

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 342/2000

(6)

New Delhi this the 15th day of December, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman
Hon'ble Mr. Govindan S. Tampli, Member (Admnv)

Dr. R. Opeh ...Applicant

(By Advocate Mr. S.S. Tewari)

-Versus-

Union of India & Others ...Respondents

(By Advocate Shri V.S.R. Krishna)

1. To be referred to the Reporter or not? YES/NO

2. To be circulated to other Benches of
the Tribunal? YES/NO

(V. Rajagopala Reddy)
Vice-Chairman(J)

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HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN
HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (ADMNV)

Dr. R. Opeh,
S/o late Shri R. Velayudhan,
R/o C-006 Pragati Vihar Hostel,
Lodhi Road,
New Delhi-110 003.

...Applicant

(By Advocate Shri S.S. Tewari)

-Versus-

Union of India through:

1. Secretary, :
Ministry of Health and
Family Welfare,
Nirman Bhawan,
New Delhi.
2. Director General Health Services,
DGHS, Nirman Bhawan,
New Delhi.
3. Deputy Director General (SS),
DGHS, Nirman Bhawan,
New Delhi.

...Respondents

(By Advocate Shri V.S.R. Krishna)

O R D E R

By Justice V. Rajagopala Reddy, Vice-Chairman (J):

On October 31, 1984, the applicant was on 8.00 a.m. to 2.00 p.m. shift duty as Doctor attached to the then Prime Minister Mrs. Indira Gandhi. At about 9.00 a.m. she was shot at. Though he immediately took car to AIIMS, she succumbed to the bullet wounds. The applicant received a chargesheet on October, 18, 1989, proposing to hold enquiry under Rule 14 of the CCS (CCA) Rules (Rules, for short) on the allegations, which read as under:

"That the said Dr Opeh while posted as Duty Medical Officer at the late Prime Minister House on 31st October 1984 found amiss in the discharge of his duties in as much as he failed to summon the ambulance which was parked near the PM's House and to remove the late Prime Minister Mrs Gandhi, after she had been fired upon, to

AIIMS in the said ambulance which resulted in depriving the later Prime Minister of immediate emergency treatment with the aid of emergency equipment available in the Ambulance.

Dr. Opeh was also found negligent in discharging his duties as he failed to cause a message to be flashed to the AIIMS to alert the Hospital that the injured Prime Minister was being brought there for emergency treatment. Dr. Opeh thereby failed to react to the emergency situation with presence of mind and exhibited lack of alertness in the face of emergency. Dr. A.K. Mukherji, Additional Director General, Additional Director General, Directorate of G.H.S. was appointed as enquiring officer while Sh. K.P. Nigam, as the Presenting Officer in February, 1990. The preliminary hearing in the enquiry was held on 7.11.91. During the said hearing the applicant repeated his request for allowing him to engage a legal practitioner as the defence Assistant. Without permitting the applicant to permit a legal practitioner, the regular hearing of the enquiry was posted to 15.2.92 and at the request of the applicant the enquiry was postponed to 17.2.92. The applicant's request for legal Assistant was rejected. He was left with no other alternative but to move the Tribunal in OA-215/92. The Tribunal allowed the same and directed the respondents to permit the applicant to engage a legal practitioner to help in the departmental enquiry. But no action was taken in this regard. On 12.8.93 R-1 appointed one Dr. B.N. Barkakaty, Assistant Director, was appointed as the enquiry officer. The respondent No.1 took no step to conduct the enquiry against the applicant or take a decision in appointing the legal practitioner. Again in the order dated 7.11.94 the enquiring authority was replaced and one Dr. N. Bihari, Additional Director General of Helath Services was appointed as enquiry officer.

By his aforesaid acts of omission and commission Dr. Opeh failed to maintain devotion to duty and acted in a manner unbecoming of a Govt. servant contravening thereby the provisions of Rule 3.1(i) and 3.1 (ii) of the CCS (Conduct) Rules, 1964."

2. He denied the allegations and pleaded not guilty. The applicant was directed to submit a written statement. He requested to furnish certain documents to prepare his defence. But instead of supplying the requisite documents he was asked to satisfy to admit or deny the charges. He denied the charges but reiterated his request for supply of documents. On 26.2.90 Dr. A.K.

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Mukherjee was appointed as an enquiring officer and Mr. K.P. Nigam as Presenting Officer. A preliminary hearing was held on 6.8.91. He was asked whether he has been granted permission to avail the legal practitioner. On 16.8.91 the request for furnishing the document was reiterated and he requested for being represented by a counsel of his choice. On 19.9.91 he was allowed to inspect the listed documents during the course of the enquiry and his request to engage legal practitioner has been denied. On 7.11.91 the preliminary hearing of the enquiry was held and the applicant was asked to submit list of defence witnesses and allowed to inspect the listed documents. He asked for inspection, the statement of two witnesses Mr. D.K. Bhat and D.C. Gulia but he was not allowed to inspect the said statement. Only on 18.11.91, copies of chargesheet and listed documents were handed over to the applicant and it was stated that the enquiry would be commenced on 15.1.92 as the applicant's request for legal practitioner was rejected the applicant had no other option except to approach the Tribunal, which by judgement dated 16.4.92 quashed the order rejecting his request for legal representative and directed the respondents to accord permission to engage legal practitioner within a period of one month from the date of the judgement. Without complying with the above order on 12.8.93 appointed another enquiry Dr. B.N. Barkakaty. Again without any progress in the enquiry, on 7.11.94 the enquiry officer was replaced by Dr.N. Behari. He also did not proceed with the enquiry for a period of five years. Suddenly on 28.1.99 the applicant was informed that Dr. Mrs. S. Sehgal, respondent No.2, herein has been appointed as the enquiry officer and another preliminary enquiry would be held on

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17.2.99. It should be noticed that though the Tribunal has passed the order in April, 1992, permitting the applicant to engage a legal Assistant, no order has been passed in compliance thereof. The applicant, therefore, in his letter dated 9.2.99 brought to the notice of the enquiry officer as to the inordinate delay and the callous attitude of the respondents in holding the disciplinary enquiry and requested the enquiry officer to put an end to this trauma by dropping the proceedings. Only on May 21, 1999 was allowed to engage a legal practitioner as his defence Assistant. As no action was taken by the respondents in dropping the proceedings the applicant has brought this OA, seeking to set aside the chargesheet dated and to promote him to the post of Senior Administrative Grade with retrospective effect and for consequential benefits.

3. The learned counsel for the applicant, Shri S.S.Tiwari, strongly urges that there is no justification for the authorities not to have initiated the enquiry for 5 years and to have completed the enquiry even after a decade thus putting the applicant to undergo mental agony and monetary loss, without any fault on his part. The incident having occurred about 15 years ago, there is no justice or equity in keeping it still alive and without there being no end to it.

4. Learned counsel for the respondents Shri V.S.R. Krishna contesting the OA, seeks to justify the delay, contending that as Thakkar Committee was making investigation into the case no chargesheet could be issued till it gave its report in 1989 and further due to the sensitive nature of the documents and other valid factors

could not be completed. Having heard the counsel for the applicant and the respondents, we have no hesitation in accepting the plea of the applicant. The misconduct alleged in this case is that the applicant had not summoned the Ambulance Van and not alerted All India Institute of Medical Sciences while transporting the injured Prime Minister who was being brought for emergency treatment. It is the case of the applicant that on that day Ambulance Van was not in good condition and also no Driver was allocated to it, we find that the charge sheet was served on 18.10.1989, i.e., after five years of the incident. According to the applicant there could be no valid reason for waiting for five years, to investigate into the two allegations and not to complete the enquiry till date.

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5. What is more crucial in this case is the unconscionable delay that occurred from the date of the charge. Four enquiry officers have been changed. Each enquiry officer had to fix the date of commencing the enquiry but no enquiry was to commence, so far. It is also to be noted that the direction given by the Tribunal in its judgment dated 16.4.1992 in OA No.214/92 directing the respondents that the applicant should be permitted to engage a legal practitioner to conduct his defence, within a month from the date of receipt of judgment, was still not complied with. Several representations made by him in this regard have also not been heeded to. Thus, we find that there was delay in initiation and completion of the enquiry.

6. In the reply the delay is sought to be justified as under:

(a)

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"The delay in the disciplinary proceedings has occurred for reasons beyond the control of the disciplinary authority like change in I.O. four times and P.O. five times for the reason of retirement/transfer of the concerned officials, change in their designation/duties etc, consideration of the request of the applicant for the assistance of a legal practitioner, non-availability of original documents for sustaining the charges from the investigating agencies etc. The charge sheet could be issued only after the interim report of Hon'ble Justice Thakkar Commission was received by the respondents on 30th mar 89. The disciplinary proceedings have now commenced and are likely to be concluded at the earliest."

7. Four reasons are shown in order to explain the delay:

- (i) Receipt of Thakkar Commission's Report in 1989.
- (ii) Change in the I.O. four times and P.O. five times.
- (iii) Request by applicant for assistance as legal practitioner.
- (iv) Non-availability of original documents, as they are of sensitive and confidential in nature.

8. The first is with regard to the delay in issuing the chargesheet in 1989. The respondents may be awaiting for the receipt of the Thakkar Commission's report, which has been set us to go into all aspects of the assassination of the late Prime Minister. It may, therefore, reasonably explain the delay of five years up to 1989 when the report is said to have been submitted for initiation of the disciplinary proceedings. But as regards the completion of the enquiry we find the reasons given are absolutely un-satisfactory, as we see presently.

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(23)

9. The change in the enquiry officers and the presenting officers is shown as are of the reasons. Though the charge was issued in October, 1989 the first enquiry officer Dr. A.K. Mukherji was appointed on 26.2.90 and in August, 1991 he held the preliminary enquiry but he did not thereafter proceed with the enquiry. It was to commence in January, 1992 but as the request to engage a legal practitioner to assist the applicant in the enquiry was rejected, the applicant had to approach the Tribunal, which by order dated 16.4.92 directed to permit him to engage the legal practitioner within a period of one month. But no such permission was ever granted to the applicant till date. The request of the applicant seeking the help of a legal practitioner and his approaching the Tribunal cannot be treated as a culpable negligence on the part of the applicant. On the other hand, refusal of the same amounted to denial of the right to afford for reasonable opportunity to defend his case ^{W.H.} _A the help of the legal practitioner in the enquiry. That case also has not taken much time as it was disposed of within a few months in 1992 itself. Till August, 1993 no proceedings were held when the enquiry officer was changed and another enquiry officer Dr. B.N. Barkakaty was appointed. He also has not commenced the enquiry. Again in November, 1994 he was replaced with Dr. N. Behari and then again a period of five years had elapsed without the enquiry being proceeded with. Suddenly again in January, 1999 another enquiry officer was appointed Dr. (Mrs.) S. Sehgal, who commenced the enquiry in February 1999 but again it was held up on one ground or the other. Thus, four enquiry officers have been changed by the respondents. But, it should be remembered that the

applicant was not responsible in the least for the change of the enquiry officers. Thus from 1989-2000 the enquiry was held up for no reason at all. The change of the enquiry officer, therefore, cannot be cited as a reason to justify the delay. (24)

10. The last reason given, the non-availability of the record, cannot be cited as a ground justifying the delay. Before the enquiry would be commenced, all the records should have been kept ready. only on the basis of the oral and documentary evidence. Thus, it is presumed that all the records were kept ready. If any other documents are asked for by the charged officer the department should be able to provide them if they are in their custody. If they are not in the custody, the officer should be informed that they were not available and to say this it should not take more than two or three weeks. Thus, none of the reasons given in my view, would justify the delay.

11. In this regard, it may not be out of place to quote how the Central Vigilance Commission has stipulated the model time limit for enquiry as per Section 8 (1) (g) of Central Vigilance Commission ordinance 1999:

"Subject: Improving vigilance administration

In exercise of powers under Section 8 (1) (g) of CVC Ordinance 1999 the Central Vigilance Commission issues the following instructions and stipulates a model time schedule for conducting Departmental Departmental Inquiries:

2. Model Time Limit for Departmental Inquiries

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2.1 Fixing date of preliminary hearing and inspection of listed documents, submission of list of Defence documents/witnesses and nomination of a Defence Assistant (DA) (if not already nominated). Within four weeks.

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2.2 Inspection of relied upon document/submission of list of DWs/Defence document/Examination of relevancy of DDS/DWs, procuring the additional document and submission of certificates confirming inspection of additional documents by CO/DA. 3 months.

2.3 Issue of summons to the witnesses, fixing the date for Regular Hearing and arrangement for participation of witnesses in the Regular Hearing. 3 months.

2.4 Regular hearing on Day to Day basis. 3 months.

2.5 Submission of Written Briefs by PO to CO/IO. 15 days

2.6 Submission of Written Brief by CO to IO. 15 days

2.7 Submission of Inquiry Report from the date of receipt of written Briefs by PO/CO. 30 days

If the above schedule is not inconsistent/conflict with the existing rules on the subject, the outer time limit of six months for completing the Departmental Inquiries should be adhered to.

3. Non Production of Documents

One of the causes for delay in departmental inquiries is due to non production of documents cited by the CO as defence document during the course of enquiry. In order to ensure that the departmental enquiries are completed in time, the document asked for by the CO would be produced by its custodian through PO or if there is no PO by its representative within a time limit fixed by IO failing which adverse note would be taken against the concerned officer (custodian of the documents). It should also be ensured that in one case involving more than one officer, only one PO should be appointed by all the DAs.

4. Disposal of allegation of Bias

The other cause of delay in completing departmental enquiries within time limit is taking unreasonable time by the DAs/Appellate authority in disposing the representation of the CO alleging bias against the IO. The DAs/Appellate authority should, therefore,

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decide the representation of the CO within fifteen days after receipt of the representation of the CO failing which an adverse view will be taken against the concerned authority.

sd/-
3.3.99.

(N. VITTAL)
CENTRAL VIGILANCE COMMISSIONER"

12. In State of Andhra Pradesh v. N. Radhakishan, JT 1998 (3) SC 123 the Hon'ble Supreme Court observed:

"The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings in considering whether delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay cause prejudices to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings."

13. Hence, as held by the Supreme Court, the delay vitiates the enquiry. But whether the enquiry was unnecessarily prolonged by the disciplinary authority without there being any seriousness on his part to complete the same as per the departmental rules, has to be considered in each case, as a matter of fact. It is also necessary to notice whether the charge is so complex that the enquiry should take necessarily long time. In the instant case the charge was only that the applicant a Doctor on duty had not summoned the Ambulance and not

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intimated the hospital immediately after the late Prime Minister was lying injured. This charge, in our view, is neither complex nor needs examination of several witnesses or exhibiting several documents. It should also not be forgotten that all the accused who were alleged to have been responsible for the assassination have been charged, tried by the trial court as well as by the High Court and their appeals have been disposed of by the Supreme Court quite a long time ago. The departmental enquiry, therefore, should not have taken more than six months at the most. None of the reasons given by the respondents are found satisfactory to justify the delay. The charge of the E.O. four times and not complying with the order of the Tribunal in giving permission to have legal practitioner, the callousness, of the respondents to conduct the enquiry itself show the lack of seriousness in expediting the enquiry. The incident occurred 15 years ago and the chargesheet 10 years back and we are yet to see the commencement of the enquiry. It is now sought to be shown to the court that the enquiry will be completed within the shortest possible time. Nobody prevented them from doing so so long and this assertion cannot be given any weight. In this view, to our mind appears to be hollow. In any event, as per the law declared by the Supreme Court we have to hold that the delay in this case has vitiates the disciplinary proceedings and they should be quashed.

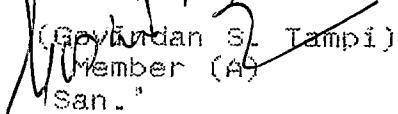
14. In view of the foregoing the charge and all other consequential disciplinary proceedings against the applicant are quashed. The respondents shall consider the

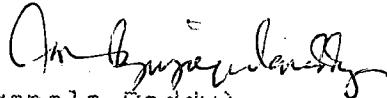
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applicant for promotion with effect from the due date if they were held up for the reason of the above disciplinary proceedings. The OA is accordingly allowed.

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15. It cannot be denied that the applicant must have gone through trauma and agony because of the unnecessary delay in the enquiry. Hence, the OA should be allowed with costs, which is quantified at ~~Rs 10,000/- (Rupees five thousand only)~~ ^{Rs ten thousand only}.


(Goyardan S. Tampli)
Member (A)
San.


(V. Rajagopala Reddy)
Vice-Chairman (J)