

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 987/99

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T.A. No.

DATE OF DECISION 20-12-99

S.N.Paracer

..... Applicant

Sh.Naresh Kaushik

....Advocate for the
Applicant(s)

VERSUS

UOI through its Secy.
M/O Communication & Ors.

....Respondent(s)

Sh.S.M.Arif

....Advocate for the
Respondents.

CORAM

The Hon'ble Shri S.R.Adige, Vice Chairman (A)

The Hon'ble Smt.Lakshmi Swaminathan, Member (J)

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

Lakshmi Swaminathan

(Smt.Lakshmi Swaminathan)
Member(J)

Central Administrative Tribunal
Principal Bench

O.A. 987/99

New Delhi this the 20 th day of December, 1999

Hon'ble Shri S.R. Adige, Vice Chairman (A).
Hon'ble Smt. Lakshmi Swaminathan, Member (J). (2)

S.N. Paracer,
S/o late Shri P.S. Paracer,
8A, Bengali Mohalla Road,
Dehradun-248001. ... Applicant.

By Advocate Shri Naresh Kaushik.

Versus

1. Union of India
through its Secretary,
Ministry of Communication,
Department of Telecom,
Sanchar Bhavan,
New Delhi-110001.
2. The Dy. Director General (Vig.),
Department of Telecommunications,
West Block-I,
Wing No. 2, Ground Floor,
R.K. Puram, New Delhi-110066.
3. The Desk Officer (Vig. II),
Ministry of Communications,
Department of Telecommunications,
West Block-I, Wing-2,

By Advocate Shri S.M. Arif.

ORDER

Hon'ble Smt. Lakshmi Swaminathan, Member (J).

The applicant has challenged the validity of the Memorandum issued by the respondents dated 21.9.1998 in which they have proposed to take action against him under Rule 16 of the CCS (CCA) Rules, 1965 (hereinafter referred to as 'the Rules') for misconduct and misbehaviour.

2. Learned counsel for the applicant has contended that the aforesaid impugned Memorandum has been issued after 12 years of the alleged lapse on the part of the applicant, that is pertaining to acceptance of tender documents in July, 1987 and after the applicant has already been promoted to the post of

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Superintending Engineer (Elect) with effect from 2.6.1998 on temporary basis. The applicant has submitted that when he was working as Surveyor Works (Elect.) in 1987-1988, he had dealt with the tenders for supply of Central AC Plant at TE Building, Agra. According to him, he had completed the said work diligently and there was no lapse of any kind on his part. He had also been promoted as Superintending Engineer on 2.6.1998. In the meantime, the applicant had also been given a show cause notice on 18.7.1995 to which he had given the reply. According to him, thereafter the Department had closed these proceedings. The applicant states that he has submitted his reply to the charge-sheet dated 21.9.1998 on 22.1.1999. Shri Naresh Kaushik, learned counsel, relying on a number of judgements mentioned in the O.A., has submitted that the impugned Memorandum of charges are highly belated and are, therefore, not sustainable in law. He has also relied on the judgements of the Tribunal in **Pramod Kumar Vs. Union of India & Ors.** (OA 266/98 - CAT Ahmedabad Bench) and **Surendra Kumar Dewan Vs. Union of India & Ors.** (OA 268/98 - Jodhpur Bench) (copies placed on record).

3. The respondents in their reply have submitted that disciplinary proceedings have been instituted against the applicant on the basis of *prima facie* misconduct noticed against him by the disciplinary authority. They have also submitted that the applicant had requested for inspection of documents which had been allowed to him. They have also submitted that a Government servant can be proceeded against ^{at any} ~~any~~ time during his service or even after his retirement, in certain circumstances if a misconduct committed by him during the service period comes to their notice. ~~of the respondents~~ They have also submitted that the applicant was promoted to the post of Superintending

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Engineer (Elect.) from the post of Executive Engineer (Elect.) on purely temporary basis by order dated 2.6.1998 and, therefore, he was reverted to the post of Executive Engineer (Elect.) by order dated 23.4.1999 in accordance with the DOP&T O.M. dated 24.12.1986 as disciplinary proceedings had been instituted against him. According to them, it was not only desirable but also administratively appropriate to revert him to the post of Executive Engineer (Elect.) in public interest. They have, therefore, prayed that the Tribunal's interim order not to enforce the impugned order dated 23.4.1999 reverting him to the post of Executive Engineer (Electrical) may be vacated. They have further submitted that as the minor penalty proceedings against the applicant are still pending, he has approached the Tribunal at a premature stage as the disciplinary authority has not taken any decision so far.

4. In pursuance of the Tribunal's interim order dated 12.5.1999, the respondents have passed the order dated 25.5.1999 posting the applicant as Superintending Engineer (Elect.), TEC Dehradun with immediate effect.

5. The main issue raised in this case is that the respondents have issued Memorandum of charges against the applicant after considerable delay of about 12 years. In **State of Punjab and Ors. Vs. Chaman Lal Goyal (1995(2) SCC 570**, the Supreme Court has held as follows:

"Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of

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administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of the circumstances. In other words, the court has to indulge in a process of balancing. Now, let us see what are the factors in favour of the respondent. They are:

(a) That he was transferred from the post of Superintendent of Nabha Jail and had given (sic up) charge of the post about six days prior to the incident. While the incident took place on the night intervening 1-1-1987/2-1-1987 the respondent had relinquished the charge of the said office on 26.12.1986. He was not there at the time of incident.

(b) The explanation offered by the Government for the delay in serving the charges is unacceptable. There was no reason for the Government to wait for the Sub-Divisional Magistrate's report when it had with it the report of the Inspector General of Prisons which report was not only earlier in point of time but was made by the highest official of the prison administration, Head of the Department, itself. The Inspector General of Prison was the superior of the respondent and was directly concerned with the prison administration whereas the Sub-Divisional Magistrate was not so concerned. In the circumstances, the explanation that the Government was waiting for the report of the Sub-Divisional Magistrate is unacceptable. Even otherwise they waited for two more years after obtaining a copy of the said report. Since no action was taken within a reasonable time after the incident, he was entitled to and he must have presumed that no action would be taken against him. After a lapse of five and a half years, he was being asked to face an enquiry.

(c) If not in 1992, his case for promotion was bound to come up for consideration in 1993 or at any rate in 1994. The pendency of a disciplinary enquiry was bound to cause him prejudice in that matter apart from subjecting him to the worry and inconvenience involved in facing such an enquiry".

The Apex Court, in Para 10 of the ~~superseded~~ judgement in the aforesaid case discussed the facts against the respondent and has noted that he was never suspended nor was he served with the Memorandum of Charges till March, 1992. The charges were very grave, there was no allegation that any

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of the witnesses whom the respondent wanted to examine in his defence have since died or have become unavailable and the said facts would cause prejudice to his case, pending the writ petition filed in the High Court, the Government had completed its evidence and only the defence evidence remained to be adduced. Taking into account all these facts, the Hon'ble Supreme Court after quoting the judgement of the Constitution Bench in A.R. Antulay Vs. R.S. Nayak (1992(1) SCC 225) have observed that ultimately the Court has to balance and weigh the several relevant factors - balancing test or balancing process and determine in each case whether the right to speedy trial has been denied in a given case. In Goyal's case (supra), the Hon'ble Supreme Court after applying the balancing process, came to the conclusion that there was no justification for the High Court to quash the charges and the order appointing Inquiry Officer. It was held that it is more appropriate and in the interest of justice as well as in the interest of administration that the enquiry which had proceeded to a large extent be allowed to be completed. At the same time, it was directed that the respondent should be considered forthwith for promotion without reference to and without taking into consideration the charges or the pendency of the said inquiry and if he is found fit for promotion, he should be promoted immediately. The Court ordered that the promotion so made, if any, pending the inquiry, shall however, be subject to review after the conclusion of the inquiry and in the light of the findings in the inquiry. It was also directed that the inquiry against the respondent shall be concluded within eight months in which the respondent shall cooperate in concluding the inquiry. It is obvious that if the respondent does not so cooperate it shall be open to the Inquiry Officer to proceed ex parte. It was further observed

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that if the inquiry is not concluded and final orders are not passed within the aforesaid period, the inquiry shall be deemed to have been dropped.

6. In the present case, the respondents have issued the charge-sheet against the applicant under Rule 16 of the Rules for minor penalty. The main grievance of the applicant is that the charge relates to incidents which occurred as far back as in 1987. Admittedly, the applicant had been promoted as Superintending Engineer by order dated 2.6.1998 before the charge-sheet had been issued. In view of the judgement of the Supreme Court in Chaman Lal Goyal's case (supra), we do not consider the other judgements relied upon by the applicant will assist him in the facts and circumstances of the present case.

7. Taking into account the facts and circumstances of the case and the judgement of the Supreme Court in Goyal's case (supra), the O.A. is disposed of as follows:

(a) The interim order passed by the Tribunal on 12.5.1999 restraining them from reverting the applicant is made absolute till conclusion of the disciplinary proceedings initiated on 21.9.1998.

(b) Respondents are directed to complete the proceedings under Rule 16 of the Rules within a period of ~~six~~ months from the date of receipt of a copy of this order. The applicant shall fully cooperate in concluding the departmental proceedings so that the inquiry is concluded within this time and in case he does not cooperate, it shall be open to the

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respondents to proceed ex parte, considering the fact that the minor penalty proceedings have been initiated nearly a decade after the occurrence of the alleged misconduct by the applicant.

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(c) In case, the inquiry is not completed within the prescribed period, the Inquiry shall be deemed to have been dropped.

(d) In case any penalty is imposed on the applicant, the aforesaid promotion of the applicant may be reviewed by the respondents in accordance with the relevant rules, law and instructions.

(e) No order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

S. R. Adige

(S. R. Adige)
Vice Chairman (A)

'SRD'