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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.3010/2002

New Delhi this the 6th day of August, 2003.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Gopal Saran,
R/o H.No.177,
Paper Wali Gali, Hapur,
Distt. Ghaziabad (UP).

-Applicant

(By Advocate Shri Ashwani Bhardwaj)

-Versus-

1. The Union of India,
through Secretary to the
Govt. of India,
Ministry of Urban Development,
Nirman Bhawan, New Delhi.
2. The Director General (Works),
Directorate General of Works,
Central Public Works Department,
New Delhi.
3. The Director of Administration,
Directorate General of Works, CPWD,
Nirman Bhawan, New Delhi. -Respondents

(By Advocate Shri Madhav Panikar)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

Quashment of memorandum dated 22.12.97 as well as enquiry report dated 30.8.2001 has been sought with all consequential benefits.

2. Applicant while working as Assistant Engineer at CPWD, Imphal w.e.f. 17.5.81 to 21.8.83 was issued a memorandum dated 4.11.91 to explain certain irregularities. On response to the explanation no action was taken.

3. On 22.12.97 applicant was issued a memorandum under Rule 14 of the CCS (CCA) Rules, 1965 alleging lapses and misappropriating government stores.

4. Respondents have issued promotion order of various Assistant Engineers on 23.4.98 promoting them as Executive Engineer in Group 'A' Service whereas case of applicant was placed under sealed cover.

5. Chargesheet dated 22.12.97 was assailed in OA-1059/98. By an order dated 20.12.99 finding no infirmity and inordinate delay in the enquiry OA was dismissed. However, respondents have been directed to complete the enquiry within a period of four months from the date of receipt of the copy of this order.

6. Order passed by the Tribunal was assailed in CWP-1788/2002 before the High Court of Delhi by applicant. By an order dated 25.4.2000 notices have been issued to opposite parties and enquiry was stayed.

7. By an order dated 7.2.2001 with the following observations CWP was dismissed as withdrawn:

"This petition is directed against the order dated 20th December, 1999 passed by the Central Administrative Tribunal, Principal Bench. The main ground of challenge was that the memorandum of charges issued against the petitioner as late as on 22nd December, 1997 for the alleged irregularities committed in the years 1981-83. The Tribunal dismissed the application of the petitioner but directed the respondents to complete the enquiry within a period of four months from the date of receipt of copy of the order. The present petition was filed in this Court and an interim order of stay of enquiry proceedings was made on 25th April, 2000. The learned counsel for the petitioner, however, seeks leave to withdraw the writ petition and prays for issuance of an appropriate direction to the respondents to complete the enquiry within a specified period. Leave is granted. We direct the respondents to complete the enquiry within a period of four months from the date of receipt of copy of this order. The petitioner shall be at liberty to take recourse to a remedy as permissible in law at a later stage if it is so

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advised and may also take the plea that the enquiry was started belatedly and was liable to be quashed on that ground. The present petition is dismissed as withdrawn with these observations."

8. Applicant thereafter filed his written statement of defence. On 31.1.2002 he was served with the findings of the enquiry officer along with a letter from CVC which was responded to on 20.2.2002. However, no decision has been taken.

9. Applicant being aggrieved with non-conclusion of enquiry within four months as directed by the Delhi High Court filed OA-3010/2002 wherein by an order dated 20.11.2002 disciplinary authority has been directed to pass an appropriate order within 15 days from the receipt of the copy of the order.

10. By an order dated 24.1.2003 beyond the assigned period by the Tribunal respondents inflicted upon applicant a penalty of reduction in pay by two stages from 10,500/- to 10,100/- for two years with cumulative effect.

11. Meanwhile, applicant in the light of direction in OA-3010/2002 filed MA-2860/2002 for revival of the OA which was allowed.

12. Respondents also filed on 21.1.2003 MA-187/2003, seeking extension of time to comply with the order of the Tribunal dated 20.11.2002.

13. Notices have been issued in OA-3010/2003 to the respondents on 31.12.2002.

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14. By an order dated 23.1.2003 leaving open the issue of abatement of the enquiry by not passing an order in compliance of the direction dated 20.11.2002 liberty was accorded to respondents to pass final order in the disciplinary proceedings with liberty to applicant to file an appeal, but meanwhile operation of the order passed by the disciplinary authority has been stayed.

15. Learned counsel of applicant by referring to the following decisions contended that launching of enquiry or passing of an order after the time fixed by the Court results in quashment of the proceedings and if explanation has not been sought within the stipulated period enquiry is abated:

i) P.N. Singh v. State of U.P., 1999 (17) LCD 24 DB HC.

ii) K.B. Bhardwaj v. Union of India, SLJ 2003 (1) 160.

16. In this backdrop the learned counsel Sh. Ashwani Bhardwaj contends that in so far as delay in issuance of chargesheet and completion of enquiry is concerned, High Court has in its order dated 7.2.2001 has left this issue open. Shri Bhardwaj contends that High Court has clearly directed respondents to complete the enquiry within four months and as the enquiry could not be completed within this stipulated period the same has abated. Moreover, by referring to liberty given to him in the present OA by an order dated 23.1.2003 leaving open the issue of abatement it is contended that order dated

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20.11.2002 wherein despite directions and on receipt of the copy of the order as the respondents have failed to pass any final order within 15 days and their failure to seek explanation within the stipulated period renders the enquiry as well as final order passed by the disciplinary authority as not sustainable and the proceedings are abated.

17. On the other hand, respondents' counsel Sh. Madhav Panikar contended that there is no inordinate delay in issuance of the chargesheet to applicant, as the matter was in process and moreover in earlier OA the issue has been settled. As such, raising the same issue would be barred by the doctrine of res judicata. However, it is stated that the respondents in compliance of the directions of this Court dated 20.11.2003 filed an MA for extension and have been given liberty to pass an order within 7 days and have passed an order on 24.1.2003, as such the enquiry has not been abated. Moreover, learned counsel relies upon the decision of the Apex Court in Bharat Coking Coal Ltd. v. Bibhuti Kumar Singh and Others, 1994 Supp (3) SCC 628 to contend that when there has been a prayer of extension of time to comply with the direction delay in concluding enquiry was explained, the delay of setting aside the enquiry is not sustainable. Further, relying upon the decision of the Apex Court in Secretary to Government, Prohibition & Excise Department v. L. Srinivasan, JT 1996 (3) SC 202 it is stated that when the charges relate to embezzlement and fabrication of false records Tribunal is precluded from acting as an appellate forum and quashing the charges at the threshold on account of delay is not in accordance with law.

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18. We have carefully considered the rival contentions of the parties and perused the material on record. The decision of the Apex Court cited in Bharat Coking Coal Ltd. (supra) is distinguishable as in that case within the stipulated period to complete the enquiry within four months from the date of receipt of the order passed on 7.2.2001 have not completed the same. Moreover, the enquiry was completed only in January, 2002 when the enquiry report was served upon applicant. This is beyond the maximum prescribed time limit accorded to respondents to complete the enquiry. We do not find any material on record to indicate that the High Court of Delhi was approached by the respondents seeking extension of time to complete the enquiry. Moreover, despite submission of defence and reply to the show cause when no orders have been passed directions dated 20.11.2002 in OA-3010/2002 respondent, i.e., disciplinary authority has been accorded 15 days time to pass a final order. The copy was served upon respondents but despite this no final orders have been passed. The extension sought by them through MA-187/2003 was filed on 21.1.2003 and after expiry of the two weeks accorded to them to pass a final order, no final order was passed. Taking note of the above on revival of the OA the issue regarding abatement has been left open. However, liberty was given to respondents to pass final orders which are appealed against by applicant. In our considered view by not completing the enquiry within the period allowed to the respondents by the High Court and by not passing a final order in compliance of the directions of this Court (supra) within 15 days both enquiry as well as final order passed on 24.1.2003 have been passed without jurisdiction

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and the enquiry is abated having failed to pass an order beyond the prescribed time limit without any reasonable explanation and extension of time allowed by the High Court or Tribunal vitiated the order. The Allahabad High Court in P.N. Srivastava's case (supra) relying upon the decision of the Apex Court in M.L. Sachdev v. Union of India, 1991 (1) SCC 605 and also State of Bihar v. Subhash Singh, 1997 (4) SCC 430 held that Government was under duty to comply with the order within the time fixed by the Court and the only course open to seek extension instead of approaching the court for seeking extension of time respondents proceeded to complete the enquiry beyond the stipulated period of four months and have also failed to pass an order within 15 days. In this view of the matter, irrespective of the charges the enquiry stands vitiated and orders passed on such enquiry cannot be sustained as well. Accordingly, we have no hesitation to hold that the enquiry against applicant has vitiated and abated.

19. In the result, for the reasons recorded above, memorandum and the findings of the enquiry officer are quashed and set aside. As a result any consequent order passed shall also be liable to be set aside. Applicant shall be entitled to all consequential benefits. The OA is allowed in the above terms. No costs.

S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra)
Member (A)

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