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

+ **W.P.(C) 7894/2015**

JAWAHAR SINGH, EX IPS Petitioner
Through Mr. Jawahar Singh, Petitioner in
person
versus

UNION OF INDIA & ORS. Respondents
Through Mr. Amit Mahajan, CGSC with
Mr. Raghav Sethi, Advocates for
Respondent/UOI

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

% **ORDER**
21.11.2019

1. The Petitioner, a former Special Inspector General of Police (IGP) of Maharashtra has in this petition challenged an order dated 1st July, 2015 passed by the Central Administrative Tribunal (CAT), Principal Bench, New Delhi dismissing his OA No.3626/2011 but with the directions that the departmental proceedings against him should be completed within three months from the date of production of a certified copy of the CAT's order.

2. The Petitioner is an IPS officer of the 1986 batch, allocated to the Maharashtra cadre. He was promoted as IGP in 2006 and subsequently transferred as IG (Prisons), Central Region, Aurangabad where he was working since 1st December, 2010. By an order dated 25th April, 2011 he was placed under suspension.

3. A charge sheet was issued to him on 6th June, 2011 containing three articles of charge as under:

i) that he had ordered shifting of 21 convicts from Nasik Road Central Prison to Aurangabad, Central Prison ignoring Rules 3 and 4, Chapter 35 of the Maharashtra Prison Manual without mentioning the reasons for transfer. Thus abusing his power and official position and displayed utter lack of integrity in violation of Rule 3 of the All India Services (Conduct) Rules, 1968 (AIS) Rules.

ii) He gave an oral order to the Additional Superintendent of Prisons, Aurangabad to bring out 21 convicts from the Aurangabad Prison on 22nd February, 2011 which act compromised the security of the prison. Thus displaying lack of professional integrity and devotion to duty violating Rule 3 of the AIS Rules.

iii) That despite directions by the Additional DG (Prisons) on 22nd February, 2011 not to hold the Press Conference, a CD recorded by the Petitioner was shown to be group of reporters in his office on 23rd February, 2011 which was in turn on various local and state level TV channels. This showed lack of professional integrity and devotion to duties and was in violation of Rule 3 of the AIS Rules.

4. When the Petitioner did not receive any response to his representations against the suspension, he filed OA No. 381/2011 before the Mumbai Bench of the CAT challenging his suspension. The said application was disposed of with liberty to the Petitioner to approach the CAT if an adverse order was

passed by the Appellate Authority in his appeal under Rule 16 of the AIS (Discipline and Appeal) Rules, 1969.

5. In CWP No. 6193/2011 filed by the Petitioner thereafter the Bombay High Court by an order 23rd August, 2011 directing the Respondents to decide his representations within four weeks. Meanwhile by an order dated 22nd July, 2011 the Petitioner suspension was extended by a period of 180 days. By an order dated 5th October, 2011 his appeal was rejected.

6. Assailing the above two orders apart from the original order placing him under suspension, the Petitioner filed OA No. 3626/2011 before the CAT, Principal Bench, this time seeking the quashing of the charge sheet by the orders placing him under suspension and extending the suspension and rejected his appeal there against and for granting all consequential benefits as admissible to the Petitioner.

7. It must be noted that during the pendency of the petition before the CAT, the Petitioner superannuated on 31st December, 2012.

8. In the impugned order dismissing his application, the CAT held to the following conclusions:

i) since the suspension of the Petitioner had been revoked with effect from 26th July, 2012 it did not survive as an issue to be decided.

ii) the Petitioner had failed to demonstrate that the charge memo was issued as a result of *malafides*.

iii) the ground that the suspension order was issued by an authority not empowered to do so was rejected.

iv) the charges for which upon the inquiry was being held against the Petitioner were not vague. Whether in fact the Petitioner had complied with the rules of the Maharashtra Prison Manual or acted in violation of the AIS Rules was within the realm of the departmental proceedings.

v) The departmental proceedings which had commenced were held up for want of Petitioner's cooperation. Since the scope of interference with such departmental proceedings was limited, and although the CAT was inclined to quash the proceedings which are already underway on the ground of delay, in view of the OM dated 29th December, 2012 issued by the Government of India requiring departmental proceedings to be concluded within six months from the date of issuance of the charge sheet, the CAT directed that the departmental proceedings should be concluded within a period of three months from the date of production of the certified copy of the impugned order.

9. Notice was issued in the present petition on 25th August, 2015. It must be noted that while the State of Maharashtra as Respondent No.2 the DG (Prison) in Mumbai is Respondent No.3. Respondents No.4, 4A and 5 are three other IPS officers.

10. The grievance of the Petitioner in the present petition is that despite the

inordinate delay in concluding the disciplinary proceedings, the CAT did not quash the charge sheet. On 14th September, 2016 it was submitted to this Court on behalf of Respondents No.2 & 3 that the Petitioner was not cooperating in the inquiry. The Court recorded the statement of the Petitioner who appears in person that he would make himself available on the next date of hearing before the Inquiry Officer.

11. On 3rd November, 2016 the Court noted a submission on behalf of the Petitioner that prior to his being placed under suspension it was mandatory to have held a preliminary inquiry. The Court noted that such submission was not addressed in the impugned order of the CAT as it had not been raised in the OA or orally argued.

12. It appears that on 9th January, 2017 the Court's attention was drawn to the Petitioner's written submission before the CAT. On 11th July, 2017 it was noted that although the matter was pending since 2015, Respondents No.2 to 5 had yet not filed a reply. On 1st November, 2017 it was noted that such reply was filed "only yesterday". Rejoinder was asked to be filed within four weeks. On 22nd March, 2018 the delay in filing the rejoinder was condoned.

13. On 12th March, 2019 the Court passed the following order:-

"The grievance of the petitioner is that even though the Central Administrative Tribunal found that the enquiry proceeding had been delayed, the Tribunal while passing the impugned order, has granted three months time to the respondent to conclude the enquiry on the ground that the petitioner had been taking time in the enquiry

proceedings. Impugned order was passed by the Tribunal on 1.7.2015. Since then, nearly four years have elapsed, but the enquiry has still not been concluded.

Counsel for the respondent has tendered a document in Court, claiming the present status of the departmental enquiry. However, the same shows the status of the Departmental enquiry only till 13.10.2017 and not thereafter. On the other hand, the petitioner has filed his own status report, wherein he states that on 9.1.2018 he had appeared when certain witnesses were examined. Counsel for the petitioner further submits that thereafter no proceedings were conducted by the enquiry officer despite repeated e-mails requesting for fixing the dates for further proceedings.

In the aforesaid background, we direct the respondents to file an affidavit within one week disclosing the up to date status of the enquiry proceedings. Counsel for the respondent seeks two weeks time to file affidavit on the ground that the dates of General Elections having been declared. We are not inclined to grant two weeks time, considering the circumstances of the case. On the next date of hearing respondent shall also produce before this Court complete enquiry proceedings in a sealed cover.

List on 26.3.2019.

It is made clear that no further adjournment shall be granted.

DASTI under the signatures of the Court Master.”

14. Pursuant to the above order, an affidavit was filed by the Respondents on 19th March, 2019 stating that between 2016 to 2017 the Petitioner was called six times for hearing but he remained absent. It was stated that oral evidence witnesses had been recorded on 11th and 13th October and 4th December, 2007. It is stated that on 9th January, 2018 the Petitioner remained present as per the prosecution witnesses and “normal hearing was conducted”. It is

stated that an E-mails sent by the Petitioner on 5th June, 9th July, 13th September and 18th September, 2008 he did not stop with requesting that hearing be fixed but also made allegations against inquiry officer, asked for new documents and requested for summoning officials of the Home Department, who were not in the original list of witnesses. Accordingly further hearings could not be conducted. It is further contended that the original relevant documents and files of departmental inquiry of the Petitioner got burnt in a fire accident that took place in the Mantralaya on 21st June, 2012. It is stated that on 16th July, 2016 the Home Department had instructed the Inquiry Officer “to conduct the proceedings on the basis of documents which are available with his department”.

15. After perusing the said affidavit, this Court on 23rd April, 2019 passed the following order:

“The respondents have filed an affidavit in terms of our order dated 12.03.2019. A perusal thereof shows that the petitioner has time and again not been participating in the enquiry proceedings on the ground that he require certain documents from the respondents. Firstly, we may observe, that merely because the petitioner makes a demand for certain documents from the respondents, which may or may not have been supplied, cannot be a basis for the petitioner to not join the enquiry proceedings. The stand of the respondents in their affidavit is that the documents sought by the petitioner were contained in a file which has got burnt in a fire at the Mantralaya. The petitioner is aware of that position and yet he is insisting on supply of those documents. Even if the documents demanded by the petitioner have not been supplied to him, he is still obliged to join the proceedings. The effect of the documents that the petitioner seeks, and which may have not been supplied by the respondents, would be assessed only after the enquiry proceedings are complete and it is not at this stage, that either the Tribunal or this Court can be called upon to go into the said issue.

The respondents have stated that if the petitioner cooperates, they would complete the enquiry proceedings within three months.

We, therefore, direct the respondents to complete the enquiry proceedings positively within the next three months. The enquiry proceedings would be held on a day-to-day basis and the petitioner is directed to cooperate in the enquiry. In case the petitioner does not participate, the Enquiry Officer shall be free to proceed ex-parte against him. We have made it clear to the petitioner that in case he will not participate in the enquiry proceedings, he shall be doing so entirely at his own peril and he cannot at any subsequent stage raise a grievance that he has been proceeded ex-parte. The record of the enquiry proceedings held till date has been produced in a sealed cover. The same have been perused and returned.

List on 21.11.2019.”

16. More than three months have elapsed since April 23, 2019. Today when the matter was called out, none appeared on behalf of Respondents No.2 to 5. The matter was then passed over. Even on the second call none appeared on their behalf. There is no affidavit or any document to place on record by Respondents No.2 to 5 informing the Court of the present status of the inquiry proceedings. Today's date was fixed in the presence of counsel for Respondents No.2 to 5. Despite this and despite a pass over not even proxy counsel was present on their behalf to inform the Court of the present status.

17. On his part the Petitioner who appears in person informed the Court that if he did participate in the inquiry hearings that took place after 23rd April, 2019. According to him, far from concluding within four months thereafter, the inquiry continued and concluded only around 10th October, 2019. Although more than a month has lapsed since then, he is not aware of the

submission of the inquiry report. Learned counsel for Union of India is also not aware if the enquiry has concluded.

18. In the circumstances outlined above, the Court is left with no option but to conclude that the inquiry proceedings have not yet concluded. The Court notes that the OM dated 29th November, 2012 of the Central Government requires inquiry proceedings to be concluded within six months from the date of appointment of the Inquiry Officer failing which the IO should submit reasons for delay to the disciplinary authority in writing. In the present case even by the time the matter was finally heard before the CAT i.e. as of 1st July, 2015 the inquiry was nowhere near completion. The CAT gave the Respondents No.2 & 3 three months time from the date of his order i.e. 1st July, 2015 to conclude the inquiry. However, the same was the position nearly four years thereafter i.e. 23rd April, 2019. In other words, for nearly over four years after the charge sheet was served upon the Petitioner the inquiry did not conclude.

19. The time fixed by this Court on 23rd April 2019 was the outer limit, considering that eight years had elapsed since the charge sheet was served on the Petitioner. It was not expected that Respondents No.2 & 3 would not conclude the inquiry even by the said extended period.

20. It is apparent that there was a disobedience of the order dated 23rd April, 2019 passed by this Court since the inquiry was not concluded within three months thereafter. Even today position is no different.

21. In these extra ordinary circumstances, the Court is left with no option but to quash the charge sheet and the inquiry proceedings which have remained inconclusive as of date. It requires to be noticed that at no stage after 23rd April, 2019 have Respondents No.2 & 3 approached this Court seeking extension of time for concluding the inquiry.

22. For all of the aforementioned reasons, the charge sheet served upon the Petitioner on 6th June, 2011 and the inquiry proceedings are hereby quashed. The Petitioner having already superannuated on 31st December, 2012 the only relief that can now be granted is to direct all consequential benefits to be granted to the Petitioner on the basis of the charge sheet having been quashed. The necessary orders by way of compliance be issued not later than 12 weeks from today.

23. The petition is disposed of in the above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 21, 2019
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