

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.2821/97

Hon'ble Mr. Justice K.M.Agarwal, Chairman
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 7th day of March, 1998

Than Singh
803/IX, R.K.Puram
New Delhi - 110 022.

... Applicant

(By Shri G.K.Aggarwal, Advocate)

Vs.

1. Union of India through
Secretary
Ministry of Urban Affairs & Employment
Nirman Bhawan
New Delhi - 110 011.
2. The Director General (Works)
Central Public Works Department
Nirman Bhawan
New Delhi - 110 011.
3. The Secretary
Union of Public Service Commission
Shahjhan Road
New Delhi - 110 011.
4. National Commissioner for Scheduled
Castes & Tribes;
Lok Nayak Bhawan
Khan Market
New Delhi - 110 003.
5. V. Sreekumar
Asstt. Vigilance Officer
CPWD
Nirman Bhawan
New Delhi - 110 011.

... Respondents

(By Shri K.C.D.Gangwani, Advocate)

O R D E R

Hon'ble Shri R.K.Ahooja, Member(A)

The applicant states that in March 1981 when he was working as a Junior Engineer (Civil) in the C.P.W.D. there was an excess interim measurement of earth work in respect of High Way No. 50. The excess interim measurement made by the applicant was later detected by the applicant himself and he had reported the matter to his superiors. The excess interim measurement was also later adjusted in the final bills of the

22

Contractor and thus there had been no loss to the Government. He therefore considered the matter settled. The applicant was promoted in 1984 as Assistant Engineer on ad hoc basis and his appointment was later regularised w.e.f. 17.11.1983. The Efficiency Bar was also cleared in the grade of Assistant Engineer w.e.f. 1.11.1986. However, after a lapse of 12 years a charge memo A I dated 30.12.1993 was served on him regarding the error committed by him in 1981. He submitted in his reply that this had been taken up after an inordinate delay of 12 years. A few months later his name came up before the DPC which recommended his promotion to the grade of ~~Assistant~~ Executive Engineer. However, on account of the pending disciplinary proceeding, the recommendations of the DPC as regards him were kept under sealed cover. He was as a result not promoted though his juniors amongst the rank of Assistant Engineers were promoted as Executive Engineers. In the Inquiry Report the charge against him was held to be proved. The Inquiry Report was conveyed to the applicant on 7.3.1996 and replied to by the applicant. When his representations for an ad hoc promotion as Executive Engineer did not result in any action on the part of the respondent, he filed an OA No. 970/97 before the Tribunal for quashing the charge sheet A-1. The OA was disposed of by an order dated 14.8.1997 Annexure A12. The operative part of this Order is reproduced below:

"We have heard the counsel on either side and seen the record. In the circumstances and in the interest of justice, we direct the respondents to open the sealed cover provisionally subject to the order yet to be passed in the inquiry proceedings and the same be given effect to. It is also directed that as per the undertaking given by the respondents, the final order will be passed within three months from the date of receipt of a copy of this order and in case no final order is passed, proceedings shall stand

12

abated. The petitioner is given liberty to take further action after expiry of the said date in case no final order is passed."

2. The applicant submits that the respondents had filed a Review Application No. 214/97 as well as MA No. 2660/97 which has not been so far disposed of. Another MA had been filed by the respondents for extension of time. This MA was rejected by the Tribunal. The applicant further submits that UPSC tendered its advice vide letter A/2 dated 28.11.1997, the impugned order of penalty A/3 was despatched to the applicant on 29.11.1997.

3. The case of the applicant is that the chargesheet A/2 was based on an old and stale charge. The error which was admitted by the applicant at the relevant time had been detected by him only and reported to his seniors. As a result no loss was caused to the Government. In the meantime, the applicant also obtained his promotion as an Assistant Engineer. He cannot now therefore be punished for incident which had occurred way back in 1981 when he was working as a Junior Engineer by withholding his promotion to the post of Executive Engineer. Secondly he submits that the Tribunal in its order dated 14.8.1997 had given three months time to the respondents to complete the Inquiry. Since the order was received by the respondents on 29.8.1997, the Inquiry proceedings stood abated at 2400 hours on 28.11.1997 and the final penalty order, therefore, could not be passed on 29.11.1997. Further he submits that the Union Council of Ministers had submitted its resignation and the same had been accepted by the President on 28.11.1997 and therefore there was no Minister In-charge who could have approved the penalty order on behalf of the President. Because of these infirmities the impugned orders A-1, A-2 and A-3 should be

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set aside as ab initio void and the respondents should be ordered to promote the applicant as Executive Engineer pursuant to the sealed cover recommendation of the DPC held in September, 1994 with all consequential benefits.

4. By way of interim relief the applicant also sought a direction that the respondents should open the sealed cover in respect of DPC's recommendations and on that basis promote him as Executive Engineer (Civil). When the matter came up on the question of Interim Relief, the counsel on both sides submitted that the matter may be finally heard at the same time.

5. The respondents in their reply have denied that the disciplinary proceedings had abated on the night of 28.11.1997 or that the Minister-in-Charge was not competent to approve the penalty merely because of the resignation of the Council of Ministers had been accepted by the President on 28.11.1997. They submit that the order of the Tribunal was received by them probably late in the evening of 29.8.1997. 30th and 31st were holidays and therefore the order was effectively received only on 1.9.1997. There was thus no delay in issuing the final order within the time stipulated by the Tribunal.

6. We have heard the counsel. As regards the first ground taken by the applicant viz., that the impugned order A-1 should be quashed because it is based on an old and stale charge concerning his tenure in 1981 as a Junior Engineer, we find no merit therein. If the applicant was dissatisfied by this order dated 30.12.1993 he should have come before the Tribunal in good time. Instead he only came before the

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14

Tribunal in 1997 in OA No. 970/97. The direction given at that time was that the Inquiry proceedings should be completed within a period of three months, otherwise the same will stand abated. In the circumstances his plea against the Order A-1 i.e. the charge memo is barred both on the grounds of limitation as well as res judicata. We also find that the other two main grounds taken by the applicant are equally without merit. The applicant himself says that the Order of the Tribunal in OA NO. 970/97 was received by the respondents on 28.9.1997 and therefore three months period according to him expired on the mid night of 28/29.12.1997. We have no statement as to at what time the order was actually received by the respondents on 29.9.1997 nor do we know the exact time at which the impugned penalty order was issued by the respondents on 29.11.1997. In the circumstances it cannot be said that the order of the respondents was issued after the expiry of three months. In the facts and circumstances of the case we also find it to be only a technical point and the proximity of the date and time leads us to conclude that the proceedings had not abated in terms of the order of this Tribunal in OA No. 970/97. We also find no substance in the allegation that the Minister-in-Charge could not approve the order since the resignation of the Council of Ministers had been approved by the President on 28.11.1997. As the learned counsel of the respondents has pointed out, despite the resignation of the Council of Ministers it had been asked to continue until alternative arrangements were made. We have been shown no provision in the Constitution which would indicate that the Council of Ministers is in the circumstances referred to barred from taking any decision in terms of Transaction of Business Rules.

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15

7. The learned counsel for the applicant vehemently argued that in terms of the order of this Tribunal in OA No. 970/97 reproduced in 3 respondents were directed to open the sealed cover provisionally subject to the order yet to be passed in the enquiry proceedings and to give effect to the same. In terms of these directions, the sealed cover had to be opened immediately and the applicant was to be promoted even while the enquiry was being brought to a conclusion by the respondents. We are of the view that as this question had been examined in the earlier OA and directions had been given, we are not called upon to issue any fresh directions urged by the learned counsel.

8. In the result, we do not find any ground for interference. Accordingly the OA is dismissed. No order as to costs.

K.M. Agarwal
(K.M. Agarwal)
Chairman

R.K. Ahooja
(R.K. Ahooja)
Member (A)

Mittal