

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2015

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE P.R.SHIVAKUMAR

W.P.Nos.7367 and 7368 of 2015
and
M.P.No.1 of 2015

Sharath Srinivas

.... Petitioner in both W.Ps.

Vs.

1. Union of India, rep. by Secretary,
Ministry of Civil Aviation,
Rajiv Gandhi Bhavan,
Safdarjung Airport,
Safdarjung Road, New Delhi 110 003.
2. The Commissioner of Security
(Civil Aviation), Bureau of Civil
Aviation Security, Ministry of Civil
Aviation, Janpath Bhavan, Janpath,
New Delhi 110.
3. Joint Commissioner of Security,
Southern Region, Bureau of Civil
Aviation Security, Ministry of Civil
Aviation, Janpath Bhavan, Janpath,
New Delhi 110.
4. Mr.B.B.Dash,
Commissioner of Security (Civil Aviation),
(incharge) and Joint Commissioner
Bureau of Civil Aviation Security,
Ministry of Civil Aviation,
Janpath Bhavan, Janpath, New Delhi 110.Respondents 1 to 4 in
W.P.No.7367 of 2015

5. The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai-600 104.

...5th Respondent in
W.P.No.7367/20915 and 7th Respondent
in W.P.No.7368/2015

5. Sri A.K.S.Billawaria

6. The Deputy Director (Administration)
Bureau of Civil Aviation Security,
A Wing-I- III Floor,
Janpath Bhavan, Janpath,
New Delhi 110.

.. 5th & 6th Respondents
in W.P.No.7368/2015.

Petitions filed under Article 226 of the Constitution of India :
Prayer in W.P.No.7367 of 2015 is for the issue of a writ of
Certiorarified Mandamus calling for the records of the 5th Respondent
in its order dated 4.3.2015 made in O.A.No.310/01949/2014 of 2014,
quash the same and consequently allow the Original Application filed
by the Petitioner as prayed for.

Prayer in W.P.No.7368 of 2015 is for the issue of a Writ of
Certiorarified Mandamus calling for the records of the 5th Respondent
in its order dated 4.3.2015 made in O.A.No.310/01948/2014 of 2014,
quash the same and consequently allow the Original Application filed
by the Petitioner as prayed for.

For Petitioner : Mr.Karthik

For Respondent-1 : Mr.Su.Srinivasan,
Addl.Solicitor General

For Respondents-2to4 : G.Rajagopalan,
in W.P.No.7367/2015 & Addl.Solicitor General,
Respondents 5 & 6 assisted by
in W.P.No.7368/2015 Mrs.R.Maheswari, SCGSC.

COMMON JUDGMENT

(Judgment of the Court was made by Justice V.Ramasubramanian)

The petitioner has come up with the above writ petitions
challenging a common order passed by the Central Administrative
Tribunal dismissing two of his Original Applications, one challenging
the order of transfer and another challenging the charge memorandum.

2. We have heard Mr.Karthik, learned counsel for the petitioner Mr.Su.Srinivasan learned Additional Solicitor General for the first respondent and Mr.G.Rajagopalan, learned Additional Solicitor General assisted by Mrs.G.Maheswari, learned Senior Central Government Standing Counsel for the other respondents.

3. The petitioner, after rendering service in the Indian Army for a period of 18 years, took voluntary retirement in the year 2000 and joined the Civil Service as Deputy Commissioner of Security, (Bomb Detection and Disposal Squad) in July 2000. He was absorbed as Controller of Explosives and posted in the Headquarters at New Delhi in April 2011. Thereafter, he was posted at Chennai as Regional Deputy Commissioner in July 2012.

4. It appears that the petitioner sought leave for five days from 8.4.2014 to 13.4.2014 to go on a private visit to Colombo, Srilanka. No Objection Certificate was not issued till the time he was due to board the flight. The petitioner proceeded to visit Srilanka and returned.

5. Subsequently, the petitioner made a request to meet the 4th respondent at New Delhi, allegedly for sorting out certain administrative issues. He sought to meet the 4th respondent at the Headquarters on 13.8.2014. It appears that the Additional Commissioner who was subordinate to the 4th respondent approved the visit in the note file on 12.8.2014. Though it was not communicated, the petitioner proceeded to New Delhi. On 13.8.2014, the 4th respondent not only turned down the request but also directed the visit of the petitioner to be treated as personal visit, undertaken with an official ticket.

6. Thereafter, the petitioner was transferred from Chennai to Kolkata by an order dated 13.10.2014. Thereafter, the petitioner applied for medical leave. The 4th respondent pointed out discrepancies and a reference was made to the Medical Board. The petitioner was directed by the Medical Board to appear before them on 23.11.2014. The petitioner submitted a letter seeking voluntary retirement on 25.11.2014 and also appeared before the Medical Board.

7. At this stage, the petitioner was served with a charge memo dated 18.11.2014. After seeking time to furnish a reply to the charge memo, the petitioner filed two Original Applications before the Central Administrative Tribunal, Chennai Bench in O.A.Nos.1948 and 1949 of 2014, challenging the order of transfer and the charge memorandum on various grounds including a ground of mala fide. Both

the Original Applications were dismissed by the Tribunal by a common order dated 4.3.2015. Aggrieved by the said common order, the petitioner is before this Court.

8. In his Original Application before the Tribunal, the petitioner narrated certain instances, that lead to a tiff between him and the 4th respondent. On the basis of the instances so narrated by him, the petitioner contended that the orders of transfer as well as the initiation of disciplinary proceedings were mala fide.

9. The respondents filed a reply before the Tribunal narrating the whole sequence of events which lead to the issue of the charge memo and also producing the note file to show the various layers of authority over and above the 4th respondent through whom the file had been processed. Therefore, the Tribunal rejected the allegations of mala fide. We do not find fault with the said finding of the Tribunal.

10. The only thing that can be said about the order of the Tribunal is that the Tribunal has found fault with the petitioner for making allegations against the 4th respondent and has concluded in para 20 to 22 that the petitioner was responsible for making allegations of mala fide and that he was guilty of conduct not in consonance with the Conduct Rules. But these paragraphs 20 to 22 would virtually prejudge the issue and hence we do not approve of the same.

11. The main ground on which the charge memorandum is challenged by the petitioner is that the Articles of charges were not specifically put up for approval by the Minister for Civil Aviation. According to the petitioner, the Minister for Civil Aviation gave approval in particular for the initiation of the disciplinary proceedings against the petitioner, but the Articles of charges were never put up before him for approval. Therefore, the petitioner contends that the procedure prescribed by Rule 14 of the CCS (CCA) Rules, as interpreted by the Apex Court in the decision in Union of India vs. B.V.Gopinath [2014 (1) SCC 351] has been violated.

12. We have carefully considered the above submissions.

13. In Union of India vs. B.V.Gopinath, the Supreme Court interpreted Rule 14 of the CCS (CCA) Rules, with particular reference to an Office Order bearing No.205 of 2005. After considering various Clauses of the Office Order No.205 of 2005, the Supreme Court held that the approval obtained for the initiation of disciplinary proceedings stands on a different footing from the approval of the

Articles of charges. In paragraphs 41 to 45, the Supreme Court has opined that by virtue of Clause (9) of the Office Order No.205 of 2005, even the Articles of charge will have to be vetted by the disciplinary authority.

14. But in the case on hand, the learned Additional Solicitor General produced relevant pages of the notes file, which has been taken note of by the Tribunal. What had happened was that on 31.10.2014, the file was called for by the Secretary to Government (Civil Aviation). The substance of the allegations against the petitioner were brought out in the note file. With the substance of the allegations, file was put up to the Minister on 1.11.2014 and it was approved by the Minister on 5.11.2014.

15. Keeping in mind the above, if we have a look at the charge memorandum it could be seen that the Articles of charges framed against the petitioner, revolved around two specific instances namely: (1) the visit of the petitioner to Colombo from 8.4.2014 to 12.4.2014 without sanction; (2) the visit of the petitioner to New Delhi on 13.8.2014 without authorization, when all Airports had been put on high alert on the eve of the Independence day celebrations on 15.8.2014.

16. Keeping in mind the above two instances around which the Articles of charges revolved, if we have a look at the note put up before the Minister, it is seen that both these allegations are brought out in the note. The entire note, may be usefully extracted, to find out whether the broad parameters laid down by the Supreme Court in B.V.Gopinath and Rule 14 of the CCS (CCA) Rules, stood satisfied or not. Therefore, relevant portion is extracted as follows:-

"The file has been called for by Secretary (CA).
The brief of the case is as follows:-

(i) Shri Sharath Srinivas, Dy. Commissioner of Seculrity, BCAS, misused official passport for his personal and unauthorized visit to Colombo.

(ii) He also misused Government voucher for obtaining ticket for his private and unauthorized trip to Delhi.

2. On the above conduct, BCAS has proposed to initiate disciplinary proceedings against Shri Srinivas. The matter was examined by AS Section vide their note p/4-6 (N), highlighted some procedural requirement for initiation of disciplinary proceedings against him. The main point of reference was holding a preliminary inquiry by the vigilance officer to determine whether

prima facie there is some substance in the allegation/charges levelled against Shri Srinivas. AS section has categorically mentioned that no such inquiry has been held in this case. AS section has also pointed out that CVC guidelines also describe a situation wherein the matter, conduct of official or allegations against him may not be serious enough to justify imposition of any formal punishment but may call for some formal action. In such case administration has an administrative device in the hands of the superior authority for conveying its disapproval of conduct or work of the official. On the above background, AS section has suggested that first stage construction with CVC appears necessary in this case.

3. Accordingly, the matter was examined by the vigilance section and being a Group A officer, it was proposed that first stage advice from the CVC should be sought. It was also mentioned that prima facie there is no vigilance angle involved except misuse government voucher for obtaining ticket to visit Delhi. On use of voucher to visit Delhi, from perusal of the records, it is seen that COSCA has not approved the tour programme to Delhi and has ordered for recovery of the amount from his salary. From the above, it can be concluded that officer might have used government voucher in anticipation that his tour would be approved by the concerned authority.

4. File is submitted for orders as to whether we may issue chargesheet as proposed by BCAS with the approval of HMCA or in the first instance, we may seek the explanation of the concerned officer, and thereafter matter may be referred to CVC for seeking first stage advice.

(Arun Kumar)

JS (AK)/31.10.14

SECY (CA)

Though there is no vigilance angle, there are serious administrative lapses on the part of the officer, viz., visiting a foreign country without permission, travelling to Delhi without authorization and failure to discharge his duties as a member of the committee for finalizing Counter-terrorism Contingency Plan. BCAS being a body of uniformed officers, a much higher level of discipline is required. For the same reason, such acts of

indiscipline need to be dealt with sternly. Therefore, charges may be framed against the officer as proposed by BCAS.

(V.Somasundaram)
Secretary (CA)
01.11.2014. "

17. A perusal of the note approved by the Minister would show that there has been application of mind on the substance of the allegations, on which the charge memo was issued on 18.11.2014. Therefore, this is not a case where the dicta laid down by the Supreme Court in B.V.Gopinath, could be taken to be applicable. In B.V.Gopinath, there were two sets of persons, one to be prosecuted before the Criminal Court and other to be proceeded departmentally. Therefore, the Supreme Court considered as to whether the decision taken was with particular reference to the allegations or not. In this case, the approval granted by the Minister on 5.11.2014 was with particular reference to the substance of the allegations, which have now been made into a charge memo.

18. Therefore, when the substance of the allegations for which approval has been granted by the Minister, do not vary from the Articles of charges, the petitioner cannot contend that the procedural safeguard available to him was made a dead letter. No prejudice could be pleaded by the petitioner in cases of this nature.

19. Therefore, we are of the considered view that except the observations made by the Tribunal against the petitioner in paragraphs 20 to 22 of its order, the order of the Tribunal does not call for any interference. Hence, the writ petitions are dismissed. The disciplinary authority shall not take into account the observations made by the Tribunal about the conduct of the petitioner and shall independently decide the disciplinary proceedings. There will be no order as to costs. Consequently, M.P.No.1 of 2015 is closed.

Sd/-
सत्यमेव जयते

Assistant Registrar(CS II)

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Sub Assistant Registrar

gr.

To

1. The Secretary,
Ministry of Civil Aviation,
Rajiv Gandhi Bhavan, Safdarjung Airport,
Safdarjung Road, New Delhi 110 003.
2. The Commissioner of Security (Civil Aviation),
Bureau of Civil Aviation Security,
Ministry of Civil Aviation, Janpath Bhavan,
Janpath, New Delhi 110.
3. Joint Commissioner of Security, Southern Region,
Bureau of Civil Aviation Security,
Ministry of Civil Aviation, Janpath Bhavan,
Janpath, New Delhi 110.
4. The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai-600 104.
5. The Deputy Director (Administration)
Bureau of Civil Aviation Security,
A Wing-I- III Floor, Janpath Bhavan,
Janpath, New Delhi 110.

+2cc's to Mr.Menon & Karthik Mukundan, Advocate, S.R.No.17395
+2cc's to Mr.R.Maheshwari, Advocate, S.R.No.16770 & 16771

W.P.No.7367 & 7368 of 2015

RJ(CO)
CA(13/04/2015)

सत्यमेव जयते

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