

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1492/2000

New Delhi on this the 9th day of May, 2001

Hon'ble Mrs. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri S.A.T. Rizvi, Member (A)

S. Sugunan
Son of Late Shri P.K.Srinivasan
Aged 49 years,
Dy. Armament Supply Officer Grade II
Naval Headquarters
DGAS/West Block No.V
R.K.Puram, New Delhi-66.
Residing at D503 P.V. Hostel, Lodhi Road
New Delhi-3.

..Applicant

(By Advocate: Shri N.M.Popli)

VERSUS

1. Union of India
Through Defence Secretary
Ministry of Defence, South Block,
New Delhi-11
2. Under Secretary (D-Lab)
Ministry of Defence
New Delhi-11.

..Respondents

(By Advocate: Shri J.B.Mudgil)

O R D E R

By Hon'ble Shri S.A.T. Rizvi, Member (A):

The applicant has filed this OA at an interlocutory stage by impugning the respondents' memorandum dated 2.12.1999 whereby a charge sheet consisting of three articles of charge has been served on him in the disciplinary proceedings initiated against him. He has also impugned respondents' order of 30.5.2000 (Annexure P-4) whereby a presenting officer has been appointed by the respondents in the same proceedings.

2. We have heard the learned counsel on either side and have perused the material placed on record.

3. Earlier, a charge sheet containing the very same charges was served on the applicant vide respondents' memorandum dated 20.2.1996 (Annexure P-1). The matter was, on that occasion, agitated before this Tribunal in OA-184/96. The grievance raised therein was finally redressed by the Tribunal by its order of 29.1.1997 which, being relevant, is reproduced below in extenso:-

(11)

"Heard Shri S. Mishra, counsel for the applicant and Shri S.C. Samantray, Additional Standing Counsel for the Respondents. Our attention is drawn to para-3 of the counter-affidavit filed by the Respondents on 30.7.1996 and also the order dated 125.7.1997 vide Annexure-A to the counter-affidavit. It is stated that by virtue of his promotion as DASO-II Shri Sugunan became a Group 'A' officer. Therefore, there is a change in disciplinary authority. Accordingly the charge memo dated 20.2.1996 has been cancelled by the 4th Respondent by its order dated 15.7.1996. As a sequel to the cancellation of charge sheet, the appointment of Inquiry Officer and Presenting Officer has also been cancelled. Both the counsels agree that there is no further grievance to be remedied in this Original Application. The Original Applicant has become infructuous and is accordingly dismissed for statistical purpose." (emphasis supplied)

4. The learned counsel appearing on behalf of the applicant has raised three issues in support of the OA. Firstly, according to him, the respondents were duty bound to seek permission of this Tribunal before serving the aforesaid record/fresh charge sheet dated 2.12.1999. Secondly, the unexplained delay of about three years which has since taken place is enough to vitiate the disciplinary proceedings initiated by the respondents. The learned counsel has also raised a grievance with regard to the place of enquiry in the current

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disciplinary proceedings. The applicant, according to him, is to present himself before the enquiry officer at a place more than 1000 KM away from Delhi where the applicant is currently posted. This would unduly inconvenience the applicant and would be found to be administratively inconvenient to the respondents as well. (2)

5. The learned counsel appearing for the respondents placed reliance on the order of this Tribunal reproduced in para 3 above. It would appear therefrom that subsequent to the initiation of the disciplinary proceedings by the respondents' memorandum dated 20.2.1996, the applicant was promoted as DASO-II which is a Group "A" post. When the applicant's status went up, the status of the disciplinary authority was also required to be changed accordingly. The same is true of the level of enquiry officer. Based on this consideration, the aforesaid memorandum of charge dated 20.2.1996 was cancelled by the respondents' order of 15.7.1996. Consequently, the orders of appointment of the enquiry officer as also that of the presenting officer were also cancelled. After making the aforesaid observation, this Tribunal in its order of 29.1.1997 further observed that "Both the counsel agree that there is no further grievance to be remedied in this Original Application." (emphasis supplied). Thereupon, the aforesaid OA was dismissed as infructuous. We have carefully considered the matter and find that there is nothing in the aforesaid order of this Tribunal which would necessitate seeking of permission by the

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respondents before launching the disciplinary proceedings afresh. The corresponding plea raised by the applicant's counsel is, therefore, rejected.

(b)

6. Insofar as the question of delay in the initiation of the disciplinary proceedings afresh is concerned, we find that the respondents have not come out with any convincing reason in support thereof. He has, however, pointed out that since the evidence against the applicant in the current disciplinary proceedings is based primarily on documents, no prejudice is likely to be caused to him on account of delay. In this view of the matter, we are inclined to agree that the delay caused, though bad in itself, is not likely to place the applicant in a position of disadvantage and, according to us, he should be able to defend himself as effectively as ever. The corresponding plea advanced by the learned counsel for the applicant is, in the circumstances, rejected.

7. In regard to the location of enquiry presently on hand being far away from Delhi, we are inclined to go along with the contention raised by the applicant that he is likely to be inconvenienced thereby. We also feel that, as far as possible, departmental proceedings and enquiries should be held at a convenient location, both administratively and otherwise. In the circumstances of this case, we find Delhi will be a more convenient location for holding the enquiry on hand. The learned

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(5)

✓ counsel appearing on behalf of the respondents has fairly conceded that it will be possible to hold the enquiry at Delhi.

(A)

8. The learned counsel on behalf of the applicant has in support of his main contention with regard to the delayed re-start of the disciplinary proceedings placed reliance on several judgements rendered by the Hon'ble Supreme Court and also by other courts. The relevant portions from some of the aforesaid judgements were read out by the learned counsel at the time of hearing. After consideration, we find that the judgements relied upon by him are, in terms of the facts and circumstances, distinguished from the present case. Hence, the judgements cited by him will not find application in the present OA.

9. For all the reasons outlined in the preceding paragraphs, the OA fails and is dismissed. Needless to say that the respondents will consider holding the enquiry at Delhi as mentioned in paragraph 7 above. No costs.

S.A.T. Rizvi

(S.A.T. Rizvi)
Member (A)

/sunil/

Lakshmi Swaminathan

(Mrs. Lakshmi Swaminathan)
Vice Chairman (J)