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

+ **W.P.(C) 10483/2016**

Date of decision: 2nd February, 2017

**COUNCIL FOR ADVANCEMENT OF PEOPLES ACTION & RURAL
TECHNOLOGY (CAPART) & ANR** Petitioner

Through Mr. S.K. Rungta, Sr. Advocate with
Mr. Prashant Singh, Advocate.

versus

B.R. SUMAN

..... Respondent

Through Ms. Asha Jain Madan, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

The Council for Advancement of Peoples Action & Rural Technology (CAPART, for short) and its Director General in this writ petition impugn order dated 8th September, 2016, passed by the Principal Bench of the Central Administrative Tribunal allowing T.A. No. 1466/2009 filed by B.R. Suman, the respondent before us. The impugned order quashes and sets aside the enquiry report and holds that there was no material to show that the applicant-respondent had violated Rule 3 (1)(i) of the CCS (Conduct) Rules, 1964.

2. This is the second round of litigation, as the Tribunal vide order dated 6th May, 2011, had earlier quashed the charge memo itself, whereupon CAPART had filed W.P. (C) No. 4126/2011, which was allowed with an order of remand. The relevant and operative portion of the High Court's

order dated 6th May, 2011 is reproduced below:-

“19. In para 9 above we have extrapolated the specific averments in the charge sheet which were highlighted by learned senior counsel for the petitioner and the same would evidence that the charge sheet is not vague. The charge sheet does not simply highlight an undue haste. It highlights that in the backdrop of the undue haste the misdemeanour is of accepting an incomplete proposal submitted by the immediately junior officer i.e. the Research Assistant; it highlights that without making an endeavour to refer to a past precedent, the file was moved forward for approval without indicating to the superior authority the incompleteness in the proposal. It highlighted that the superior authority was not informed that the proposer had its headquarters 300 kms away from where the work was to be executed. The charge sheet also brought out that the allegation was of acting in concert with the voluntary organization whose representatives came pre-armed with a letter enclosing therewith a resolution of the voluntary organization to accept the terms of the grant; and certainly we would highlight that if this was so the same would be good evidence of a pre-plan. Ignoring our observation, which is inferential, we highlight that the charge sheet lists the misdemeanour of acting in concert in that a prearmed resolution being available with the representative of the voluntary organization.

20. We speak no further with respect to the evidence led before the Inquiry Officer for the reason we find that while challenging the penalty the respondent has attacked the report of the Inquiry Officer and hence the penalty, and since the learned Tribunal has not dealt with said aspect of the matter, TA No.1446/2009 has to be restored for fresh adjudication by the Tribunal on the remainder issues, save and except the challenge to the charge sheet on

the plea that it is vague and indeterminate.

21. The petition stands disposed of setting aside the impugned decision dated May 06, 2011. TA No.1446/2009 is restored for fresh adjudication before the Central Administrative Tribunal in terms of para 20 above.

22. A closing word. While dealing with the impugned decision, we have made a reference to the reasoning contained in the report of the Inquiry Officer, only to bring home the point to understand the nature of the indictment as per the charge sheet and this reference by us would not be treated as an expression on the merits of the report of the Inquiry Officer. Our observations on the report of the Inquiry Officer were limited to a reflection on the contents of the charge sheet, to understand the same and no more. Thus, at the remanded stage the Tribunal would decide the matter uninfluenced by any observations made by us with respect to the report of the Inquiry Officer.”

3. After having noticed the aforesaid observations of the High Court, the Tribunal in the impugned order has referred to the contentions raised by the respondent in brief and thereafter, the Tribunal has abruptly and in a cryptic manner has recorded their final conclusion without any discussion on the enquiry report and the findings recorded therein with reference to the file notings etc. The impugned order is bereft and devoid of any reason and elucidation for the final conclusion. The relevant portion of the impugned order reads:-

“5. We see substance in the aforesaid submissions made on behalf of the applicant and find the Enquiry Report as based on suspicions and presumptions. We

do not find material to lead to the conclusion that the applicant was guilty of violating rule 3 (1) (i) of the CCS (Conduct) Rules 1964.

4. It is a well-settled proposition of law that suspicion and presumption cannot take place of proof even in a domestic enquiry [vide, for example, Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others, (2006) 4 SCC 713; UOI Vs H.C. Goel, 1964 SCR 718].

5. In the light of the above, we are of the view that the TA deserves to succeed and the same is, therefore, allowed. The impugned order is set aside. The applicant shall be deemed to be in service from the date of his compulsory retirement till the date of his superannuation. He shall be entitled to all consequential benefits in terms of arrears of pay and revised retiral benefits due to him, which shall be calculated and paid to him within two months from the date of receipt of a copy of this Order. No order as to costs.”

4. In order to ensure that a second order of remand is not passed, we have perused and studied the enquiry report, which is elaborate and discusses several facets and aspects. The enquiry report refers to the file notings dated 27 and 28th October, 1994 made by the Research Assistant who was junior to the respondent-B.R. Suman, as well as the senior officers who had initiated the said notings. Negative and disapproving findings have been recorded against the respondent on the basis of file notings. The enquiry report also refers to the sanction letter which was given by hand on 31st October, 1994. The project holder had requested release of 75% of the sanctioned amount, which file was also processed and signed on 31st

October, 1994. Approval was granted on 10th November, 1994. The oral evidence including statement of M.P. Singh, Research Assistant, has been elaborated and commented. After referring to the respondent's defence, the enquiry report sums up the entire findings as under:-

“Promptness or haste or urgency in handling of cases in Govt. or its instrumentalities is not culpable by itself; in fact these are qualifites that deserve appreciation. But when promptness or haste or urgency begin to smack of being “undue”, particularly in matters involving finances, financial sanctions or release of funds or other benefits, the whole exercise begins to look suspect. When the examination and handling of such matters is found to be incomplete, improper, perfunctory, superficial, mechanical or slip shod, the suspicions of malafide or improper motive get strengthened.

In the instant case, there has been inexplicable “Haste” in its processing. The “Haste” was “Undue” for there was no justification for skipping over proper and detailed examination. Coupled with “undue haste” examination, or “misleading examination”. The case has therefore all the elements that make the entire exercise look motivate.” But before we record our findings on the charge, we would like to observe that the onus for improper, or motivated, or as mentioned in the imputations “slip shod” examination does not lie along on the lower levels of the hierarchy; each one of the functionaries handling a matter at his level has to share the responsibility if anything is found amiss. In fact, the higher the ladder, the higher the accountability. In the instant case, while the lower levels reveled (sic) in “slip shod” examination, the higher levels “indulgently acquired” to such examination and granted recommendation and/or approval without raising eyebrows. In equity, such a situation warrants independent probe to ascertain the culpability of the action of the senior officers also.

Findings:

In final analysis of the evidence on record and all the facts and circumstances of the case I hold the charge as proved.”

5. We have not reproduced other portions of the enquiry report to avoid prolixity, but have taken time to examine and peruse the original file relating to departmental proceedings. Another reason why we have not reproduced the relevant portions of the enquiry report is to avoid any prejudice, as was also submitted by the counsel for the respondent.

6. In these circumstances, the Tribunal, we hold, was not justified in allowing the Transfer Application without detailed elucidation as to the facts and material, by simply recording that the enquiry report was based on suspicion and was presumptuous.

7. Learned counsel for the respondent has submitted that M.P. Singh, the Research Assistant was awarded punishment of stoppage of one increment for one year. She is not aware whether any punishment was imposed on S.S. Machhal. As per the respondent, Mr. Prasad, who was the Deputy Director General, was not proceeded against. Counsel for the petitioner, however, submits that this is not correct. He states that Mr. Prasad had expired and, therefore, proceedings could not culminate in a final order. These contentions will have to be examined by the Tribunal after ascertaining the correct position.

8. We accordingly allow the present writ petition and set aside the order dated 8th September, 2016 passed by the Tribunal allowing T.A. No. 1446/2009 with an order of remand for fresh decision in accordance with law. We clarify that we have not expressed any opinion on merits in favour

or against any party. As this is an old matter, the Tribunal would dispose of the matter expeditiously, preferably within six months.

9. To cut short the delay, the parties are directed to appear before the Tribunal on 22nd February, 2017, when a date of hearing will be fixed. No costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

FEBRUARY 02, 2017

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