

CWP No.2795 of 2014

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP No.2795 of 2014
Date of decision:31.10.2017**

Union of India and others

... Petitioners

Vs.

Central Administrative Tribunal,
Chandigarh Bench, Chandigarh and another

... Respondents

CWP No.3780 of 2014

Narender Kumar

... Petitioner

Vs.

Union of India and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Mr. Alok Kumar Jain, Advocate
for the Union of India.

Mr. Puneet Sharma, Advocate
for the petitioner in CWP No.3780 of 2014 and
for respondent No.2 in CWP No.2795 of 2014.

Ms. Guninder Kaur Gill, for the Intervener.

AMIT RAWAL, J.

1. By this order, we shall dispose of two writ petitions bearing Nos.2795 of 2014 and 3780 of 2014 challenging the order of the Central Administrative Tribunal, Chandigarh Bench (for short 'CAT') as common questions of law and facts are involved.

2. The Union of India is aggrieved of the findings rendered by the CAT *vis-a-vis* setting aside the suspension order dated 04.01.2013 (Annexure P-9) of the applicant, whereas, Narender Kumar (petitioner in CWP No.3780 of 2014) is aggrieved regarding rejection of his prayer for quashing of show cause notice dated 15.05.2012 (Annexure P-7) and charge sheet dated 28.06.2013 (Annexure P-11).

3. As per the averments made in the Original Application, applicant - Narender Kumar joined as Assistant Central Intelligence Officer (G-1)-AICO-1 in 1987 in the office of erstwhile Govt. Examiner of Questioned Document (GEQD) Shimla. In the year 1997, he was promoted as Assistant GEQD and transferred to Calcutta. In the year 2010, i.e., on 28.06.2010, he prepared a report of handwriting analysis/examination under GEQD, Dr. B.A.Vaid, as per the procedure prescribed. On 03.03.2011, one Guninder Kaur, submitted a complaint (Annexure P-2) alleging that no reason was provided in the said report with malafide intent. In furtherance of the said report, vide office order dated 09.03.2011 (Annexure P-3), a three member Committee was constituted to look into the complaint.

4. Vide report dated 23.03.2011 (Annexure P-4 in CWP No.3780 of 2014), the aforementioned Committee of Expert gave its opinion for further re-examination of the case under reference by two document experts thoroughly and independently and to be checked by the third document expert before releasing the report. A show cause notice dated 15.05.2012 (Annexure P-7) was served upon the applicant on the basis of the report dated 23.03.2011 (Annexure P-4). The applicant stated to have submitted

reply to the said show cause. Dr. B.A.Vaid and Narender Kumar were placed under suspension, vide order dated 04.01.2013 (Annexure P-9). Both were issued charge sheet alongwith Article of Charges. The aforesaid action was challenged before the CAT by filing the Original Applications.

5. Mr. Alok Kumar Jain, learned counsel for the Union of India submitted that CAT had set aside the order of suspension in respect of applicant-Narender Kumar, in a most fallacious and erroneous manner. According to him, CAT failed to peruse the record in its correct perspective, despite having summoned the same, by holding it to be a “Post-Facto” approval from the appointing authority. In this regard, he drew our attention to the office note dated 20.12.2012 (Annexure P-12) to urge that CAT erroneously mis-interpreted the noting portion dated 20.12.2012 (Annexure P-12), wherein, the Directorate of Forensic Science Services, Ministry of Home Affairs had recommended for transfer of both the officials, namely, Dr.B.A.Vaid (applicant in OA No.818/HP/2013) and Narender Kumar but not suspension, whereas, the subsequent noting dated 27/28.12.2012 submitting the proposal for initiating the disciplinary action against the aforesaid delinquent officials had not been noticed. Thus, there was no question of taking “Post-Facto” approval as opined.

6. On the contrary, Mr. Puneet Sharma, learned counsel for the applicant-Narender Kumar relied upon the noting portion dated 20.12.2012, to submit that there was no proposal to place the applicant under suspension and initiate the disciplinary proceedings against him except for transferring him. It was, thus, urged that the entire proceedings of serving show cause

notice and charge sheet are without jurisdiction and vitiated.

7. It was argued that the case of Narender Kumar before the CAT was for setting aside the charge sheet and the CAT erred in not appreciating the fact that the departmental proceedings were a gross abuse of process of law. According to him, no further examination of the questioned documents could be undertaken by neutral examiner for want of questioned documents in original which were in the custody of the CBI Court. Hence writ petition No.3780 of 2014.

8. We have heard learned counsel for the parties and perused the paper book.

9. For the sake of brevity, relevant extract of the notings dated 20.12.2012 (Annexure A-12) as well as dated 27.12.2012/28.12.2012 (Annexure P-1) in CWP No.2795 of 2014 read thus:-

20.12.2012 (Annexure A-12)

“5. However, in the mean time, taking into cognizance discrepancies on the part of of these officials as mentioned in para 2 supra, it is proposed that both the officials may be transferred immediately from their present place of posting i.e., Shimla Unit of CFSL, Chandigarh. Dr. B.A.Vaid, GEQD will be transferred to CFSL, Hyderabad, where the lone vacancy of GEQD exists at present. Sh. Narendra Kumar, Dy. GEQD will be transferred to CFSL, Kolkata.

6. *MHA are requested to please see the matter for information before transfer orders in r/o Dr. B.A.Vaid, GEQD*

& Sh. Narindra Kumar, Dy. GEQD as proposed above are issued by this Directorate.

(Dr. C.N.Bhattacharyya)

Chief Forensic Scientist”

“27.12.2012/28.12.2012

3. *As per observations made by JS(PM) it is submitted that earlier as per directions of Union Home Secretary, D.F.S.S was asked to take disciplinary action/suspension against the aforesaid officers and no such proposal from D.F.S.S has been received so far.*

4. *It is for consideration as to whether D.F.S.S may be asked to submit the proposal for suspension/initiation of disciplinary action against Dr. B.A.Vaid, GEQD and Shri Narender Kumar, Dy. GEQD as deemed fit for seeking the approval of competent authority.*

Sd/-27.12.2012

Sd/-28.12.2012

Notes on pre-page may please be seen. D.F.S.S have already stated that various irregularities were found on the part of Dr. B.A.Vaid, GEQD and Sh. Narender Kumar, Dy. GEQD (P-1/N) and H.S has instructed to take disciplinary action/suspension against the officers responsible. Para 4 (prepage) may be approved.

Sd/28.12.12.”

10. On perusal and comparison of the aforequoted noting portions, in our view, the CAT had erred in recording a finding that there was grant of “Post-Facto” approval with regard to suspension of Narender Kumar/applicant which is against the record produced before it. CAT had requisitioned the entire record and perused the same.

11. The finding recorded by CAT is legally unsustainable as it failed to notice the noting portion dated 27.12.2012/28.12.2012, wherein there was proposal to take action against the delinquent officers. The finding of the CAT, is thus based on misdirection and non-appreciation of relevant portion of record. CAT had erroneously held that “Post-Facto” approval regarding the suspension of applicant had been granted which is not the case and therefore, the same is not sustainable in the eyes of law and it is hereby set aside.

12. As regards the claim of applicant-Narender Kumar, vis-a-vis quashing of show cause notice and charge sheet, CAT had rightly rejected the plea as no reply to the charge sheet, had till date, been submitted and no inquiry officer has been appointed. It would not be appropriate either for the CAT or this Court to examine the purported defence which might be taken in response to the charge sheet.

13. Thus, the impugned findings recorded by CAT under challenge are upheld. However, it is clarified that applicant-Narender Kumar shall be at liberty to file a detailed and comprehensive reply to the charge sheet by raising all the pleas as sought to be raised in CWP No.3780 of 2014. In case, such reply to the charge-sheet is filed, the same shall be decided by the

competent authority as expeditiously as possible in accordance with law after affording an opportunity of hearing to the petitioner and by passing a speaking order.

14. Resultantly, CWP No.2795 of 2014 filed on behalf of Union of India is allowed, whereas, CWP No.3780 of 2014 filed on behalf of Narender Kumar, is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AMIT RAWAL)
JUDGE

October 31, 2017
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No