

Central Administrative Tribunal
Principal Bench

OA No.1052/94
MA No.1572/94

New Delhi this the 5th Day of September, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)
Sh. C.J. Roy, Member (J)

Hem Chand (I.P.S.)
S/o Late Sh. Prem Chand,
R/o 3B/3, Jawahar Nagar,
Kanke Road, Ranchi-834008 (Bihar) ...Applicant

(By Senior Advocate Sh. O.P. Sharma with Sh. S.S. Tewari,
Counsel).

Versus

1. Union of India through
Secretary, Ministry of Home Affairs,
North Block, New Delhi.

2. The Secretary, Ministry of Coal,
Shastri Bhawan, Govt. of India,
New Delhi.

3. Sh. S.K. Lal,
Secretary, Ministry of Coal,
Govt. of India,
Shastri Bhawan, New Delhi.

4. Sh. P. Rangasami,
C.D.I. Central Vigilance Commission,
Block No.10, Jam Nagar House,
Akbar Road, New Delhi.

5. The Central Vigilance Commissioner,
Bikaner House, New Delhi. ...Respondents

(Sh. Altaf Ahmed, Additional Solicitor General and
Sh. E.X. Joseph, Senior Counsel and Sh. Amresh Mathur
counsel).

(None for other respondents).

1. Whether Reporters of local papers may be allowed to
see the Judgement? *Ye*

2. To be referred to the Reporter or not? *Ja*

3. Whether their Lordships wish too see the fair copy of
the Judgement? *Na*

4. Whether it needs to be circulated to other Benches of
the Tribunal? *Na*

JK
(N.V. Krishnan)
Vice-Chairman (A)

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ORDER

By Hon'ble Mr. N.V. Krishnan: -

The applicant, a Deputy Inspector General of Police, who belongs to the Indian Police Service cadre of West Bengal is on deputation with the Ministry of Coal as Executive Director (Vigilance), Central Coal Fields Limited, Ranchi. He has challenged the memorandum dated 9.12.92 (Annexure 'A') of the second respondent.

Ministry of Coal by which disciplinary proceedings have been initiated against him on the articles of charges enclosed with that memorandum. The applicant has stated that the charges have been framed against him out of malice, as he has incurred the wrath of the powers that be by the investigations conducted by him, which has established misconduct on their part. He has, therefore, impleaded by name, Sh. S.K. Lal, the Secretary, Ministry of Coal as the third respondent. However, when the matter came up before us for the first time on 23.5.94, we noticed that the main challenge is on the ground that the Ministry of Coal is incompetent to initiate these proceedings in the light of the provisions contained in the All India Services (Discipline & Appeal) Rules, 1969 because it is contended that the Ministry of Home Affairs alone has the authority to initiate such proceedings. He has relied on an unreported judgement dated 8.12.93 of this Tribunal in OA-967/92 - S.P. Singh vs. Union of India & Others. The applicant had also prayed for an interim direction to restrain the respondents from proceeding further with the illegal enquiry.

2. As the memorandum of charges date d 9.12.92 was being impugned in the OA, which was filed only on 19.5.94, *prima facie*, the prayer appeared to be barred by limitation. The learned counsel for the applicant, was granted permission to file a M.A. for condonation of delay. Only respondents 2 and 3, (i.e., Ministry of Coal and Sh. S.K. Lal) filed a reply on 29.7.94 to which a rejoinder has also been filed.

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3. On 23.8.94, when the matter came up for direction on interim relief, it was noticed from the reply of the respondents that the Hon'ble Supreme Court had dismissed on 21.1.94 the S.L.P. filed by the applicant in another context and given a direction to the respondents to complete the enquiry within six months from the date of that order. Therefore, two preliminary questions were heard viz. the condonation of delay and the effect of the Supreme Court's order.

4. The learned counsel for the applicant contended that, as a matter of fact, there is no delay in filing this application because, the Ministry of Coal have appointed the Inquiry Officer only by the order dated 9.3.94 (Annexure 'A'). This order has been impugned in this O.A. He contends that it is this order which, by implication, rejects the requests made by the applicant on 10.8.93 (Annexure 'H') to the Joint Secretary, Ministry of Home Affairs to revoke the suspension and withdraw the chargesheet. Alternatively, as the applicant has made the Annexure 'H' representation dated 10.8.93, he has 18 months' time from that date to file an application before the Tribunal under Section 21 of the Administrative Tribunals Act, 1985. Even taking the worst situation viz. that the cause of action arose on 9.12.92, the application is delayed by about five months. It is submitted that the delay was not intentional and as an important issue has been raised and as the applicant has hopes of getting relief, this application should be admitted after condoning the delay.

5. On the contrary, the learned Additional Solicitor General pointed out that, after the receipt of the chargesheet, the applicant sent a reply on 7.1.93 to the Ministry of Coal (Annexure 'F') denying the charges. Therein, he requested that, if an enquiry is still proposed to be held despite his reply, an Inquiry Officer of an appropriate rank be specially appointed to save him from embarrassment. Having participated in the disciplinary proceedings and made a request for appointing a senior officer to hold the enquiry, the applicant cannot turn round and challenge the chargesheet itself on grounds of lack of jurisdiction in respondent No.2 to issue the same. He, therefore, opposed the prayer for condonation of delay.

6. There would have been some force in the arguments of the learned counsel for the applicant if the order dated 9.3.94 appointing the Inquiry Officer was the only communication issued to the applicant. In that case, it could be treated, by implication, to ^{be} a reply to the request of the applicant seeking the revocation of suspension and the withdrawal of the memorandum of charges. That is not so. Therefore, 9.3.94 cannot be treated as the starting point for reckoning limitation.

7. We notice that, as a matter of fact, on 10.8.93 the applicant did not send an ordinary representation. He actually, preferred an appeal before the Ministry of Home Affairs by addressing it to Sh. Anurag Goel, Joint Secretary in that Ministry (Annexure 'H'). In that appeal, inter alia, he has taken the plea that his cadre controlling authority is the Ministry of

Home Affairs and not the Ministry of Coal and that in accordance with the provisions of the All India Services Rules - Rules for short - and the Allocation of Business Rules, the Ministry of Home Affairs alone is competent to take disciplinary action against him and not the Ministry of Coal and that, therefore, the action taken by the Ministry of Coal in suspending him and chargesheeting him is illegal and without jurisdiction. It would appear that the Ministry of Home Affairs did not send him a reply directly. Instead, the applicant was informed by the Central Coal Fields Limited by their letter dated 1.10.93 (Annexure 'M') that they have received a communication from the Ministry of Coal in respect of his appeal dated 10.8.93 and indicating that the Ministry of Home Affairs has clarified that no appeal lies against the Presidential order vide Rule 15(1) and that an officer aggrieved by a Presidential order may seek redressal by submitting a memorial to the President of India. The applicant was, therefore, advised to file a memorial to the President of India, if he desired to do so. The learned counsel for the applicant did not state whether any memorial was submitted to the President of India. Apparently not, as neither a copy thereof has been filed with the OA nor was it mentioned before us.

8. Rule-16 specifies the orders against which appeal lies, subject to Rule-15. A memorandum of charges issued under Rule-8, like the Annexure 'A' memorandum dated 9.12.92 in this case, - is not subject to appeal. This is in addition to the fact that no appeal lies against an order made by the President under Rule 15(1). A senior officer like the applicant should have known

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this. Instead, he has been prosecuting/remedy which does not lie. Therefore, this action of his would not help in extending the period of limitation. That apart, a reply to his appeal was given to him on 1.10.93. The effect of this letter on limitation will have to be considered.

9. Section 21 of the Administrative Tribunals Act, 1985 is relevant. The normal rule is that an application should be filed within one year from the date on which the final order about which a person is aggrieved was passed. If, however, an appeal or representation, as mentioned in Section 20, has been made and no reply thereto has been received within six months, then the application can be filed within one year from the expiry of the said period of six months. The period of six months would be available only if an appeal actually lies and not otherwise. The futile effort made by the applicant in filing the appeal which does not lie will not give him any extension of time in regard to limitation. Therefore, the period between 10.8.93 and 1.10.93 cannot be excluded from reckoning for purposes of limitation. If, in pursuance of the advice given by Annexure 'M' letter dated 1.10.93, the applicant had filed a memorial to the President of India, he could have claimed advantage of this provision. As that has not been done, we are of the view that the period of limitation would start running from the date of the impugned memorandum of charges, i.e., 9.12.92.

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10. In this view of the matter, this O.A. ought to have been filed around the middle of December, 1993. As it was filed on 19.5.94, it is barred by limitation.

11. The question is whether the delay of about five months should be condoned. The only ground given is that the delay was not intentional and that the applicant has made out a good case.

12. In the normal course we would have condoned the delay. There are circumstances, which, however, persuade us to the contrary. It is stated in the reply of the respondents that they have filed an application before the Supreme Court for extending the time granted for completing the enquiry (Annexure R-k). The applicant has filed a rejoinder and he has enclosed a copy of the counter-affidavit, which he has filed in the Supreme Court in reply to the aforesaid application. That counter-affidavit shows that the applicant had challenged the order of suspension before the Patna Bench of this Tribunal on the same grounds as those on which the memorandum of charges dated 9.12.92 have been challenged before us. He has stated therein as follows: -

"he has been suspended illegally by the Ministry of Coal. The Ministry of Coal has no power to suspend an I.P.S. officer as per the All India Services (D&A) Rules, 1969 readwith Allocation of Business Rules, 1961. This power is vested in the Ministry of Home Affairs."

"Original Application No.427/92 was filed in the Central Administrative Tribunal, Patna Bench, for quashing the suspension order on the grounds that it was malafide and made without jurisdiction."

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In other words, it is not as if the applicant discovered for the first time that the Ministry of Coal did not have jurisdiction in this matter, as was sought to be made out by referring to the appeal dated 10.8.93. In the circumstances, the applicant could very well have challenged the memorandum of charges also within time.

13. For these reasons, we are not inclined to condone the delay and accordingly, the MA for condonation of delay is dismissed.

14. We are also of the view, for the reasons to be stated shortly, that this application cannot be maintained before us. This conclusion flows from the order dated 21.1.94 of the Supreme Court (Annexure R-K).

15. In the context of this order, two questions were discussed at length. Firstly, whether this application should be treated as barred on the principle of constructive res-judicata. Secondly, whether, even otherwise, this Tribunal cannot proceed with this OA, considering the direction to the respondents by the Supreme Court to complete the enquiry within six months from 21.1.94. We do not find it necessary to discuss the first question because in our view, in any case, this application is not maintainable on the second ground.

17. We note that the Supreme Court has given a direction to the respondents to complete "the enquiry" within a period of six months from 21.1.94. If this OA had been filed after the enquiry had been completed, the situation would, perhaps, have been different, ignoring

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the issue of limitation for arguments sake. However, this OA was filed in May, 1994 and one of the prayers is to quash the chargesheet. If we had quashed the chargesheet, nothing would have been left of the enquiry to be completed. The question is whether such an order would be appropriate considering the order of the Supreme Court.

17. In this regard the learned counsel for the applicant contended that the Supreme Court only meant to direct that, if the chargesheet is otherwise legal, the enquiry should be completed as directed. Therefore, this Tribunal can still consider whether the Annexure 'A' memorandum of charges is illegal.

18. We are unable to agree. When the Supreme Court gave that direction, there was an underlying assumption that the chargesheet was framed by a competent authority. The applicant has a ground that the Ministry of Coal has no jurisdiction. Therefore, he should have brought to the notice of the Supreme Court his misgivings in this respect and sought leave to challenge the memorandum of charges before the appropriate forum on this ground. Admittedly, this was not done.

19. In the circumstances, we feel that if we allow this OA and quash the Annexure 'A' memorandum of charges dated 9.12.92, we would pass an order which would obstruct the implementation of the Supreme Court's directions. This will be contrary to the provisions of Article 144 of

the Constitution. Therefore, we hold that this O.A. is not maintainable, keeping in view the order passed by the Supreme Court on 21.1.94.

20. For the aforesaid reasons, we dismiss this O.A.

W.C.R.
(C.J. Roy)
Member (J)

'Sanju'

N.V.K.
5/9/94

(N.V. Krishnan)
Vice-Chairman (A)