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

+ **Date of Decision: November 27, 2018**

% **W.P.(C.) No. 9994/2017 with CM APPL.40758-59/2017**

P. SASI

..... Petitioner

Through: Mr. Sriram J. Thalopathy, Advocate
with Mr. Shilp Vinod and Mr. Pushkin
Rajkumar, Advocates.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Ms. Abha Malhotra, Advocate with
Mr. Abhishek Kamal, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A.K. CHAWLA

A.K. CHAWLA, J. (ORAL)

1. Instant writ petition under Article 226 of the Constitution of India has come to be preferred by the petitioner extending challenge to the orders dated 06.05.2014 and 28.07.2015 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, in short 'CAT', in OA No.1497/2009 and the RA No.152/2014 in OA No.1497/2009 respectively.

2. Concisely, the facts relevant to the instant petition are that the petitioner has been working as an Assistant in MGO Branch/Army Headquarters and during the course of such employment, a departmental

inquiry was initiated and he was served with the charge-sheet dated 04.12.2001. Imputations of misconduct thereunder were, as follows:

"ARTICLE OF CHARGE I

Shri P Sasi, while working as Assistant in MGO Branch/Army HQrs during the period from 01 May 1998 to 14 Mar 2001 came in contact with Shri Samuel Mathew of Tehelka.com who was impersonating as agent for a fake firm viz West-End and assisting the firm in its endeavour to get an evaluation letter issued for supply of Army equipments for consideration in kind and money. He has thus failed to maintain absolute integrity and exhibited conduct unbecoming of a Govt. Servant which is violative of Rule 3 (1)(i) & 3(1)(iii) of the CCS (Conduct) Rules, 1964.

ARTICLE OF CHARGE II

Shri P Sasi while functioning as an Assistant in the MGO Branch/Army HQrs. Min. of Defence During 01 May 1998 to 14 Mar 2001 passed on official information and documents to persons he was not authorised to communicate. Thus by the above said act, Shri P Sasi, Asstt. has unauthorisedly communicated official documents directly/indirectly to unauthorised persons and thereby contravened Rule 11 of the CCS (Conduct) Rules, 1964."

The above-said Articles of Charges, as per the case of the respondents and capitulated in the inquiry report dated 26.12.2006, are as under:

"6. The case of the Disciplinary Authority is that Shri P Sasi while working as an Assistant in MGO Branch/Army HQrs was known to Shri Mathew Samuel, who was actually working with Tehlka.Com but impersonating as an agent for M/s West-End

International, a dummy firm (created by Tehlka.Com) to get an evaluation letter from Army HQrs. Shri P Sasi, Asstt. on an inducement from Shri Mathew Samuel for consideration of Rs. 52,000/- and promise of employment to his family members showed undue favours to the said firm. In doing so, Shri P Sasi went to the extent of using his official position in introducing the representative of the said firm to various Government Servants with a view to influence these officials for adopting illegal and unauthorised acts, inconsistent and incompatible with the discharge of his official duties. Shri P Sasi has thus acted in a manner which was likely to prejudice the interests of Government in procurement of Defence equipment. By his above acts, Shri P Sasi, Asstt. has exhibited a conduct which is clear violation of Conduct Rules which enjoins upon a Government servant to maintain absolute integrity, devotion to duty and to do nothing unbecoming of a Government Servant. He has thereby violated Rule 3(1)(i), 3(1)(ii) and Rule 3(1)(iii) of the CCS (Conduct) Rules, 1964.

7. *Shri P Sasi was posted as Assistant in the MGO's Branch/Army HQrs, Ministry of Defence, wef 01st May 1998 to 13th Mar 2001. In the month of Mar 2001, there were widespread media report that M/s Tehlka.Com have video-taped interviews of their reporters with various officials in the Ministry of Defence and politicians who were apparently involved in murky defence deals. In these clippings, the persons were filmed accepting graft money offered by the interviewers posing as agents of a fictitious firm known as West End for supply of their product to the Defence. Shri P Sasi, Asstt. knowing fully well that the recipient is not authorised to receive official information, has unauthorisedly divulged official information regarding purchase of defence equipments to which he had access in his official capacity and thereby violated/contravened Rule 11 of the CCS (Conduct) Rules, 1964."*

3. In support of his case, the Department examined two witnesses, namely, PW-1 Shri Anirudh Bahl, Editor Investigations, Tehlka.com and PW-2 Shri Mathew Samuel, Correspondent, Tehlka.com. In support of his defence, the Charged Officer (CO) - the petitioner, examined two defence witnesses DW1 Shri Narender Singh, AFA, Ministry of Defence and DW2 Shri Gopal K. Nair, a dismissed employee of Holy Family Hospital.

4. The Inquiry Officer in his report dated 26.12.2006 concluded for the Department having established the Article of Charge-I and the Article of Charge-II partially. At this stage itself, it would be in the fitness of things to note that prior to the inquiry report dated 26.12.2006 an inquiry report dated 17.09.2003 had come to be furnished to the Disciplinary Authority and as per the said report, Article of Charge-I was partially proved and the Article of Charge-II was not proved but this report was not accepted to by the Disciplinary Authority and the matter was remitted back to the Inquiry Officer under Rule 15 of the CCS (CCA) Rules, 1965 for further inquiry and that, resulted into the inquiry report dated 26.12.2006. This inquiry report dated 26.12.2006 was served upon the petitioner but he did not make any representation there-against, but he sought a copy of the inquiry report dated 17.09.2003 which had not been accepted by the Disciplinary Authority. The request to that effect was rejected by the Competent Authority.

5. In the absence of any representation, and on consideration of the material on record and the report of the Inquiry Officer, the Competent Authority imposed the penalty of dismissal from service upon the petitioner

on 10.10.2007. The statutory appeal preferred there-against was dismissed on 07.04.2008 and to that, the petitioner extended challenge before the CAT by way of OA no. 1497/2009, which was allowed on 06.04.2009 directing reinstatement of the petitioner in service observing that in the guise of further inquiry, a *de novo* inquiry had come to be conducted and it did not fall within the purview of Rule 15 of the CCS (CCA) Rules. Aggrieved thereof, the respondents preferred WP(C) no. 8705 of 2010 before this court and this Court set aside the order of CAT observing that the inquiry conducted by the inquiry officer, who submitted inquiry report dated 26.12.2006, cannot be regarded as a *de novo* inquiry and consequently, the matter was remitted back to CAT for consideration afresh on the other grounds, if any. This resulted into passing of the impugned order dated 06.05.2014. Review sought thereof by way of RA no. 152 of 2014 was also dismissed vide the other impugned order dated 28.07.2015. Aggrieved of the said orders, the petitioner has preferred the instant petition.

6. The impugned orders are primarily assailed by the petitioner on the premise that PW2 Mr. Mathew Samuel, was an interested witness inasmuch, as, he was a beneficiary of the sensation created by the so called operation conducted by Tehlka.com and therefore, his deposition was not trustworthy and reliable. The other pertinent plea assailing the impugned order is that the original tapes and the unedited certified transcripts of alleged conversations and transactions, which the petitioner allegedly indulged into, were never provided or proved on record before the inquiry officer and that, any excerpts of transcripts in the absence of the proper thereof, carried no corroborative value. The other grounds assailing the impugned orders are

general in nature like the inquiry officer having not appreciated the facts and the evidence correctly and for having reached the conclusions on insufficient and/or inadmissible evidence.

7. The thrust of the submissions of the learned counsel for the petitioner in assailing the impugned order and the inquiry report dated 26.12.2006 has been with regard to the failure of the department in proving the veracity of the excerpts of the alleged conversation between him and PW-2 Mathew Samuel, and the non-production of the tapes purportedly available with CBI. In his submissions, when the tapes purportedly recording his conversation with PW-2 Mathew Samuel-which contained incriminating material, were available and could be adduced in evidence before the inquiry officer, the non-production thereof has the effect of drawing an adverse inference against the department's charges. In continuation of such submission, it was contended that in the absence of such material having been proved on record, the deposition of PW-2 was uncorroborated and was not reliable inasmuch, as, he was an interested witness to justify the story of Tehlka.com, on whose behalf he is said to have joined in creation of sensational news.

8. Having considered this submission in the light of the record, we are of the view that the same has no merit. It is not the case of the petitioner that the petitioner was not granted any opportunity to cross-examine any of the departmental witnesses, and/or was not afforded any opportunity to lead any evidence and thereby, rebut the evidence led by the department and prove his defence.

9. The inquiry officer in his report has elaborately dealt with the depositions of the departmental witnesses, as also the statement of the CO-the petitioner and the deposition of his defence witnesses DW-1 and DW-2 especially in paras 12 to 18. The facts narrated therein, and which are not disputed even in the instant petition, are that the petitioner came in contact with PW-2 Mathew Samuel in 1998 when he was working as Assistant in OS-16(B) of MGO Branch and his job was to extend assistance in compilation of the stock position of electronic spares to be issued to the units on need basis and that, he remained in contact with PW-2 Mathew Samuel till around the time in March, 2001, when wide spread media reports came out to the effect that M/s Tehlka.com had videotaped interviews of their reporters with various officials in the Ministry of Defence and politicians, who were apparently involved in murky defence deals. Adverting to the statement of the CO-the petitioner, the Inquiry Officer has also taken note of the fact that he had also introduced another person, namely, Shri Rajiv Sharma by PW-2 Mathew Samuel, who was one of the DGS&D suppliers and wanted to register his firm M/s Globe Traders, Delhi with the Army to provide his product and that, he was instrumental in providing the information as to the availability of Director Col. Anil Sehgal during 1430 to 1600 hrs on working days and he also provided them the telephone number of Director-OS. When PW-2 appeared in the witness box and deposed for having been provided with lot of guidance and information and the documents and papers of companies such as CSF Thomson, France & Elope of Israel, and that the petitioner had also given 11 tube documents as also the documents relating to ammunition capacity of Ordinance Depot,

he was extensively cross-examined by the petitioner on 21.09.2005, 06/07/10/13.10.2005, which the Inquiry Officer has specifically taken note of in para 12 of the inquiry report dated 26.12.2006. During the course of hearing, on being queried, ld. counsel for the petitioner conceded to that effect and has been at pains to say or contend that during such extensive cross-examination of PW-2, the deposition of PW-2 Mathew Samuel was shaken and/or stood rebutted by any material. His only contention has been to the effect that PW-2 Mathew Samuel was an "interested witness" inasmuch, as, he was a part of Tehlka.com in airing fake news and, therefore, his deposition was not reliable, especially in view of the fact that the vital piece of evidence-by way of tapes, which could be produced has been withheld, and an adverse inference thereon should have been drawn.

10. In our considered view, his such submission is wholly meritless. Deposition of a witness, which goes unchallenged and un-rebutted, is a vital piece of evidence, which cannot be ignored lightly. Such deposition, in the absence of an apparent reason for being not believable or truthful, cannot be ignored. What is the weight to be attached thereto is another matter. In that view of the matter, the mere contention of the ld. counsel on the premise it is contended, as said earlier, holds no water. Then, we observe, it is also not the case of the petitioner that the conversation of the petitioner with PW-2 was not recorded on tapes, and such tapes had also come to be placed before some Committees and are now, possibly, with CBI. It is true that such tapes have not come to be produced and proved before the Inquiry Officer-to prove the excerpts thereof before the Inquiry Officer, and in view thereof, any excerpts cannot be used against the CO-the petitioner. The factum of

existence of such tapes, irrespective of the content thereof, is an admitted fact. In other words, it cannot be said that the Department proceeded in the absence of any material. However, what is relevant is that the department has led in evidence the primary evidence viz. PW-2 - the person who impersonated as the agent of the fake firm i.e. West-End. He has extensively deposed about his interactions and dealings with the petitioner and how the petitioner-for illegal gratification in cash and in kind, parted with vital information which was in breach of his positional responsibilities and obligations. There is also no reason or explanation given by the petitioner as to why his Department, or PW-2, or PW-1 or any of the Tehlka.com people would seek to falsely implicate him and impute motives. The CO-petitioner, to rebut the unshaken deposition of PW-2 on the vital aspects of the matter, has examined two defence witnesses DW-1 Sh. Narinder Singh, AFA, Ministry of Defence and DW-2 Sh. G.K. Nayyar. DW-1 Sh. Narinder Singh, came to be examined by CO-the petitioner, despite having been not listed as a defence witness and objected to by the inquiry officer. Interestingly, he is none else, but against whom also PW-2 had deposed for having taken bribe. Thus, DW-1 had common ground with the petitioner. In fact, it was DW-1 who was an interested witness. As for DW-2, he is not only a friend of CO-the petitioner, but a dismissed employee of Holy Family Hospital and now a trade unionist. Be that as it may, ld. counsel for the petitioner could not point out for anything emerging from their depositions, which could have the effect of rebutting the unshaken deposition of PW-2 Mathew Samuel or, for that matter, PW1. Appreciation of evidence is an exercise which falls within the realm of functions of the Inquiry Officer and

the Disciplinary Authority. In judicial review we are not called upon to undertake the same. There is no reason brought forth as to why the Inquiry Officer should not have believed the deposition of the departmental witnesses, and on the basis of such inquiry report and the other material before the Competent Authority, the subject penalty order should not have been passed, which has been upheld by the Appellate authority as well as CAT. It is trite that the proceedings before the Inquiry Officer are in the nature of quasi-judicial proceedings, and the strict proof of evidence as envisaged in the Evidence Act is not called for in the Departmental proceedings. In *General Manager (Operations) State Bank of India & Anr. vs. R. Periyasamy*, (2015) 3 SCC 101, the Supreme Court, adverting to its earlier judgments has observed, as follows:

"11. It is interesting to note that the learned Single Judge went to the extent of observing that the concept of preponderance of probabilities is alien to domestic enquiries. On the contrary, it is well known that the standard of proof that must be employed in domestic enquiries is in fact that of the preponderance of probabilities. In Union of India Vs. Sardar Bahadur, this Court held that a disciplinary proceeding is not a criminal trial and thus, the standard of proof required is that of preponderance of probabilities and not proof beyond reasonable doubt. This view was upheld by this Court in State Bank of India & ors. Vs. Ramesh Dinkar Punde. More recently, in State Bank of India Vs. Narendra Kumar Pandey, this Court observed that a disciplinary authority is expected to prove the charges leveled against a bank-officer on the preponderance of probabilities and not on proof beyond reasonable doubt.

12. Further, in *Union Bank of India Vs. Vishwa Mohan*, this Court was confronted with a case which was similar to the present one. The respondent therein was also a bank employee, who was unable to demonstrate to the Court as to how prejudice had been caused to him due to non-supply of the inquiry authorities report/findings in his case. This Court held that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this were not to be observed, the Court held that the confidence of the public/depositors would be impaired. Thus in that case the Court set-aside the order of the High Court and upheld the dismissal of the bank employee, rejecting the ground that any prejudice had been caused to him on account of non-furnishing of the inquiry report/findings to him.

13. While dealing with the question as to whether a person with doubtful integrity ought to be allowed to work in a Government Department, this Court in *Commissioner of Police New Delhi & Anr. Vs. Mehar Singh*, held that while the standard of proof in a criminal case is proof beyond all reasonable doubt, the proof in a departmental proceeding is merely the preponderance of probabilities. The Court observed that quite often criminal cases end in acquittal because witnesses turn hostile and therefore, such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on par with a clean acquittal on merit after a full-fledged trial, where there is no indication of the witnesses being won over. The long standing view on this subject was settled by this Court in *R.P. Kapur Vs. Union of India*, whereby it was held that a departmental proceeding can proceed even though a person is acquitted when the acquittal is other than honourable. We are in agreement with this view.

14. *In administrative law, it is a settled principle that the onus of proof rests upon the party alleging the invalidity of an order. In other words, there is a presumption that the decision or executive order is properly and validly made, a presumption expressed in the maxim omnia praesumuntur rite esse acta which means 'all things are presumed to be done in due form.'*

11. In view of the foregoing settled position of law and the given facts and circumstances of the case, we do not see any reason to interfere in the matter in exercise of the writ jurisdiction. Writ Petition is therefore, dismissed. No order as to costs.

A.K.CHAWLA, J.

VIPIN SANGHI, J.

NOVEMBER 27, 2018

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