Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 3349/2022

Thursday this the 2nd day of March, 2023

Hon'ble Mr. Justice Ranjit More, Chairman
Hon'ble Mr. Mohd Jamshed, Member (A)

Veerabhadram Vislavath
Son of Bhav Singh Vislavath
Date of Birth: 11.11.1976(age 46 years)
Working as: Deputy Commissioner of Income Tax,
IRS(Group 'A' post) in
Government of India, Ministry of Finance,
CBDT, Department of Revenue, new Delhi – North Block
Residing at E-37, Darbhanga House, L.T. Colony, Pedder
Road, Pedder Road, Mumbai 400026, State of Maharashtra

...Applicant

(By Advocate: Mr. R G Walia)

Versus

1. Union of India
Through the Secretary, Government of India
Ministry of Finance, Department of Revenue, North Block,
New Delhi – 110001

2. The Chairman
Central board of Direct Taxes
North Block, New Delhi – 110001

3. Principal Chief Commissioner of Income Tax
3rd Floor, Aaykar Bhavan, M K Road, Churchgate
Mumbai – 400020

4. Ms. Abha Kala Chanda, Inquiry Officer,
Commissioner of Income Tax(DR-1&2), Income Tax
Appellate Tribunal, Picup Bhawan, 5th Floor, Gomti Nagar,
Lucknow, Aaykar Bhawan, 5-Ashok Marg, Lucknow –
226001

5. Union Public Service Commission

Through its Chairman/Secretary, Dholpur House
Shahjahan Road, New Delhi - 110069

...Respondents

(By Advocate: Mr. R V Sinha & Mr. S N Verma)

Reserved on: 06.02.2023
Pronounced on: 02.03.2023

ORDER

Per: Mohd Jamshed, Member(A)

The applicant is an IRS Officer of 2011 Batch. It is submitted that he has had an unblemished service record. Since 2017 onwards, he was having matrimonial dispute with his wife and a number of complaints etc. were made by both the parties in this regard. The applicant had also filed for divorce. The applicant submits that he was also transferred from Mumbai to Uttar Pradesh by the respondents vide transfer order dated 04.05.2018, which was later stayed by the order passed by the Tribunal on 08.05.2018. Subsequently on 23.08.2018, a complaint was filed against the applicant under the POCSO Act, 2012 by his wife and her family members. The applicant on 14.09.2018 was taken into judicial custody on the basis of this compliant and was placed under suspension vide order dated 14.09.2018. He was subsequently issued a departmental chargesheet on 04.01.2019 without any fact finding enquiry having been conducted. During the enquiry the applicant remained under suspension, which was extended from time to time.

The special case number 641/2018 was concluded on 17.03.2021 whereby the applicant was acquitted. This acquittal was in the criminal case on the basis of which he was placed under suspension and the charge memo was issued. Despite having been acquitted in the criminal case No. 641/2018 by the learned Special Court, the respondents continued with the suspension of the applicant. In the meanwhile, vide letter dated 12.08.2022, he was supplied with the impugned inquiry report dated 10.03.2021. He submitted his representation against the same on 12.08.2022. It is submitted that the Tribunal allowed OA No. 21/2022 vide order dated 23.08.2022 directing the respondents to reinstate the applicant into service from 14.05.2022, however, he has not yet been reinstated. The present OA has been filed seeking the following reliefs:

> "(a) This Hon'ble Tribunal may graciously be pleased to callfor records and proceedings which led to the issuance of the impugned Inquiry Report dated 10.03.2021 i.e. Annex A1 and after going through its propriety, legality and constitutional validity be pleased to quash and set aside the same.
> (b) This Hon'ble Tribunal may be pleased to call for the records which led to the issuance of the impugned Chargesheet dated 01.04.2019 and after going through its propriety, legality and constitutional validity be pleased to quash and set aside the same.
> (c) This Hon'ble Tribunal may be pleased told and declare that the impugned Inquiry Officer's report dated 10.03.2021 is absolutely illegal and wrong and accordingly quash and set aside the same with further directions to the respondents not to act on the said report at all.
> (d) Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the case.
> (e) Costs of this Original Application may be provided for."

2. The applicant has primarily drawn the attention of this Tribunal to the impugned inquiry report dated 10.03.2021 to look into its legality and constitutional validity, and is seeking to set aside the same. He is also seeking relief in terms of quashing and setting aside of the charge memorandum dated 04.01.2019. It is the contention of the applicant that the impugned departmental chargesheet has been issued to him on the allegation which is entirely based upon the charge in criminal case No. 641/2018 in which he has been finally acquitted vide judgment dated 17.03.2021. He also contends that during the inquiry no documents as stated in the annexure of the charge memorandum were exhibited and no listed witnesses were produced before the Inquiry Officer for cross examination. The Inquiry Report has been prepared by the Inquiry Officer entirely on the basis of the Presenting Officer's brief which was never supplied to him and is therefore perverse and illegal.

3. In support of his contentions, the applicant has relied upon the following judgments:

1. **Union of India & Ors. Vs. J Ahmed** (1979) 2 SCC 286

2. **Inspector Prem Chand vs Govt of NCTD & Ors.** (2007)4 SCC 566

3. **A L Kalra vs Project and Equipment Corporation of India Ltd.** (1984)3 SCC 316

4. **P V Mahadevan vs. Md. T N Housing Board** (2005) 6 SCC 606

5. **Roop Singh Negi vs Punjab National Bank & Ors.** (2009)2 SCC 570

6. **Sher Bahadur vs Union of India & Ors.** (2002)7 SCC 142

7. **Union of India & Ors. Vs. Veerabhadram Vislavath** WP(L) No. 33749/2022

8. **Satyendra Singh Gujjar vs. Union of India & Ors.** WP No. 12403/2018

9. **Anil Mishra vs Union of India & Ors.** OA NO. 369/2006

5. The respondents have filed their counter affidavit opposing the OA. It is submitted that disciplinary proceedings were initiated against the applicant vide charge memo dated 04.01.2019 for misconduct under POCSO Act, 2012. Although the applicant has been acquitted in the POCSO case on 17.03.2021, this does not necessarily require closing of the departmental proceedings against him, as it is well established that the standard of proof required in departmental proceedings differs materially from the standard of proof required in criminal trial. Whereas the standard of proof required in departmental proceedings is that of preponderance of probability, proof beyond reasonable doubt is required in criminal proceedings. It is further submitted that the inquiry has been completed, and the disciplinary authority is yet to take a final decision on the same and therefore, at this stage the OA seeking the quashing of disciplinary proceedings is premature.

6. Heard Shri R G Walia, learned counsel for the applicant and Shri R. V. Sinha, learned counsel for the respondents.

7. The applicant is an IRS Officer of 2011 batch, who was posted at Mumbai. He was having domestic and matrimonial dispute with his wife and her family members. A special criminal case No. 641/2018 was registered against him under section 376(2)(i), 323 and 506 of the Indian Penal Code(IPC) and Section 4, 6, 8 and 12 of the POCSO Act, 2012. He was arrested on 05.09.2018 by Gamdevi Police Station, Mumbai in connection with the same and his custody was obtained from the Session Court till 10.09.2018, which was further extended till 24.09.2018 . His bail application was also rejected by the Session Court on 17.09.2018. Finally, he was released from custody on 07.10.2018. These criminal proceedings continued against him and finally vide order dated 17.03.2021 by the court of Special Judge under POCSO Act, 2012, the applicant was acquitted vide section 235(2) of the CrPC for the offences punishable under 376(2)(i), 323 and 506 of IPC and under Section 4, 6, 8 and 12 of POCSO Act, 2012. It is, however, important to note that the applicant was acquitted from the said charges by invoking the provisions of section 235(2) of CrPC as the parties arrived at compromise and the complainant had no objection for quashing the proceedings against the accused. In the meanwhile, the applicant was placed under suspension and a charge memorandum dated 04.01.2019 was issued to him. It is evident from the Article of Charge that on the information given by the Sr. Police Inspector, Gamdevi Police Station, Mumbai vide letter dated 06.09.2018, the applicant was arrested on 05.09.2018 in connection with the Special Criminal Case No. 641/2018 under POCSO Act, 2012 and his custody was obtained from the session court till 10.09.2018. Subsequently it was informed that the judicial custody was further extended till 24.09.2018 and he was released from custody on 07.10.2018. The statement of imputation of misconduct supporting the article of charge in Annexure II of the Charge Memorandum, is basically the reproduction of the same article of charge as given in Annexure I.

8. The list of documents by which of Article of Charge farmed against the applicant is proposed to be sustained includes the copy of letter dated 06.09.2018 by Sr. Police Inspector, Gamdevi, copy of letter dated 11.09.2018 by Sr. Police Inspector, Gamdevi and, order dated 14.09.2018 regarding deemed suspension. It is also observed from the list of witnesses that there are only two witnesses listed, i.e., Smt. Rajesh Bhuneshwar Devi(mother of the victim) and Shri G. B. Patil, Sr. Police Inspector, Gamdevi Police Station. The departmental proceedings were accordingly initiated. The perusal of the inquiry report reveals that the proceedings were started on 09.11.2019 and concluded on 28.12.2020. The details of the events i.e. his judicial custody and suspension etc. have been described in para 7 of the critical analysis. It is also mentioned that the applicant did not attend the inquiry on a number of occasions. In a few paras, it is narrated that the Charged Officer was asked to submit some details to the respondents, to which he did submit the due details but did not reply to the points raised, and filed a general reply. He was subsequently asked and given opportunity to produce defence witnesses and whether he wanted any cross examination of the witnesses. No reply was given by the applicant in this regard, and in any case, he showed no willingness to cross examine any witnesses. The applicant during the enquiry contended that the criminal trial was expected to close soon, however, nothing was heard about the progress of the criminal case from the Charged Officer, and as the inquiry could not be dragged on indefinitely, the same was concluded. In conclusion the Inquiry Officer, has stated that nothing further can be investigated in this case at her end and hence, the report be considered as the final report. From the inquiry report, it is evident that the Inquiry Officer has merely considered the report of the Presenting Officer and agreed that the applicant had exhibited misconduct unbecoming of a Govt. Servant. The inquiry officer concluded that the Article of Charge levelled against the applicant based on documentary evidence as of now is substantiated.

9. A perusal of the charge memo indicates no charge but only the description of the criminal case filed against the applicant, his subsequent arrest and release in the criminal case under section

376(2)(i), 323 and 506 of the IPC and Section 4, 6, 8 and 12 of the POCSO Act, 2012 and on the basis of this, the respondents have concluded that the applicant exhibited conduct unbecoming of a Govt. Servant thereby violating rule 3(1) of CCS Conduct Rules, 1965. The Article of Charge I in Annexure I and the statement of imputation of misconduct in support of the Article of Charge in Annexure II, are exactly the same. The list of relied upon documents is also regarding the same criminal case and letters of suspension. The two witnesses that have been quoted in Annexure 4 are one Smt Rajesh Bhuneshwar Devi, mother of the victim and Sr. Inspector Patil, both of whom are connected with the criminal proceedings undertaken against the applicant. There is nothing on record to show if there is any difference between the charges framed in the criminal case and those in the departmental chargesheet. In fact, they are exactly the same. As far as the documents are concerned, they pertain to the same criminal case and both the witnesses are also connected with the same charge. At no point during the inquiry have these witnesses been called and cross examined by the Inquiry Officer. In fact, the complaint, if any, against the applicant also did not feature anywhere in the list of documents, or discussed in the Inquiry Report. Most importantly, the Inquiry Officer has concluded that she has gone through the report of the Presenting Officer and that she agrees with the analysis of the Presenting Officer that the Charged Officer exhibited conduct unbecoming of a Government Servant. This very fact establishes that the Inquiry Officer herself did not conduct the Inquiry and simply agreed with the analysis of the Presenting Officer. This report of the Presenting Officer is not part of the Inquiry Report as a separate document. It is also not clearly stated as to why the witnesses were not called for cross examination by the Presenting Officer or the Inquiry Officer. It is evident that this is a hurriedly concluded, casually done Inquiry Report. This brings us to other aspects raised by the applicant regarding the charge of misconduct and whether a criminal charge which is totally unrelated with the official working can be construed as misconduct. With regard to the misconduct, the observations of the Hon'ble High Court of Mumbai in WP No. 33749/2022 in **Union of India vs Veerbhadra Vislavath** dated 30.11.2022 is relevant. The Hon'ble Court has held as under:

> "28. We were initially inclined to grant leave to the petitioners to initiate disciplinary proceedings against the respondent on the basis of the preliminary enquiry report dated 2nd March 2022 and even to grant them liberty to place the respondent under suspension afresh; however, our attention having been drawn to the instructions of the DoPT and the circulars of the CVC, we are left with no other option but to conclude that so long such instructions/circulars hold the field and are not amended, any action taken on the basis of the anonymous complaint received by the petitioners cannot be acted upon to the detriment and prejudice of the respondent. We hope and trust, the UPSC would proceed to make an appropriate recommendation for taking the disciplinary proceedings initiated by the charge-sheet dated 4th January 2019 to its logical conclusion in accordance with law and in the process, to put the controversy at rest.
> 29. For the reasons aforesaid, we hold the writ petition to be devoid of merits and not deserving even an admission. The same stands dismissed, but without any order for costs.

> 30. The order of the Tribunal impugned before us shall be implemented by the petitioners immediately, but not later than 7 (seven) days from date of uploading of this order by allowing the respondent to resume his duty. Compliance of the other directions of the Tribunal shall be effected within a period of 6 (six) weeks from this date.”

It is also worthwhile noticing Rule 14 of CCS(CCA) Rules, 1965 which lays down the procedure for imposing major penalty. Rule 14(3) reads as under:

> “(3) Where it is proposed to hold an inquiry against a Government servant under this rule and rule 15, the disciplinary authority shall draw up or cause to be drawn up-
> (i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;
> (ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-
> (a) a statement of all relevant facts including any admission or confession made by the Government servant;
> (b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.”

This also brings us to the judgment of the Special Court and the order of acquittal. The learned Special Court under POCSO Act, 2012 having considered all aspects, acquitted the applicant vide Section 235(2) of the CrPC and passed the following order:

> “ORDER
> 1) Accused Veerabhadram Bhavsingh Vislavath is hereby acquitted vide Section 235(2) of the Code of Criminal Procedure for the offences punishable under section 376(2)(i), 323 and 506 of Indian Penal Code under Section 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012.
> 2) The Bail Bonds of the accused shall stands cancelled.
> 3) Accused shall execure a Personal Bond in the sum of Rs. 15,000/-(Rs. Fifteen Thousand Only) with one solvent surety in the equal sum in compliance with the provisions of Section 437-A of the Code of Criminal Procedure.
> 4) Judgment is pronounced in open Court.
> 5) As the matter is disposed off by this Judgment, the Records and the Proceeding be sent to Record Department.”

10. The respondents have not been able to establish that the charges in departmental proceedings were different than the charges as were under consideration by the Criminal Court under POCSO Act,

2012. There was nothing which was different or beyond the scope of the criminal proceedings in the departmental proceedings conducted. The Departmental proceedings from the inception of the issuance of the charge memo are sloppy and casually worked out incorporating the same charge in both the Article of Charge in Annexure I and the imputation of misconduct in Annexure II. The reliance on the report of the Sr. Police Officer who investigated Criminal case and the non calling of any witnesses during the Inquiry prove that the Inquiry was not conducted in terms of the prescribed rules and regulation. In conclusion the Inquiry Officer stated that she relied upon the report of the Presenting Officer. Once the Inquiry Officer has been appointed, he/she has the responsibility of conducting the Inquiry himself/herself and draw his/her own conclusions instead of simply agreeing with the report of the Presenting Officer, which is neither available nor was made available to the applicant. We have also taken into account the relied upon judgments on behalf of both the parties and find that this is a fit case for judicial intervention, as the disciplinary proceedings against the applicant have no other ground showing violation of any service laws and are entirely based on the criminal charges for which he has already been acquitted.

11. We, thus, find that the manner of conducting the Departmental Enquiry is manifestly perverse and illegal. We have also taken note of the concerned and relied upon judgments, especially, the Apex Court judgments in the cases of **State of Karnataka and Anr. vs. N. Gangaraj** CA No. 8071/2014, **B.C. Chaturvedi vs. Union of India and Ors**., (1995) 6 SCC 749, State **of Bikaner and Jaipur vs. Nemi Chand Nalwaya**, (2011) 4 SCC 584, **Union of India vs. P. Gunasekaran**, (2015) 2 SCC 610. The ratio of all these judgments is that the scope of judicial review is very limited and it is only in the eventuality that the finding of the decision of the Inquiry Officer/Disciplinary Authority is manifestly perverse or illegal that the Tribunal or any other Court under Article 226 can interfere. This aspect has been recently reiterated in the judgment of the Hon'ble High Court of Delhi in **Union of India & Anr. Vs Chinthapally Rajasekhar** W.P.(C)-6953/2021 dated 22.02.2023. Relevant portions of the said judgment are as under:

> "45. At the outset, we may state that the Tribunal has clearly erred in setting aside the punishment order against the respondent. The scope of judicial review is very limited as has been held by the Supreme Court in a catena of judgments. It is only in the eventuality that the finding/decision of the Inquiry Officer / Disciplinary Authority is manifestly perverse or illegal, or if the finding/decision has been arrived at without any evidence, that the Tribunal or even this Court under Article 226 of the Constitution of India can interfere with the decision of the Disciplinary Authority."
>
> "47. It is well settled that Courts and Tribunals should not ordinarily interfere with the findings of the Disciplinary Authority, unless the same has been arrived at without any evidence or suffers from manifest perversity or illegality."

Taking note of the limitations of the scope of judicial review with regard to the interference in the Department Enquiry, we have carefully considered the charge memorandum and the inquiry report as well as the judgment of the Special Court. As stated above, the charge memorandum has been issued entirely on the facts of a complaint followed by lodging of the FIR and arrest and release of the applicant. In the said criminal case, the applicant has been acquitted. The departmental action against him includes his suspension for a long period of time and issuance of the charge memorandum. This charge memorandum was merely a statement of facts as received from the Inspector of the concerned Police Station regarding the lodging of FIR and arrest of the applicant. The charge is exactly the same in Annexure I and Annexure II. During the Inquiry conducted, no mention has been made of the relied upon documents especially the complaint lodged by the mother of the victim and the report of the concerned police station. The listed witnesses were not called for cross examination by the Inquiry Officer. Shockingly enough, it is stated by the Inquiry Officer in the concluding para that she has considered the report of the presenting officer and agrees with the same holding the charge as proved. This makes the departmental proceeding manifestly perverse and illegal.

12. In view of the facts and circumstances we allow the OA setting aside the impugned order dated 25.07.2022, 12.07.2022, the impugned chargesheet dated 04.01.2019 as well as the Inquiry Officer’s report dated 10.03.2021. There shall be no costs.

(Mohd Jamshed)
Member (A)

(Ranjit More)
Chairman

/gm/