

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

O.A.NO.1130/94

New Delhi, this the 6th day of February, 1995

Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri B.K. Singh, Member (A)

Shri Gopal Sharma,  
C-4/123, Yamuna Vihar,  
New Delhi.

... Applicant

By Advocate: Shri S.D. Singh

Vs.

Secretary,  
Indian Council of Agricultural Research,  
Krishi Bhavan,  
New Delhi. ... Respondent

By Advocate: Shri R.S. Aggarwal

JUDGEMENT

Hon'ble Shri J.P. Sharma, Member (J)

The applicant filed this application on 27.5.94 when he had already been served with memo. of chargesheet dated 20.5.94 as per liberty given in the decision dated 10.7.92 in O.A.1497/97 which was also filed by the applicant where the applicant has assailed an order dated 20.11.96 passed in departmental enquiry imposing the penalty of compulsory retirement.

2. The relief prayed for by the applicant is that the chargesheet dated 20.5.94 be quashed as that relates to an incident that occurred about 14 years ago and is violative of Articles 14, 16, 21 and 311 of the Constitution of India. It is further prayed that the respondents be directed to reinstate the applicant with all consequential benefits.

2. The respondents in their reply have opposed the grant of the reliefs on the ground that memo. of chargesheet dated 20.5.94 is valid, proper and has been issued for valid reasons. There is no legality in issuing such memo. dated 20.5.94 as per direction of the Tribunal in its judgement dated 10.7.92. The applicant was reinstated in service by the order dated 1.10.92. There is no avoidable delay in the issue of chargesheet dated 20.5.94. Regarding the joint proceedings with other delinquent, the respondents have taken a stand that charges in the case of applicant are slightly different and so no common proceedings could be held.

3. The applicant has also filed the rejoinder. It is stated that the memo. of chargesheet dated 20.5.94 was issued by the respondents after about 2 years of the judgement dated 10.7.92. Since in the earlier decision of O.A.1497/87 the Tribunal has issued a direction that "the respondents shall be at liberty to proceed with the enquiry, if they so like by appointing an Enquiry Officer and the applicant shall be furnished all the documents and statements of the witnesses recorded during investigation and will also be allowed the help of the defence assistant, even of a lawyer, if he so chooses and the enquiry if so commenced against the applicant should be concluded within a period of six months from the date of receipt of a copy of this order." It is therefore reiterated in the rejoinder that since the respondents did not initiate the departmental enquiry within six months from the date of receipt of copy of the judgement in O.A.No. 1497/87 then they have forfeited their right to hold an enquiry.

4. We heard the learned counsel Shri S.D. Singh for the applicant and Shri R.S. Aggarwal for the respondents.

5. The applicant was employed as L.D.C. in ICAR and was promoted to the rank of U.D.C. on 9.9.66. He was served with a memo. of chargesheet dated 18.6.83 under Rule 14 of the CCS(CCA)Rules, 1965. The charge against the applicant is that while functioning as UDC during the period 1980-81 dishonestly abetted Shri T. Sagar to misappropriate Rs.5,000/- by appending false payment certificates on the payment vouchers pertaining to Shri P.N. Bhaduri, D.P. Motiramani, T.C.N. Singh and B.S. Pathak. In this enquiry, the disciplinary authority by the order dated 10.7.85 imposed the penalty of removal from service but the appellate authority considering the appeal of the applicant modified the penalty of removal from service to 'compulsory retirement' by the order dated 20.11.86. The applicant has assailed this order of punishment and after discussing the whole matter the orders of punishment both of the disciplinary authority as well as of Appellate authority and the Revisional authority were quashed including the report of the Inquiry Officer directing the respondents to take the applicant back into service on the post which he held at the time the impugned order of removal from service was passed. However, a liberty was given to the respondents, if so they desired to proceed afresh for the alleged misconduct against the applicant by holding regular enquiry as per directions given in the body of the judgement. However, it is evident that the time limit was fixed for the respondents to conclude the enquiry in six months. However, the charge against the applicant is of abetting Shri T. Sagar to misappropriate Rs.5,000/- which was to be paid to certain persons after passing vouchers submitted by

them for payment of T.A. bills etc. The applicant himself in para 4.14 admitted that the charge levelled is just the same on which the earlier enquiry was held so it cannot be said a case of double jeopardy inasmuch as the respondents are holding the enquiry as per liberty given to them by the decision in O.A. 1497/87 by the order dated 10.7.92. Similarly also it cannot be said that the applicant is proceeded for misconduct said to have been committed by him about 14 years ago and the reliance by the applicant on the decision of Hon'ble Supreme Court in the case of Union of India Vs. M.B. Patnaik reported in 1981(2)SCC 159 is misplaced. This is not a fresh enquiry for that misconduct but it is an enquiry for the same misconduct for which the applicant was served with memo. of chargesheet on 16.6.83 on certain irregularities found in the conduct of the enquiry, the report of the Inquiry Officer as well as orders passed by the disciplinary authority and the Revisional authority were quashed. The case cited by the applicant that the enquiry cannot be held again does not help him. Simiarly, the reliance has been wrongly placed in the case of Kashinath Dikshita Vs. Union of India 1986(3) SCC 229. While remanding the case to the disciplinary authority by the decision of O.A. 1497/87, it was directed that the applicant shall be given reasonable opportunity to the extent of engaging a defence assistant who may be a lawyer also and after supplying documents relevant to the charge in the said enquiry. It is a fact that the respondents did not initiate the departmental enquiry afresh within the time given in the direction in O.A. 1497/87 dated 10.7.92. However, time has not been the essence of the liberty given to the respondents. It is a case

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where there is a charge of payment against the applicant of allowing one Shri T. Sagar to misappropriate Rs. 5,000/- and it is alleged that he appended false certificate on the payment vouchers of certain persons. In a case of misappropriation of money and also that having been allowed against the co-delinquent the time taken by the respondents though it is abnormally long yet the fact remains that the applicant is alleged to be instrumental in doing certain acts whereby Govt. money has been misappropriated. The applicant has not come immediately after six months when the time expired. The applicant has only filed this application after he has been served with a memo. of chargesheet dated 20.5.94. He filed this application one week thereafter. This chargesheet has not been quashed by the direction given in the earlier O.A. to the respondents. The charge levelled against the applicant is the same. Only because the respondents have not proceeded within the time limit would not be a ground to quash the chargesheet which has been earlier considered and was found not to be in any way against the statutory rules. In view of this we find that the applicant himself did not think or was not advised time <sup>as</sup> essence of holding a fresh enquiry against the applicant. We do not find any reason to quash the chargesheet as it will also affect the co-delinquent who has already been charged for alleged misappropriation of money and a separate departmental enquiry is in progress against him.

6. But we do find that the respondents cannot take advantage of the delay they caused in issuing the fresh chargesheet. The applicant was reinstated in service by the order dated 1.10.92 on the post of

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U.D.C. It also appears that the respondents have placed the applicant under suspension under sub rule 4 of rule 10 by the order of even date. As the applicant continues to be under suspension the respondents should have concluded the departmental enquiry within the reasonable time instead of concluding the enquiry, the respondents waited for about 2 years and served the memo. of chargesheet dated 20.5.94. In fact the respondents have not rightly understood the order passed in O.A.1497/87 wherein the same chargesheet has to be taken sufficient which was served on the applicant on 16.6.83 and only the respondents had to proceed with the enquiry after appointing Inquiry Officer, the presenting officer and the defence assistant as per choice of the applicant under rules and even a lawyer if desired by the applicant. The respondents have slept over the matter for about 2 years. The applicant was compulsory retired from the service w.e.f. 10.7.85. He was reinstated notionally on 1.10.92 and again suspended by the order of even date. The applicant therefore is out of service from 10.7.85 till his reinstatement on 1.10.92 and again under suspension from 1.10.92. The respondents cannot keep the applicant under suspension for such a long period for their own fault of not expediting the enquiry within the time frame fixed by the Tribunal in its direction dated 10.7.92. The suspension therefore in such a situation also operates as a penalty against the applicant and besides suffering humiliation the Sword of Democles is always hanging over him. Since the proceedings in the enquiry have not yet commenced and seeing to the nature of

the evidence against the applicant it will not likely to conclude in the recent future. In such a circumstance in the interest of justice, the applicant has to be reinstated after revoking the order of suspension subject to the period to be determined subsequently in the final order to be passed by the disciplinary authority. The application is therefore liable to be allowed to this extent.

7. The application is partly allowed with the direction to the respondents to expeditiously conclude the enquiry against the applicant on the basis of memo. dated 20.5.94. The respondents are further directed to reinstate the applicant after revoking the order of suspension dated 1.10.92 and he shall be entitled to the full wages from that period and the period under suspension till the date of his reinstatement shall be decided by the respondents after the conclusion of the enquiry alongwith the period from 1.7.85 to 1.10.92. Application is disposed of with no order as to costs. The respondents to comply with the direction within a period of two months from the date of receipt of copy of the order.

  
(B.K. SINGH)  
MEMBER(A)

  
(J.P. SHARMA)  
MEMBER(J)

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