IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: January 24, 2023

\+ W.P.(C) 10828/2017, CM APPLs. 44386/2017, 9501/2022, 51609/2022 & 53459/2022

RAJNISH KUMAR RAI, IPS

..... Petitioner

Through: Mr. I. H. Syed, Sr. Adv. With Mr. Anando Mukherjee, Ms. Ekta Bharati and Mr. Rahul Sharma, Advs.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Arun Bhardwaj, Sr. Adv. And Ms. Bharathi Raju, Sr. Panel Counsel with Mr. S. S. Sejwal, Legal Officer, MHA and Mr. Abhishek Sharma, Ms.Gauraan and Mr. Yogesh Panwar, Advs. for UOI

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

V. KAMESWAR RAO, J

CM No. 53459/2022 (by petitioner seeking permission to place on record additional documents)

For the reasons stated in the application, the same is allowed and the additional documents are taken on record.

Application is disposed of.

W.P.(C) 10828/2017

1. The challenge in this petition is to the order dated August 09, 2017 in O.A. 2670/2017 and order dated October 04, 2017 in R.A. 205/2017 in O.A. 2670/2017 passed by the Central Administrative Tribunal ('Tribunal' for short), Principal Bench, New Delhi.

2. The grievance of the petitioner in the O.A. was to the order of transfer dated June 12, 2017 and initiation of an inquiry. Insofar as the grievance against transfer is concerned, the Tribunal held that the same had become infructuous as the petitioner had joined the place of posting. Insofar as the second grievance is concerned, the Tribunal after stating that he has not filed any record of the inquiry, rejected the said prayer. In fact, we note that the learned counsel for the petitioner withdrew the original application with liberty to challenge the inquiry proceedings, if any initiated, in accordance with law.

3. The petitioner filed a Review Application seeking review of order dated August 09, 2017. The same was decided by the Tribunal on October 04, 2017.

4. The Tribunal after noting that no disciplinary proceedings have been initiated against the petitioner and as such no ground existed for invoking review jurisdiction, dismissed the same.

5. Mr. I. H. Syed, learned Senior Counsel, appearing for the petitioner would submit that the petitioner is an IPS Officer of the 1992 batch and was working in CRPF as IG, posted in North Eastern Sector (NES) between the period May, 2015 to June, 2016. While he was posted in NES as IG, CRPF, on March 29-30, 2017, a joint-operation was conducted by the Army, Assam Police, Shashtra Suraksha Bal and

CRPF in Chirang, Assam. It is his case that certain contrary reports as to the genuineness of the encounter was received from the Commandant. The petitioner after summarising the two contrary views, had on April 17, 2017, sent a report to the DG, CRPF recommending an enquiry/investigation into the incident to be carried out by an independent investigation agency.

6. In this background, the transfer order dated June 12, 2017 was issued transferring the petitioner from the post of IG, NES to IG, CIAT School, Chittoor (AP). The petitioner accordingly on June 14, 2017 relinquished the charge as IG, NES and subsequently joined the place of posting. According to Mr. Syed, simultaneously as per some paper reports, an inquiry was initiated on the role of the petitioner in connection with the "procedural aspects" of the enquiry conducted by him. It was in this background that the petitioner had filed the O.A. 2670/2017 before the Tribunal. According to him, the petitioner had sought voluntary retirement from service ('VRS' hereinafter) on August 23, 2018 but the same was not accepted by the respondents. He submitted that the petitioner relinquished the charge of his office on November 30, 2018, at Chittoor, after informing all concerned authorities. He has challenged the rejection of his request for VRS in O.A. 528/2018 in Central Administrative Tribunal, Ahmedabad Bench. Subsequently, he was placed under suspension on December 17, 2018 and was then served with a charge sheet dated January 14, 2019 for misconduct as he had relinquished his office unauthorisedly. The Ahmedabad Bench of Tribunal vide order dated January 21, 2019 granted interim relief to the petitioner and restrained the respondent

No.1 from passing final orders in the disciplinary proceedings. The petitioner challenged this interim order before the High Court of Gujarat in Special Civil Application 5929/2019. The respondents have also filed a separate Special Civil Application 8430/2019 challenging the interim order granted to the petitioner. According to Mr. Syed vide order dated August 08, 2019, the Gujarat High Court has directed both the parties to maintain status quo and the matter has been admitted.

7. Mr. Syed submitted, while passing the order of status quo the High Court had directed the parties to (i) maintain status quo in respect of all issues arising from or connected to VRS which includes the status quo with regard to proceedings before the Central Administrative Tribunal, Ahmedabad Bench in O.A. 528/2018; (ii) to maintain status quo in respect of disciplinary proceedings initiated against the petitioner which had not progressed since then; (iii) status quo with respect to the petitioner's employment with the IIM, Ahmedabad which has not been disturbed since then. The submission of Mr. Syed was that the petitioner is still in service of IIM, Ahmedabad. In fact, he also stated that the respondents are raising objection with IIM, Ahmedabad about the employment of the petitioner.

8. Be that as it may, according to Mr. Syed, a preliminary inquiry cannot be the basis of disciplinary proceedings against the petitioner. In other words, there is no provision for preliminary inquiry in the All India Service (Discipline and Appeal) Rules, 1969 ('Rules of 1969', in short) for the respondents to initiate one. In support of his submission, he has relied upon the judgment of the Supreme Court in the case of

State of Odisha and Anr. v. Satish Kumar Ishwardas Gajbhiye & Ors., 2021 SCC Online SC 1238.

9. According to Mr. Syed, the respondents could not have issued show cause notice on December 28, 2021 as the petitioner is deemed to have retired in 2018. Even otherwise, the show cause notice dated December 28, 2021 could not have been issued to the petitioner as the subject matter of the proceedings had occurred four years prior to the date on which the proposed disciplinary proceedings were instituted in view of Rule 6 (1) of the All India Services (Death-cum-Retirement benefits) Rules, 1958 ('Rules of 1958', in short).

10. In fact, it is his submission that the show cause notice is such that it shows that disciplinary authority has already formed an opinion and as such it deserves to be quashed and set aside.

11. He stated, the implication of the order of the status quo is well known and understood by the respondent No.1 that they cannot interfere with the employment of the petitioner in IIM, Ahmedabad. He stated that for the aforesaid submissions the present writ petition need to be allowed and the inquiry/show cause notice and any other consequential proceedings need to be set aside.

12. On the other hand, Mr. Arun Bhardwaj, learned Senior Counsel for the respondents would submit that pursuant to the letter of the petitioner dated April 17, 2017 apprising the position to the DG, CRPF, the DG, CRPF vide letter dated May 28, 2017, reported the facts to the Ministry of Home Affairs and also recommended initiation of suitable action against the petitioner for unjustified indictment of the security establishment without supporting facts and pending

magisterial enquiry instituted as per law.

13. According to Mr. Bhardwaj, the petitioner had tried to not only degrade the security forces but also brought them into disrepute and had undermined the national security apparatus. It is in the given factual situation that the respondent No.1 vide order dated June 09, 2017 ordered the preliminary fact finding inquiry into the matter. It was keeping in view the sensitivity of the matter that the petitioner was transferred to Chittoor. In fact, Mr. Bhardwaj has laid stress on the fact that the petitioner sought to withdraw the O.A. with liberty to challenge the inquiry proceedings. Thereafter he filed a review petition which was also dismissed by the Tribunal after noting that some administrative inquiry is being held which is in the nature of a fact finding inquiry. The Inquiry Committee collected the evidence from the field where the incident occurred and after considering the relevant record such as circular/manuals of CRPF including the Standard Operating Procedures (SOPs), Magisterial Inquiry, FIR, etc. and oral examination of 27 security personnel and other civilians, the report of preliminary inquiry was submitted to the Respondent No.1 on January 18, 2021.

14. On examination of the same, the respondents observed violation of several SOPs. Accordingly, before contemplating any disciplinary action against the petitioner, and also keeping in view the principles of natural justice and DoP&T guidelines dated June 06, 1995, a Show Cause Notice dated December 28, 2021 was issued to the petitioner to explain as to why disciplinary action should not be initiated against him for the misconduct committed by him.

15. Mr. Bhardwaj would submit, in fact, the petitioner made a request seeking additional documents for submitting his reply to the Show Cause Notice. The said request was rejected by the respondents.

16. The CM No. 9501/2022 filed by the petitioner had come up for hearing on February 22, 2022, when it was directed that the respondents shall maintain status quo with regard to the Show Cause Notice dated December 28, 2021.

17. It is in this background that the respondents have filed an application being CM No. 51609 of 2022 seeking vacation of the order of status quo granted vide order dated February 22, 2022. His endeavour has been to draw a distinction between a preliminary inquiry and an inquiry envisaged under the Rules of 1969.

18. A preliminary inquiry is in the nature of information gathering exercise on the basis of which the disciplinary authority would decide whether to proceed in the matter or not. On the contrary an inquiry envisaged under the Rules of 1969 is a guilt finding exercise where a formal charge sheet is served and inquiry is held as per the procedure laid down under the Rules.

19. According to Mr. Bhardwaj, the reliefs prayed for in the writ petition, regarding the transfer and to set aside the decision of respondent No.1 initiating the inquiry has become infructuous. In fact, even the Tribunal noted so. Even the relief with regard to the inquiry has become infructuous as the same has been completed. On the basis of report of the preliminary enquiry, the Show Cause Notice has been issued on December 28, 2021. His submission was also that mere issuance of show cause notice does not constitute departmental

proceedings as per the Rules of 1969. The decision to initiate departmental proceedings shall entirely depend on the reply/explanation of the petitioner to the Show Cause Notice issued to him.

20. The show-cause notice is an opportunity accorded to the petitioner to respond to the contents of the Show-Cause Notice / findings of the Fact Finding Committee and as such he should avail the opportunity given by the respondent which is very much part of the principles of natural justice.

21. It is his contention that relief qua show-cause notice sought for by the petitioner is beyond the relief sought for by the petitioner in the petition and as such is not maintainable. The petitioner should have approached the Tribunal being the primary Court of adjudication.

22. According to him, the petitioner has realised that the original relief sought in the writ petition dated November 29, 2017 has become infructuous and meaningless. The petitioner tried to complicate and digress the matter by raising fresh issues / facts through the CM dated February 19, 2022 and filed an additional affidavit dated August 20, 2022 which is irrelevant and unconnected with the present *lis* before this court. His submission was also that the issue relating to voluntary retirement of the petitioner is pending adjudication before the High Court of Gujarat and the proceedings pending before the Ahmedabad Bench of the Tribunal have no bearing on the outcome of the captioned writ petition.

23. It is the case of the respondents that the request of the petitioner for voluntary retirement having been rejected, the petitioner

continues to be an employee of the Union of India and is governed by the Rules of 1969. According to Mr. Bhardwaj, the submission of Mr. Syed that the petitioner is deemed to have been retired is incorrect. The respondent No.2 had directed the petitioner to join his duty at CIAT (CRPF), Chittoor but he continued to remain unauthorisedly absent from office duty. It is for this reason, he was placed under suspension by respondent vide order dated December 17, 2018 followed by issuance of charge sheet dated January 14, 2019. The suspension is being reviewed from time to time and has been further extended up to May 24, 2023. Further Mr. Bhardwaj stated that the status quo order is only with respect to departmental enquiry on an unconnected charge. If the petitioner commits any other misconduct, criminal or otherwise, he cannot take shelter of the order of status quo given by the High Court of Gujarat. Mr. Bharadwaj has also submitted that the reliance placed by Mr. Syed on the Judgment in the case of ***State of Odisha & Anr. (supra)*** is not applicable to the case in hand. In the said judgment, it has been held in paragraph 13 that *"in situation where rules do not provide for holding preliminary enquiry before initiating the disciplinary action, the principle laid down in the case of* ***Champaklal Chimanlal Shah (supra)*** *would prevail"*. The enquiry is in the nature of information gathering exercise on the basis of which the authorities would decide whether to proceed in the matter or not. The Apex Court has in paragraph 8 clearly held as under:

> *"8. We do not think the position of law has changed since then. In the case of Champaklal Chimanlal Shah v. The Union of India [AIR 1964 SC 1854], some form of preliminary enquiry was found to be*

justifiable under certain circumstances. It was observed in this judgment:

> *"12. Before however we consider the facts of this case, we should like to make certain general observations in connection with disciplinary proceedings taken against public servants. It is well known that government does not terminate the services of a public servant, be he even a temporary servant, without reason; nor is it usual for government to reduce a public servant in rank without reason even though he may be holding the higher rank only temporarily. One reason for terminating the services of a temporary servant may be that the post that he is holding comes to an end. In that case there is nothing further to be said and his services terminate when the post comes to an end. Similarly a government servant temporarily officiating in a higher rank may have to be reverted to his substantive post where the incumbent of the higher post comes back to duty or where the higher post created for a temporary period comes to an end. But besides the above, the government may find it necessary to terminate the services of a temporary servant if it is not satisfied with his conduct or his suitability for the job and or his work. The same may apply to the reversion of a public servant from a higher post to a lower post where the post is held as a temporary measure. This dissatisfaction with the work and/or conduct of a temporary servant may arise on complaint against him. In such cases two courses are open to government. It may decide to dispense with the services of the servant or revert him to substantive post without any action being taken to punish him for his bad work and/or conduct. Or the Government may decide to punish such a servant for his bad work or misconduct, in which case even though the servant may be temporary he will have the protection of Article 311(2). But even where it is intended to take action by way of punishment what usually happens is that something in the nature of what may be called a preliminary enquiry is first held in connection with the alleged misconduct or unsatisfactory work. In this preliminary enquiry the explanation of the government servant may be taken and documentary and even oral evidence may be considered. It is usual when such a preliminary enquiry makes out a prima facie case against the servant concerned that*

charges are then framed against him and he is asked to show case why disciplinary action be not taken against him. An enquiry officer (who may be himself in the case where the appointing authority is other than the Government) is appointed who holds enquiry into the charges communicated .to the servant concerned after taking his explanation and this enquiry is held in accordance with the principles of natural justice. This is what is known as a formal departmental enquiry into the conduct of a public servant. In this enquiry evidence both documentary and oral may be led against the public servant concerned and he has a right to cross-examine the witnesses tendered against him. He has also the right to give documentary and oral evidence in his defence, if he thinks necessary to do so. After the enquiry is over, the enquiry officer makes a report to the Government or the authority having power to take action against the servant concerned. The government or the authority makes up its mind on the enquiry report as to whether the charges have been proved or not and if it holds that some or all the charges have been proved, it determines tentatively the punishment, to be, inflicted on the public servant concerned. It then communicates a copy of the enquiry officer's report and its own conclusion thereon and asks him to show cause why the tentative punishment decided upon be, not inflicted upon him. This procedure is required by Article 311(2) of the Constitution in the case of the three major punishments i.e. dismissal, or removal or reduction in rank. The servant, concerned has then an opportunity of showing case by making a representation that the conclusions arrived at the departmental enquiry are incorrect and in any case the punishment proposed to be inflicted is too harsh"

24. He has further relied upon the following judgments in support of his contentions:

1. ***Dr. Amiya Bhushan Majumdar v. State of Tripura and Ors., W.P.(C) 516/2021 decided on August 20, 2021 of the High Court of Tripura at Agartala;***
2. ***Rohtash v. State of Haryana and Ors. decided by the Punjab and Haryana High Court, reported as (2017) SCC Online (P & H) 510;***

3. ***Union of India v. Kunisetty Satyanarayana, 2006 12 SCC 28;***
4. ***Oryx Fisheries Pvt. Ltd. v. Union of India, 2010 12 SCC 427;***
5. ***P. Sirajuddin v. State of Madras, (1971) 1 SCC 595***

25. He seeks the dismissal of the writ petition.

26. Having heard the learned counsel for the parties, and perused the record, at the outset we may state that the present petition has been filed by the petitioner, primarily challenging the orders dated August 09, 2017 and October 04, 2017 both in the Original Application and the Review Application. A perusal of the order passed in the O.A., would reveal that the same was withdrawn by the counsel for the petitioner with liberty to challenge the inquiry proceedings, if initiated in accordance with law. The O.A. having been withdrawn, the review petition filed by the petitioner was not at all maintainable. Even otherwise we find the Tribunal in the order dated October 04, 2017 has by referring to certain signals which depict some administrative enquiry is being conducted, which is in the nature of a fact finding enquiry and as such no disciplinary proceedings have been initiated, has held that no ground is available to the petitioner for invoking the review jurisdiction. This conclusion of the Tribunal cannot be faulted.

27. We find during the pendency of the present writ petition a show cause notice dated December 28, 2021 was issued to the petitioner as to why disciplinary proceedings be not initiated against him.

28. Pursuant thereto the petitioner has filed CM 9501/2022 seeking stay of the show cause notice dated December 28, 2021. The said

application was listed before the Court on December 22, 2022 when this Court had directed, maintainance of status quo.

29. One of the submissions of Mr. Bhardwaj was that the show cause notice issued to the petitioner is beyond the relief sought for by the petitioner in the Original Application and as such the filing of the CM 9501/2022 with regard to the show cause notice dated December 28, 2021 is not maintainable and the petitioner should have approached the Tribunal, i.e., the primary Court of adjudication for grievance if any against the show cause notice issued to him. This plea of Mr. Bhardwaj is appealing. This we say so, because the show cause notice dated December 28, 2021 is beyond the relief sought for by the petitioner in the O.A. and as such the show cause notice being a fresh cause of action appropriate for the petitioner is to approach the Tribunal. In fact, the counsel for the parties had made extensive submissions on the preliminary / discreet inquiry conducted; the issuance of show cause notice, the nature of show cause notice etc. In support of their submissions, they have also relied upon the judgments of the Supreme Court and various High Courts. In other words, the submission centered around the show cause notice dated December 28, 2021.

30. In effect, the petitioner has laid a challenge to the show cause notice dated December 28, 2021 which is a fresh cause of action which has arisen after the impugned order have been passed by the Tribunal.

31. Mr. Bhardwaj is right in relying upon the judgment of the Supreme Court in the case of ***L. Chandra Kumar v. Union of India & Ors., Civil Appeal No. 481/1980*** wherein the Supreme Court has in

para 97 held as under:-

> *"97. In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323A and Clause 3(d) of Article 323B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323A and 323B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323A and Article 323B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."*
>
> *(emphasis supplied)*

32. Further, we are of the view that as stated above, the orders of the Tribunal cannot be faulted and the prayer sought for by the petitioner before the Tribunal does not survive for consideration in

view of the show cause notice dated December 28, 2021 and the fact that the petitioner had joined his place of posting.

33. Surely, all pleas of the parties with regard to the challenge to the show cause notice dated December 28, 2021 shall be available before the Tribunal, both on facts and in law, including the judgments relied upon by them in support of their submissions on the merit of show cause notice dated December 28, 2021.

34. Accordingly, this petition and the pending applications are closed as nothing survives to be adjudicated. Liberty is granted to the petitioner to approach the Tribunal if he has grievance with regard to show cause notice dated December 28, 2021, in accordance with law.

35. The petitioner shall approach the Tribunal within three weeks from today. The status quo order with regard to the show cause notice shall continue for the same period of three weeks within which time the petitioner shall file the petition and the Tribunal shall consider the prayer of interim relief of the petitioner in accordance with law and without being influenced by the order passed by this Court.

36. No costs.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

JANUARY 24, 2023*/ds/jg*