

Pradip Kumar Guha Vs. Union of India (Uoi) and ors.

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Court : Central Administrative Tribunal CAT Kolkata

Decided On : Jan-02-2007

Reported in : (2008)(2)SLJ332CAT

Judge : B Som, B Rao

Appellant : Pradip Kumar Guha

Respondent : Union of India (Uoi) and ors.

Judgement :

1. Since both the O.As. have been filed by the same applicant and as the relief claimed are inter-related, they are taken up together for disposal by this common order. However, for reasons of convenience, we shall deal with O.A. 644/02 in this order.

2. Mr. P.K. Guha, applicant, presently working as Deputy Director General, All India Institute of Hygiene and Public Health, Calcutta, under the M/o Health and Family Welfare, Govt. of India, has filed O.A.644/02 assailing the memorandum of charge No. C 13011/12/98-Vig. Dated 13.6.05 being mala fide and harassing in nature. He has also filed O.A.264/06 being aggrieved that he has not been given appointment to the post of Director, Central Drug Laboratory, Calcutta despite his selection by the UPSC.3. The case of the applicant is that impugned charge memo has been served on him with an ulterior motive to thwart his career progression and for his appointment to the post of Director, Central Drug Laboratory (CDL for short) at Calcutta, to which post he has been recommended for appointment in an

open competition advertised by the Union Public Service Commission vide memo dated 2.2.2005. His selection was also preceded by issuance of a no-objection certificate/vigilance clearance by the respondents considering his unblemished service records. Although the recommendation of the Commission was issued on 2.2.2005, the respondents, instead of acting on the said advice/recommendation with due diligence and expedition, have served the impugned charge-sheet dated 13.6.2005 on him proposing action under Rule 14 of the CCS (CCA) Rules, 1965. Thereafter, as per order dated 13.10.2005 they informed him that they have decided not to accept the UPSC's recommendation for his appointment to the post of Director, CDL.

4. His allegation is that the respondent authorities have saddled him with the said disciplinary proceedings by serving the impugned charge-memo relating to some alleged acts of omissions and commissions which were more than 8 years old. His further allegation is that the charges are unsustainable on various legal grounds referred to in his pleadings as also during oral arguments. In the first instance, the preliminary enquiry report on which the said charge-memo is based does not contain any particular allegation against him. Further, the alleged charges relate to the period of 1996-98 but during the said period he had been promoted to the post of Dy. Director General subsequent to such events and that would clearly reveal that he had the vigilance clearance for his promotion. He has also submitted that the delay in initiating disciplinary proceeding has prejudiced him in more than one way and there has been no worthwhile action taken by the respondents after serving the charge memo on 13.6.2005 as the disciplinary proceeding has made no progress and the Enquiry Officer appointed in November 2005 having retired in the meantime.

5. He has also assailed the charge-memo on the ground that it is neither specific nor relates to any misconduct on his part and a bare reading of the charge-memo will bring home that point. He has further stated that the respondents have repeatedly stated that the charge-memo was issued on the advice of the Central Vigilance Commission (CVC for short). However, the first stage advice of the CVC dated 6.11.2003 clearly shows that although the said authority had advised initiation of major penalty proceedings against him, but there appears to be no

reason adduced on the face of the said advice. He has further submitted that the said advice is without any basis being not in conformity with the notice of show cause dated 6.6.2003 (Annexure-P4).

6. He has further stated that in the notice of show cause dated 6.6.2003 it is alleged that the applicant along with other officials of GMSD, Guwahati/Kolkata "had procured huge quantities of the said drugs after splitting the supply orders to avoid seeking approval of the DGHS, the Competent Authority and favour has been shown towards M/s.

Richi Lab by repeatedly placing the orders on the said firms ignoring more than 100 other listed suppliers" whereas the first stage advice of the CVC dated 6.11.2003 at Paragraph 4 reads as follows: The Commission would further advice the Ministry to examine the role of the DGHS officials who appear to have approved the proposals in a number of cases, for purchase of the medicines in a routine manner, without raising the question of placing orders on other firms producing cheaper medicines with the same ingredients.

7. Relying on the judgment of the Apex Court in the case of Mahendra Singh Gill and Ors. v. Chief Election Commissioner , the learned Counsel for him has argued that the first stage advice of the CVC recommending major penalty proceedings against him is without basis as would appear from a plain reading of the said advice and no amount of other documents could in any way save the same from the principle that the document itself should be self-explanatory and be able to stand on its own feet and cannot be supplemented with other documents for the purpose of arriving at the decision so taken to be correct. He has also argued that there being no loss alleged to have been caused to the Govt. exchequer whatsoever, since all the procurements were made at DGHS approved rates and money received from the indenters, the allegations are mere rouge to damage the career of the applicant.

8. The respondents, on the other hand, have opposed the application denying all the allegations. It is their case that selection and appointment of the applicant for the post of Director, Central Drug Laboratory, Kolkata had no nexus with the decision of the Competent Authority to initiate disciplinary proceedings against the

applicant for his acts of omissions and commissions as contained in the charge memo. The delay, if any, in acting on the recommendation of the UPSC was on the ground that the Disciplinary Authority in the first instance had to take a conscious decision as to whether the integrity of the applicant was clear from all angles and that no departmental proceedings had been initiated against him. They have stated that it was way back on 6.11.2003 that they had received the first stage advice from the CVC recommending initiation of major penalty proceedings against the applicant and the charge-sheet was under preparation. They, however, have admitted that the charge memo was issued only on 13.6.2005. They have denied the allegation that the delay in the matter, in any way, was a ploy to deny him appointment to the post for which he was selected by the UPSC. The fact of the matter is that it had taken time to obtain vigilance clearance and approval of the Appointing Authority for arriving at the decision as not to accept the recommendation of the UPSC. It was only after due deliberations over the matter that it was decided to disagree with the recommendation of the UPSC. They have further pointed out that by issuing the letter dated 13.10.2005, they had informed the applicant of the reasons for not giving him appointment on the basis of the recommendation of the UPSC. It cannot be applicant's claim that he should be given appointment without obtaining vigilance clearance as CVC's advice in the matter had already been received in November 2003 and the approval of the Appointing Authority for initiation of disciplinary proceedings was obtained in May 2004, whereas the recommendation of the UPSC was received only in February 2005. For the reasons adduced in the reply, the respondents have submitted that the grounds on which the relief has been sought are neither cogent nor valid, and, therefore, the application is liable to be set aside.

9. The respondents have defended the delay in initiating the disciplinary action on the ground that for initiation of disciplinary proceedings during service period, there is no time bar; but only in the case of disciplinary proceedings after retirement a Govt. servant, under Rule 9 of Pension Rules, time limit for initiation of such action has been prescribed. They have, therefore, taken the stand that merely on the ground of delay no allegation of mala fide or unfairness can be raised. They have also denied that the principles of estoppel or waiver could be applied in the instant case as it is a disciplinary proceeding initiated against a Govt. servant for his acts

of omission and commission in due discharge of his duties. They have also stated that it would be unreasonable on the part of the applicant to presume that no charge-sheet would have been issued by the respondents had he not been given offer of appointment as Director, CDL. It is also their stand that the charge-memo having been issued, the applicant should have waited for the outcome of the enquiry by fully cooperating with the Enquiry Officer.

10. We have heard the learned Counsel for the rival parties and have perused the records placed before us. The applicant has filed a detailed rejoinder along with a date chart. The respondents have also, on our direction, placed the relevant files viz. Recruitment File No.A/12011/3/99-D (Section-Drugs) with UPSC folder and Vigilance File No.C-13011/13/98-Vig. We have carefully gone through these records.

11. The applicant in this O.A. has challenged the charge-memo dated 13.6.2005 issued to him mainly on the ground of delay and malice. He has levelled several allegations against the respondents to bring home the point that he was a victim of prejudice and mala fide action.

12. The learned Counsel for the respondents has repeatedly submitted before us that in disciplinary matters, the Courts have very limited scope of intervention and more so at the interlocutory stage. Reliance has been placed in the case of Dy. Inspector General of Police v. K.S.Swaminathan 13. Learned Counsel for the applicant, on the other hand, has submitted that the Tribunal has jurisdiction to go into the matter in view of the conduct of the respondents in initiating the impugned disciplinary proceeding which is seeking with mala fide. He has cited a number of contradictions in the actions of the respondents including that of the CVC to flag the point of mala fide, that he was a victim of malice and the charge memo has been heaped on him only to thwart his career advancement. It is also his allegation that the respondents in their reply have disclosed that they had obtained the advice of the CVC to initiate major penalty proceedings against the applicant as far back as in November 2003 and that they obtained the approval of the Disciplinary Authority on 13.5.2003 and the charge-sheet was issued only on 13.6.2005 and after issuing the charge-sheet and appointing the I.O., no sitting of

the enquiry has taken place so far and in the meantime the I.O. has also retired. This chronology of events clearly brings out the prejudice caused to the applicant due to inordinate and unexplained delay which is not attributable to the applicant. Moreover, the charges are absolutely vague and baseless and therefore, the Tribunal can go into the matter for the ends of justice and grant appropriate relief.

14. The scope of judicial review undoubtedly runs in a limited compass but that does not mean that it is totally prohibited to undertake judicial review. Surely that will depend on the facts and circumstance of each case. In this regard we may recall the decision of the Hon'ble Apex Court in the case of B.C. Chaturvedi's case which inter alia states as follows: Judicial review is not an appeal from a decision but a review of the matter in which a decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a Public Servant, the Court/Tribunal is concerned to determine whether the enquiry was held by a Competent Officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence the authorities entrusted with the powers to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. The Court/Tribunal in its power of judicial review does not act as Appellate Authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribed the mode inquiry or where the conclusion or the finding reached by the Disciplinary Authority is based on no evidence....

15. It is true that ordinarily the Court or Tribunal should not interfere at the charge-sheet stage in disciplinary matters, but the applicant in this case has raised the issue that delay in initiation of disciplinary action has been utterly prejudicial to his interest and that the action against him was initiated without any basis (his plea is that he was not indicted in the preliminary enquiry and this statement has not been repudiated by the respondents), we felt it incumbent on our part to lift the veil by

going through the departmental records produced by the respondents and see the facts of the case to come to a conclusion.

16. We find from the records relating to the vigilance File No. C 13011/13/98-Vig that an anonymous complaint was received in the Ministry of Health and Family Welfare in September 1998 implicating 8 officers one of them being the applicant in this case. When the matter was dealt with in the file and put up to the Chief Vigilance Officer of the Ministry, the said officer in his note dated 1.9.1998 had observed that "anonymous complaint cannot start vigilance enquiry as per CVC 's direction". The same view was again taken in the file later on also by the same Chief Vigilance Officer. Thereafter, in the office note dated 9.4.2003 when the vigilance clearance in respect of the applicant was sought for his appointment as Director, CDL, Calcutta, it was observed in Para 2 of the note as under: In this connection, it may be stated that complaint against the officials of GMSD, Dte. GHS including Mr. P.K. Guha was received in the Ministry during 1998. Dte. GHS was requested to have an inquiry into the matter. Dte. GHS has constituted a Committee under the Chairmanship of addl. DG (RKS) to inquire into the matter. The Committee has submitted its report which was examined by the Dte.

GHS in their file No. C 13019/1/99-AV. The Committee has observed that since the allegations contained names of private parties/persons, these may be referred to a professional body like CBI for investigation. However, the Committee has found nothing against Mr. P.K. Guha. No charge-sheet nor disciplinary proceedings were initiated against him. Mr. P.K. Guha was earlier accorded vigilance clearance in connection with his in-situ promotion on 5.9.2000.

17. The allegation contained in the anonymous complaint had been enquired into by a Committee under the Chairmanship of Dr. R.K. Srivasatava, Addl. DG whose report was examined in office note dated 5.8.2003. In that note it was held, without any reference to the observation made earlier in the note dated 9.4.2003, as under: ...It is seen from the complaint that Mr P.K. Guha, Sh. S K. Sarkar and Sh. Subramaniam were perhaps responsible for the alleged irregularities for the said period. However, we may ascertain from the MSO, R.K. Puram, New Delhi before we refer the case to CVC for 1st stage advice. It is understood that Sh.

Subramaniam is likely to retire in the near future. Therefore, immediate action is required to issue charge-sheet before his retirement otherwise 4 years time bar would be applicable since the alleged irregularities took place in the year 1996-99.

The matter was further considered in the Deptt. of Health vide note of Dy. Secretary dated 12.5.2003 wherein it was observed that: ...keeping in view the fact that Mr. G. Subramaniam who had worked as Head of GMSD, Guwahati between 1996-98 is retiring this month and no disciplinary proceedings can be initiated against him after four years from the date of misconduct under Rule 9 of CCS (Pension) Rules, there is hardly any time to seek his version and also consult CVC. It is therefore proposed that we may issue a charge-sheet for major penalty under Rule 14 of CCS (CCA) Rules to all the officials on the charge of splitting of supply orders to the extent of crores of rupees to place the orders on M/s. Hansraj Group of Companies during 1996-98 without any apparent justification and thereafter consult CVC. The matter was further examined by the Chief Vigilance Officer in his note dated 12.5.2003 (in the meantime it appears that there was a change of Chief Vigilance Officer) and he opined as follows: It appears that prima facie Mr. Subramaniam had a major role to play in the matter. He is retiring this month. Therefore, we may consider issuing charge-sheet for major penalty to him.

For others, we will call for explanation and then take advice of CVC, as CVC is advising. Special circumstances above will then be explained to CVC. In pursuance to the above, on 2.6.2003 the applicant was called upon to explain and his explanation was considered in the office note dated 21.7.2003. In this office note, after taking into account the explanation/defence of the applicant, it was observed that: Although splitting of supply order has been considered as a system fault by this Ministry yet it is to be seen that splitting of supply order in order to show favouritism to one particular firm can not be ignored as almost 11.112.% of total business carried out by GMSD, Kolkata was with M/s Richi Lab. alone in 1996-97. Similarly in the year 1997-98 it was around 11.75%. Therefore, we may perhaps proceed further to initiate major penalty proceedings against Mr. P.K. Guha.

This was followed by a note of the Under Secretary, Vigilance dated 25.8.2003 which was as follows: 2. The enquiry report has not tried to blame any particular

official, although frequently procuring from Hansraj Jain or his firms. We may only draw an inference. Unless original files are perused, it would be difficult to see whether any specific serious act of misconduct like ignoring the lower price of any other firm, quality of drugs procured etc. was committed by any official.

3. Explanation of the officials has been called for. Mr. G. Subramaniam who has been issued the charge sheet has denied the charges. Sri P.K. Guha, DDG, MSO, GMSD, Kolkata has explained the reasons for resorting to piecemeal procurements i.e. split purchases. According to him, the piecemeal procurements are made after following codal formalities and are demand-based. While there is no risk of expiry of large quantities of medicines on the refusal by the indenters, the latter get fresh stock every time after due inspection and test. Moreover, there is no loss to the exchequer, the rates having already been fixed by the MSO. Hqrs. He has attributed the rise in local purchase by CGHS, to the practice by GMSO of starting procurement only on DGHS sanction since 1999-2000, whereas the piecemeal procurement within delegated financial powers and obtaining sanction from the Directorate for bigger orders, the Depot could meet more than 80% of the requirements.... He has denied that he has shown any favour to the Hansraj firms.

5. From the report of the Committee and the explanation offered by the officials, it can only be inferred that repeat purchase orders at short intervals had been made, many of them on a particular firm or group of companies owned by M/s. Hansraj and his brothers. Before we write to MSO for original files including copies of the registration deeds of the supplier firms (to know the real identity of the supplier), we may perhaps seek the advice of CVC as no serious sustainable charges for major penalty appear to be possible on the basis of the present available documents which are only statistics of procurements of Guwahati and Kolkata depots.

18. However, without obtaining or going into the original records to ascertain the nature of acts of omission/commission of the officials, as suggested in the note of the Under Secretary (Vig.), the M/o Health and Family Welfare, Deptt. of Health, obtained the approval of the Disciplinary Authority on 13.5.2003 to take disciplinary action against all the officials including the applicant against whom

complaints had been received in 1998 and referred the matter (vide pages 35-39 of the said note sheets,) to CVC on 26.9.2003 for advice. Thereafter, the CVC considering the reference made to it, held as follows vide its letter dated 6.11.2003: 3. In view of the above, the Commission would endorse the action taken by the Ministry against Mr. Subramaniam and would also advise to initiate major penalty proceedings against Sh. P.K. Guha. The commission would also advise the Ministry to appoint their own I.O. to conduct oral enquiry against them.

4. The Commission would further advise the Ministry to examine the role of the DGHS officials who appear to have approved the proposal in a number of cases, for purchase of the medicines in a routine manner, without raising the question of placing orders on other firms producing cheaper medicines with the same ingredients.

19. After receipt of the advice dated 6.11.2002 of CVC, the respondents initiated action to peruse the relevant documents/files/registers of GDMS, Guwahati and Kolkata for framing of charge and keeping in view the huge volume of the documents required, a special team consisting of representative from the Vigilance Section and Dte. GHS was constituted to visit Kolkata and Guwahati to study and, if necessary, obtain the relevant documents. Thereafter, the matter remained pending for study of the documents for two years and the charge sheet was actually issued on 13.6.2005 after obtaining the 'concurrence' of the Disciplinary Authority on 26.4.2005.

20. The above narration of facts brings out several peculiar aspects of the case. An anonymous complaint was opened up after several years to consider vigilance/disciplinary action against the applicant. Initially the CVO and even the Vigilance Section upto August 2003 was not finding any fault with the applicant. In fact, it was in a mysterious manner that the respondent Ministry decided to initiate disciplinary against him overruling the advice of the Under Secretary (Vig.) and ignoring the earlier decision of the CVO that no cognizance to be taken on anonymous complaints.

21. It is also clear that there has been inordinate delay in initiation of disciplinary action against the applicant. The respondents in their reply and also during oral

hearing have repeatedly stated that the allegation of delay is of no consequence as, for initiating disciplinary proceedings against a Government servant during his service period, no time limit is prescribed under the CCS (CCA) Rules.

Although prima facie this is the position of the rules on the subject, the merit of the allegation of delay will have to be considered in the facts and circumstance of each case.

22. It has been held repeatedly by the Hon'ble Apex Court in a catena of decisions that delay in initiating and/or concluding disciplinary proceedings against a Govt. servant causes prejudice to the charged officer unless it can be shown that the delay is attributable to the delinquent officials. It has been further held that delinquent employee has a right that the disciplinary proceedings against him be concluded expeditiously and he is not made to undergo mental agony and also monetary loss without any fault on his part in delaying the proceedings. Reference is invited to State of Andhra Pradesh v. N.Radhakishan State of Madhya Pradesh v. Bani Singh and Anr.P. V. Mahadevan v.M.D. Tamil Nadu Housing Board M.V. Bijlani v. UOI and Ors. . However, the Court has to see the nature of the charge, the complexity and on what account the delay has occurred while considering the question of delay for granting relief. On a consideration of the facts and circumstances of the case as discussed earlier, we are of the view that the explanation offered by the respondents for the delay is neither sufficient nor reasonable.

We have also found serious infirmity in the decision making process as discussed above in Paras 16, 17 and 18. The decision making process adopted in this matter also fails the triple tests as laid down in Wednesbury Principle referred to in the case of Om Kumar and Ors. 2001 SC SLR 295, that of illegality, procedural irregularity or irrationality. In the instant case, our finding in the face of the facts of the case as discussed earlier is that the procedure adopted was irregular, the advice of the CVC was irrational and hence the whole matter is liable to be set aside as illegal.

23. We have also found from the facts of the case as stated earlier that the anonymous complaint which was received in 1998 became the source of

generating action against the applicant although repeatedly it was held that in the preliminary enquiry no charge had been found against the applicant. It was also held by the Vigilance Branch that without going into the original documents no responsibility could be fixed. But the fact of the matter is that respondents were hardly not clear as to what was the loss to the Govt. Their allegation is not that the applicant was guilty of taking illegal actions or he enriched himself by resorting to illegal placement of orders to a particular firm. The allegation was of irregularities which were curable. The applicant in his defence has contended that he had obtained wherever it was necessary, approval of the DGHS for procurement of drugs and that if he had repeatedly placed orders on a particular firm that was because that firm was having proprietary right over the medicines which were indented by the various Government institutions for procurement.

It is not the allegation of the respondents that indents were fictitious and hence it is unreasonable to hold that the applicant was prima facie guilty of misconduct. We further found from the advice of the CVC that it is the DGHS who had been granting permission for piecemeal procurement of drugs and, therefore, had recommended looking into the conduct of the officials in the DGHS. That advice in no way implicated the applicant. The most astonishing part of the whole case is that the decision to initiate disciplinary actions against the applicant was taken on the advice/endorsement of CVC obtained without looking into the documents or collecting facts of the case to allege misconduct. In other words, first a decision was taken by the Disciplinary Authority to issue a major penalty charge sheet, followed by obtaining 'endorsement' of the CVC on 6.12.2003 and thereafter they spent two years to collect facts to frame charge sheet to suit the decision taken on 13.5.2003. In fine, the Disciplinary Authority decided on a major penalty action without knowing what were his acts of omission and commission. Nothing could be more preposterous, arbitrary and illegal and hence liable to be set aside.

24. We repeat that the genesis of the whole matter lies in the anonymous complaint. There are clear instructions of the CVC regarding consideration of anonymous complaints which are mostly aimed at character assassination and mud slinging. It will be useful to quote the relevant instructions as contained in CVC's O.M. No. 98/DSP/9 dated 31st January, 2002 addressed to all Chief

Vigilance Officers on the subject of "improving vigilance administration no action to be taken on anonymous/pseudonymous petitions/complaints." The Commission had reviewed the instructions regarding action to be taken on anonymous/pseudonymous complaints and observed that the enabling provision in the DOPT's Orders No. 321/4/91-ADV.III dated 29.9.1992 had become a convenient loophole for blackmailing and detrimentally affecting the career of public servants whose promotions/career benefits were denied owing to consequent investigation. Considering all aspects, the Commission by virtue of powers invested under Para 3(v) of the Ministry of Personnel, Public Grievance and Pensions, Department of Personnel and Training Resolution No. 371/20/99-ADV.III dated 4th April, 1999, had instructed all Govt. Deptts./Orgns. PSEs. and Banks not to take action on anonymous/pseudonymous complaints. All such complaints are to be filed vide CVC's Instruction No. 3(v)/1992 dated 29th June, 1999.

2. However, it has come to the notice of the Commission that some Govt. Deptts./Orgns. And, in particular, Banks are not complying with the CVC's instructions and have been taking cognizance/action on anonymous/pseudonymous complaints. Very often, the content of the complaint, described as verifiable, is used as a justification for such action. The instruction of the Commission does not permit this line of action.

3. It is hereby reiterated that under no circumstances, should any investigation be commenced or action initiated on anonymous/pseudonymous complaints; these should invariably be filed.

Any violation of this instruction will be viewed seriously by the Commission.

25. In the context of these instructions, it is worthwhile to refer to the remarks of the CVO of the respondent department itself, who in his note had observed that anonymous complaints are not to be taken note of in the matter of vigilance investigation. In fact, the Govt.

instructions are that no cognizance is to be given to the anonymous complaint. This type of complaints are symptoms of intellectual dishonesty which instead of

doing anything good either to the system or to the society, create administrative botherations. What is more surprising is that the Ministry for reasons best known to itself had set up a Committee to look into the allegations and in the office note dated 9.4.2003, as we had indicated earlier, it was clearly stated that the Committee had found nothing against the applicant. However, it is because of the office note dated 5.8.2003. the things started changing in respect of the applicant. It was in that note that doubt was raised that "Mr. P.K. Guha, Mr. S.K. Sarkar and Mr. Subramaniam, "were perhaps responsible for the alleged irregularities for the said period...." In the note of the Under Secretary/Vigilance dated 25.8.2004 it was very categorically held that enquiry report has not tried to blame any particular official and whether splitting of orders leads to any misconduct, according to him, is a matter of inference. He was, however, of the firm view that unless the original files were perused, it would not be possible to say whether any specific serious act of misconduct was involved. He was also of the view that the allegations as they stood did not call for any charge-sheet for major penalty as the same would not be sustainable. But in spite of that, it appears that the respondents decided to go in all hurry to beat the time as Mr.

Subramaniam was retiring and that because with his retirement no action would be possible against him as the matter would be more than 4 years old. Further, in the note of the Dy. Secretary dated 12.5.2003, it was decided to charge-sheet Mr. Subramaniam as there was no time to seek his version of the matter, and also to postpone consulting the CVC till after issue of the charge-sheet. Thus the whole decision making process was faulty, violative of the instruction laid down in this regard and the rational and reasoned views of the Vigilance Branch was overruled without the benefit of superior reasoning.

26. It was on account of the advice of the CVC, as the respondents have submitted, that they had taken major penalty action against the applicant. The applicant in his submissions has stated that the advice of the CVC suffers from various contradictions and lacks any basis.

Firstly; that in his advice letter dated 6th November, 2003, the CVC has not given any reason for advising major penalty proceedings against the applicant In the

said letter of advice of CVC there is no reason available as to why they felt the explanation furnished by the applicant untenable or why the suggestion of the Under Secretary/Vigilance was without merit and why they had thought it right to overrule the observation of Under Secretary/Vigilance that alleged acts of omission/commission did not constitute serious sustainable charges for initiating major penalty proceedings and finally there is no whisper why they allowed the department to initiate action on anonymous complaint contrary to their own instructions. In the said perspective their advice at Para 4 also appears to be without merit.

27. Having regard to the above facts of the case and the position of law, we have no doubt that the charge-memo dated 13.6.2005 issued against the applicant is unsustainable in the eye of law being arbitrary, irregular, illegal, irrational, being premeditated and in violation of the instructions issued by CVC vide his circular dated 31st January, 2002 and is, therefore, liable to be quashed. We order accordingly.

28. As the decision of the Ministry not to accept the advice of the Commission was based on the fact that the applicant is facing a disciplinary proceedings, and the said disciplinary proceedings having been quashed by us by our above order for the reasons stated herein, the respondents are directed to take a fresh view in the matter regarding acceptance of the advice of the UPSC and take a final decision regarding filling up the post of Director, Central Drug Laboratory, Calcutta within a period of 45 days from the receipt of this order. The interim order stands vacated. Both the O.As. are accordingly disposed of by this common order. There will be no order as to costs. No order as to costs.

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