

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.2710/97

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

New Delhi, this the 24th day of May, 2000

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Shri V.K.Saxena
s/o Lt. Shri S.M.Saxena
Chief Welfare Inspector
Office of Divl. Rly. Manager
Northern Railway
Moradabad. ... Applicant

(By Shri B.S.Mainee, Advocate)

Vs.

Union of India
through

1. The General Manager
Northern Railway
Baroda House
New Delhi.
2. The Divisional Railway Manager
Northern Railway
Moradabad. ... Respondents

(By Shri B.K.Agarwal, through Shri Rajeev Bansal,
Advocate)

O R D E R (Oral)

By Reddy. J.

While the applicant was working as Welfare Inspector, he was asked to verify the working period of one Mr. Tyagi, Casual Porter from the Railway Station of Moradabad Division. He verified the same and issued the verification report confirming that Mr. Tyagi worked as Casual Porter. On the basis of that report Mr. Tyagi was appointed as Substitute Loco Cleaner. Thereafter, another officer was sent to recheck the working period of Mr.Tyagi who submitted a report stating that the records for the relevant period were not produced by the Station Master. On the allegation that the applicant falsely verified the working period, he was served with a charge memo dated



6.11.1990 and after the enquiry, an enquiry report was submitted wherein the applicant has been totally exonerated. The disciplinary authority agreeing with the findings of the enquiry officer found him not guilty by an order dated 30.7.1992. Thereafter nothing happened for a period of five years and it is stated that the applicant was also promoted as Chief Welfare Inspector on 28.11.1995. The impugned notice has been issued to the applicant on 11.9.1997 stating that the applicant had falsely verified the working period of Shri Tyagi and hence the charges against him stood proved and he was asked to submit his representation within a period of 15 days. This notice is challenged in the OA.

2. The learned counsel for the applicant, Shri B.S.Mainel submits that there is an inordinate delay unreasonable and unconscionable delay in issuing the impugned notice, and the same is, therefore, contrary to the Rule 25(5) of the Railway Servants (Discipline & Appeal) Rules, 1968 as the power of review should be exercised within a reasonable time and the delay of five years is wholly unreasonable.

3. The learned counsel for the respondents, however, submits that under Rule 25(5) proviso it is open to the authorities concerned to revise the order at any time and that no restriction could be imposed upon the power.

4. We have given our anxious consideration to



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the points raised before us. The facts are not in dispute in this case. The only question to be decided is whether the impugned notice is vitiated on account of unreasonable delay. The applicant was exonerated by the order dated 30.7.1992 and the impugned notice was issued on 11.9.1997. It is not in dispute that, meanwhile, the applicant had been promoted to the post of Chief Welfare Officer in 1995. Proviso to Rule 25(b) has to be noticed to appreciate the point involved in this case. If the authorities mentioned in 25(1) seek to initiate the proposal for review of an order, imposing penalty/exoneration, it should be exercised only within a period of six months from the date of the order. However, under the proviso to Rule 25 sub rule 5, the review could be undertaken by the Railway Board, President and other specified authority at any time without restriction of any time limit. The proviso reads as under:

"Provided that when revision is undertaken by the Railway Board or the General Manager of a Zonal Railway or an authority of the status of a General Manager in any other Railway Unit or Administration when they are higher than the appellate authority, and by the President even when he is the appellate authority, this can be done without restriction of any time limit."

5. The impugned notice has been issued by the General Manager of Zonal Railway. Hence the proviso to sub Rule (5) is attracted. Thus, apparently no time limit could be imposed upon his power to review. Does it mean that the review could be exercised at any time. Should this power, like any power, be not exercised within a reasonable period? These questions were answered by the Supreme Court in New Delhi



Municipal Committee Vs. Life Insurance Corporation of India, AIR 1977 SC 2134 wherein an expression 'at any time' used in Sections 67, 68A of Punjab Municipal Act has come up for interpretation. The Court observed 8 that "The width of this power may justifiably be curtailed by reading the expression "at any time" to mean "within a reasonable time". It added that "It may be assumed that the power ought to be exercised within a reasonable time since, the use of expression of wide amplitude like "at any time" does not exclude the concept of reasonableness. But subject to that consideration, the power of amendment can be exercised even after the expiry of the year for which the list is to remain in force." Though the expression 'at any time' was employed in the context of amendment of the property tax list, the observations are apt and applicable to the facts in the instant case.

6. Thus, it is clear that the expression in the present case 'without restriction of any time limit' should be read to mean that this power be exercised within a reasonable time.

7. The learned counsel for the applicant also relies upon the Judgment in Sachindra Nath Mahapatra Vs. The State of West Bengal and Others, AIR 1972 Calcutta 385, wherein the power of review, under regulation 884 of Bengal Police Regulations (1943) was considered by the Calcutta High Court and held that exercise of revisional power after 2 years from the date of original order without any justifiable cause for the delay, resulted in needless mischief and

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injury to the delinquent and it was in breach of implied obligation to commence the proceeding with diligence. In construing the implied powers and obligation in a Statute, the Court relied upon Maxwell Interpretation of Statutes 10th Edition at page 364, which states as under:

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"But when an Act confers such powers it also impliedly requires that they shall be exercised only for the purposes for which they were given and subject to the conditions which it prescribes, and also with due skill and diligence and in a way to prevent a needless mischief or injury."

8. Thus, it is manifest that the power of review ought to have been exercised with all promptitude and due skill and diligence and without causing prejudice to the applicant.

9. The learned counsel for the respondents submits that the file in this case was initiated immediately after the order of the disciplinary authority was passed in 1992. He has furnished for our perusal the concerned file. On 8.12.1992 the General Manager has directed the case to be taken for review but afterwards, we do not find any action being taken by the department in processing the papers for review. It is stated that the file has come from the Divisional Railway Manager, Moradabad on 10.1.1994 to the Office of General Manager, New Delhi. What has happened to the file is not brought to our notice or stated either in the counter. The concerned file is also not placed before us. Though the ground of delay was urged in the OA, in the counter it was not significantly controverted. The learned counsel for the respondents relies upon Shri A.Krishnan Vs. Chief



Commissioner of Income Tax (Administration) and
Commissioner of Income Tax, Tamil Nadu I, Madras,

[1988] 8 ATC 841. We have carefully perused the same.

Taking the view that the review authority had initiated action under Rule 29(1) of the Rules before the applicant had completely undergone the penalty imposed by the disciplinary authority, the court held that there was no unreasonable delay in reviewing authority deciding to issue notice. In the instant case the applicant was exonerated and he also earned increments as well as promotions. Thus, it appears to us that it is wholly unjustified to seek to punish the person after a delay of five years.

10. In State of Andhra Pradesh Vs. N.Radhakishan, JT 1998(3) SC 123 the Supreme Court has clearly held that the departmental enquiry should be completed expeditiously and delay causes prejudice to the charged officer unless it can be shown that he was to blame for the delay or when there was proper explanation for the delay.

11. The learned counsel for the applicant however, contends that the impugned order is only a notice and no punishment is imposed hence the applicant cannot be said to have any grievance by the impugned notice. We have seen the impugned notice. The mind of the General Manager has been clearly revealed in the notice as he stated that the applicant had falsely verified the working period and that the charges impeded against him stood proved.



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12. In view of the above facts and circumstances, we are of the view that the delay of five years is not explained and is wholly unreasonable and is contrary to the proviso to sub rule 5 of Rule 25 of the Railway Servants (Discipline & Appeal) Rules, 1968.

12. The OA is allowed. The impugned notice is quashed. No costs.

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(SMT. SHANTA SHAstry)
MEMBER(A)

V.Rajagopala Reddy
(V.RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

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