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

+ **Date of Decision: 13.12.2018**

% **W.P.(C) 9124/2015 & C.M. No. 20746/2015**

VIJAI LAKSHMI SHARMA

..... Petitioner

Through: Mr. Rupesh Kumar with Mr. Aditya Kumar
and Mr. Pravesh Bahuguna, Advs.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Kirtiman Singh, CGSC with Mr.
Prateek Dhanda, Mr. Waize Ali Noor and
Ms. Shruti Dutt, Advs.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

VIPIN SANGHI, J. (ORAL)

1. The petitioner has preferred the present writ petition to assail the order dated 25.08.2015 passed by Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 3580/2013. By the impugned order, the Tribunal has rejected the Original Application preferred by the petitioner. In the said Original Application, the petitioner had assailed the action taken by the respondents to initiate departmental proceedings against him by issuing the memorandum of charge-sheet dated 09.08.2012. The petitioner also assailed the consequential orders dated 31.10.2012, appointing the Inquiry Officer and

the Presenting Officer.

2. The petitioner, who was an Indian Revenue Service Officer of 1975 Batch, superannuated from the post of Member, Central Board of Excise and Customs (CBEC) on 31.03.2011. It appears that while she was in service, a complaint was made against the petitioner in respect of availment of exemption under Notification bearing No.39/2001-CE, dated 31.07.2001 by one M/s. Sunshine Oleochem Pvt. Ltd., and the Directorate of Vigilance, Central Board of Excise and Customs forwarded the same on 04.03.2011 to the Additional Secretary and CVO (Rev. Hqrs.), Deptt. of Revenue, Ministry of Finance.

3. On 11.03.2011, the Ministry of Finance, Deptt. of Revenue issued a memorandum dated 11.03.2011 to the petitioner calling for a reply on the said issue. The petitioner sent a reply on 16.03.2011.

4. It appears that the communication dated 04.03.2011 had also been forwarded to the Central Vigilance Commission (CVC). While the matter was still pending consideration in the Ministry of Finance, on 21.03.2011, the CVC issued an office memorandum addressed to the Ministry of Finance stating that the CVO, Deptt. of Revenue may expedite views/ comments on the complaint against the petitioner for the perusal of the Commission on priority basis, as the petitioner is due for retirement on superannuation on 31.03.2011.

5. It further appears that on 25.03.2011, the Ministry of Finance through Revenue Secretary sent a communication to the CVC wherein it was, inter alia stated that *“the complaint has been examined in Revenue Headquarters vis-a-vis explanation submitted by Smt. Vijai Lakshmi Sharma. This Department has observed that the case made out by DG(Vig.), CBEC is baseless and*

unfounded. Therefore, it has been decided with the approval of Finance Minister to close the complaint against Smt. Vijai Lakshmi Sharma. Smt. Vijai Lakshmi Sharma is retiring on 31.03.2011.

A detailed report in the matter is enclosed.”

6. The CVC, however, did not agree with the decision taken with the approval of the Finance Ministry to close the complaint against the petitioner and communicated its advice vide office memorandum dated 30.05.2012. The CVC in the said advice stated as follows:

*“The commission has perused the investigation report forwarded by the CVO, CBEC and the views of the CVO, D/o Revenue thereon. The matter has been examined by the Commission in r/o Shri Ajit Kumar, then Chief Commissioner along with the role of Smt. Vijai Lakshmi Sharma, Member CBEC. **The view of DA and CVO, Deptt. of Revenue that the case made out by CVO, CBEC is baseless and unfounded is not tenable in view of the fact that Smt. Sharma ignored the facts available on record that commercial production had not been commenced by the unit at least till 31.1.2006 and the investment of Rs. 9 crores on plant and machinery were made only upto 31.12.2005, and plant and machinery valued at over Rs.25 crore were installed and set up after 31.12.2000, which was not as per notification No. 39/2001-CE dated 31.07.2001. Instead of initiating proceedings for withdrawal/ cancellation of the certificates irregularly issued by the 1st Empowered Committee, which was subsequently done in 2010 by Shri Kishan Singh, the then Chief Commissioner, she got herself involved in the exercise to extend further exemption to remaining products namely, Palm Stearin Fatty Acid, Sunflower Fatty Acid, Rice Bran Fatty Acid, Distilled Palm***

Kernel Fatty Acid, Soap Noodles, Bath Soap, Washing Soap, Glycerin, Plyamides, Glycerol Monostearate, Stearic Acid, Distilled Palm Fatty Acid by ignoring the overwhelming evidence gathered by the department for denial of exemption on all the products of M/s SOPL. Smt. Sharma thus failed to take corrective measures to safeguard government revenue and caused loss of revenue of Rs. 23.79 crore upto 24.05.2010. Hence, the Commission would advise initiation of major penalty proceedings under rule 98 of CCS (Pension) Rules, 1972 against Smt. Vijai Lakshmi Sharma, Member, CBEC (Retd.)”(emphasis supplied)

7. Consequently, the impugned charge-sheet was issued to the petitioner vide memorandum dated 09.08.2012 under Rule 9 of the CCS (Pension) Rules, 1972, since she had already superannuated on 31.03.2011.

8. The submission of learned counsel for the petitioner is that the final decision had been taken by the competent authority, namely the Ministry of Finance as communicated by the Revenue Secretary, Ministry of Finance to the CVC in its communication dated 25.03.2011- to not initiate any enquiry, in view of the Petitioners reply to the memorandum dated 11.03.2011. The submission is that having arrived on the said final decision, it could not have been re –opened merely on the advice of the CVC. The decision has to be taken independently by the Competent Authority. In fact, the advice of the CVC was not even called for in a case like the present, since the matter was not examined by the Ministry of Finance on a reference made by the Commission. The submission is that under Section 17 of the Central Vigilance Commission Act (CVC Act), 2003 the concerned Ministry/ Department is obliged to send

the report of the inquiry undertaken, only in a case where reference is made by the Commission, and not otherwise. In the present case, merely on account of the complaint dated 04.03.2011 being forwarded to the CVC, the CVC could not be said to have made a reference to the Ministry of Finance for initiation of disciplinary proceedings against the petitioner. Vide communication dated 21.03.2011, the CVC had merely sought the views/ comments of the Ministry of Finance, and no reference was made by the CVC to the said Ministry – requiring the Ministry to enquire into the petitioner’s conduct. In support of this submission, learned counsel for the petitioner has sought to place reliance on the judgment of the Division Bench of this Court in **Rajesh Gouhari & Anr. v. N.S. Padmanabhan & Anr.**, LPA 799/2012, decided on 28.01.2013, MANU/DE/2807/2013.

9. Learned counsel for the petitioner submits that since the decision taken by the Competent Authority - not to initiate disciplinary proceedings, was a decision in favour of the petitioner, there was no need to communicate the same and without its communication as well, the said order became effective.

10. The petitioner has placed reliance on the decision in **MCD v. Qimat Rai Gupta**, (2007) 7 SCC 309, wherein the Supreme Court observed:

“Where, however, communication of an order is a necessary ingredient for bringing an end result to a status or to provide a person an opportunity to take recourse to law if he is aggrieved thereby, the order is required to be communicated.”

11. The further submission of learned counsel for the petitioner is that the decision taken by the competent authority not to initiate the departmental

proceedings and to close the matter was a collective decision, and the departmental proceedings have been sought to be initiated only against the petitioner and not any of the other officers involved in the Committee, of which the petitioner was a member.

12. On the other hand, Mr. Kirtiman Singh, Central Government St. Counsel has submitted that on the memorandum dated 11.03.2011 issued to the petitioner, no decision was communicated to her to say that the show cause notice/ memorandum had been withdrawn after taking into account her reply. The correspondence undertaken by the Ministry of Finance with the CVC was inter - departmental internal correspondence, and the same was not addressed to the petitioner. Thus, no “order” was passed in law, much less communicated to the petitioner, to not initiate the disciplinary proceedings against the petitioner. Unless communicated, an internal departmental communication does not partake character of an order. In this regard, reliance is placed on ***Laxminarayan R. Bhattad V. State of Maharashtra***, 2003 (5) SCC 413, wherein the Supreme Court observed:

“The correspondences exchanged between the parties also do not show that the minutes drawn fructified in an order conferring any legal right upon the appellant. By reason of the endorsement in the note-sheet no policy decision had been taken. It is now-known that a right created under an order of a statutory authority must be communicated so as to confer an enforceable right. (See Bachhittar Singh Vs. State of Punjab and Another reported in AIR 1963 SC 395)”

13. Mr. Singh further submits that the communication dated 25.03.2011

issued by the Ministry of Finance through the Revenue Secretary could, at the highest, be viewed as a tentative decision, since the final decision could have been taken only after consultation with the CVC. The communication dated 25.03.2011 does not contain a detailed considered decision on the merits of the complaint against the petitioner. In fact, the aspects pointed out by the CVC in its advice contained in the OM dated 30.05.2012 highlighted the aspects, for the view that the complaint merited initiation of departmental proceedings against the petitioner. In this regard, he has referred to the advice of the CVC contained in the OM dated 30.05.2012 and in particular the extract emphasized by us above.

14. Mr. Singh submits that reliance placed by the petitioner on section 17 of the CVC Act, 2003 is misplaced. He submits that section 8 of the said Act sets out the functions and powers of the CVC and clause (d) of section 8(1) mandates the CVC to :

“inquire or cause an inquiry or investigation to be made into any complaint against any official belonging to such category of officials specified in sub-section (2) wherein it is alleged that he has committed an offence under the Prevention of Corruption Act, 1988 (49 of 1988) and an offence with which a public servant specified in sub-section (2) may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial;”

15. Section 8(2) enumerates the category of officials in respect of whom the CVC could inquire, or cause an inquiry or investigation to be made into any complaint, which includes members of All India Services serving in connection with the affairs of the Union and “Group A” officers of the Central

Government – which the petitioner was at the relevant time. He further submits that reliance placed by the petitioner on the decision of this Court in ***Rajesh Gouhari*** (supra) is misplaced, since the facts of the case are materially different from the present case.

16. Having heard learned counsels and perused the record as well as the decisions relied upon by them, we are of the view that there is no merit in this petition.

17. The statutory functions and powers of the CVC are set out in section 8 of the CVC Act. The statutory mandate placed on the CVC, inter alia, includes the responsibility of inquiring into or causing an inquiry or investigation to be made into any complaint against any official, inter alia, belonging to All India Services serving in connection with the affairs of Union and Group A Officers of the Central Government, in cases where the complaint alleges commission of offences under the Prevention of Corruption Act and an offence with which such a public servant may be charged under the Cr PC at the same trial. Thus, when the CVC issued the communication dated 21.03.2011 to the Ministry of Finance requiring the CVO, Department of Revenue to expedite the views/comments on the complaint made against the petitioner, the said communication could not have been brushed aside and a final decision taken, including by the Finance Minister, to close the complaint against the petitioner without holding consultation with the CVC. The views of the CVC were bound to be elicited and considered before taking any such decision to close the complaint. Pertinently, the communication dated 25.03.2011 merely states that the complaint against the petitioner “*is baseless and unfounded*”. However, the

basis on which the said observation was made is not reflected in the said communication. There is nothing to suggest that the advice of the CVC contained in the OM dated 30.05.2012, or the substance thereof, was considered by the Finance Minister before the Confidential communication dated 25.03.2011 was issued by the Revenue Secretary to the CVC. The communication dated 25.03.2011 could, thus, at the highest be regarded as containing a tentative view of the Competent Authority to close the complaint. Pertinently, the competent authority has chosen to issue the charge sheet to the petitioner under Rule 9 of the CCS Pension Rules after receiving the advice of the CVC, as contained in its OM dated 30.05.2012. It was not the stand taken by the Competent Authority/ Ministry of Finance, that the decision conveyed in the communication dated 25.03.2011 was final, and that it could not be reviewed. This only shows that even the Ministry of Finance did not consider the decision communicated to the CVC in the communication dated 25.03.2011 to be the final decision in the matter.

18. It is also pertinent to note that while the petitioner has placed on record the “Confidential” communication dated 25.03.2011 issued by the Revenue Secretary, Ministry of Finance to the CVC, he has withheld the detailed report in the matter which formed an enclosure to the said communication. Without the detailed enclosure, the said communication is incomplete. Moreover, the fact that the said communication dated 25.03.2011 was marked as “Confidential” itself shows that it was not intended to be communicated to any other person, much less the petitioner. We find merit in the submission of Mr. Kirtiman Singh that there was no “order” in existence – which was passed to

close the complaint against the petitioner. As held by the Supreme Court in *Laxminarayan R.*(supra), a right is created under a Rule of a Statutory Authority only when it is communicated, so as to confer an enforceable right. The petitioner is seeking to enforce a so-called right stated to have been created by the confidential letter dated 25.03.2011 issued by the Ministry of Finance which was not intended to be communicated, and was not communicated to the petitioner.

19. In the light of the aforesaid, we are of the view that there is no question of the issue being “re-opened” by the competent authority after its closure since, in the first place, there was no closure. Merely because, on consideration of the advice given by the CVC, the competent authority has decided to issue the charge sheet to the petitioner vide memorandum dated 09.08.2012, it does not follow that the competent authority has not taken an independent decision. If the competent authority did not concur with the advice of the CVC, it was open to it to correspond with the CVC and place before its reasons for not agreeing with the advice of the CVC contained in the OM dated 30.05.2012. This is so mandated by Section 17 of the CVC Act. Section 17(3) shows that once the advice of the CVC is received, it is for the Central Government to consider the same and take appropriate action and, in case the Central Government does not agree with such advice of the Commission - for reasons to be recorded in writing, it is obliged to communicate the same to the Commission.

20. Section 17 of the said Act, insofar as it is relevant, read as follows:

“17. Report of any inquiry made on reference by Commission

to be forwarded to that Commission.—(1) The report of the inquiry undertaken by any agency on a reference made by the Commission shall be forwarded to the Commission.

(2) The Commission shall, on receipt of such report and after taking into consideration any other factors relevant thereto, advise the Central Government and corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government, as the case may be, as to the further course of action.

(3) The Central Government and the corporations established by or under any Central Act, Government companies, societies and other local authorities owned or controlled by that Government, as the case may be, shall consider the advice of the Commission and take appropriate action: Provided that where the Central Government, any corporation established by or under any Central Act, Government company, society or local authority owned or controlled by the Central Government, as the case may be, does not agree with the advice of the Commission, it shall, for reasons to be recorded in writing, communicate the same to the Commission.”

21. Section 17 is not the only repository of the manner in which the CVC could exercise its jurisdiction and authority to discharge its statutory functions contained in section 8 of the Act. In the facts of the present case, it appears that the complaint against the petitioner was also sent to the CVC, and the CVC took cognizance of it and called for a response from the Ministry of Finance. While doing so, the CVC was discharging its statutory function and exercising authority, inter alia, under section 8(1)(d) of the CVC Act. The process of calling for the views/ comments of the Ministry of Finance on the complaint received against the petitioner was a process undertaken to arrive at a decision whether to inquire into, or case an inquiry or investigation into, the conduct of

the petitioner in respect whereof the complaint was made.

22. Reliance placed by the petitioner on ***Rajesh Gouhari*** (supra), in our view, is misplaced. We may, firstly, observe that in ***Rajesh Gouhari*** (supra), there was an “order” passed on 14.07.2009 by the CMD of respondent no.2, Educational Consultants India Ltd. exonerating respondent no.1. In the present case, as noticed above, there is no “order” passed by the competent authority exonerating the petitioner, much less any such order has been communicated to him.

23. It is also observed that in ***Rajesh Gouhari*** (supra), the order passed by the Disciplinary Authority was a speaking order. That is not the position in hand. No speaking order has been brought on record by the petitioner which may have been passed by the Competent Authority, containing reasons for taking no action on the complaint against the petitioner.

24. The order in ***Rajesh Gouhari*** (supra) also shows that it was admitted on behalf of the employer before the learned Single Judge that there was no evidence available against the charged officer/ respondent no.1. The charge-sheet was issued against respondent No.1 only on account of the communication received from the Government of India and the communication sent by the CVC advising initiation of minor penalty proceedings, inter alia, against respondent No.1. Moreover, in relation to Section 17 of the CVC Act, the Division Bench observed:

“It would thus be seen that the aforesaid provision applies to only those inquiries which are made on reference by the Commission. Neither the Memorandum

dated 05.01.2009 nor does the decision of the Disciplinary Authority dated 14.07.2009 indicates that the inquiry resulting into the decision dated 14.07.2009 was initiated on a reference from the Commission. If that be so, the provisions of Section 17 of Central Vigilance Commission Act, 2003 would not apply.”

25. There can be no quarrel with the aforesaid proposition. However, as noticed hereinabove, Section 17 is not the sole repository of, and not the only mechanism by which the CVC exercises its jurisdiction under Section 8 of the Act. It is also pertinent to note that in **Rajesh Gouhari** (supra), the appellant was the son of the complainant, and the Disciplinary Authority had accepted the decision of the learned Single Judge holding that initiation of departmental proceedings against respondent No.1, after the issuance of the speaking order dated 14.07.2009 in favour of respondent No.1, tantamounted to double jeopardy. It is in these circumstances that the aforesaid order in **Rajesh Gouhari** (supra) came to be passed. Thus, that decision is not attracted in the facts of the present case.

26. For the aforesaid reasons, we find no merit in this petition and dismiss the same, leaving the parties to bear their respective costs.

VIPIN SANGHI, J

A. K. CHAWLA, J

DECEMBER 13, 2018