

“ARTICLE I

Shri Vineet Ohri, while functioning as Commissioner of Central Excise, Kolkata-III Central Excise Commissionerate, Kolkata during 27.10.2004 to 09.01.2006 committed gross misconduct inasmuch as submitted false TTA bill supported by a false transport bill dated 19.07.05 from M/s. Nitco Roadways Pvt. Ltd. Kolkata for Rs.48,000/- towards transportation of his personal effects/domestic goods by road from Delhi to Kolkata (when in reality he did not transfer his personal effects at all) by deliberately omitting the prescribed conditions essential for the exercise of financial powers. As a self-sanctioning authority he showed undue favour to himself in sanctioning the illegal and wrongly calculated inflated amount which was claimed on the basis of false transport bill, in his favour. The said Shri Vineet Ohri, misused his official position so that the false and not 'Pre receipted' transport bill for Rs.48,000/- was accepted and processed by the Accounts Section of his Commissionerate. Later on Shri Vineet Ohri, refunded an amount of Rs.38,425/- drawn by him, through TR-6 challan, received on the basis of false TTA bill by mis-stating the facts and thereby admitting claim of false TTA bill.

ARTICLE II

Shri Vineet Ohri, while functioning as Chief Control of Factories (CCF), Gwalior failed to repay with interest, an advance of Rs.16,000/- which was drawn by him on 10.03.04 from CCF's office, Gwalior, for his foreign tour, even after a lapse of more than two years. Shri Vineet Ohri, after completion of his foreign tour, though submitted a TA bill on 22.06.04 at the CCF's Office, Gwalior (after his release from the office and while he was on leave) for the amount of air-

fare as per the invoice submitted by Air India, but he failed to indicate the matter of pendency of the TA advances of Rs.16,000/- drawn by him and adjust the same in the TA bill submitted by him. Subsequently, Shri Vineet Ohri, submitted a supplementary TA adjustment bill on 05-08-06 at the Kolkata-III Central Excise Commissionerate and being the Head of the Department, got the bill adjusted through his office illegally though the entire TA incurred was required to be forfeited as per the provisions of General Financial Rules, 1963 and FRSR.”

5. The respondent challenged the aforesaid charge sheet by filing an OA before the Central Administrative Tribunal, Principal Bench, New Delhi without even replying to the same and before inquiry could be initiated against him on the basis of the said charge sheet. Apart from some other submissions, his main argument was that there could not have been another inquiry on the basis of pseudonymous complaint.
6. The petitioner herein contested the said OA on various grounds, including the ground that in a judicial review, interference at an interlocutory stage in disciplinary proceedings was not warranted in law. The Tribunal, however, allowed the OA of the respondent vide orders dated 4.12.2007 and set aside the memo of charges dated 10.5.2007. We may note that in the meantime, a Departmental Promotion Committee (DPC) had been convened for promotion to the post of Chief Commissioner wherein the case of the respondent was also considered but kept in sealed cover. The Tribunal, while allowing the OA, also directed the petitioners to open the sealed cover and given effect thereto.
7. The petitioners filed writ petition thereagainst in this Court, which

was registered as WP (C) No. 5496/2008. By order dated 31.7.2008

this writ petition was dismissed as withdrawn with liberty to the petitioners to file a review application. Accordingly, the petitioners preferred RA No. 124/2008 but unsuccessfully as that has also been dismissed by the Tribunal vide its orders dated 24.12.2008.

8. It would be necessary to mention at this stage that in WP (C) No. 5496/2008 the petitioners had argued that there was no absolute bar in the CVC's instructions from not holding disciplinary proceedings on pseudonymous/innocuous complaints. In this behalf, the petitioners had relied upon CVC's instructions dated 29.6.1999 and 31.1.2002. It was on this basis that this Court had allowed the petitioners to prefer review application bringing the aforesaid instructions of CVC to the notice of the Tribunal as the petitioners had argued that in spite of due diligence the aforesaid instructions could not be brought to the notice of the Tribunal. The Tribunal while dismissing the review application has reminded itself of its limited jurisdiction in entertaining such review petitions and observed as under :-

“10. Applying the aforesaid to the conspectus of the present case for showing an error apparent on the face of record a long drawn process has been adopted by the respondents, the error was not self evident and was made to be discovered allegedly, which is not a ground of review the order.

11. As regards consideration of CVC instructions of October 2002, it is a mere discovery but the parties seeking review has not shown that this piece of evidence was not within their knowledge and even after exercise of due diligence it could not be brought to the notice of the Tribunal. Moreover, the Tribunal has taken note of it while stressing upon a specific circular of Customs and Central Excise issued on 18.1.2006, where all the instructions of CVC were taken into consideration and thereafter a decision has been arrived at to quash the disciplinary proceedings.

12. As none of the grounds raised are apt in law, as declared by the Apex Court in Kamal Sengupta (supra), an attempt has been made by the learned counsel for the review applicants to re-agitate the matter, which is not permissible in review. Erroneousity in law is subject to judicial proceedings before the higher forum.”

9. Feeling aggrieved, in the present petition, the petitioner challenges both the orders of the Tribunal, i.e. the one passed in OA and the other passed in the review application.
10. The first question which falls for consideration is as to whether at an interlocutory stage when only charge sheet has been issued proposing to hold the inquiry, whether the Tribunal could set aside the charge sheet on the ground that no action could be initiated on the basis of pseudonymous complaint. We find from the reading of the orders dated 4.12.2007 that while doing so, the Tribunal referred to the CVC instructions issued on 29.6.1999, 31.1.2002 and 18.1.2006. Following portions from these instructions have been quoted by the Tribunal :-

“CVC instructions issued on 29.6.1999 provide as under:-

“2. One of the facts of the life in today’s administration is the widespread use of anonymous and pseudonymous petitions by the disgruntled elements to blackmail honest officials. Under the existing orders, issues by the Department of Personnel & Training letter No.321/4/91-Advocate.III dt. 29.9.92, no action should be taken on anonymous and pseudonymous complaints and should be ignored and only filed. However, there is a provision available in this order that in case such complaints contain verifiable details, they may be enquired into in accordance with existing instructions. It is, however, seen that the exception provided in this order has become a convenient loophole for blackmailing. The public servants who receive the anonymous/pseudonymous complaints, generally, generally follow the path of least resistance and order inquiries on these complaints. A peculiar feature of these complaints is that these are resorted to

especially when a public servant's promotion is due or when an executive is likely to be called by the Public Enterprises Selection Board for interview for a post of Director/CMD etc. if nothing else, the anonymous/pseudonymous achieves the objective of delaying the promotion if not denying the promotion. These complaints demoralize many honest public servants."

12. Further these instructions were reiterated on review by the CVC on 30.1.2002 with the following decision:

"2. However, it has come to the notice of the commission that some Govt. Deptts/Orgns. And, in particular, banks are not complying with the CVC's instructions and have been taking cognizance/action on anonymous/pseudonymous complaints. Very often, the content of the complaint, described as verifiable is used as a justification for such action. The instruction of the commission does not permit this line of action."

13. Also the instructions issued on 18.1.2006 by the Director General of Vigilance in Customs and Central Excise decide as under:

"3. Instances have also come to notice that the anonymous/pseudonymous complaints are entertained at the field formations/various levels to harass the officers. In this regard, CVC advised that all officer/authorities concerned should adhere, strictly to the instructions in vogue relating to anonymous/pseudonymous complaints."

11. A conjoint reading of the aforesaid instructions would bring forth the following significant aspects :-

- (a) DOPT had issued instructions dated 29.9.1992 to the effect that no action should be taken on anonymous and pseudonymous complaints, they should be ignored and only filed.
- (b) Exception to this provision is that in case such complaints contain verifiable details, they may be enquired into in accordance with the existing instructions.
- (c) The CVC felt that this exception had become a convenient loophole for blackmailing.

- (d) Those who receive complaints, follow an easy path of ordering enquiries. Very often, the contents of the complaint described as verifiable is used as justification for such action though instructions do not permit this line of action.
 - (e) Such complaints are specially resorted to when a public servant's promotion is due or when he is likely to be called by PESB for interview for a post of Director/CMD etc. If nothing else, this results in delaying the promotion if not denying it.
 - (f) These complaints demoralize many honest public servants. The CVC has itself stated that most of these complaints are entertained at various levels to harass the officers.
12. The message behind the aforesaid instructions is loud and clear. Normal rule is not to entertain such pseudonymous/innocuous complaints. Only in exceptional cases where verifiable details are found, further action should be taken. This explanation has to be treated as only an explanation and not to take the place of the normal rule, which would mean that only in very exceptional circumstances, on such pseudonymous/innocuous complaints wherein some justification is found after verification, that those be entertained. One has to be particularly circumspect when such complaints are received at a time when a public servant is due for promotion. Commenting upon these instructions of the CVC, the High Court of Madras in the case of *P.M. Ramalingam v. The Director General of Police, Central Reserve Police Force* (WP Nos. 11543-544/2000 decided on 26.9.2003) observed as under :-

“21....The report is dated 25.5.2000. The Prohibition that “no action should at all be taken” will cover all pending proceedings on that date. No action of any nature or any kind shall be taken. The communication is very specific and emphatic. No authority can ignore this communication act contrary to the terms of that communication. Any steps, or any orders of any kind contrary to CVC communication is not valid and becomes illegal and unenforceable in law. Therefore, though the said communication is subsequent to the date of ordering the preliminary enquiry, inasmuch as the entire proceedings are under challenge in the writ petition, the petitioner is entitled to rely upon the above CVC communication. Therefore, inasmuch as the preliminary enquiry was initiated on the basis of anonymous letter, the entire report is liable to be quashed and accordingly it is quashed.”

13. We may also highlight the following caution administered by the Apex Court in *R.C. Sood v. High Court of Judicature at Rajasthan*, (1998) 5 SCC 493. In this backdrop, we have to examine as to whether the present case falls under exception to the general rule that action qua such pseudonymous complaints should not be taken.
14. Few facts which are taken note of by the learned Tribunal, in respect of each article of charge, and which are substantially undisputed and highlighted by learned counsel for the respondent in an elaborate manner, may now be stated :
15. **RE: ARTICLE OF CHARGE NO.1**

It is an admitted position even in the charge sheet that the respondent received the sanctioned amount of Rs.38,425/- for transportation of his household goods only on 14.11.2005 by cheque. Just 10 days thereafter, i.e. on 24.11.2005, he had issued a cheque for Rs.48,000/- to M/s. Nitco Roadways. Fourteen days thereafter, on 8.12.2005, the respondent of his own wrote to the Chief

Commissioner that because of family circumstances, he was not transporting his household goods and thus returning the drawn amount of Rs.38,425/-. On 10.12.2005, the respondent received a cheque of Rs.48,000/- from M/s. Nitco Roadways and on 14.12.2005, he refunded the said amount of Rs.38,425/- by cheque to the Government. All the aforementioned transactions took place by means of cheques and is admitted even in the article of charge No.1.

16. Thus, the respondent had returned the amount much before issuance of the charge sheet. More importantly, all these acts are voluntary and he had no knowledge about the purported pseudonymous complaint. Interestingly, this complaint is dated 7.7.2005, by which date the respondent had not even drawn or was sanctioned advance TA, which he got only on 14.11.2005 and he returned the same on 14.12.2005. By that time, no action on the said pseudonymous complaint had even been initiated.

17. We had summoned the records and have examined the same. It appears that t hat this advance TA was claimed by filing printed certificate as no other form was available. Therefore, it may be a *bona fide* or innocent mistake in signing the said printed form. In any case, sequence of events is eloquent, namely, what was drawn was only an advance. This could not be treated as an element of misconduct at all, more so when even the Administrative Head, after eliciting reply to the explanation, had opined vide his letter dated

31.10.2006 to close the subject matter. In this context it would be useful to refer to the following observations of the Supreme Court in the case of *Inspector Prem Chand v. Govt. of NCT of Delhi & Ors.*, (2007) 4 SCC 566 :-

“12. It is not in dispute that a disciplinary proceeding was initiated against the appellant in terms of the provisions of the Delhi Police (Punishment and Appeal) Rules, 1980. It was, therefore, necessary for the disciplinary authority to arrive at a finding of fact that the appellant was guilty of an unlawful behavior in relation to discharge of his duties in service, which was willful in character. No such finding was arrived at. An error of judgment, as noticed hereinbefore, per se is not a misconduct. A negligence simpliciter also would not be a misconduct. In *Union of India and Ors. v. J. Ahmed* (1979) 2 SCC 286, whereupon Mr. Sharan himself has placed reliance, this Court held so stating: (SCC pp.292-93, para 11)

“11.Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (*see Pierce v. Foster* 17 Q.B. 536, 542). A disregard of an essential condition of the contract of service may constitute misconduct [see *Laws v. London Chronicle (Indicator Newspapers)* 1959 1 WLR 698]. This view was adopted in *Shardaprasad Onkarprasad Tiwari v. Divisional Supdt., Central Railway, Nagpur Division, Nagpur* 61 Bom LR 1596, and *Satubha K. Vaghela v. Moosa Raza* 10 Guj LR 23. The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under:

“Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct.”

18. **RE: ARTICLE OF CHARGE NO.2**

No doubt, it appears that the respondent took some time in adjusting the aforesaid TA advance of Rs.16,000/-. However, fact remains that this TA advance was also adjusted by him voluntarily and *suo moto* on 27.7.2006 by depositing a sum of Rs.4,700/-, after

deducting the expenses incurred from the said advance. This also happened much before the issuance of charge memo. The allegation in article of charge No.2 is that in view of the delay, the TA claim was required to be forfeited as per the provisions of General Financial Rules. Thus, the delay or the subsequent accounting adjustment cannot be described as a misconduct to proceed against the applicant. At the most the Pay & Accounts office could have been instructed to forfeit the TA claim if General Financial Rules so permit, but in the instant case the PAO's office had itself written to adjust Rs.4,700/- only.

We are, therefore, of the opinion that it was not such a serious matter and would hardly come within the expression '*misconduct*' warranting initiation of inquiry on pseudonymous complaint.

19. Most relevant factor in the present case is that though the pseudonymous complaint is dated 7.7.2005, charge sheet came to be issued on 10.5.2007. In the interregnum, a very important and significant event had taken place insofar as the respondent is concerned. The DPC for promotion of the respondent as Chief Commissioner of Central Excise was held on 21.3.2007. The respondent was considered and found fit for promotion. The ACC also approved this promotion. As on that date, there was nothing against the respondent as no charge memo was issued by that time. In normal course, such promotion should have been given effect to. However, after serving the charge memo on 10.5.2007, the aforesaid result of the DPC was placed in '*Deemed Seal Cover*'. This is a

curious way of dealing with the respondent. Obvious motive was to deny the promotion to the respondent even when he rightfully and legitimately earned the same. No such procedure of '*Deemed Seal Cover*' was permissible under the law. All this throw reasonable suspicion in the mind that belated action and that too on a pseudonymous complaint was timed when the respondent became entitled to get promotion. Apprehension expressed by the CVC in the aforesaid circulars on pseudonymous complaint becomes manifest in the present case. All the juniors of the respondent were promoted on the basis of DPC held in March 2007. For two years the respondent is struggling to get his promotion. The promotion, otherwise rightly earned by him, is denied to him by issuing charge sheet at this stage trying to somehow implicate the respondent with alleged irregularities which do not even constitute '*misconduct*'. In this backdrop, we find justification in the following observations of the Tribunal in the impugned judgment :-

“17....Another aspect of the matter is that whereas the applicant on a *bona fide* error has neither caused any loss to the Government nor has established prima facie to be mala fide. The Chief Commissioner when recommended, no action as yet has been taken, which shows victimization of the applicant without any fairness with a view to abort the original claim of the applicant for promotion, which is now being kept under sealed cover.”

20. In view of our aforesaid discussion, we are unable to accept the submission of learned counsel for the petitioner that the Tribunal should not have interfered with the matter at the interlocutory stage. No doubt, at show-cause stage, normally the courts have to refrain themselves from interfering and quashing a charge sheet. Ordinarily,

discretion to interfere at this stage is not to be exercised by quashing a show-cause notice or charge sheet. However, at the same time, this principle is also abundantly clear that in exceptional cases the courts can interfere. It may be that in rare cases such a discretion is to be exercised when charge sheet or show-cause notice is found to be wholly without jurisdiction or for some other reason it is wholly illegal. In the present case, taking holistic view of the matter, we find that a case for interference was made out by the respondent. It was very well within the powers of the Tribunal to examine as to whether allegations, in the facts and circumstances, amount to '*misconduct*' at all or not and whether the issuance of charge sheet was an act of victimization. The facts of the present case clearly demonstrate that such interference was warranted at this stage itself for doing substantial justice in the matter.

21. As noticed above, action against the respondent was initiated on the basis of a pseudonymous complaint; the alleged allegations, when seen in the backdrop of the record and explanation, do not constitute '*misconduct*'; on the basis of such pseudonymous complaint of July 1995, charge sheet came to be issued only in May 2007, that too when the respondent had already been cleared for promotion as Chief Commissioner of Central Excise by the DPC, which was even approved by the ACC. These factors, taken independently, might not have been serious. However, cumulative effect of all these aspects gives an indication that the issuance of

charge sheet upon the respondent at this juncture was not a *bona fide* move on the part of the petitioners.

Accordingly, we dismiss this writ petition with no order as to costs.

(A.K. SIKRI)
JUDGE

(SURESH KAIT)
JUDGE

July 10, 2009
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