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

+ **W.P.(C) 2743/2011**

UNION OF INDIA & ANR

..... Petitioners

Through Mr. Ruchir Mishra, Mr. Mukesh Kr. Tiwari, Mr. Sanjiv Kr. Saxena, Mr. Ramneek Mishra and Mr. Abhishek Rana, Advocates

versus

DEVENDER KUMAR GOEL

..... Respondent

Through Mr. Rajesh Kumar Chaurasia, Ms. Garima Shukla, Mr. Pardeep Jatav and Mr. Sujeet Kumar, Advocates

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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29.11.2019

Dr. S. Muralidhar, J.:

1. The Union of India has filed this writ petition challenging an order dated 11th November, 2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('CAT'), allowing O.A. No. 1482/2007. The CAT has by the impugned order quashed the charge-sheet dated 4th August, 1997 as well as a penalty order dated 15th March, 2007 issued against the Respondent, with all consequential benefits.

2. While directing notice to issue in present petition on 28th August, 2011, the impugned order of the CAT was stayed.

3. This is a text book case of delay defeating justice. A government servant has been made to spend the last two decades of his service in defending himself against charges that were vague and unsustainable in law.

4. For the purpose of the present case, it requires to be noted that on 22nd November 1988, the Respondent was appointed as the Deputy Chief Assayer at the Madras Gold Collection-cum-Delivery Centre ('Centre') at Madras under the Ministry of Finance. In relation to his functioning in the said post, the Petitioners alleged that several irregularities had been noticed. He was served with a charge-sheet dated 4th August, 1997 containing 6 articles of charge, which could be summarised thus:

(i) Article I: That the Petitioner took away gold buttons weighing about 54 gms and removed approximately 149gms of gold recovered through process of departmental recovery.

(ii) Article II: That the Petitioner did not maintain any register regarding departmental recovery of gold since he took over charge on October 1989 until May 1990.

(iii) Article III: That the Petitioner cheated gold merchants who bought gold lot by delivering at lower percentage and cheated government by delivering gold at higher percent of fine gold contents.

(iv) Article IV: That the Petitioner, on a holiday, opened the Centre and the

main vault where the gold was stored singly without any dual control; no register was maintained recording the entry of persons inside the vault; the cash register in the Centre was not properly maintained.

(v) Article V: That the Petitioner accepted the job of preparation of silver medals for Tirumala Tirupati Devasthanam (TTD) even though there was lack of infrastructure facility in the Centre; he awarded the job of preparing silver medals to private firm at higher rates; fabricated the documentary evidence to show that while making selection of sub-contracting firm the procedure was followed; transaction with the sub contracting firm was not entered in the records books; payments were made from an unauthorized bank account; vouchers were not rechecked and also tampered with.

(vi) Article VI: That the Petitioner used unparliamentary language in official correspondence; failed to carry out lawful orders of the superior authority.

5. In terms of the charge-sheet, Articles I to V referred to the actions of the Petitioner not being in conformity with the instructions contained in a Government Order ('GO') dated 30th January 1991, which according to the Petitioners was issued to ensure that a proper procedure was followed at the Centre.

6. It requires to be straightaway noticed that the period involved as regards each of the above Articles of the charge was a period prior to the date of the above GO dated 30th January, 1991. Article I refers to events of 1990; Article II for the period between October, 1989 and May, 1990; Article III

refers to instances of 6th March, 1990 and 24th April, 1990; Article IV of an incident of 14th August, 1990; Article V, again, for events of October, November and December, 1990. In other words, in terms of the charge-sheet the Petitioner is supposed to have committed misconduct by not complying with a GO which was not in force or even issued at the relevant point in time.

7. To complete the narration of facts, the Enquiry Officer (EO) held that Articles I to IV were not proved. He held Article V to be proved and Article VI of the charge-sheet to have been partly-proved. When the matter travelled to the Disciplinary Authority (DA), he disagreed with the EO in respect of Articles I to IV by a disagreement note dated 23rd April, 2001. According to the DA, even the Articles I to IV should be held to be proved. The report of the DA with the disagreement note was then sent to the Respondent, who submitted a representation on 29th May, 2001.

8. The matter travelled to the UPSC for its advice. From the impugned order of the CAT dated 11th November, 2010, it is revealed that in the initial stage, an order was passed by the DA on 19th February 2003, imposing on the Respondent the major penalty of the reduction of pay by six stages for three years with a cumulative effect of postponing his future increments.

9. This was then challenged by the Respondent first before the CAT by filing OA No. 834/2004. In this first round of litigation, by an order dated 19th May 2004, the CAT allowed the aforementioned OA No. 834/2004 and quashed the penalty order. Essentially, this was on the ground of inordinate

delay in the initiation and completion of the disciplinary proceedings. It must be recalled here that for events of 1990, a penalty was ultimately being imposed 13 years later in 2003.

10. The Petitioners herein however challenged the said order of CAT before this Court by filing W.P.(C) 1594-96/2005. By an order dated 31st January, 2005, this Court remitted the matter to the CAT, since it had allowed the Respondent's application only on the ground of delay without expressing any view on the merits of the matter. Thus, the second round of litigation commenced.

11. In the second round, the CAT by its order dated 29th July, 2005 reached the same conclusion of quashing the charge-sheet and the disciplinary proceedings, but this time on the ground that the GO dated 30th January, 1991, which formed the basis of five of the six charges was prospective in nature. However, the CAT while quashing the penalty order gave liberty to the DA to pass a fresh order taking into consideration the order of the CAT.

12. The Petitioners then consulted the UPSC, which gave an advice by its letter dated 18th August, 2006 that the charge memorandum itself stood vitiated by a "serious legal infirmity". This legal infirmity was what was pointed out by the CAT, viz., that in five out of six charges, the allegations were based on an alleged violation of the GO dated 30th January, 1991, which was non-existent at the material time, that is the period between 1989 and 1990, when a substantial part of the misconduct was alleged to have been committed. The UPSC, therefore, advised the Petitioners that the

appropriate course would be for the DA to issue a fresh order to drop the disciplinary proceedings, without prejudice to further action by the DA.

13. However, the Petitioners were not willing to relent. The matter was ‘re-referred’ to the UPSC, which reiterated its advice by its letter dated 29th November, 2006. It must be recalled that by this time, 16 years had elapsed since the alleged misconduct. The Petitioners were stubborn in disregarding the advice of the UPSC. According to the Petitioners, there was no need to drop the disciplinary proceedings already initiated and all that was required to be done was that an appropriate penalty had to be imposed on the Respondent. According to the Petitioners, the action of the Respondent ‘cast doubt on his integrity as a Government servant’ and held that the earlier penalty already imposed was required to be reiterated. This was done by an order dated 15th March, 2007.

14. Thus, then commenced the third round of litigation with the Respondent having to file OA No. 1482/2007. By the impugned order the CAT allowed the said OA and quashed the charges essentially on the ground that the disagreement note of the DA was vague and did not reveal anything having been added in relation to Articles V and VI. The disagreement note, according to the CAT, did not reflect “any consideration having been given to the specific defence averments by the CO recorded at length separately for each article of charge in the enquiry report”.

15. According to the CAT, the language of the disagreement note was couched “in terms of finality of expression, rather than indicating

tentativeness of use with an open mind.” The CAT also noted that such belated action against a Government Servants was “a source of mental agony and harassment” besides “not being in public interest”.

16. Referring to the judgment in *P.V. Mahadevan v. M.D. Housing Board (2005) 6 SCC 636* the CAT reiterated that “the fact of the suffering of the employee due to protracted disciplinary proceedings was much more than the punishment in that case”. The CAT found the disregard of the advice of the UPSC to be unreasonable and unsustainable in law. It was of the view that the opinion expressed by the Committee of Secretaries had influenced the ultimate decision of the DA, which sought to justify the imposition of the penalty on the grounds of ‘general prudence’, the same not being charge in the case.

17. This Court having heard the submissions of Mr. Ruchir Mishra, learned counsel for the Petitioners and Mr. Rajesh Kumar Chaurasia, learned counsel appearing for the Respondent, is unable to find any ground to disagree with the CAT in the instant case.

18. The Court has carefully perused the report of the EO, the disagreement note of the DA and several orders passed by the CAT in the present matter. There is no answer by the Petitioners to the fundamental flaw pointed out by the CAT on more than one occasion, and the UPSC on two occasions, that five out of the six charges were based on the alleged violation of a GO dated 30th January, 1991, which plainly was not even in place when the alleged acts of misconduct by the Respondent took place.

19. Mr. Mishra tried to defend these charges by stating that there was a practice already being followed in the Mint, which was merely codified by the GO dated 30th January, 1991. However, what is critical is that it was incumbent on the Petitioners to show that the Respondent was somehow aware of that practice, and despite being aware of it, did not adhere to it. More seriously, that is not even stated in the charge memorandum. Therefore, apart from the fact that reliance has been placed on a GO which was not even in existence, the charge did not specify the practice being followed in the Mint which had not been complied with by the Respondent.

20. The Court also finds that the very wording of Articles V and VI is vague. In alleging that the Petitioner had deviated from the procedure by sub-contracting the job of preparation of silver medals to a private firm “at very high rates”, the charges fail to specify what the resultant loss was to the Government. More importantly, even the partly proved Article VI and the proved Article V lose all meaning, considering that the Respondent has had to face disciplinary proceedings for two decades without any end in sight.

21. As rightly pointed out by the CAT, in matters like this delay defeats justice. The process itself becomes the punishment. Given that in the last two decades of his career as a Government servant, the Respondent has had to spend a substantial portion of his time and resources in trying to defend himself against such vague charges, the agony and harassment can be well imagined. It destroys the morale of not just that officer, but of an entire workforce who see their colleague go through such harassment. Even in this

Court, the Petitioners have relentlessly pursued the Respondent making him defend himself in Court proceedings at great cost.

22. The following observations of the Supreme Court in *P.V. Mahadevan* (*supra*) are apposite as far as the present case is concerned:

“Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.”

23. For all of the aforementioned reasons, the Court finds no grounds made out for interfering with the impugned order of the CAT. The petition is accordingly dismissed with costs of Rs.20,000/- which will be paid by the Petitioners to the Respondent within four weeks from today.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 29, 2019

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