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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 28.05.2019

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**W.P.(C) 6049/2019
SH. R.K. NAIDU**

..... Petitioner

Through: Mr. Shankar Raju, Mr. Nilansh Gaur
and Ms. Himantika Saini Gaur,
Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondent

Through: Mr. Ashwani Bhardwaj, Advocate
and Mr. R.M. Tripathi, Advocate for
UOI.
Mr. Ravinder Agarwal, Advocate for
CVC.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

VIPIN SANGHI, J. (ORAL)

CM APPL.26103/2019

Exemption allowed, subject to all just exceptions. The application
stands disposed of.

W.P.(C) 6049/2019 & CM APPL. 26102/2019

1. The petitioner assails the order dated 24.04.2019 passed by Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 1275/2019. The Tribunal has rejected the said Original Application wherein the petitioner had assailed the charge memorandum dated 01.02.2019 issued to him, in respect whereof, the respondents have initiated the enquiry under Rule 14 of the CCS (CCA) Rules. There are ten articles of charge levelled against the petitioner. The Articles of charge reads as follow:

“ARTICLE – I

That Shri R.K. Naidu while performing his official duties as Regional Director, Netaji Subhas Western Centre, Gandhinagar during the year 2015-16 has awarded the contract for providing mess services at SAI, Regional Centre, Gandhinagar and STC, Vidyanagar, Jaipur to M/s Om Catering, Bhopal without following the provision of General Financial Rules 2005 like no proper publicity of tender was done, license fee was not properly spelled out in financial bid, tender for Regional Centre, Gandhinagar was not approved by Regional Director but it was included in the agreement signed etc. many irregularities were made.

Thus by awarding the tender to M/s Om Catering Bhopal in contravention of the provision as stipulated in the General Financial Rules-2005, the said Shri R.K. Naidu, Regional Director, SAI has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of an officer of Sports Authority of India thereby contravening Rule 3(1), (i), (ii), (iii) and (xxi) of CCS (Conduct) Rules, 1964 read with Rule 39 of SAI service Bye Laws and Conditions of Service Regulations, 1992.

ARTICLE – II

That Shri R.K. Naidu, Regional Director, SAI while performing his official duties as Regional Director, Netaji Subhas Western Centre, Gandhinagar hired a vehicle for Regional Director for the year 2016 in a non transparent, non competitive and unfair manner.

Thus by hiring the vehicle in contravention of the provision as GFR 145 to 150, 158 and 178 to 181 stipulated in the GFR 2005, the said Shri R.K. Naidu, Regional Director, SAI has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of an officer of Sports Authority of India thereby contravening Rule 3(1), (i), (ii), (iii) and xxi of CCS (Conduct) Rules, 1964 read with Rule 39 of SAI service Bye Laws and conditions of Service Regulations, 1992.

ARTICLE – III

That Shri R.K. Naidu, Regional Director, SAI while performing his duties as Director, I/C, Netaji Subhas Western Centre, Gandhinagar has converted the guest house building in to his residence without the approval of Competent Authority and also directed not to allot any room / accommodation to any guest / official.

Thus by not allowing any guests in the guest house, the same remained unutilized for the purpose it was made. Thus Shri R.K. Naidu, Regional Director, SAI has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of an officer of Sports Authority of India thereby contravening Rule 3(1),

(i), (ii), (iii) and (xxi) of CCS (Conduct) Rules, 1964 read with Rule 39 of SAI service Bye Laws and conditions of Service Regulations, 1992.

ARTICLE – IV

That Shri R.K. Naidu, Regional Director, SAI while performing his official duties as Regional Director, I/C, Netaji Subhas Western Centre, Gandhinagar during the year 2015-16 had incurred unfruitful expenditure on payment of Pay & allowances to watchmen due to non utilization of their services for making security arrangement at STC, Jodhpur, and Jaipur. There has also been several lapses in award of security contract in the STCs Jodhpur & Jaipur like no wide publicity given to the tender, the tendering process was initiated without proper estimate request from concerned STC in Charge. In STC Jaipur proper departmental security staff was available, even then it was outsourced incurring avoidable expenditure to the SAI.

Thus by not utilizing the services of regular staff already posted at STCs and awarding the work to the private agencies / contractor, in contravention of GFR 2005, Shri R.K. Naidu, Regional Director, SAI has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of an officer of Sports Authority of India thereby contravening Rule 3(1), (i), (ii), (iii) and (xxi) of CCS (Conduct) Rules, 1964 read with Rule 39 of SAI service Bye Laws and conditions of Service Regulations, 1992.

ARTICLE – V

That Shri R.K. Naidu, Regional Director, SAI while performing his official duties as Regional Director, I/C, Netaji Subhas Western Centre, Gandhinagar during the year 2015-16 has failed to follow the cardinal principles of financial propriety and various procedures of GFR, 2005 in renovation of toilets in the Administrative Building at SAI, NSWC, Gandhinagar. Different piecemeal work orders were given for renovation of toilets at different floors instead of one composite work order.

Thus by not following the provision of GFR-2005 in award of the toilets in the Administrative building at SAI, NSWC, Gandhinagar, Shri R.K. Naidu, Regional Director, SAI has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of an officer of Sports Authority of India thereby contravening Rule 3(1), (i), (ii), (iii) and (xxi) of CCS (Conduct) Rules, 1964 read with Rule 39 of SAI service Bye Laws and conditions of Service Regulations, 1992.

ARTICLE – VI

That Shri R.K. Naidu, Regional Director, SAI while performing his official duties as Regional Director, I/C, Netaji Subhas Western Centre, Gandhinagar during the year 2015-16 has passed the bills of the Mess Contractor relating to certain items which was not in the scope of agreement and the execution of the agreement has been witnessed by his son Shri Rajiv Naidu who was associated with M/S Om Caterer. Moreover milk payments were being released to the suppliers on behalf of contractor i.e. M/s Om Caterer which was the responsibilities of contractor.

Thus by making the payments which was not per agreement, Shri R.K. Naidu, Regional Director, SAI has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of an officer of Sports Authority of India thereby contravening Rule 3(1), (i), (ii), (iii) and (xxi) of CCS (Conduct) Rules, 1964 read with Rule 39 of SAI service Bye Laws and conditions of Service Regulations, 1992.

ARTICLE – VII

That Shri R.K. Naidu, Regional Director, SAI while performing his official duties as Regional Director, I/C, Netaji Subhas Western Centre, Gandhinagar during the year 2015-16 has procured food supplements for the National Coaching Camps in gross violation of the instructions of SAI. Head Quarters.

Thus by not following the instructions and also not following the proper procedure for procurement of food supplements, for National Camper, Shri R.K. Naidu, Regional Director, SAI has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of an officer of Sports Authority of India thereby contravening Rule 3(1), (i), (ii), (iii) and (xxi) of CCS (Conduct) Rules, 1964 read with Rule 39 of SAI service Bye Laws and conditions of Service Regulations, 1992.

ARTICLE – VIII

That Shri R.K. Naidu, Regional Director, SAI while performing his official duties as Regional Director, I/C, Netaji Subhas Western Centre, Gandhinagar during the year 2015-16 has deployed man

power including Medical Officer, Lady Gynecologist, Lady Physiotherapist and Lab Technician etc. through M/s Lucky Management Services, Gandhinagar without indicating the requisite qualification against the post and the manpower were deployed in contravention with the circulars from SAI Head Quarters. Moreover excess payment was also released to the agency.

Thus by deploying the manpower without mentioning the requisite qualifications, Shri R.K. Naidu, Regional Director, SAI has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of an officer of Sports Authority of India thereby contravening Rule 3(1), (i), (ii), (iii) and (xxi) of CCS (Conduct) Rules, 1964 read with Rule 39 of SAI service Bye Laws and conditions of Service Regulations, 1992.

ARTICLE – IX

That Shri R.K. Naidu, Regional Director, SAI while performing his official duties during the year 2015-16 has awarded the work of Housekeeping maintenance services at SAI Campus, NSWC, Gandhinagar and Horticulture work at SAI, NSWC, Gandhinagar without following the procedure laid down in GFR-2005.

Thus by awarding the work of Housekeeping maintenance and Horticulture work without following the laid down procedure Shri R.K. Naidu, Regional Director, SAI has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of an officer of Sports Authority of India thereby contravening Rule 3(1), (i), (ii), (iii) and (xxi) of CCS (Conduct) Rules, 1964 read with Rule 39 of SAI service Bye Laws and conditions of Service Regulations, 1992.

ARTICLE – X

That Shri R.K. Naidu, Regional Director, SAI while performing his official duties during the year 2015-16 was requested vide letter dated 30.5.2016 to nominate an officer of Finance Division of SAI in the tendering committee to ensure strict compliance of GFR an also maintain complete transparency in the selection process of the contracts being handled by Regional Centre, Gandhinagar. Shri R.K. Naidu failed to comply with the directions of the Head Office which is the serious matter.

Thus by not adhering to the directions of the SAI Head Office, Shri R.K. Naidu, Regional Director, SAI has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of an officer of Sports Authority of India thereby contravening Rule 3(1), (i), (ii), (iii) and (xxi) of CCS (Conduct) Rules, 1964 read with Rule 39 of SAI service Bye Laws and conditions of Service Regulations, 1992.”

2. The case of the petitioner before the Tribunal was, and the said submission is advanced before us as well, is that the Articles of charge relate to infraction of the rules, including the General Financial Rules (GFRs) by the petitioner in the discharge of his functions. Learned counsel for the petitioner submits that the said Articles of charge could not have been framed in view of the fact that the internal audit of the respondent Sports Authority of India (SAI), as well as audit conducted by the CAG did not find any irregularity in the matter of administration of GFRs or the other rules.

3. The Tribunal has rejected this submission of the petitioner by observing as follows:

“4. The applicant challenges the charge memorandum as well as the proceedings relating to the appointment of the inquiry officer etc. As many as 10 articles of charge were alleged against him, and each article was elaborated in the statement of imputation. It may be true that most of the allegations are in relation to the method of incurring expenditure. However, the charges cannot be treated as baseless, simply on the ground that the internal audit and the audit conducted by the office of C&AG did not object to the said items of expenditure. The parameters that are applied in the course of audit are substantially different from those that become relevant in the disciplinary proceedings. The audit will be mostly on the touchstone of existence of the power to incur the expenditure, and the proper channelization of the process. Propriety of incurring expenditure ultimately becomes relevant in that process, though sometimes views may be expressed on that also. At any rate, the applicant can point out or take assistance from audit in that behalf.”

4. The Tribunal also noticed that occasion for it to interfere with the charge memorandum would arise only when it is proved to its satisfaction that the authority which issued the charge memorandum is not vested the power, or when no act of misconduct can be perceived even if the allegation contained in the memorandum are taken as true. The petitioner had failed in that regard.

5. Having heard learned counsel for the petitioner, perused the Articles of charge as well as the internal audit report relied upon by the petitioner, we are of the view that there is no merit in this petition and the impugned order

does not call for interference. We agree with the findings of the Tribunal that the purpose of neither the internal audit, nor the audit by the CAG – or any other audit for that matter, is to fix the liability of an officer of an organisation qua his misconduct. Even in the present case, the internal audit report, which is placed on record, does not show that there is any consideration by the internal auditor of the specific issues raised in the ten Article of charge framed against the petitioner. If this submission of the petitioner were to be accepted, it would not be possible to initiate disciplinary proceedings in relation to misconduct involving financial dealings of a delinquent officer in his official capacity, unless the auditors point out the alleged misconduct or infraction of rules. The scope of the enquiry undertaken by the auditors is in a very different context inasmuch, as, they examine the accounts of the organisation and are really concerned with the issue whether there have been any leaks or diversion of funds. Whether, or not, there is misconduct by an officer/ employee falls within the domain of the Disciplinary Authority to consider, and not the auditors.

6. For the aforesaid reasons, we do not find any merit in this petition and the same is dismissed.

VIPIN SANGHI, J.

RAJNISH BHATNAGAR, J.

MAY 28, 2019/kd