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

Date of Decision: 25.11.2019

+ **W.P.(C) 12386/2019**

UNION OF INDIA

..... Petitioner

Through: **Mr. Anil Soni, CGSC.**

Versus

SHRI V.K. PURI

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI, J. (ORAL)

C.M. No.50634/2019 (exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) No.12386/2019 and C.M. No.50633/2019 (stay)

1. The petitioner/Union of India (Department of Revenue, Ministry of Finance) impugns order dated 08.08.2018 rendered by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal' for short) in O.A. No.839/2014, by which the application filed by the respondent/Sh. V.K. Puri has been allowed and charge memo dated 20.06.2012 issued against the respondent has been quashed.

2. The genesis of the matter is a complaint, stated to have been

received against the respondent in January 1998 to the effect that while functioning as Additional Commissioner, New Customs House, Mumbai, the respondent had decided certain matters contrary to the relevant provisions of the law. Consequent upon receiving such complaint, vide letter dated 14.02.1998 the Director General (Vigilance), CBIC referred the matter to the West Zonal Unit, Mumbai for investigation.

3. In the meantime however, the orders passed by the respondent in his adjudicatory capacity, which were subject matter of the controversy, came to be reversed by the Appellate Authority during 1998-99. It is required to be noticed that the matters in question were adjudicated by the respondent in the year 1993 and 1994.

4. Sometime in 2006, the respondent was asked to submit a reply in relation to the complaint to the concerned vigilance officer; in response to which the respondent submitted two letters dated 25.09.2006 and 20.07.2007 stating his stand with regard to the matters adjudicated by him. In the meantime, certain letters dated 29.11.2007 and 02.04.2008 were exchanged between various officers of the department to indicate that some files relating to the matter were not traceable.

5. Be that as it may, on 09.07.2008 the Investigating Officer submitted his report with regard to the complaint; whereupon on 29.05.2012 the matter was referred to the Central Vigilance Commission (CVC) for first stage advice. In response, vide letter dated 06.06.2012, the CVC advised that major penalty proceedings be conducted against the respondent, as also urgent action on the same,

since the respondent was due to retire on 30.06.2012. Consequently on 25.06.2012, the respondent was served with a memorandum of charge dated 20.06.2012 initiating a departmental inquiry against him under Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964 and he was directed to submit his written statement within a period of 10 days. Vide letters dated 02.07.2012 and 16.07.2012, the respondent requested extension of time and sought the copies of relevant documents, to enable him to file his reply to the charge memo.

6. On 30.06.2012 however the respondent preferred O.A. No.2494/2012 before the Tribunal challenging the charge memo issued to him. Vide order dated 31.07.2012 the Tribunal dismissed O.A. No.2494/2012 as being premature and directed the respondent to file his reply before the disciplinary authority.

7. On 20.08.2012 the respondent approached this court by way of W.P.(C) No.5323/2012 challenging the Tribunal's aforesaid order dated 31.07.2012. By order dated 29.08.2012 this court directed the respondent to submit a detailed response to the charge memo; which the respondent subsequently did. However, having considered the reply rendered by the respondent, the disciplinary authority rejected the same vide order dated 12.12.2012. Thereupon, vide order dated 09.01.2013 this court disposed of W.P.(C) No.5323/2012 as having been withdrawn, granting liberty to the respondent to challenge the disciplinary authority's order dated 12.12.2012. In this backdrop on 27.01.2014 the respondent filed a fresh O.A. No.839/2014 before the Tribunal seeking to quash and set-aside charge memo dated

20.06.2012 as well as the disciplinary authority's order dated 12.12.2012, which O.A. came to be allowed by the Tribunal vide order dated 08.08.2018, which has led to filing of the present writ petition.

8. Mr. Anil Soni, learned Central Government Standing Counsel appearing for the petitioner, has contended that the Tribunal fell into error and has failed to appreciate that it is the settled position of law that a charge memo cannot become subject matter of challenge, since it does not adversely affect the rights of a delinquent employee unless it is established that it has been issued by an authority not competent to initiate disciplinary proceedings. Counsel has further argued, *inter alia* relying upon the decision of the Supreme Court in the case of **Secretary, Ministry of Defence and Ors. vs. Prabhash Chandra Mirdha** (2012) 11 SCC 565 that neither the disciplinary proceedings nor the charge-memo can be quashed at this initial stage since it would be premature to deal with the issues. The thrust of the submission is that the truth of a charge is for the inquiry officer and the disciplinary authority to determine; and a charge memo is therefore not ordinarily quashed prior to conclusion of departmental proceedings. Counsel has further submitted that, as held by the Supreme Court in **Secretary to Government, Prohibition & Excise Department vs. L. Srinivasan** (1996) 3 SCC 157, mere delay in initiation of disciplinary proceedings is also no ground for quashing a charge memo, since in certain cases it could take a long time to inquire into the matter. Counsel has further argued that the Tribunal has failed to consider that the respondent had filed an earlier O.A. No.2494/2012 seeking quashing of the same charge memo, which O.A. was dismissed by the Tribunal vide order

dated 31.07.2012; and W.P.(C) No.5323/2012 preferred against order dated 31.07.2012 before the High Court was later withdrawn by the respondent; whereas, now the respondent has again approached the Tribunal vide O.A. No.839/2014 for substantially the same relief, which O.A. ought not to have been allowed by the Tribunal since it was also barred by *res judicata*.

9. We have heard learned counsel for the parties; have perused the record; and have carefully considered the rival submissions.

10. In our view, the relevant facts which stand-out in the present case are the following:-

- (i) The charge memo proceeds on the basis of a complaint received sometime in January 1998. From what is recorded in the impugned order, a copy of the complaint so received was *not* made available to the respondent even in the course of proceedings before the Tribunal. The Tribunal further records that even the *complainant was not traceable*. This, the Tribunal records, on the basis of what is stated by the disciplinary authority in its order dated 12.12.2012;
- (ii) The complaint itself relates to a period when the respondent was acting in an adjudicatory capacity as Additional Collector of Customs in Bombay; and was adjudicating certain cases relating to imports, the issue being whether the imported goods were ash/dross/residue or waste and scrap. This was done sometime in the year 1993-94;

- (iii) The first report of investigation into the matter was made in the year 2008, purportedly for the reason that some of the orders passed by the respondent were then pending in appeals/reviews, which appeals/reviews reversed the orders passed by the respondent;
- (iv) The charge memo finally came to be issued to the respondent on 25.06.2012, just days before he was to retire from service on 30.06.2012.

11. Upon a conspectus of the foregoing facts and circumstances, what weighs with us are the following aspects of the matter:-

- (i) As per the record, neither the complaint nor the complainant are traceable;
- (ii) The order of the disciplinary authority concluded wrongdoing on the part of the respondent in relation to some orders passed by the respondent as an adjudicatory authority, which orders were subsequently reversed in appeal/review in accordance with the procedure prescribed by law;
- (iii) No loss of revenue has accordingly been caused to the exchequer;
- (iv) While the wrongdoing in question related to the period 1993-94, the complaint is said to have been received in 1998; the initial investigation was completed in 2008; and the charge memo was finally issued in 2012 i.e after a gap of some 19 years, on the eve of the respondent's superannuation from service.

12. While the law does dissuade both the Tribunal as well as the High Court from interfering in departmental proceedings by quashing a charge memo, on fundamental consideration that such action would be premature since the charge is still to be inquired into in departmental proceedings, there is no absolute bar in quashing a charge memo in an *ex facie* deserving case. We are also conscious of the position of law in relation to departmental action against an officer discharging judicial or quasi-judicial powers, in that the government is not precluded from taking disciplinary action against an officer exercising judicial or quasi-judicial powers, if such action is premised on misconduct of the officer in performance of his duties as an officer. The legal position on this aspect is settled *inter-alia* in the decision of the Supreme Court in ***Union of India & Ors. vs. K.K. Dhawan*** reported as (1993) 2 SCC 56 in which the Supreme Court has held as under:-

"28. Certainly, therefore, the officer who exercises judicial or quasi-judicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation

of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:

- (i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;*
- (ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;*
- (iii) if he has acted in a manner which is unbecoming of a Government servant;*
- (iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;*
- (v) if he had acted in order to unduly favour a party;*
- (vi) if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great".*

29. The instances above catalogued are not exhaustive. However, we may add that for a mere technical violation or merely because the order is wrong and the action not falling under the above enumerated instances, disciplinary action is not warranted. Here, we may utter a word of caution. Each case will depend upon the facts and no absolute rule can be postulated."

(Emphasis in original)

13. Being conscious of the foregoing position of law however, in our view, here is a case, where even if departmental proceedings were to be allowed to continue, to us it appears that it would be nearly impossible to bring home the charge of the respondent having acted wrongfully in his adjudicatory capacity. There is no material on record to suggest that the adjudicatory function was performed by the

respondent dishonestly, muchless for any ulterior motive or consideration. No proceedings under the Prevention of Corruption Act, 1988 or any other applicable penal law have been initiated against the respondent. Admittedly, neither the complaint nor the complainant are traceable. Absent these critical factors, the chance that the charge levelled against the respondent would be proved is beyond negligible. It is this reasoning that has also informed the Tribunal's order dated 08.08.2018.

14. In the above circumstances, we are of the view that it would be an exercise in utter futility if departmental proceedings against the respondent are permitted to go on. Such exercise would only be a waste of time, effort and resources; and harassment to the respondent; but nothing more.

15. In the above view of the matter, in exercise of powers of judicial review under Article 226 of the Constitution of India, we find no reason to interfere in the impugned order dated 08.08.2018; nor do we find any merit in the present writ petition.

16. Accordingly the writ petition, alongwith pending applications, if any, are disposed of; without however, any order as to costs.

ANUP JAIRAM BHAMBHANI, J.

G.S. SISTANI, J.

NOVEMBER 25, 2019

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