

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 13.02.2012
Judgment pronounced on: 16.02.2012

+ **W.P.(C) 850/2012**

RAJENDRA PRASAD DWIVEDI ... Petitioner

versus

UNION OF INDIA & ANR ... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Sudhir Nandrajog, Senior Advocate with Mr S.S. Duggal and
Mr Manish Shanker Srivastava
For Respondents : Mr Rajinder Nischal

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K.JAIN

V.K. JAIN, J.

1. This writ petition is directed against the order dated 28.11.2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as “the Tribunal”), whereby OA No. 4249/2010, filed by the petitioner, was dismissed. The facts giving rise to the filing of this petition can be summarized as follows:

The petitioner, at the relevant time was working as a Deputy Legal Advisor in the CBI. Disciplinary proceedings for imposing major penalty on the petitioner were initiated and the first stage opinion of Central Vigilance Commission was

obtained on 18.05.2010. This was followed by drafting of Charge Memo, List of Documents and List of Witnesses, etc. The proposal to initiate disciplinary proceedings against the petitioner was submitted to the Prime Minister, who was the Competent Authority to approve departmental action against him, through the Minister of State, who approved the same on 21.07.2010. The papers placed before the Prime Minister included Charge Memo, Statement of Imputation, List of Witnesses and List of Documents supporting the charge. The approval of the Prime Minister to initiate major penalty proceedings against the petitioner was communicated vide note dated 28.06.2010, whereupon the charge memo was issued on 29.07.2010 and served upon the petitioner on 30.07.2010.

2. It was alleged in the charge memo that the petitioner, along with Constable Vijay Prabhu, went to the residence of one Bharat Bhai Shah, who was prosecuted under Section 120-B and 420 of Indian Penal Code read with Sections 5(1)(d) and 5(2) of Prevention of Corruption Act and who was awarded punishment of simple imprisonment for one day and fine of Rs 4,00,000/-. It would be pertinent to note here that prosecution of Shri Bharat Bhai Shah on behalf of the CBI was being conducted by the petitioner and he did not attend the aforesaid case, on the day he visited Shri Bharat Bhai Shah in the Hospital. It was also alleged that in another case, he contacted one Vijay Nanalal Seth against whom a case under Section 120-B read with Section 420/409/467/468 and 471 of IPC and Sections 13(1)(d) read

with 13(2) of Prevention of Corruption Act, 1988 was registered, assured him of arranging bail within a few days of his arrest, if Rs 2 lakh were paid by him and later when Shri Seth was released on bail, he paid Rs 2 lakh to the petitioner. Yet another allegation against the petitioner was that on 29.06.2005, he unauthorizedly enquired about the information regarding searches to be conducted on 30.06.2005, in the cases in which he was not involved.

3. In the meanwhile, the petitioner submitted a notice dated 03.03.2010 under Rule 48(1)(a) of CCS (Pension) Rules, 1972, seeking voluntary retirement from service. The request of the petitioner seeking voluntary retirement was processed in a separate file. Director, CBI vide note dated 26.3.2010 recommended dropping of disciplinary proceedings and acceptance of notice for voluntary retirement. The Minister of State, who was the Competent Authority to take decision on the application of the petitioner seeking voluntary retirement from service, approved the retirement proposal, subject to the condition that the charge-sheet would be served on him before he was permitted to proceed on voluntary retirement.

4. OA No. 4249/2010 was filed by the petitioner seeking quashing of the Memorandum of Charge-sheet dated 29.7.2010 as well as ID Note bearing No. DP PERS.I/2010/3085/3/13/87 dated 23.9.2010 issued by CBI, whereby it was decided that since a charge-sheet had been served on the petitioner on 30.7.2010 for initiation of major penalty proceedings, he was entitled to provisional pension and

leave encashment but was not entitled to payment of gratuity, till finalization of the disciplinary proceedings against him. A perusal of the impugned order passed by the Tribunal would show that not only the leave encashment but the amount lying deposited in General Provident Fund of the petitioner as well as the part of the gratuity were also released to him. The OA was dismissed by the Tribunal vide impugned order dated 28.11.2011.

5. It has been contended by the learned Senior Counsel for the petitioner that since CBI ID Note dated 26.3.2010 whereby Director CBI, in consultation with In-charge DOP, CBI recommended closure of the criminal cases as well as dropping of disciplinary action against the petitioner coupled with acceptance of the notice for voluntary retirement given by him, was not placed before the Competent Authority, the decisions taken by the Competent Authority to institute major penalty proceedings against the petitioner, got vitiated on account of the relevant material not being made available to him. We, however, do not find any merit in the contention. The Competent Authority was required to take a decision on the proposal placed before him for initiating major penalty proceedings against the petitioner, on the strength of the allegations contained in the Memorandum of Charge including Statement of Imputations, List of Witnesses and list of documents etc. in support of the Articles of Charge and the notice given by the petitioner seeking voluntary retirement from service had absolutely no bearing on

such a decision. It is not as if, Director CBI while approving the ID Note dated 26.3.2010 had come to the conclusion that the charges against the petitioner had no merit. The recommendation made by him for dropping the disciplinary proceedings against the petitioner purports to have been based on previous record of the petitioner coupled with the notice given for voluntary retirement. It would be pertinent to note here that admittedly, it was Director CBI, who had earlier recommended initiation of major penalty proceedings against him in the file, in which the proposal for major penalty proceedings was approved by the Prime Minister on 28.7.2010. We, therefore, are unable to accept the contention that it was obligatory for the respondents to place the ID Note dated 26.3.2010 before the Competent Authority, before he approved initiation of major penalty proceedings against the petitioner.

6. The second contention of the learned Senior Counsel for the petitioner was that the Memorandum of Charge was signed by the Director in DOP and was neither signed nor approved by the Prime Minister, who was the Competent Authority and therefore, it cannot be said that the disciplinary proceedings had been instituted by a competent person. We do not find any merit in this contention as well. A perusal of the impugned order would show that the respondents produced two files before the Tribunal for its perusal; one in which the notice of the petitioner seeking voluntary retirement from the service was processed and the

other in which the proposal for initiation of disciplinary proceedings for major penalty against the petitioner was approved by the Prime Minister, who was the Competent Authority. The Tribunal, on examination of the file, found that the papers which were placed before the Prime Minister comprised Charge Memo including Statements of Imputations, List of Witnesses and List of Documents supporting Articles of Charge and thus, the whole proposal including draft Memorandum of Charges was placed before the Prime Minister by DOP, which was approved by him and the approval was communicated vide note dated 28.7.2010. The Tribunal therefore came to the conclusion that competent authority had approved not only the proposal for taking departmental action against the petitioner but also the Charge Memo issued to him. In view of the verification by the Tribunal from the file, we cannot accept the contention that the charge-sheet served upon the petitioner did not have approval of the Competent Authority. Once the draft charge-sheet was approved by the Competent Authority, it was not necessary that memo of charge-sheet should be signed by the Competent Authority himself or the Charge Memo should again be submitted to him for approval. If the draft charge-sheet is approved by the Competent Authority, the memorandum of charge-sheet can be signed by a subordinate officer pursuant to the approval granted by the Competent Authority. We, therefore, find no merit in the second contention as well.

7. No other contention was raised before us. The writ petition is devoid of any merit and is hereby dismissed without any order as to costs.

V.K.JAIN, J

BADAR DURREZ AHMED, J

FEBRUARY 16, 2012
Bg/vn