

Reportable

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) No. 2893 of 2008

Reserved on : April 02, 2009.

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Pronounced on: April 17, 2009.

Union of India

... Petitioner

through :

Mr. H.K. Gangwani, Advocate

VERSUS

Shri Govind Manish

... Respondent

through

Mr. Devesh Singh, Advocate

CORAM :-

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. The respondent herein is a member of Indian Revenue Services of 1994 batch. In the year 2003, he was posted in Delhi as Deputy Director of Income Tax (Investigation). It is the practice in the Income Tax Department to make general transfers normally in the months of April/May every year. Options are also invited from the officers if they are having any preferred stations in mind where they

2. want to seek transfer. The respondent herein made a request that he may be considered for transfer and submitted his option from Delhi region to Mumbai region.
3. It is matter of common knowledge that certain postings, in all Government Departments, are “prized” postings for obvious reasons. Therefore, many officers try their best to get posting to such places. It is more true in respect of Income Tax/ Revenue Department. It is also a matter of common knowledge that it gives rise to, at times, sharp practices being adopted by certain officials. At that time, many persons become “active” and try to take advantage of the situation. That is unfortunate. But, it happens. During the year 2003 as well, a racket indulging in such practices was busted by the CBI. One Shri A Krishnamurthy, a practicing Chartered Accountant in Chennai boasted of his “contacts” in right places to get people transferred to the destination of their choice. He approached via his contacts Mr. C.R. Perumalsamy *alias* Babu, Ist P.A. to Shri G.N. Ramachandran, the then Minister of State of Finance (Revenue), Government of India. On receipt of an

information that the game of “influence” was going on in this behalf, the CBI taped the phones of Mr. A Krishnamurthy, Babu and others. After investigating into the matter, conducting preliminary inquiry and collecting evidence, the CBI submitted its report along with the material to the Central Vigilance Commissioner (CVC). In these conversations, tape-recorded by the CBI, it was found that Mr. A. Krishnamurthy had approached Babu seeking transfer of various persons for consideration. The CVC examined the said material and advised for issuance of charge-sheets for major penalty proceedings against certain employees. In this list of persons against whom disciplinary proceedings were sought to be initiated, the respondent was also included. Accordingly, Memo/charge sheet dated 7/8.09.2005 was served upon the respondent under Rule 14 of CCS (CCA) Rules. Allegation against him was that he had agreed to pay Rs.6 lakhs to Babu towards bribe for ensuring the transfer through Shri A. Krishnamurthy. Imputation of misconduct or misbehavior in support of the said charge with which we are concerned, was as under:

“that the said Sh. Govind Manish, while posed (sic. posted) as Dy. Director of Income Tax (Investigation), New Delhi, in the year 2003, failed to maintain absolute integrity and exhibited conduct unbecoming of a Govt. servant, by way of approaching Sh. A. Krishnamurthy, a practicing chartered accountant in Chennai in the matter pertaining to his transfer from Delhi to Mumbai who on his behalf approached his contact Sh. R. Perumalsamy @ Babu, 1st P.A. to Sh. G.N. Ramachandran, the then Minister of State of Finance (Revenue), Govt. of India and on the demand of Sh. R. Perumalsamy @ Babu, he agreed to pay Rs.6 lacs to Sh. Babu towards bribe for ensuring his transfer through above Sh. A. Krishnamurthy. (emphasis supplied)

Para 2-5 of statement of Imputation of misconduct or misbehavior in support of the article of charge, which are the only concerned paragraphs, read as follows:-

2. That Sh. Govind Manish, while posted as Dy. Director of Income Tax (Investigation), Jhandewalan, New Delhi, in the year 2003, failed to maintain absolute integrity and exhibited conduct unbecoming of a Govt. servant in the matter pertaining to his transfer from Delhi to Mumbai. For getting his transfer done Sh. Govind Manish approached Shri A. Krishnamurthy, a practicing Chartered Accounts, based at Chennai, who came in his contact during his posting in Chennai. Shri A. Krishnamurthy in turn approached Sh. R. Perumalsamy @ Babu, 1st PA to Sh. G.N. Ramachandran, the then Minister of State for Finance (Revenue), Govt. of India on his behalf and struck a deal for making payment of Rs.6 lacs as bribe to the said Sh. Babu for getting his transfer done from Delhi to Mumbai. Sh. Govind Manish agreed to pay the said amount of Rs.6 lacs as bribe to the above Sh. R. Perumalsamy @ Babu through his contact Shri A. Krishnamurthy.

3. That the CBI had made surveillance of the telephones (both mobile and landline nos.) of Sh. A. Krishnamurthy, CA. An audio CD was prepared, containing recording of the conversation between Sh. Anurag Vardhan and Sh.

Krishnamurthy on the one hand and Sh. Krishnamurthy and Sh. R. Perumalsamy Krishnamurthy and certain other IT Officers.

4. That the name of Sh. Govind Manish figured in the telephonic conversations between Sh. Krishnamurthy and Sh. Perumalsamy on 11.5.03 at 20.30 hrs., wherein Sh. Krishnamurthy told Sh. Perumalsamy that another officer (DC) had requested his transfer from Delhi to Bombay. In the conversation dtd 15.5.2003 at 16.29 hrs., between Sh. Anurag Vardhan and Krishnamurthy, the officer's name clearly figured, when Sh. Krishnamurthy enquired whether Sh. Govind Manish was ready to pay. To this, Sh. Anurag Vardhan replied that he was "200% ready". Sh. Vardhan again asked Sh. Krishnamurthy on 19.5.03 at 18.05 hrs. whether Govind's name was there, and got an affirmative reply. After issue of transfer list on 21.5.03, Sh. Krishnamurthy told Sh. Vardhan that for Sh. Govind Manish it would be done later.

5. That here is, thus an evidence indicating that Sh. Govind Manish had struck a deal with Sh. Krishnamurthy through Sh. Anurag Vardhan. From the transcript of telephonic conversations it is seen that Sh. Krishnamurthy had provided the name of one Addl/Jt commissioner and 3 DCITs to Sh. Perumalsamy, who were prepared to pay Rs.6 lakhs for their transfers. The 3rd DCIT, besides Sh. Anurag Vardhan and Sh. Rajesh Kumar, was Sh. Govind Manish."

(emphasis supplied)"

4. Annexure (iii) containing the list of documents mentioned as many as 13 documents on the basis of which aforesaid charge was sought to be substantiated. Annexure (iv) to the said Memo contained a list of four witnesses through whom charge was sought to be proved.

5. The respondent submitted his reply to the said charge-sheet refuting the allegations. He also, in the said reply, requested for supply of copies of the documents and evidence on the basis of which the charges were laid against him as those documents were not supplied to the respondent. The request of the respondent to supply the documents was not replied to. He, in these circumstances, sent reminders dated 31.10.2005 and 20.11.2005. Without paying any heed to his request, orders dated 09.12.2005 were passed by the Disciplinary Authority appointing Shri Rohit Tiwari, CDI, CVC as the inquiring authority and Shri Rajiv Mehrotra, Addl. CIT as the Presenting Officer. These orders were sent to the respondent with covering letter dated 19.12.2005. On receipt of these letters, the respondent renewed his request dated 27.12.2005 for providing material and evidence in respect of the said charges followed by another communication dated 12.01.2006. On 19.01.2006, certain documents were supplied to him, on the basis of which, the respondent nurtured the belief that charge-sheet served upon him was totally mis-conceived in law and charge

unsustainable inasmuch as without even considering the relevant material available on record and perhaps under the influence of extraneous circumstances resulting from the report of the CBI, the charge-sheet was served upon him. Without waiting for the inquiry to commence, the respondent decided to challenge the action of serving the charge-sheet and therefore, approached the Tribunal by filing OA No.264/2006 under Section 19 of the Administrative Tribunal Act. His efforts have succeeded before the Tribunal. Vide its judgment dated 21.03.2007, the Tribunal has accepted his plea and quashed the charge-sheet memo dated 7/8.09.2005. Assailing this judgment, present writ petition is preferred by the petitioner/department under Article 226/227 of the Constitution of India invoking extra-ordinary jurisdiction of this Court seeking judicial review of the impugned judgment.

6. Mr. H.K. Gangwani, learned counsel for the petitioner made a fervent appeal to this Court to set aside the impugned order as the OA was pre-mature and it was not open to the Tribunal to interfere with the matter when only a charge-sheet was served and the

inquiry was yet to be conducted. His submission was that, at this stage, it was not proper for the Tribunal to go into the charges and come to the conclusion as to whether there was any evidence to establish those charges or not. That was the job of the inquiry officer. The respondent could have claimed before the Inquiry Officer, while defending the inquiry, that there was no material to prove the charges. He submitted that on the basis of the Report of the CBI and the transcription of the talks between Mr. A. Krishnamurthy and Babu & others, it was found that there was some material which pointed needle of suspicion on the respondent herein. At this stage, therefore, it could not be said that it was a case of “no evidence”. He argued that in the conversation of the tape-recorded version of talks between the aforesaid persons on telephone and mobile phones, name of the respondent had specifically figured who had agreed to pay Rs.6 lakhs for his transfer from Delhi to Mumbai. He thus argued that it could not be said that Disciplinary Authority had not applied his mind while deciding to issue the charge-sheet to the respondent for major

penalty proceedings. According to him, the approach adopted by the Tribunal, by interfering at this stage, was clearly uncalled for as the Tribunal assumed the role of Inquiry Officer and returned the findings that there was no material to implicate the respondent even when the inquiry was yet to be conducted. Placing reliance upon plethora of case laws, he argued that such a judgment of the Tribunal could not stand scrutiny and was therefore liable to be set aside. Specific reliance was placed in the case of *Union of India & Ors. Vs. Upendra Singh* 1994 (3) SCC 357. The power of the Court to interfere with disciplinary proceedings at this stage on level of charges was dealt with in the following manner:

“6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review,

the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in *H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal v. Gopi Nath & Sons*, 1992 Supp (2) SCC 312. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus: (SCC p. 317, para 8).

“Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself.”

7. Now, if a court cannot interfere with the truth or correctness of the charges even in a proceeding against the final order, it is understandable how can that be done by the tribunal at the stage of framing of charges? In this case, the Tribunal has held that the charges are not sustainable (the finding that no culpability is alleged and no corrupt motive attributed), not on the basis of the articles of charges and the statement of imputations but mainly on the basis of the material produced by the respondent before it, as we shall presently indicate.

xxx.....In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if the charges framed read with imputations or particulars of the charges, if any, no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law.”

7. Mr. Gangwani further submitted that the Tribunal misconstrued itself by going into the extraneous factors at this stage. According to him, the perusal of the impugned judgment would show that the Tribunal was influenced by non-supply of certain documents that by itself would not have led to quashing of the charge-sheet, which was the plea made by the learned counsel and in this behalf he strongly relied upon the Apex Court decision in *Syndicate Bank & Others Vs. Venkatesh Gururao Kurati*, (2006) 3 SCC 150 which is as under:

“In our view, non-supply of documents on which the enquiry officer does not rely during the course of enquiry does not create any prejudice to the delinquent. It is only those documents, which are relied upon by the enquiry officer to arrive at his conclusion, the non-supply of which would cause prejudice, being violative of principles of natural justice. Even then, the non-supply of those documents prejudice the case of the delinquent officer must be established by the delinquent officer. It is well settled law that the doctrine of principles of natural justice are not embodied rules. It cannot be put in a straitjacket formula. It depends upon the facts and circumstances of each case. To sustain the allegation of violation of principles of natural justice, one must establish that prejudice has been caused to him for non-observance of principles of natural justice.”

However, in the present case this stage has not arrived, therefore the non supply of the documents listed at serial No. 6, 7, 9, 10 and 11

under Annexure A-III appended to the charge memorandum should not have been construed as a violation of principles of natural justice by the Tribunal to interfere at this stage and to pass the impugned order quashing the said charge-sheet.

7. According to Mr. Gangwani, the tribunal grossly erred in not appreciating that it is a well settled proposition of law that in case a *mala fide* is alleged then the person against whom the said *mala fide* is alleged is required to be made a party to the proceedings. However, the respondent has not followed the procedure in this regard. Therefore, the Tribunal ought not to have observed that there is an element of malice and *mala fide* imputation involved in issue of the charge-sheet and should not have quashed and set aside the charge-sheet.

He, thus, summed up his submissions by arguing that at this stage, the Tribunal lacked jurisdiction to interfere; no right of the respondent was affected; action of the petitioners in serving the charge-sheet was in *per se* illegal and if the respondent is able to prove his innocence in the inquiry, the charges can be dropped by

the Disciplinary Authority itself. Therefore, no prejudice was caused to the respondent at this stage.

8. Learned counsel for the petitioner may be right to the extent that the Tribunal at this stage when inquiry yet to start, could not be influenced by non-supply of certain documents for quashing the charge-sheet. Insofar as that grievance of the respondent is concerned, during the inquiry, he should have made such a request to Inquiry Officer and at this stage when the inquiry has not even been started, the Tribunal would be wrong in observing that non-supply of certain documents would construe as violations of principles of natural justice. Notwithstanding the same, we feel that the order of the Tribunal does not call for any interference, for other reasons.
9. No doubt, it is firmly rooted principle of law that when the matter is at the stage of departmental inquiry and only the charge against the respondent is framed, at this stage the Court/Tribunal, normally, does not interfere with. At this stage, the judicial authority has no jurisdiction to go into the correctness or truthfulness of the charges.

When the arguments of learned counsel for the petitioner are examined in the context of aforesaid principle, they appear to be attractive. However, it is only when we have not looked into the other side of coin and taken note of some material facts, which Mr. Gangwani glossed over while making his submissions. These are the following:

- i) Admittedly, in the mobile/telephone conversations which are taped, there is no voice of the respondent herein. The conversations are primarily between Babu and A. Krishnamurthy. At times, two or three other persons also figure in those talks. However, the voice of the respondent is nowhere in those tapes, which is conceded to by the petitioners.
- ii) The respondent is implicated only because of the reason that in a conversation between Krishnamurthy and Babu, the name of "Govind" appears who, as per talk, agreed to pay Rs.6 lakhs for his posting to Mumbai. Again it is conceded that the respondent is not the only person with the name "Govind, there are many other officials with the same name. Full name of the respondent is "Govind Manish". Indubitably in the talks, name of "Govind Manish "nowhere figures and only

“Govind” is uttered. Following are the names of the officials with “Govind”:

Govind Lal; Gobind Ram Singhal; Govind Bhai C. Chouhan; S. Govinda Rao Joshi; R. Govind Rajan; Har Govind Singh; Govind Manish; P. Govinda Moorthy; L.R. Govinda Rao; K. Govindan Kutty and Ushan Govindan.

- iii) The reason for thinking that this Govind would be the respondent, i.e., Govind Manish arises only because the talk relates to transfer to Mumbai and it is the respondent who had given option to be transferred to Mumbai. Even this link, however, is snapped when we find that the respondent had in fact withdrawn his option offer for transfer from Delhi to Mumbai before the said conversation. The admitted fact clearly clinches the issue and had it been kept in mind. The DA would not and could not have issued the charge-sheet. It so happened that the respondent along with his family members had met with a serious road accident on the night of 16/17.04.2003. He and his family members sustained severe injuries and all of them had to be admitted at Kailash Hospital & Research Centre, Noida, U.P. The entire family was in the hospital even on 24.04.2003, i.e., one week after the accident. The respondent addressed a letter of that date to the Chairman, Central Board of Direct Taxes (CBDT) informing

him about the said accident and withdrawing his request for transfer to Mumbai in the following words:

“6. I would, therefore, request you to kindly treat my request for transfer as withdrawn and I may kindly be allowed to continue in the Delhi region.”

The respondent thus wanted to stay in Delhi region only and was no more interested to go to Mumbai. He made his intentions clear in this behalf on 24th April, 2003 itself. In the purported conversation dated 15.03.2003, “Govind” appears who had allegedly agreed to give Rs.6 lakhs for his transfer from Delhi to Mumbai. Only on this basis, charge-sheet is served upon the respondent. But we fail to understand that how the said “Govind” can be the respondent, *viz.*, “Govind Manish” offering payment for transfer from Delhi to Mumbai when so far as the respondent “Govind Manish” is concerned, he was no more interested in this transfer.

- iv) List of the transferred officials was out within few days thereafter and again admittedly the name of the respondent did not figure in the said list. It was because of the reason that his name was not even considered for transfer, seemingly on

his own request contained in letter dated 24.04.2003, as per which he wanted to stay in Delhi region only.

10. No doubt, all these aspects are to be considered by the Disciplinary Authority or the Inquiry Officer during the course of inquiry, but what can definitely be examined by this Court is as to whether the aforesaid facts which were available before the Disciplinary Authority while ordering inquiry against the respondent were at all looked into or examined or not. To put it otherwise, the Court is not powerless, at this stage also to examine as to whether there is a due and appropriate application of mind on the part of Disciplinary Authority to arrive at a decision to proceed against the respondent.
11. We thus proceed to examine the material on record along with the charge-sheet and 13 documents in the list of documents as referred, by which the Disciplinary Authority proposed to sustain article of charge. We are concerned here with four documents appearing at Sl. Nos. 6, 7, 9, 10 & 11 of the said list. These are the following:

“6. Call details of mobile No. 9810214219 of Mr. Govind Manish, 85, Trishul Tower, Kasushambi, Ghaziabad,

UP-201001, received from Nodal Officer, Bharti Cellular Ltd.

7. Letter of SP/SPE/CBI/ACB, Chennai dtd. 5.6.03, along with details of Tel. No. 24347260, 24340074, 24335599, 24339999, Mobile No. 9841073000 and 9444039999 of Sh. A. Krishnamurthy (last one in the name of Sh. Kalicharan), provided by BSNL, Chennai and RPG Cellular.
9. Transfer proforma file, including the transfer proforma of Sh. Govind Manish, for his transfer from New Delhi to Mumbai, given by him in 2003, for consideration in AGT-2003, including list of officers considered for transfer, including name of Sh. Govind Manish and his posting details including his posting at New Delhi.
10. Statement of Sh. A. Krishnamurthy recorded on 4.6.03.
11. Statement of Sh. Govind Manish recorded on 27.5.03.”
12. When the charge was served along with the said list but without the copies of documents, the respondent requested for supply of the documents. He had clearly indicated that he would be in a position to give effective reply/representation to the charge-sheet when he is

in the receipt of the said documents. However, in spite of repeated requests even thereafter, these documents were not supplied. There is a big question mark as to whether these documents were before the Disciplinary Authority at all when the decision to charge-sheet the respondent was taken. This doubt is raised because even as per the version of the petitioners entire record was with the CBI. Furthermore, the respondent has produced the following correspondence which would indicate that as late as in May 2006, those documents were not available with the department/petitioner.

- a) First, the document is daily order sheet dated 02.02.2006 of the Inquiring Authority wherein the Presenting Officer is directed to ensure that the inspection of listed documents by the respondent along with his defence assistance is got completed by 24.02.2006. The Presenting Officer was also directed to give all the listed talks and the statement of the listed witnesses recorded in the preliminary investigation of the respondent. This was admittedly not done by the Presenting Officer.

b) Letter dated 10.04.2006 is written by the Department to the respondent stating that :

“The authenticated copies of documents/statements of the listed witnesses are yet to be received by undersigned from concerned authorities. The same will be provided to you only after receipt of the same by undersigned from the said concerned authorities.”

c) Letter dated 24.05.2006 of the Directorate General of Income Tax (Vig.) to the Director of Income Tax (Vig.), North *inter alia* states that:

“I have, therefore, been directed to request you to obtain the above mentioned documents from the office of SP (CBI) and forward the same to this Office for further necessary action.”

d) It thus becomes abundantly clear that when the relevant documents were not available before the Disciplinary Authority then taking a decision to proceed against the respondent.

13. We are proceeding only on the basis of admitted position disclosed above, *viz.*, the respondent is not the one who entered into any conversation in the tape-recorded version produced by the CBI; name of one of 'Govind' appears and not the complete name of the respondent, i.e., "Govind Manish" and there are as many as 10 "Govinds" in the Indian Revenue Services Office; and above all, money is allegedly offered for seeking transfer to Mumbai and as far as the respondent is concerned, he was no more interested in such a transfer who had withdrawn his option to seek transfer to Mumbai much before this conversation. When the decision of the Tribunal is examined keeping in forefront the aforesaid perspective, it is difficult to find fault with the approach of the Tribunal. The Tribunal was conscious of its limitation in dealing with such matters at the outset of inquiry which is mentioned in the beginning of the judgment in Para 3. It was also conscious of the guiding principles for deciding such issues as in Para 16 in the case of *Upendra Singh* (supra) is quoted to show that the Tribunal or the Court can interfere with only if on the charges framed, no misconduct or other

irregularities can allegedly be said to have been made out or the charges framed are contrary to any law. Keeping in view this principle, the Tribunal proceeded to discuss the case at hand in the following manner:

“17. The aforesaid guiding principle, when placed in practical laboratory, would establish beyond reasonable doubt that allegations of misconduct made against applicant in present case, as reflected vide article of charge, could be split into following:-

- i) That applicant approached Shri A. Krishnamurthy, a practicing Chartered Accountant in Chennai relating to his transfer from Delhi to Mumbai.
- ii) As per para 4 of the imputation of misconduct, Annexure-II to Charge Memorandum, which is the only relevant part in our considered view, recites that applicant's name figured in the telephonic conversation-
 - a) Between Shri A. Krishnamurthy and Shir R. Perumalsamy on 11.5.2003 at 2030 hrs;
 - b) Between Sh. Anurag Vardhan and Shri A. Krishnamurthy on 15.5.2003 at 1629 hrs; and
 - c) Between Shri Vardhan & Shri Krishnamurthy on 19.5.2003 at 1506 hrs.

Said para further states that by that time a transfer list had already been issued on 21.5.2003, which did not include applicant's name and Shri A. Krishnamurthy had told Shri Vardhan that required job in respect of applicant “would be done later”. It is an admitted fact that prior to

said date, i.e. on 24.4.2003 he withdrew his option for transfer and requested the concerned authority to allow him to continue in Delhi. Admittedly documents at Sl. Nos. 6, 7, 9, 10 & 11 at Annexure III charge memorandum have not been supplied. If the aforesaid documents are deleted from the list of documents, rest of the documents would not throw any light on the allegations made, as rest of them are inconsequential. With reference to Civil List of IRS, it was pointed out that there are many "Govind" in the Deptt., namely 1) Govind La; 2) Gobind Ram Singhal; 3) Govind Bhai C. Chouhan; 4) S. Govinda Rao Joshi; 5) R. Govind Rajan; 6) Har Govind Singh; 7) P. Govinda Moorthy; 8) L.R. Govinda Rao; 9) K. Govindan Kutty and 10) Ushan Govindan. It was also pointed out that in all conversations, the reference made is to one "Govind: & not to "Govind Manish" i.e. the applicant. It was further pointed out that though Statement of imputation repeatedly alleges that name of "Govind Manish" figured in the telephonic conversations but no document or record has been either supplied or pointed out to establish that the name which figured in the telephonic conversations was of "Govind Manish". In backdrop of the above, Ld. Counsel contended that issue which arises for consideration is on what basis one could allege with certainty that it was applicant whose name figured in talk in between aforesaid person, particularly in the absence of said persons cited a witness? These factual & crucial aspects were not disputed & controverted by respondents. Shri A.K. Behera, learned counsel in our opinion, rightly emphasized and contended that basis for the impugned charge memorandum is the alleged conversation between various other persons and not with applicant. None of them are listed as witness. In other words, the entire allegations are based on hear-say. The alleged talk between persons cannot, by any stretch of imagination, be the basis of issuing charge sheet, particularly when neither said persons were listed as witness nor applicant's identity or link with them is free from serious doubts.

xxxxx..... In the circumstances, we find justification in the contention raised that when respondents themselves have neither supplied even the relied upon documents and his representation dated 24.4.2003 were available on record seeking retention in Delhi, than why would he either negotiate or agree to pay a whopping amount of Rs.6 lacs, and that too in the month of May, 2003. We must appreciate the circumstances in which the applicant was placed in the Month of April, 2003 when he & family members met with a serious accident. Would a person of ordinary prudence in such circumstance take care of his family well being or negotiate to pay a bribe for his transfer, particularly when his representation for retention in Delhi had not been rejected? In our considered view the answer to the aforesaid question would be in negative. An ordinary man of prudence similarly placed will not act in manner for which allegation has been made."

14. After examining the matter ourselves, in the light of record of and the submissions of the parties, we are inclined to agree with the aforesaid conclusion of the learned Tribunal. The charge for which the respondent is implicated, no misconduct or other irregularities can be said to have been made out. Charge sheet framed is also contrary to law as there was no proper application of mind by the Disciplinary Authority. We thus do not find any reason to interfere with the judgment of the Tribunal.

15. The respondent has filed CM Appl. No. 15329/2008 wherein he has pointed out that he has not been given Non-Functional Selection Grade (NFSG), though his batch-mates of 1994 batch and even his juniors i.e. IRS of 1995 batch have already been placed in the said grade. This, notwithstanding the facts that vigilance clearances has been granted to him for placing in NFSG, after getting the approval of the Member, P&V, CBBI. The judgment of the Tribunal came in March 2007 whereby charge-sheet had been quashed. There was no reason to deny him the benefit of NFSG. More particularly, when there were no proceedings challenging the judgment of the Tribunal filed by the petitioner (which came to be filed only in April 2008 that too much after the contempt petition was filed by the respondent before the Tribunal). Further, this denial, in spite of vigilance clearance, was quite unreasonable and arbitrary. Under these circumstances, more so even we are dismissing the present writ petition, order for granting NFSG to the respondent from the date it was admissible to him shall be passed within two week with all the arrears.

16. Before we part with, we deem it appropriate to address one important development in this case. Though the CBI had submitted its report to the CVC in the year 2003, charge-sheet was framed against the respondent two years thereafter, which is dated 7/8 September, 2005. Furthermore, the Tribunal had rendered its judgment on 21.03.2007 quashing the charge-sheet and the present petition challenging that judgment was filed after more than one year i.e. 04.04.2008. In order to know the circumstances under which such a belated decision was taken to assail that order the respondent had sought information from the Ministry of Finance under the provisions of Right to Information Act. The Ministry gave this information vide its communication dated 15.07.2008 annexed by the respondent dated 12.02.2009 in reply to the 14.01.2009. As per this information, the first advice from the Ministry was sought only on 05.11.2007, which was given on 06.11.2007. Thus, after the judgment which came in March 2007, for 8 months file was not moved at all. Answer to other query is more important. Advice was also sought from the Department of Legal

Affairs for filing writ petition. This advice was tendered on 16.11.2007, as per which the Department of Legal Affairs had opined is as under:

“There is not much scope for challenging the order before the High Court. No substantial question of law is involved and there has been undue delay on the part of department in processing the case for the Writ petition in the High Court. Even if the writ petition is filed, there is likelihood of its being dismissed on the ground of limitation. Department of Revenue may take administrative decision in implementing the Tribunal’s order.”

File was again sent on 01.04.2008 seeking concurrence of the Department on legal affairs for filing writ petition in the following manner:

“In its advice dated 02.04.2008, the Deptt. of Legal Affairs has opined that “The opinion of the Ministry given at pp.16 on 16.11.2007 stands good. It does not require any modification. If the department wants to file writ petition, it may do so at its own risk and cost as the success in the writ petition is in remote. Department should defend the contempt petition properly.”

17. Notwithstanding, categorical opinion of the Department of Legal Affairs that it was not a fit case for filing the writ petition, the petitioner went ahead and filed the instant writ petition. Not that we are influenced by the remarks of the Department of Legal

Affairs. For this reason, we have referred to these remarks only after considering the matters ourselves on its own merits. Reason for quoting the aforesaid opinion of the Department of Legal Affairs is that even when there are instructions that normally the Department should concede to such legal advice and should not challenge the orders by filing frivolous petitions/appeals, many times such advice is not heeded to. This tendency of filing appeals till the highest Court by the Government Department, and in turn becoming biggest litigant in this country, is one of the reasons clogging judicial systems with huge pendency.

18. Under these circumstances while dismissing the writ petition, we are constrained to impose compensatory cost of Rs.10,000/-.

(A.K. SIKRI)
JUDGE

(SURESH KAIT)
JUDGE

April 17, 2009.
pmc