

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A No. 717/1998
T.A No.

Date of Decision 12-9-2001

Shri Balvir Singh ..Petitioner

Sh. G. D. Gupta - Sr. Advocate for the petitioner(s)

Versus

Union of India ..Respondent

Sh. V. S. R. Krishna ..Advocate for the Respondents

Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)

Hon'ble Shri Govindan S. Tampi, Member (A)

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

(Govindan S. Tampi)
Member (A)

(46)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. 717/1998

New Delhi, this the ..12th..day of September 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

Shri Balvir Singh
S/o Sh. Gajjan Singh, resident of E-3,
Type IV, New Police lines,
Kingsway Camp, New Delhi.

.....Applicant

(By Shri G.D. Gupta, Sr. Counsel)

Versus

1. Union of India through the
Secretary to the Govt of India,
Ministry of Home Affairs,
North Block, New Delhi
2. Govt. of N.C.T. Delhi through
its Chief Secretary, 5, Sham Nath Marg,
Delhi.

.....Respondents.


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

O R D E R

By Hon'ble shri Govindan S. Tampi, Member (A)

Challenge in this OA is directed against the alleged improper action of the respondents in holding a fresh enquiry against the applicant on the same grounds as in the earlier enquiry.

2. Heard Shri G.D. Gupta, learned senior Counsel for the applicant and Shri V.S.R. Krishna, learned counsel for the respondents.



3. The applicant who was recruited to Delhi and Andaman & Nicobar Police Service (DANIPS) on the basis of Civil Service Examination, 1980 (CSE-1980) joined duties on 29.6.1982. Accordingly, he was to complete his probation in June 1984, but was informed on 21.4.1988 that the same stood extended until further orders, though no reason for the same was mentioned. In the meanwhile, he was placed under suspension between 9.9.1983 and 26.2.1987 on the basis of a false complaint filed by one Shri Mit Singh to pressurise his tenant one Shri R.S Rati, the applicant's uncle to vacate the rented premises. The preliminary enquiry report prepared at the back of the applicant, alleged that the applicant was misusing the official position to intimidate the complainant. A F.I.R. also was registered in the above connection with Police Station Janakpuri. Copies of the complaints filed against the applicant on 5.7.1983 and 18.3.1984, were supplied to the applicant only on 22.1.1986. On his filing his reply to the memoranda relating to the complaints a charge sheet was issued to him on 30.6.1987. The above charge sheet was based on the first complaint dated 5.7.1983, while the complaint dated 18.3.1984 became the FIR which led the trial in the Court of Metropolitan Magistrate, Delhi in which the applicant was acquitted on 6.11.1990. The first complaint also became a FIR and the case thereon is still pending in the Court of law. The charge sheet was replied on 24.7.1987 by the applicant denying the charges, but his services were suddenly terminated by respondents' order No. 14018/2/88-UTS dated 12.12.1988. The applicant filed a representation against it on 15.12.1988, and followed it up with OA No.2439/1988 which was decided on 8.6.1989, quashing the termination order with grant of all consequential benefits and the same was "cancelled" on 4.10.1989. However, on 14/15.3.1989, disciplinary proceedings were initiated

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against the applicant . by the Chief Secretary as the disciplinary authority Inquiry Officer and the Presenting Officer were also appointed. The inquiry was closed by the I.O. on 30.1.1991 with none of the prosecution witnesses , having been produced inspite of three opportunities being given. All concerned were directed to give their written briefs. The applicant filed his written brief on 22.2.1991 while the Presenting Officer did not do so. Applicant therefore felt that the matter has been closed. However, after four years, on 6.3.1995 a new I.O. was appointed to enquire into the charges though the previous inquiry had been closed. Nothing happened thereafter. Two years later on 4.4.1997, a third Inquiry Officer was appointed for the same purpose. Proceedings followed thereafter by hearing on 30.7.1997, 7.8.1997 and 8.9.1997 when some documents were given to the applicant. In the meanwhile, on 24.10.1997, he also submitted a representation to the Chief Secretary bringing out the irregularity of initiating a second inquiry as well as alleging that the inquiry had been delayed as many as 14 years only to harass him. He further made a further request on 3.12.1997 to have the DE proceedings stalled Inquiry Officer was duly informed of the same. Inspite of the above, the Inquiry Officer had proceeded with the second enquiry. Hence the application.

4. Main grounds urged by the applicant in support of his pleas are as below:-

- i) inordinate delay in the proceedings which have taken nearly ten years making the matter stale,

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- ii) inaction of the respondents in not accepting the first enquiry report exonerating but proceeding with the second enquiry which was not permitted by the Rules, 1965,
 - iii) violation of Rule 14 (15) of the CCS(CCA) Rules which guaranteed against calling for additional evidence and additional witnesses to fill up gaps, in the earlier enquiry.
 - iv) adoption of wrong procedures of enquiry.
 - v) reluctance on the part of the respondents to suspend the disciplinary proceedings, in spite of his total acquittal in the criminal case and the prejudicial attitude of the disciplinary authority, who was insistent to ensure that the applicant was harmed, by whatever means, fair or foul.

The applicant, therefore, requests that the second proceedings initiated against him be quashed with full consequential reliefs.

5. In their reply the respondents point out that the application was totally misconceived and not maintainable and also hit by limitation. The respondents do not deny the facts indicated in the OA as far as they relate to the applicant's joining service, his suspension during the

probation period, filing a complaint against him by a person and institution of disciplinary proceedings and criminal proceedings against him. As the applicant was under suspension for a long time i.e. from 1983 to 1987 his assessment reports were not available and therefore his period of probation had to be extended. After two assessment reports became available, DPC met on 10.11.1988 found that on the basis of his performance he was not fit to be continued in service and thus discharged him from service on 12.12.1988. It is pointed out that even during the preliminary enquiry, though at a later stage he was asked to explain his conduct and therefore it is not correct^{to} state^{to} that he had been discriminated. First Inquiry Officer, had in fact exonerated him of the charges but the Disciplinary Authority who considered the enquiry report observed that the exoneration was on the ground that no evidence had been produced on behalf of the prosecution and therefore ordered a fresh enquiry, which was fully permitted in terms of rule 15 of CCS (CCA) Rules 1965. The Disciplinary Authority had directed that further enquiry be conducted which was fully in accordance with the provisions laid down in Rule 15. Averment to the contrary by the applicant was without any basis. ^{There} is also no truth in the averment that the enquiry was being delayed to harass him. The applicant's plea in his alleged representations dated 27.10.97 and 17.11.97, sent to the Chief Secretary calling upon him to drop the fresh enquiry has no merit at all. It is not a case of holding a fresh enquiry on the same allegation as the applicant alleges but holding further enquiry from the stage of recording of evidence of the prosecution witnesses. The plea by the applicant that as he had been discharged in the criminal proceedings disciplinary proceedings should not have been proceeded with, also has no basis as the level of proof,

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required in the two proceedings are different in nature. In view of the above the respondents point out that the action taken by them was fully in accordance with the rules governing the subject and the applicant was not entitled for any relief.

7. During the oral submissions Shri G.D. Gupta learned ~~Sr.~~ Counsel appearing on behalf of the applicant forcefully reiterated the pleas taken by him in the OA and stated that on account of the considerable delay of more than 10 years which had occurred in this case and as the applicant has been exonerated by the first Inquiry Officer, it was not proper for the respondents to have initiated fresh proceedings. Provision of CCS (CCA) Rules, did not provide for any fresh enquiry or de-novo-enquiry. The learned Sr. Counsel also indicated that as the criminal proceedings against the individual had culminated in his honourable acquittal, there was hardly any justification for the disciplinary proceedings to have continued. Here fresh or de-novo proceedings have been ordered which was totally incorrect. Sh. Gupta sought to rely upon the decision of the Hon'ble Supreme Court in the case of State of Madhya Pradesh Vs Bani Singh and Others (AIR 1990 SC 1308) and that of Hon'ble Delhi High Court in Ashok Kumar Vs DDA in Civil Writ Petition No. 3145/94 holding that unjustified and inordinate delay would vitiate the proceedings. He also referred to the decision of this Tribunal in TA No. 368/1985 in S.P. Bansal Vs UOI & Others in TA 368/1985 decided on 30.5.86 which held that further enquiry cannot be held under Rule 15, to produce additional evidence to overcome the shortcomings of the first enquiry. On the other hand Sri Krishna, learned counsel appearing for the respondent stated

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that as the entire proceedings have been gone through correctly, there was no case for the tribunal to interfere in the matter.

8. We have carefully considered the matter and perused the evidence brought on record. This in fact is second round of litigation before this Tribunal. Facts of the case are not disputed. The applicant, who joined as a Probationer of 1982 batch was proceeded against on the basis of complaint given by one Shri Mit Singh and remained under suspension from 9.9.83 to 26.2.87. The disciplinary proceedings as well as criminal proceedings were initiated against him on the same set of facts. In between his probation which should have been completed in June 84 was also extended on 21.4.88 until further orders. His removal from service dated 12.12.88 ordered without completion of enquiry, challenged in OA 2439/88, was quashed and set aside by this Tribunal on 8.6.89 as being violative of the Article 311(2) of the Constitution.

9. The criminal proceedings launched against him culminated in his acquittal by the Metropolitan Magistrate on 6.11.90 with the following observations:

"In my considered opinion, there is not any convincing (sic) evidence on the record to prove that the accused used to give any threat either to PW1 or to his wife. In my considered opinion, the prosecution has miserably failed to prove its case against the accused beyond reasonable doubt and, therefore, the accused is entitled to get benefit of doubt. I hold accordingly.

In view of the above, I acquit the accused of the charge by giving him reasonable benefit of doubt. He is discharged from his bail bonds. File be consigned to R.R."

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10. In the disciplinary proceedings initiated against the applicant on grounds similar to those raised in the criminal proceedings, Dr. P K Bandopadhyaya, Commissioner of Departmental Inquiries of the Central Vigilance Commission, ^{and I.O.} closed the Inquiry and held the charge as not proved. It is observed that in spite of three opportunities having been given, the Presenting Officer could not produce the relevant witnesses. It is also seen that even the officer who conducted the preliminary investigation into the events referred to in the complaint about the applicant was also not made available before the Inquiry Officer. The I. O. had in addition to perusing the records, examined the charged officer and considered his written brief. Interestingly no written brief had been given by the Presenting Officer. The Central Vigilance Commission also advised the respondents to accept the I.O.'s report. Nothing apparently was done. However, after 4 years on 6.3.1995 another Inquiry Officer was appointed who did not do anything which ^{led} ~~lead~~ to the appointment of a third Inquiry Officer on 4.4.1997, which is pending. As many as fourteen years had gone by since the complaint was acted upon and ten years after the charge sheet was initiated. As the criminal proceedings had ended on his honourable acquittal, the disciplinary proceedings should not have been proceeded with according to the applicant. In this context he is found to have represented to Chief Secretary both on 27.10.97 and 17.11.97 but the same had been declined by the respondent's letter dated 15.12.2000, which also has been impugned in this O.A.

11. It is admitted on all hands that the proceedings against applicant have been initiated only on the basis of the complaint filed by one Mit Singh to the effect that the applicant had abused his official position with the help of

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his junior colleagues to harass the complainant who was the land-lord of certain premises occupied by applicant's uncle. Findings in the Criminal proceedings are that that the Prosecution has totally failed to bring home to the charged officer (applicant), the charges levelled against him. The same is more or less the position, in the disciplinary proceedings initiated against him which ended in the closure of the ^{first} enquiry and the submission of the report by Dr. Bandopadhyay that the charge did not stand proved. The CVC is also found to have advised the respondents to accept the findings of the I.O. but for reasons not clearly spelt out, the respondents have pursued the proceedings with the appointment of Shri Virendar Kumar as the second Inquiry Officer on 6.3.95 and ^{followed} it up with that of 3rd Inquiry Officer Shri S.M. Batra. It would appear therefore that the respondents were bent upon proving the charge against the applicant, by any means available to them. The initiation of a second enquiry is not provided for under Rule 15 of the CCS(CCA) 1965. In terms of said rule disciplinary authority, for reason ^{to be} recorded in writing, can remit the case to the inquiring authority for further enquiry and report and the latter shall thereupon proceed to hold further enquiry according to the provisions of Rule 14. " Thus what is permitted by the Rule is holding of further enquiry and not any de novo or fresh enquiry. However, the perusal of the relevant records makes it clear that what has been done by the respondents is the initiation of fresh enquiry or a de novo enquiry. In fact the notings dated 5.10.94 in the relevant file, "specifically seeks approval" for holding fresh enquiry under Rule 15(1) of the CCS(CCA) Rules, 1965 from the stage of recording of the prosecution witness in the case. Both C.V.C. and the competent authority ^{have} ~~had~~ termed it as a fresh enquiry. Further, the Disciplinary Authority also

refers it as a de-novo enquiry for which approval of the competent authority has been obtained. The position however in law is that a de novo or a fresh enquiry is not permitted, especially for bringing in additional evidence and producing witnesses, as has been clearly laid down by the Tribunal in the case of S.P. Bansal Vs. Union of India & Ors. in TA 368/1985 decided on 30.5.1986. ~~the~~ the respondents' right to have simultaneous or independent proceedings both under criminal law and under CCS(CCA) Rules cannot be questioned. It is also true that the nature of evidence required in these cases are different. The fact however, remains that in the both criminal proceedings and in the first Departmental Enquiry, the charges were not proved. In spite of that, after lapse of so many years the respondents are seeking to revive and keep the proceedings on ~~to~~ by instituting a de novo or fresh enquiry under the garb of further enquiry to overcome the shortcomings and failures of the first enquiry, for which respondents alone were responsible and there is nothing on record to prove that the applicant was in any way guilty of non-cooperation or delay during the inquiry. As such the respondents' action cannot be upheld in view of the decision of the Hon'ble Supreme Court in the case of State of Madhya Pradesh Vs Bani Singh and others and by Delhi High Court in the case of Ashok Kumar Vs DDA (supra). As the respondents have taken more than ten years, without any reason for keeping the proceedings alive and have not made use of the opportunities given to them, we are not inclined to remit the case to them once again for similar exercise. The proceedings marked by illegality and delay have to fail.

11. In the above view of the matter the application succeeds and is accordingly allowed. The disciplinary proceedings initiated against the applicant and are

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continuing in terms of the respondents' letter dated 15.12.2000 are quashed and set aside with all consequential benefits in accordance with the law to the applicant. No costs.

(Govindan S. Tampi)
Member (A)

Patwal/

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)