

(16)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1899/2001

Wednesday, this the 1st day of May, 2002

Hon'ble Mrs. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri S.A.T. Rizvi, Member (Admn)

Shri Ashok Kapoor
Head Clerk/MRTS
Northern Railway
Baroda House
New Delhi

..Applicant

(By Advocates: Shri P.S.Mahendru and Shri S.K.Anand)

Versus

1. Union of India through
The General Manager
Northern Railway
Baroda House, New Delhi
2. The Dy. Chief Engineer/MRTS
Northern Railway,
Baroda House, New Delhi
3. Shri V.N.Astrolia
AEN/G
Northern Railway,
Baroda House, New Delhi

..Respondents

(By Advocate: Shri V.S.R.Krishna)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, VC (J):-

In this application, the applicant is aggrieved by the Memorandum of charges issued by the respondents dated 18.1.2001 in which they have proposed to hold an inquiry against him pertaining to an alleged incident of 1989.

2. The brief relevant facts of the case are that the applicant, who was working as Head Clerk in 1989, had prepared a special Duty Pass No.181240 dated 29.6.1989 EX - New Delhi to Kanpur. However, in the passenger foil of the Duty Pass the route of journey was shown as Ex- New Delhi to Gorakhpur and back to Kanpur which, according to the applicant, was as per the instruction of the officer

18,

concerned for whom he had issued the pass. The relevant portion of the charge-sheet issued to the applicant by the impugned Memorandum dated 18.1.2001 reads as follows:-

"That the said Shri Ashok Kumar while working as Head Clerk/TT/Line under SEN/TT/Line, Shivaji Bridge New Delhi during the year 1989 failed to maintain absolute integrity, devotion to duty and acted in an unbecoming manner in as much as he had prepared and issued 2nd class special Duty Pass No.181240 dt: 29.6.89 ex-NDLS to CNB in favour of Shri Gopi Chand App: Chargeman (Civil) but had made the passenger foil of this pass available ex-NDLS to GKP and back to CNB without mentioning date of its issue and availability to facilitate the pass holder to travel free of charge to and from GKP."

3. One of the main grounds taken by Shri P.S.Mahendru, learned counsel is that the initiation of disciplinary proceedings by the aforesaid Memorandum of charges in January, 2001 of an incident which happened nearly 12 years back, is illegal as it has been unduly delayed and that too without any reasonable explanation given by the respondents for the delay. He has submitted that the alleged incident of issuing the aforesaid Duty Pass to the concerned officer took place in the month of June, 1989 and the statement of the applicant as well as the officer, Shri Gopi Chand, was also recorded in the same year. Thereafter, the respondents have remained silent till they issued the impugned Memorandum of charges in January, 2001. He has relied on the judgements of the Hon'ble Supreme Court in State of Madhya Pradesh Vs. Bani Singh & Another (AIR 1990 SC 1308 and State of A.P. Vs. N. Radhakishan ((1998) 4

(3)

SCC 154). In the circumstances, the learned counsel has prayed that the impugned Memorandum of charges dated 18.1.2001 as also the inquiry proceedings held by the respondents in pursuance of the same should be quashed and set aside.

4. The respondents in their reply have stated that a preliminary inquiry was instituted against the applicant in 1989. In furtherance of that preliminary inquiry, the statements of the applicant as well as Shri Gopi Chand were recorded in the same year, i.e., 1989. Thereafter, the explanation given for the delay in issuing the Memorandum of charges is as follows:-

"The departmental inquiry could not be started because of the transfer of applicant or officers when the new officer took over he saw the vigilance report and served chargesheet on applicant."

The respondents have also relied on the statement of the applicant recorded on 30.8.1989 which, according to them, shows that the applicant had issued 2nd class special Duty Pass No.181240 dated 29.6.1989 Ex-NDLS to CNB in favour of Shri Gopal Chand App.Chargeman (Civil) but had made the passenger foil of this pass available Ex-NDLS to GKP and back to CNB without mentioning the date of its issue, which was to facilitate the pass holder to travel free of charge to and from GKP.

5. They have also submitted that in the statement recorded by the applicant, he has referred to the fact that he was very confused on that date, i.e., on

18/

(4)

30.6.1989 as his father met with an accident and his senior called him and asked to prepare the pass. The applicant is also stated to have mentioned that he had prepared the pass but made a mistake in preparing the pass because of the happenings with his father. According to the respondents, this is a confession on the part of the applicant that he has clearly committed a mistake and wrongly prepared the pass. Hence Shri V.S.R. Krishna, learned counsel has submitted that the respondents have done nothing wrong in issuing the Memorandum of charges, though belatedly. He has, therefore, prayed that the OA may be dismissed and the respondents be allowed to continue with ^{the 18} ₁ Departmental proceedings initiated against the applicant by issuing Memorandum of charges in January, 2001.

6. We have carefully considered the submissions made by the learned counsel for both the parties and have perused the materials placed on record.

7. From the brief facts mentioned above and the charges levelled against the applicant, it is seen that the charge against the applicant relates to an incident, of his issuing a Duty Pass to Shri Gopi Chand, which is ^{on 18} dated 26.9.1989. He had also been asked for explanation as to how he had issued the Duty Pass to which he has given a reply on 30.9.1989 which is relied upon by the respondents. The applicant has submitted, inter alia, in this note dated 30.8.1989 that he was very much confused on that date when the pass was issued in which he had made certain mistakes. This statement dated 30.8.1989

B2

(2)

given by the applicant was available in the records of the respondents on which apparently, they took no action till they issued the Memorandum of charges dated 18.1.2001. The only explanation given by the respondents in their reply for the delay in issuing the charge-sheet is what has been reproduced in paragraph 4 above. The explanation can hardly be accepted as a reasonable explanation because neither the names of the officers who had been transferred nor who were the new officers who took charge of the relevant Sections of the Department with relevant dates and other details, including the applicant's own transfer order, have been mentioned by the respondents. In the facts and circumstances of the case, the explanation given by the respondents can only be termed as a vague and wholly inadequate attempt to explain the inordinate delay in dealing with the matter of issuing the Memorandum of charges against the applicant. This has been done after nearly 12 years of the incident which is the subject matter in the charge-sheet which has been issued.

8. In State of Madhya Pradesh Vs. Bani Singh (supra), the Hon'ble Supreme Court has held as follows:-

"4. The appeal against the order dt. 16-12-1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned Counsel. The irregularities which were the subject-matter of the enquiry is said to have taken place between the years 1975-1977. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to

18

(6)

(2)

them even in April, 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

(emphasis supplied)

A similar view has been taken by the Hon'ble Supreme Court in State of A.P. vs. N. Radhakishan (supra), wherein it has been held as follows:

"... In considering whether delay has vitiating the disciplinary proceedings, the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained, prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path, he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

(emphasis supplied)

9. In the facts and circumstances of the present case, as mentioned above, there is no explanation, let

alone a reasonable explanation, given by the respondents for the delay caused by them between the date of the incident, i.e., 29.6.1989 and the issuance of the Memorandum of charges dated 18.1.2001. Having regard to the aforesaid judgements of the Hon'ble Supreme Court in Bani Singh's case (supra) and N. Radhakishan's case (supra), the impugned Memorandum of charges dated 18.1.2001 is, therefore, liable to be quashed and set aside only on the ground of delay. It is also relevant to mention that the incident in question relates to a Duty Pass being issued by the applicant to another Govt. (Railway) servant who was entitled to the Duty Pass to some extent. The applicant himself has clearly stated that he was confused on that date when the Duty Pass was issued with a different route being shown in the foil of the Pass because his father had met with an accident. The respondents have not cared to either accept or deny the averment of the applicant regarding the accident or whether the explanation given by him was accepted by them or not at the relevant time in 1989. It is also relevant to mention here that the respondents have not only failed to explain the delay in issuing the impugned Memorandum of charges but they have also not stated what action has been taken against the concerned officer(s) who have inordinately delayed the same to fix responsibility. Therefore, in the balance of the diverse considerations in the case, the impugned order dated 18.1.2001 is liable to be quashed and set aside, following the aforesaid judgements of the Hon'ble Supreme Court.

10. In the result for the reasons given above, we find merit in this application. Accordingly, the OA succeeds

(23)

(8)

and is allowed. The impugned Memorandum of charges dated 18.1.2001 is quashed and set aside. No order as to costs.

S.A.T.Rizvi

(S.A.T.Rizvi)
Member (A)

Lakshmi Swaminathan

(Mrs. Lakshmi Swaminathan)
Vice Chairman (J)

/sunil/