

\$~2.

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

+ W.P.(C) 8322/2019 and C.M. Nos.34468-34469/2019

UNION OF INDIA AND ORS. Petitioners

Through: Mr. R.V. Sinha, Advocate.

versus

TUSHAR RANJAN MOHANTY Respondent

Through: Respondent in person.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

20.08.2019

%

1. The petitioner Union of India assails the order dated 18.09.2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (CAT/ Tribunal) in O.A. No.2999/2016. The Tribunal allowed the said Original Application preferred by the respondent, wherein he assailed the charge memorandum dated 09.06.2016 issued to him on several grounds. The Tribunal examined all the grounds and allowed the Original Application on two grounds enumerated as Grounds 'F' and 'H'. Ground 'F' reads:

“(f) There is no misconduct made out from the face of the records;”

2. Ground 'H' reads:

“There is total violation of the principles of natural justice by the Respondent Ministry while dealing with the present case

inasmuch as the complainant has himself dealt with the file, the Applicant was not accorded a Personal Hearing, and the Inquiring Authority and the Presenting Officer has been appointed without considering the Reply of the Applicant.”

3. At the outset, we have pointed out to Mr. Sinha that the impugned order is dated 18.09.2017, whereas the present writ petition has been preferred and got listed only in August, 2019 i.e. nearly 23 months after passing of the impugned order. Mr. Sinha submits that there was some delay in preparation and filing of the Original Application. In the list of dates and events, the following circumstances have been stated to explain the delay.

<i>“September, 2017 to March, 2018</i>	<i>On receipt of the aforesaid order/ judgement dated 18.09.2017 through counsel vide his letter dated 3.10.2017, the same was considered in consultation with the nodal Ministries/ Department, i.e., DOP&T & Ministry of Law & Justice by the competent authority and it was decided to challenge the same before this Hon’ble Court. Therefore, the Govt. counsel was requested vide letter dated 28.12.2017 to draft the requisite writ petition, etc., who required certain documents and clarifications which were furnished to the Govt counsel.</i>
--	---

<i>April, 2018 to 15.3.2019</i>	<i>On receipt of draft writ petition from the Govt Counsel, the same was under examination for re-ascertaining its factual correctness. In the meantime, the Govt Counsel was elevated as ld. Member (Judicial) in Central Administrative Tribunal in July, 2018.</i>
---------------------------------	---

Accordingly, thereafter, the matter was taken up with Ministry of Law & Justice for engagement of new Government Counsel in place of the earlier counsel vide letter dated 8.1.2019, who in turn appointed the present counsel vide BTF No.CW/03/19/HC/Lit/Sec.B. The present counsel informed the department regarding his engagement and thereafter, the documents were provided to him by the petitioners, who, thereafter re-drafted the writ petition and forwarded the same vide his letter dated 15.03.2019 to the department for signatures and approval.”

4. We are not satisfied with the aforesaid explanation for the delay of nearly two years in preferring the writ petition. The aforesaid averments are vague and non-specific. The aspects that persuades us to not condone the delay and laches are that the respondent is no longer in service since August, 2018; though the charge memorandum was issued only on 09.06.2016, it related to an incident which is alleged to have happened on 02.01.2015—thus, the charge memorandum itself was issued nearly one and a half year after the occurrence of the alleged incident, and; the respondent, who appears in person, points out that even though there was no stay operating during the pendency of the Original Application before the Tribunal, the petitioner itself did not hold any departmental proceedings after the issuance of the charge memorandum dated 09.06.2016. The impugned order, as aforesaid, was passed only on 18.09.2017.

5. Thus, we are not inclined to interfere with the impugned order. At the

same time, we make it clear that we have not approved of the finding returned by the Tribunal on the aspect whether the conduct attributed to the respondent – which he vehemently denies, tantamount to misconduct, or not.

6. We also find that the charge memorandum was issued merely on the basis of a note recorded by the complainant himself, namely, Mr. D.K. Sharma, Under Secretary (ISS) on the file. The note sheet placed on record shows that the DS (ISS) after perusing the said note recommended initiation of disciplinary proceeding against the respondent. The JS (A) also concurred with the same. At that stage, the version of the respondent was not called by the petitioner. Though, it may not be necessary to issue a show-cause notice to the delinquent requiring him to show cause as to why the disciplinary proceedings be not initiated in respect of the alleged misconduct, prudence demanded that the petitioner should have at least called for the version of the respondent, and not proceeded only on a one-sided story narrated by the complainant Mr. D.K. Sharma.

7. Mr. Mohanty has highlighted another important aspect to discredit the note of Mr. D.K. Sharma, Under Secretary (ISS). In his note, Mr. D.K. Sharma records in paragraph 2, inter alia, as follows:

“2. As per the direction of Hon’ble CAT a short reply was prepared with the approval of Secretary vide notes at page 2-4/ante, and vetting by the Government Counsel. Today on 02.01.2015, in order to attend the matter, the undersigned along with Shri Dharam Singh, SO (ISS) and Shri R.N. Rathee, AD posted in ISS Division went to Hon’ble CAT, New Delhi where the matter was listed in Court No. 2 as item No. 5 before the vacation Bench. Shri R.N. Singh, Government Counsel by the time, the matter was heard could not reach, therefore,

undersigned apprised the Bench about the filling of short reply as per the direction of Hon'ble CAT on last date of hearing. The Bench directed to post the matter for hearing on next date. However, Shri Mohanty, DDG was pressing for interim relief stating that no salary has been paid. At this stage, Shri Amit Sinha, junior of Shri R.N. Singh reached and he opposed grant of any interim relief as prayed by Shri Mohanty who was agitated for non-disbursal of salary. The Bench listed the matter for hearing on 05.01.2015. At this stage, Shri T.R. Mohanty in highly improper and aggressive manner started shouting before the Bench that this case has to be listened today or else he will approach High Court on Monday. He also threatened that in case, it is not heard today he will jump from the floor and commit suicide. The Bench, however, warned him that he cannot blackmail the Bench and accordingly the matter was posted on 05.01.2015."

(emphasis supplied)

8. Mr. Mohanty points out that, as a matter of fact, the position recorded in the aforesaid extracted in paragraph 2 of the note is contrary to the record. He has drawn our attention to the order passed by the Tribunal in his Original Application on 30.12.2014 in O.A. No. 4721/2014. By this order, the Tribunal had passed an interim order stating "*in the meanwhile, the respondents shall not proceed with the matter till the next date.*" The matter was adjourned to 02.01.2015. On 02.01.2015 – when the alleged incident is stated to be taken place, interim order was directed to continue till 05.01.2015, which was the next date. Thus, the very foundation set out in paragraph 2 of the note – which is claimed to have led to the alleged misconduct by the respondent is missing since there was already an interim order existing on record, which was continued by the Tribunal. Thus, there was no occasion for the respondent to create a scene before the Tribunal, much less to threaten that he would jump to the ground floor and commit

suicide. There was no occasion for the Bench to issue any warning to the respondent – that he could not blackmail the Bench. No such incident is recorded in the order sheet of 02.01.2015.

9. For all the aforesaid reasons, we are not inclined to interfere with the impugned order.

10. Dismissed.

VIPIN SANGHI, J

RAJNISH BHATNAGAR, J

AUGUST 20, 2019

B.S. Rohella