

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 2645/96
T.A. No.

199

DATE OF DECISION 12.03.98

Sh. N.L. Kataria	Petitioner
Sh. B.S. Mainee	Advocate for the Petitioner(s)
Versus	
U.O.I. & Ors.	Respondent
Sh. B.S. Jain	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. T.N. Bhat, Member(J)

The Hon'ble Mr. S.P. Biswas, Member(A)

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?


 (S.P. Biswas)
 Member(A)

Cases referred

1. Direct Recruit Class II Engg. Officers Association Vs. State of Maharashtra (AIR 1990 SC 1605)
2. Commissioner of Income Tax, Bombay Vs. T.P. Kumaran (1996(3) SLJ 101.
3. B.S. Minhas Vs. ISI (1983(4) SCC 582)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2645/1996

New Delhi, this 12th day of March, 1998

Hon'ble Shri T.N. Bhat, Member (J)
Hon'ble Shri S.P. Biswas, Member (A)

Shri N.L. Kataria
B-84, Anand Vihar
Delhi-110 092

.. Applicant

(By Advocate Shri B.S. Mainee)

versus

Union of India, through

1. Secretary
Ministry of Railways
Rail Bhavan, New Delhi
2. General Manager
Northern Railway
Baroda House, New Delhi
3. Secretary
Union Public Service Commission
New Delhi

.. Respondents

(By Advocate Shri B.S. Jain

ORDER

Hon'ble Shri S.P. Biswas

Brief facts necessary to be mentioned for the disposal of the case are as hereunder:

This is a second round of litigation by the applicant, a retired Senior Signal & Telecommunication Engineer (Construction) of Northern Railway, New Delhi. On 27.10.94, just 3 days before his retirement, the applicant was handed over a memo for a major penalty proceedings. He was, however, allowed to retire on superannuation on 30.10.94. In an earlier OA 1125/95 filed by the applicant and decided on 20.7.95, the Tribunal directed the respondents to "complete the disciplinary proceedings to the stage of submission of the enquiry report by the enquiry officer to the disciplinary authority within a period of 4 months from

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the date of receipt of communication of this order". Respondents were also directed to take action for final order in consultation with the authorities with utmost expedition.

2. The present application is the direct offshoot of the former one in the sense that as per the applicant, respondents have not cared to implement the directions in that OA (1125/95). That apart, the applicant alleges that even after having completed the disciplinary enquiry on 10.10.95, respondents have failed to ~~X~~ pass a final order and are withholding heavy amount of over Rs.2 lakhs of retiral benefits due to the applicant thereby causing tremendous hardship. Being aggrieved by the failures of R-1 and R-2 to pay the aforesaid legitimate dues, the applicant is again before us seeking the following reliefs:

(i) That the disciplinary proceedings which are in violation of Railway Board's instructions, be quashed;

(ii) Alternatively, respondents be directed to finalise the proceedings and pass final order within a specified period as has been done in the OA 2626/96 (B.N. Singh Vs. UOI) decided by the Tribunal on 15.10.96.

3. Applicant seeks to justify the aforesaid reliefs mainly because of inordinate delays caused by the respondents in final disposal of the disciplinary proceedings. To add strength to his argument, he

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brought the following details, mentioned in terms of chronological order, to highlight the lackadaisical manner the respondents have been acting in dealing with the present case of disciplinary proceedings against the applicant.

DETAILS OF DELAYED PROCEEDINGS

- (i) Memo of charge sheet handed over on 27.10.94;
- (ii) Date of retirement: 31.10.94
- (iii) Enquiry completed on 10.10.95
- (iv) Report of IO given to the applicant: 27.10.95
- (v) Reply by the applicant on 8.11.95
- (vi) Representation (first reminder) on 29.4.96
- (vii) Second reminder on 14.10.96
- (viii) Disagreement of views between disciplinary authority and IO's report: 20.12.96
- (ix) Reply by the respondents on disagreement: 21.1.97

4. Applicant argued that more than a year has passed even after the enquiry report was submitted and the matter is still pending between the Ministry of Railways and UPSC.

5. In the counter, Shri B.S. Jain, learned counsel for the respondents opposed the claim on the plea of "Constructive Resjudicata". He drew our attention to the specific plea taken by the applicant in his earlier OA (1125/95) praying reliefs that the "disciplinary proceedings be quashed or in the alternative respondents may be directed to finalise the proceedings within a specified period". The counsel argued that Rules do not

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permit reagitating the same issues already decided earlier. To add strength to his contention, the counsel cited the decision of the Hon'ble Supreme Court in the case of **Direct Recruit Class . II Engg. Officers Association Vs. State of Maharashtra AIR 1990 SC 1605.** In that case specific facts raised under Article 32 by the same parties and for the same reliefs were held to be barred by principles of resjudicata. He also cited the decision of the Apex Court in the case of **Commissioner of Income Tax, Bombay Vs. T.P. Kumaran 1996(3) SLJ 101.** That was the case where the apex court held that relief which should have been claimed in original suit cannot be claimed by a separate one subsequently. As per the counsel, the reliefs claimed in the present OA in para 8.1 are identical and is badly hit on grounds of resjudicata.

6. We have heard the counsel for both parties and we find that the Tribunal in the earlier OA took note of the fact that the railway administration has failed to make progress in the disciplinary proceedings for no justifiable reason and it was considered that it would be in the fitness of things if the respondents could complete the proceedings as expeditiously as possible. No finding, therefore, was entered in respect of the quashing of the proceedings as prayed for. On the contrary, Tribunal proceeded to examine the alternative relief as prayed and directed the respondents to finalise the proceedings within a specified period. Admittedly, those directions of the Tribunal have not been fully complied with. We are, therefore, unable to accept respondents' contention that the present OA is hit by principles of resjudicata.

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7. We find that after the judgement was delivered by this Tribunal on 20.7.95, respondents initiated action only on 20.2.96 after a gap of about 8 months when the details were sent to Railway Board. Thereafter the Board took yet another spell of 6 months in referring the case to the Central Vigilance Commission on 22.8.96. The case was then referred by CVC to the disciplinary authority on 10.10.96 and it was subsequently processed for reference to UPSC after obtaining relevant records only on 30.6.97. Respondents would submit that it takes 8-10 months at the level of UPSC for giving their advice. Even thereafter, respondents would require yet another three/four months for obtaining presidential order after receipt of specific advice of UPSC.

8. We find that Railway Board's instructions stipulate that such proceedings should be completed as early as possible and the time limit of 150 days has been provided only to serve as a model. Looking at the events, it is evident that proceedings in the present case progressed only at snail's pace apart from the fact that the respondents initially took as long as 8 months ~~were taken~~ to supply the documents to the applicant forcing the applicant to file OA 1125/95 praying for quashing of the disciplinary proceedings. It is also seen that even after applicant had submitted his reply to the IO's report, it took more than a year for the respondents to pass any final order. Consequently, applicant was forced to send several reminders requesting the respondents to settle his dues as early as possible. Repeated representations did not wake up the respondents much less a satisfactory reply to

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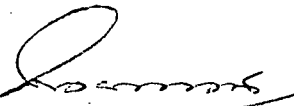
applicant's several representations. Though a model of time limit has been provided in dealing with such matters, we find that the respondents have unduly dragged in settling these proceedings. It is well settled rule of administrative law that an executive authority must rigorously hold to the standards by which it professes its action to be judged and it must scrupulously observe those standards. (see B.S. Minhas Vs. ISI 1983 4 SCC 582).

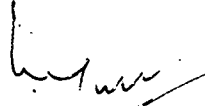
9. In the circumstances, the OA is partly allowed to the following extent:

(i) Respondents shall finalise the proceedings and pass a final order in the case within a period of four months from the date of receipt of a certified copy of this order;

(ii) Applicant will have the liberty to agitate the issue again seeking relief in terms of quashing of the proceedings in case of failure on the part of respondents to finalise proceedings as aforesaid.

(iii) There shall be no order as to costs.


(S.P. Biswas)
Member (A)


(T.N. Bhat)
Member (J)

/gtv/