

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.19394 of 2017

And

W.M.P.No.20902 to 20904 of 2017

Krishnaveni Anandan

.. Petitioner

Vs.

1.Union of India Rep.By the Secretary
Ministry of Commerce and Industries,
Government of India,
3rd Floor, NDYMCA Cultural Centre Building
1 Jai Singh Road,
New Delhi - 110 001.

2.The Director and Disciplinary Authority
Export Inspection council of India
3rd Floor, NDYMCA Cultural Centre Building
1 Jai Singh Road
New Delhi - 110 001.

3.Joint Director
Export Inspection Agency
6th Floor, C.M.D.A, Tower II
No.1, Gandhi Irvin Road
Egmore, Chennai - 600 008.

4. The Director, Central Vigilance Commission,
Satarkta Bhavan, G.P.O.Complex
Block A, INA
New Delhi 110 023.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari to calling for the records the Impugned Charge Memo in EIC/D(Q/C)/Vig/Comp./KVN/ Nagercoil/ 2016-17 dated 03.03.2017 issued by the second respondent pursuant to the order passed by the fourth respondent in Office Memorandum dated 09.02.2017, quash the same.

For Petitioner

: Mrs.Sudharshana Sundar

O R D E R

The learned counsel appearing for the writ petitioner made a sincere attempt with great effort to show that the writ petitioner is an honest officer. The writ petition has been filed as against the charge memo issued against the writ petitioner by the second respondent in proceedings dated 09.02.2017. The charges against the writ petitioner are as extracted hereunder:

Article-1:

That Smt.Krishnaveni Anandan, Assistant Director (T) while working at EIA Chennai Sub-Office Nagercoil during 2014 to 2016, failed to maintain integrity and acted in a manner unbecoming of an EIA employee by denying and delaying the issuance of Health Certificates (HCs) as well as Certificates of Origin (CoOs) to the exporters without any justified reasons with the malafide intent to harass the exporters.

Article -2:

Smt.Krishnaveni Anandan, Assistant Director (T) while working at EIA Chennai, Sub-Office, Nagercoil during 2014 of 2016, wilfully misappropriated the EIA money by withdrawing cash from EIA Nagercoil account against the bills paid by exporters, however did not disburse the money to the exporters who actually paid the bills, thus, failed to maintain integrity and acted in a manner unbecoming of an EIA employee.

Article -3:

Smt.Krishnaveni Anandan, Assistant Director (T) while working at EIA, Chennai, Sub-Office Nagercoil during 2014 to 2016, demanded and obtained money from three exporters i.e. M/s Maria Aquacon Private Limited, M/s Kanya Kumari Marine Foods and M/s Gladson Exporters, thus, failed to maintain integrity and acted in a manner unbecoming of a Government employee.

Article -4:

Smt.Krishnaveni Anandan, Assistant Director (T) while working at EIA Chennai Sub-Office Nagercoil during 2014 to 2016, organized a training program for technologists at Hotel Cannan on 01.02 August 2015 (Saturday -Sunday) and allowed collection of Rs.4000/-per participant as cash. Smt.Krishnaveni Anandan, neither sought/obtain approval from EIA-Chennai Headquarter for

organizing the training program and charging fee from participants nor ensured that money collected was deposited in the EIA account, thus, she failed to maintain absolute integrity.

Article -5:

Smt.Krishnaveni Anandan, Assistant Director (T) while working at EIA, Chennai, Sub-Office Nagercoil during 2014 to 2016, required exporters to visit her home town Aruppukkotai for getting signed Health Certificates (HCs) and Certificates of Origin (CoOs) and also made them to provide vehicle for her personal purposes, thus, she acted in a manner unbecoming of an EIA employee.

Article -6:

Smt.Krishnaveni Anandan, Assistant Director (T) while working at EIA, Chennai, Sub-Office Nagercoil during 2014 to 2016, behaved rudely on phone with Ms.Joshpine B.,Technologist of M/s Jude Foods India Pvt.Ltd., when she had called her in the afternoon of 26.03.2016 in connection to the issuance of 3 HCs for chilled consignments, thus, Smt.Krishnaveni Anandan acted in manner unbecoming of an EIA employee.

2. The Articles of charges are enclosed in Annexure-I of the charge memo and the statement of imputation of misconduct in support of the articles of charges framed against the writ petitioner is enclosed in Annexure -II of the charge memo.

3. On perusal of the charges, this Court is of the clear view that they are serious in nature and corruption allegations are also set out in the articles of charges. Substantiating the articles of charges, statement of imputation of misconduct is also narrating the deeds and details regarding the alleged incidents took place, resulting such alleged corrupt activities of the writ petitioner.

4.This Court is deeply conscious that in the event of adjudicating the merits and demerits of the case at this point, it will definitely affect right of defence to the writ petitioner. Thus, this Court is not inclined to appreciate the merits and demerits of the case and certainly, it is left open to the writ petitioner to submit her explanations /objections on the allegations set out in the impugned charge memo and defend her case in the domestic enquiry.

5.The learned counsel appearing for the writ petitioner strenuously contended that the preliminary investigation report

was prepared behind the back of the writ petitioner and no opportunity was provided to the writ petitioner at the time of conduct of the investigations, which resulted in framing of the charges, impugned in this writ petition.

6. The theory mooted out by the learned counsel is absolutely unknown to law and not found in any of the established procedure of the service jurisprudence in relation to domestic enquiry. The Investigating Agency has to proceed with the investigation on the basis of the nature of incidents, complaints and allegations. The investigation has to be conducted in its own way and at the idea formulated by the Investigating Officers. Examination of delinquent and the parties concerned and obtaining statements from the delinquents, witnesses and other connected persons has to be undertaken if necessary by the Investigating Officer. In some cases, the records available itself may be sufficient to constitute the charges against the public servant. Thus, it is at the wisdom of the Investigating Agency, the investigation has to be proceeded and the question of examination of the delinquent or providing opportunity at the stage of investigation does not arise at all. In other words, investigations are to be independent and the method of investigations are to be decided by the competent authorities, more so, it is a prerogative of the Investigators performing the job. Investigation is a specialised field and the competent authority conducting investigation has to be laid to conduct in a free and fair manner. Thus, the theory advanced by the learned counsel for the writ petitioner that opportunity to be given to the delinquent at the stage of investigation, is to be rejected at the outset.

7. Now that the charge memo has been issued to the writ petitioner, question of furnishing the investigation report to the petitioner, at this stage does not arise at all. For perusal of the documents, records, for adducing evidences and for production of documents shall be undertaken by the writ petitioner as well as the Departmental Presenting Officer, during the course of domestic enquiry and opportunities to be provided to the delinquent officer at the time of conducting the domestic enquiry. The process of disciplinary proceedings shall be set in motion by the disciplinary authority right from the stage of placing the employee under suspension, under the Rules. Thereafter, a charge memo is to be issued, an enquiry officer to be appointed, a domestic enquiry to be conducted, after affording all reasonable opportunities to the delinquents as contemplated under the Rules. On receipt of the enquiry report, the disciplinary authority shall either accept the report or deviate the findings of the enquiry report. In the event of deviating the enquiry report, the disciplinary authority has to furnish the reasons for deviation and issue show cause notice to

the delinquent inviting explanations/objections on the point of deviation. In the event of accepting the enquiry report, copy of the report to be enclosed and show cause notice to be issued, inviting explanations/objections from the delinquents on the enquiry report. Thereafter, the disciplinary authority considering all the materials available on record, take a decision and pass a final order assigning reasons for taking such a decision.

8.The preliminary investigations are conducted by the competent authorities to find out the genuinity of the allegations. After conducting such preliminary investigations, there is every possibility of dropping all further actions. Therefore, providing opportunity or disclosing the nature of investigation need not be made available to the delinquents at this point of time, when the charges are framed.

9.In the case on hand, the writ petitioner is holding a responsible post of an Assistant Director. There is every possibility that the records and the evidences can be destroyed. Thus, the procedure of investigation is independent and it is no way connected with the subsequent initiation of disciplinary proceedings against the writ petitioner.

10.In this writ petition, complaints were given against the writ petitioner with regard to corrupt activities while performing her official duties. On a perusal of the letter dated 30.11.2016, it has been clearly stated as below:

In this regard, the undersigned has been directed to inform as detailed hereunder;

a) Smt.Krihnaveni Anandan, Assistant Director (Technical), EIA-Chennai, SO-Nagercoil was kept under suspension based on the complaint relating to corruption charges against her that was duly been investigated and reported by the concerned agency. The petitioner was suspended by the competent authority in exercise of the powers conferred under EIAE (CCA) Rules, 1978, after due application of mind to the facts and circumstances of the case as well the nature of the allegations.

b) This matter was thoroughly investigated by the Chief Vigilance Officer, EIC and reported that the concerned officer has "misused her official position or power for personal gain by asking exporters to bear the expenditure of exporters meeting and withdrawing the cash against those payments from office account also, obtained

pecuniary advantage from the exporters, organized unofficial training for exporters for personal monetary gains, delayed/denied the issuances of Health Certificates as well as GSPs/CoOs to the exporters without any justifiable reasons which led to financial losses to exporters”

c) Based on the outcome of the vigilance report the Disciplinary Authority has decided to initiate the disciplinary proceedings against the officer. Since Smt.Anandan is a Group “A” Officer the matter has already been referred to CVC for first stage advice as per extant guidelines of the CVC on the subject.

d) Pending receipt of response from CVC, the Competent Authority has revoked the suspension of the officer vide order dated 16th November, 2016

e) However, in view of the serious allegations of corruption against the officer it was not advisable to retain her either at the same place i.e. SO:Nagercoil or at the nearby place in public interest since, there were serious complaints relating to corruption charges against her from the exporters community of Nagercoil and a prima facie case is also made out on the basis of the outcome of the Vigilance investigation. Therefore, it was decided to post her at Sub Office: Bhimavaram under the same region so that there will be no interference or influence on the exporters who complained against her.

f) Posting her to any nearby place may also hamper the smooth functioning of the sub-office as well as exporters certification since, normally the services of the officer posted at nearby station are utilized in administrative exigencies in other offices that are nearby and in such an event it will not be in public interest to allow any officer to deal with the cases of the same exporters who had made a complaint of corruption against the officer, at least till such time the officer is cleared of serious allegations against her as she may misuse her powers against those exporters who complained against her. Therefore, her request for nearby station couldn't be considered.

g) As regard to Commissions observation relating to speeding up the process is concerned,

this office has already requested the CVO, EIC to take up the matter with CVC for obtaining first stage advice in the matter at the earliest and once it is received appropriate action as deemed necessary shall be initiated and the inquiry will be completed in a time bound manner.

3. It is also placed on record that the allegationsofharassment/conspiracy/victimization..etc.,.made by the complainant seem to have been leveled as a counter blast as the officer is facing serious allegations of corruption and as stated above a prima facie case is made out in the vigilance investigations. The Hon'ble Commission is assured that this office functions absolutely in fair, transparent and rule responsive manner practicing the policy of zero tolerance towards corruption and no harassment or victimization as alleged is accorded to take place under any circumstances.

4. Keeping in view of the above facts and circumstances, DoC is requested to take appropriate action as deemed necessary.

5. This issues with the approval of Competent Authority.

11.On a reading of the entire letter, this Court is of the undoubted opinion that the procedure adopted by the Disciplinary Authority is very much in order and there is no infirmity. The authorities have acted independently, based on the records available and also based on the investigation conducted into the allegations raised against the writ petitioner.

12.The legal principles with regard to the challenging of charge memo is limited. A charge memo can be challenged only if the charge memo was issued by an authority having no jurisdiction or incompetent to issue such a charge memo or the allegations of mala fide are raised. Even in case of raising allegations of mala fide, such an authority against whom the allegation has been raised, is to be impleaded as a party in the writ proceedings in his personal capacity. In the absence of any one of the legal grounds, no writ can be entertained against the charge memo.

13.The present Writ Petition is moved questioning the validity of the charge memo, mainly relying on the factual

aspects of the matter.

In respect of the allegations and statement of imputations in the charge memo, the Writ Court cannot adjudicate the factual aspects as this stage, in view of the fact that the disciplinary authority is yet to conduct the detailed enquiry into the allegations set out in the charge memo. Thus, such a course of adjudication on merits and demerits at the stage of issuance of charge memo is impermissible and no Writ can be entertained in this regard, by exercising the powers under Article 226 of the Constitution of India.

14.The learned counsel for the petitioner emphasised that no charge memo can be issued against the writ petitioner based on the reports submitted by the Central Vigilance Commission.

15.The very proposition is absolutely unacceptable, in view of the fact that Central Vigilance Commission (hereinafter referred to as 'CVC') is a specialised Commission constituted for the purpose of identifying and eradicating the corrupt activities and practices of the public servants, serving in the Union of India. Such being the object of CVC, the grounds raised in this regard that the report submitted by the CVC should not be relied upon, is certainly unacceptable and is to be rejected at the threshold.

16.CVC has rightly investigated the matter and in view of the serious allegations of corruption made against the writ petitioner and after conducting the investigation thoroughly, CVC submitted a report in this regard. Accordingly, the charge memo impugned in this Writ Petition was issued against the writ petitioner. Thus, it is left open to the writ petitioner to submit her explanations/objections on the articles of charges and the statement of imputation and defend her case in the domestic enquiry, in accordance with the Rules.

17.The right of an employee to defend his case arises only on initiation of the disciplinary proceedings. In the case on hand, the disciplinary proceedings was initiated based on the investigation report submitted by the CVC. The CVC came to the conclusion that there is a prima facie case and materials available against the writ petitioner on record. Thus, there is no irregularity in the initiation of disciplinary proceedings against the writ petitioner.

18.This Court had gone into the nature of the allegations framed against the writ petitioner. All the charges raised relate to corruption and incidents of corruption are also shown in the charge memo. No leniency can be shown against the corrupt activities of the public officials and all such corruption

charges are to be dealt with iron-heart. Time and again the Constitutional Courts have reiterated and emphasized that zero percent tolerance is to be shown on corruption charges and even in case of delay in framing the corruption charges, the charge cannot be quashed.

19. The menace of corruption is spreading like cancer in this great Nation. As already stated, it is to be dealt with iron-heart. The idea of growing corruption amongst the public servants will certainly affect the constant development of our great Nation. Corruption is a national issue in the current days and the same has to be addressed transparently, seriously and vigorously. No leniency can be shown to the public servants facing corruption charges. Thus, the case on hand deserves no consideration at all and this Court is of the opinion that the present Writ Petition is filed only with a view to prolong and protract the issue, instead of participating and the proving the innocence by the writ petitioner. Accordingly, the writ petition is devoid of merits. Hence, the Writ Petition stands dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

dna/kas/rpa

To

1. Union of India Rep. By the Secretary
Ministry of Commerce and Industries,
Government of India,
3rd Floor, NDYMCA Cultural Centre Building
1 Jai Singh Road,
New Delhi - 110 001.

2. The Director and Disciplinary Authority
Export Inspection Council of India
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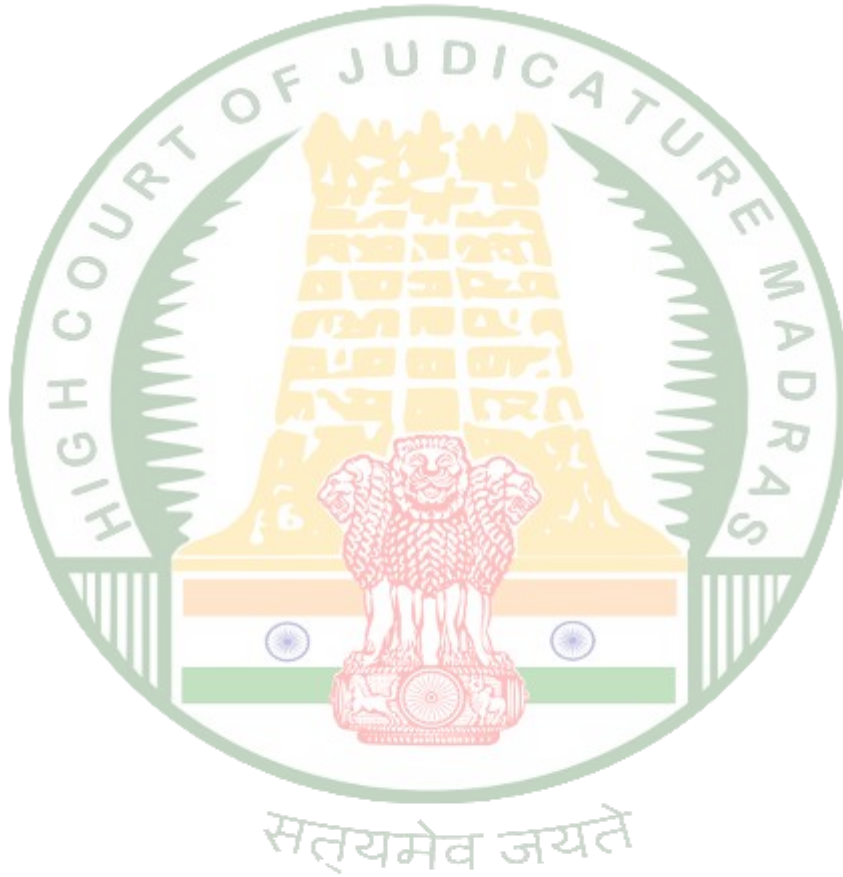
3. Joint Director
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6th Floor, C.M.D.A, Tower II
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Egmore, Chennai - 600 008.

4. The Director, Central Vigilance Commission,
Satarkta Bhavan, G.P.O.Complex
Block A, INA
New Delhi 110 023.

+1cc to Mrs.Sudarshana Sundar, Advocate SR.No.53622

W.P.No.19394 of 2017

GN(09/08/2017)



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