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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 4845/2018 CM APPL. 18648/2018 (Stay), CM APPL. 18649/2018 (To file Additional Documents)**

LIEUTENANT GOVERNOR DELHI & ORS Petitioners

Through: Ms. Ruchira Gupta and Ms. Mona Sinha, Advocates.

versus

NARINDER KUMAR SHARMA Respondent

Through: Mr. G. Natarajan and Mr. T.N. Durga Prasad, Advocates.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
% **12.02.2020**

1. The Petitioners have challenged the impugned judgment and final order dated 25th October, 2017 in OA No.3716/2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('CAT') by which the OA filed by the present Respondent was allowed. The Petitioners, in fact, are Government of NCT of Delhi.

2. The Respondent had retired from the post of Superintendent Engineer from Irrigation and Flood Control Department of Government of NCT of Delhi on 30th September, 2016. Initially, he had joined as Junior Engineer (Civil) in 1986. The Anti-Corruption Branch of the Petitioners had received

a complaint from father of the Respondent regarding disproportionate assets and unauthorised documents held by the Respondent which amounted to grave misconduct warranting disciplinary actions. The said complaint was forwarded to Petitioner no.1, who initiated a departmental inquiry.

3. An inquiry report was submitted on 20th August, 2016. The inquiry committee had found various allegations detailed in the complaint to be true. It forwarded the same for appropriate departmental action. Immediately thereafter, the Statement of Article of Charges was framed against the Respondent and the said charges along with Memorandum of Charges ('MoC') dated 28th September, 2016 were issued to the Respondent and forwarded to him by a forwarding letter dated 30th September, 2016.

4. As per the Petitioners, the said MoC was duly received by the Respondent, who preferred OA No. 3716/2016 before the CAT challenging the action of the Petitioners. A counter reply was filed by the Petitioners to which rejoinder was filed by the Respondent.

5. By the final judgment an order dated 25th October, 2017 the said OA filed by the Respondent was allowed. The CAT quashed the MoC and the subsequent proceedings initiated by the Petitioners.

6. Aggrieved by the impugned order dated 25th October 2017, the present writ petition has been filed on the grounds that CAT has committed an error by allowing OA without appreciating the correct facts and circumstances of the case; OA before CAT was premature; no petition for quashing of Article

of MoC is maintainable; CAT had wrongly relied upon the judgment of the Apex Court in the matter of *P.V. Mahadevan vs. MD, T.N. Housing Board (2005) 6 SCC 636* as the said judgment was *per incuriam*; the CAT has ignored the fact that the Respondent was charged with gross misconduct and there was no inordinate delay in initiating the proceedings and hence it has been submitted that the impugned judgment is bad in the eyes of law and CAT has exceeded its jurisdiction and has exercised the same with material irregularity. Hence, it is prayed that the impugned order dated 25th October, 2017 passed by the learned CAT be quashed and Petitioners be allowed to continue with the departmental enquiry as contemplated by the MoC dated 28th September, 2016.

7. Notice in this matter was issued on 6th July, 2018. Pursuant thereto, the Respondent has filed a counter affidavit wherein a preliminary objection has been raised that he was allowed to superannuate on attaining the age of 60 years on 30th September, 2016 and that till that date no charge-sheet was issued to him. He contends that the assertion of the Petitioners that the Respondent was served with the MoC by way of pasting on the door of his residence is wrong as the said MoC was pasted on the “mumty” on the third floor of the residence of the Respondent which is at terrace level and it is a not a residential area and that it was only after a fortnight that it came to the notice of the Respondent.

8. He further denied the allegation that he was avoiding being served a copy of the MoC before his superannuation as due to some health problem he had taken casual leave on 29th September, 2016 and 30th September, 2016 and he

had submitted the requisite medical documents. The MoC itself is dated 28th September, 2016 but the forwarding letter is dated 30th September, 2016 and it was received by the Respondent by registered post on 3rd October, 2016, i.e., three days after his retirement.

9. The Respondent stated that he joined Department of Irrigation and Flood Control of Government of NCT of Delhi on 22nd February, 1986 and prior to this he was working with DDA from 3rd January, 1983 so at the time of issuance of his passport in the year 1977 he was not in Government service. Moreover, the said issue relates back to more than 30 years and no MoC can be issued after such a long delay.

10. The Respondent denied the allegation that he travelled abroad from 17th September, 2003 to 28th September, 20003 as he had no passport with him as it was lost. He had lodged report with the police and had sought permission to apply for the fresh passport in the year 2003 and that his leave record also proves that he had not availed any kind of leave during that period. As per the Respondent, there is a family feud going on with his own father who has made lot of allegations against him but on scrutiny no substance was found in the said allegations and the Petitioners, with the sole intention of harassing the Respondent, had issued the MoC relating to the passport issue, which was more than 30 year old.

11. In his parawise reply, the Respondent denied the applicability judgment of the Supreme Court in the matter of *State of Madhya Pradesh v. Bani Singh 1990 (Supp) SCC 738* as the same was *per incuriam* and bad in law.

He reiterated that there was undue and unexplained delay in initiating the disciplinary proceedings and issuance of the Charge-Sheet and CAT was well within its jurisdiction and totally justified in quashing the departmental proceedings against him. The Respondent further stated that the name of the complainant is Shri Het Ram Sharma and not one Net Ram Sharma. He denied any misconduct on his part and stated that as no pecuniary loss was caused to the Government at any point of time, there was no question of any misconduct on the part of the Respondent. According to the Respondent, the case law relied upon by the Petitioners relate to an employee in service and not a pensioner like him. On this basis, he has sought that the writ petition filed by the Petitioners may be dismissed with costs. Rejoinder affidavit was filed by the Petitioners to the counter affidavit filed by the Respondent.

12. We have heard the learned counsel for the parties. The Statement of Article of Charges issued to the Respondent by the Petitioners is reproduced hereunder:

"Article-I

That the said Sh. Narinder Kumar Sharma, Superintending Engineer, while functioning as Assistant Engineer (Civil) in the Irrigation & Flood Department, Govt. of NCT of Delhi, obtained Indian Passport in the year 1987, without obtaining any no objection certificate from the department.

By the above acts of omission & commission, the aforesaid Sh. Narinder Kumar Sharma, Superintending Engineer exhibited lack of absolute integrity and devotion to duty, which is unbecoming of a Govt. Servant, thereby violating the provisions of Rule 3 of CCS (Conduct) Rules, 1964.

Article-II

That the said Sh. Narinder Kumar Sharma, Superintending Engineer, while holding the aforesaid post during the aforesaid period, committed grave misconduct in as much as he got renewed his Indian Passport in the year 1997, without - obtaining no objection certificate from the Department.

By the above acts of omission & commission, the aforesaid Sh. Narinder Kumar Sharma, Superintending Engineer exhibited lack of absolute integrity and devotion to duty, which is unbecoming of a Govt. Servant, thereby violating the provisions of Rule 3 of COS (Conduct) Rules, 1964.

Article - III

That the said Sh. Narinder Kumar Sharma, Superintending Engineer, while holding the aforesaid post during the aforesaid period, committed grave misconduct in as much as while getting his passport renewed in the year 1997, he furnished wrong/false information to the Passport Authorities, mentioning his profession as "private practice and coaching.

By the above acts of omission & commission, the aforesaid Sh. Narinder Kumar Sharma, Superintending Engineer exhibited lack of absolute integrity and devotion to duty, which is unbecoming of a Govt. Servant, thereby violating the provisions of Rule 3 of CCS (Conduct) Rules, 1964.

Article - IV

That the said Sh. Narinder Kumar Sharma, Superintending Engineer, while holding the aforesaid post during the aforesaid period, committed grave misconduct in as much as he travelled abroad during the period 17/09/2003 to 28/09/2003, without any permission from the Competent Authority.

By the above acts of omission & commission, the aforesaid Sh. Narinder Kumar Sharma, Superintending Engineer exhibited lack of absolute integrity and devotion to duty, which is unbecoming of a Govt. Servant, thereby violating the

provisions of Rule 3 of CCS (Conduct) Rules, 1964.

Article - V

That the said Sh. Narinder Kumar Sharma, Superintending Engineer, while holding the aforesaid post during the aforesaid period, committed grave misconduct in as much as he remained absent from duty unauthorizedly during the period w.e.f 17/09/2003 to 28/09/2003.

By the above acts of omission & commission, the aforesaid Sh. Narinder Kumar Sharma, Superintending Engineer exhibited lack of absolute integrity and devotion to duty, which is unbecoming of a Govt. Servant, thereby violating the provisions of Rule 3 of CXS (Conduct) Rules, 1964.

Article-VI

That the said Sh. Narinder Kumar Sharma, Superintending Engineer, while holding the aforesaid post during the aforesaid period, committed grave misconduct in as much as he gave a wrong/false statement to the officers of Anti- Corruption Branch, stating that he and his wife were neither having passports nor travelled abroad, although he as well as his wife were having passports and travelled abroad.

By the above acts of omission & commission, the aforesaid Sh. Narinder Kumar Sharma, Superintending Engineer exhibited lack of absolute integrity and devotion to duty which IS unbecoming of a Govt. Servant, thereby violating the provisions of Rule 3 of CCS (Conduct) Rules. 1964".

13. It is seen that the first charge is of the year 1987 and on the date when the MoC was issued a period of about 30 years had already passed. Similarly, Article II of the Charges is again of the year 1997 which is about two decades old. Article III is also of the year 1997 which is about two decades old. Article IV is a 13 year old charge and it relates to Respondent

stated to have travelled abroad without any permission from the Competent Authority in 2016. When the MoC was being drawn, 13 long years had already passed. Article VI is again based upon the earlier charges.

14. The CAT has observed as under in respect of these charges and has allowed the OA filed by the present Respondent in the following terms:

“Admittedly, no action was taken against the applicant during all these years. Even for absence from duty in the year 2003, no proceedings, not even a show cause notice seems to have been issued to the applicant. The present charge sheet has been issued by the respondents on the basis of complaint lodged by the father of the applicant on 21.09.2016 as is evident from the counter affidavit Para (h and i). No explanation has been tendered in the reply regarding inordinate delay in initiating disciplinary proceedings against the applicant. The delay in such a case particularly when the charge memo has been issued on the date of retirement is totally unwarranted and impermissible in law. Hon'ble Supreme Court in the case of *State of Madhya Pradesh v. Bani Singh and Another*, 1990 Supp. SCC 738 has held as under:

"4. ... There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

For the above reasons, this OA is allowed. The impugned charge memo and subsequent proceedings, if any, are hereby quashed. Any pending proceedings are also declared to be illegal. No order as to costs"

15. We do not find any infirmity or illegality in the order passed by the learned CAT which is based upon the sound legal proposition propounded

by Hon'ble Supreme Court in *P.V. Mahadevan v. MD, T.N. Housing Board (2005) 6 SCC 636*. The CAT has rightly viewed the MoC issued to the Respondent against the background of the inordinate delay in issuing it and, therefore, found the impugned MoC and the proceedings subsequent thereto, as being liable to be quashed.

16. In view of the above, the writ petition filed by the Petitioners is hereby dismissed. The pending applications are also disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

FEBRUARY 12, 2020

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