

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1339/87
T.A. No.

198

(5A)

DATE OF DECISION 23.9.88

Shri D.L. Matta Petitioner

Shri J.P. Verghese Advocate for the Petitioner(s)

Versus

Union India & Others Respondent

Shri P.P. Khurana Advocate for the Respondent(s)

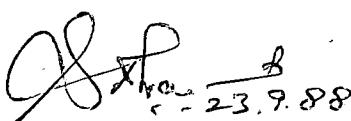
CORAM :

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. S.D. PRASAD, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

MGIPRRND-12 CAT/86-3-12-86-15,000


23.9.88
(S.D. PRASAD)
MEMBER (A)


23.9.88
(P.K. KARTHA)
VICE CHAIRMAN(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

(6)

O.A. No. 1339/87

Date of decision 23.9.88

Shri D.L. Matta Petitioner

Vs.

Union of India & Others Respondent

Shri J.P. Verghese Advocate for the Petitioner

Shri P.P. Khurana Advocate for the Respondent

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. S.D. PRASAD, ADMINISTRATIVE MEMBER

(The judgment of the Bench delivered by
Hon'ble Mr. S.D. Prasad, Administrative
Member)

This relates to an application under Section 19 of
the Administrative Tribunals Act, 1985 wherein the petitioner
has sought two reliefs - (1) quashing of the departmental
proceedings instituted against him vide memorandum dated
the 16th May, 1985 (Annexure-III), and (2) promotion to ^{of} the post of
Assistant Engineer. The first relief is claimed on the
ground of inordinate delay in the finalisation of the
proceedings, while the second relief is based on the

ground of juniors to the petitioner having been already promoted. It may be added that the petitioner is due to superannuate on 30.9.1988.

2. The facts of the case are few and not in dispute. The petitioner, while employed as Jr. Engineer in R.M.L. Hospital Division, New Delhi, was proceeded against on 16.5.85 under Rule 14 of the Central Civil Services (CC&A) Rules, 1965 on the charge of having adopted higher rates for the basic rate of granite in the preparation of the justification statement for the tender of a work executed in the year 1983, as a result of which there was an overpayment of Rs.38,244/- to the contractor and corresponding loss to the Department. Prior to the institution of the regular proceeding, the petitioner had been called upon, vide memo dated 8.8.84(Annexure-I), to explain his aforesaid lapse. In an explanation submitted by him on 22.8.84, vide Annexure-II, the petitioner had taken the stand that - (a) the enhancement of rate from Rs.128/- to Rs.150/- per sq. ft. had been done by the Assistant Engineer (Shri M.M. Sharma), and (b) the market rate for this particular item of work had shot up temporarily due to increased demand on account of IX-Asiad and NAM works at different sites and under different agencies. In any case, his defence was that the acceptance of rates was within the jurisdiction of the Assistant Engineer who had 'thoroughly checked' and 'signed in token of approval'. Apparently the explanation of the petitioner

was not found satisfactory and a regular proceeding was ordered by the Competent Authority.

3. It is not for us in this proceeding to go into the merits of the charge against the petitioner or his defence thereon. The main grounds on which the petitioner has sought to assail the aforesaid proceeding are -

- (i) inordinate delay in finalisation of the proceeding, resulting in withholding of his promotion to the rank of Assistant Engineer as well as his supersession by juniors;
- (ii) non-observance of Government Instructions regarding expeditious disposal of disciplinary cases and periodical review of cases involving withholding of promotion on account of pendency of disciplinary proceeding;
- (iii) entrustment of inquiry under the disciplinary proceeding to the Central Vigilance Commission, which has no jurisdiction, because the petitioner is a Class-III employee and not a Gazetted Officer; and
- (iv) impending superannuation of the petitioner on 30.4.88. The petitioner's grievance is that he has not got a single promotion so far though he had put in more than 25 years of service.

4. We may now proceed to consider the above-mentioned grounds ad seritem. Though Shri J.P. Verghese, learned counsel for the applicant alleged at the bar that the

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institution of disciplinary proceeding was mala fide and motivated only with a view to deny promotion to the applicant, no specific materially has been brought on record to substantiate such allegation. In the D.A. rules, no precise time-limit has been prescribed within which a disciplinary proceeding must be completed. It is, however, a well accepted maxim of law and administration that every authority must act with due care and expeditious in proper discharge of his duties and functions. We find that in the instant case, the charge-sheet was issued on 16.5.1985. Though it was stated therein that a list of documents by which, and a list of witnesses by whom, the articles of charge were proposed to be sustained had been enclosed, the applicant's letter dated 26.7.1985 to the Superintending Engineer, vide Annexure-7, shows that Annexures-I, II & III to the charge-sheet had not been supplied to him. This was apparently done later and, thereafter, the applicant must have submitted his written statement of defence. However, it seems that Shri A.K. Gardha was appointed as the Inquiring Authority by an office order dated on 17.1.1986, that is, after a lapse of nearly six months. Even this appointment was subsequently cancelled vide order dated 16.7.1986 (Annexure-R2), and Shri A.R. Banerji, Commissioner of Departmental Inquiry was appointed as the Inquiring Authority. No reasons for the change were stated. In their written statement filed on 30.11.1987, that is, more than sixteen months after the appointment of the

second Inquiring Authority and more than two years after the initiation of the departmental proceeding, the respondents commented under para 6(d) of para 6 thereof as under:-

" A number of officers have been involved on this inquiry and the Appointing Authority has nominated a Commissioner for Departmental Inquiry under Central Vigilance Commission vide Annexure R2. The hearing is likely to take place shortly". *[Emphasis supplied]*

It is a matter of surprise that even after making an averment such as above, not a single hearing has taken place till date. At this stage, it may be mentioned that in MP No. 306/88, the applicant had himself moved this Tribunal for getting the disciplinary proceeding stayed, pending the disposal of his main application. His prayer was, however, specifically rejected by an order passed on 16.2.1988. Thus, there was apparently no reason or justification for the disciplinary proceeding against the applicant not having been proceeded with, particularly in view of the fact that ^{applicant} he was due to superannuate within a matter of months and also the fact that his promotion had been stalled for long, while his juniors had got promoted. No reason or explanation has ~~not~~ been brought up before us to account for the delay. As stated earlier, the facts relating to the charge were simple and straightforward and we fail to understand why the disciplinary authority or the Inquiring Authority should have taken so long to make any progress at all. We are, therefore, of the view that the grievance of the applicant relating to inordinate delay in finalisation of the proceeding is fully justified and, on the facts and

circumstances of the case, he deserves the relief claimed by him in this regard.

5. In this context, we may refer to some of the instances in which Courts have set aside disciplinary proceedings which had been unduly delayed.

5A. In Shri V.P. Gidroniya Vs. State of Madhya Pradesh, 1967 SLR 243 at 251, a disciplinary inquiry had been initiated against a Government servant in 1961 and for five years that inquiry had not been concluded. The Madhya Pradesh High Court ordered the reinstatement of the petitioner and made the following observations regarding the undue delay in the conduct of the inquiry:-

" For the foregoing reasons, this petition is dismissed. The petitioner complained before us about the long delay in the completion of the disciplinary enquiry against him. The complaint is undoubtedly justified. It is clearly not in the interest either of the Government or of the Government servant that a disciplinary enquiry should drag on and be conducted for years in a leisurely manner. The disciplinary enquiry was started against the petitioner in 1961 and he was first suspended on 3rd August 1961. Five years have elapsed since then and there is yet no conclusion of the enquiry".

5B. In E.S. Athithyaraman Vs. the Commissioner, Hindu Religious and Charitable Endowments (Administration) Department, 1971 SLR 41 at 46, which again related to a case where there had been a delay of more than $3\frac{1}{2}$ years in the conduct of the inquiry, the Madras High Court held that in the circumstances of the case, the respondents must be deemed to have dropped the entire proceedings. The following observations contained in the judgment are relevant:-

"....admittedly there had been a delay of more than three and a half years in between 14th December, 1961, when the petitioner sent his explanation to the show cause notice against the proposed punishment and the notice dated 20th August, 1965, of the Assistant Commissioner of Ramanathapuram at Madurai, offering to conduct an enquiry. There is no explanation whatever in the counter affidavit for this delay of more than three and a half years. Even after the petitioner appeared for the enquiry on 1st September, 1965, for more than two years,

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nothing was heard about the matter, when suddenly on 4th November, 1967, the Commissioner sent a notice to the petitioner calling upon him to show cause against the proposed punishment. Such a long delay in this matter, coupled with certain other circumstances, clearly leads to the conclusion that the respondent must be deemed to have dropped the entire proceeding".

5C. In Subrata Chaki Vs. State of West Bengal, 1985(3), S.L.R. 530 at 535 and 536, the Calcutta High Court quashed the charge-sheet and the disciplinary proceedings against the appellants on the ground that there had been undue delay in the conduct of the inquiry. The following observations are pertinent:-

".....No explanation for the delay for more than five and half years has been furnished either by the Commissioner, Presidency Division, who was to act as the Disciplinary Authority, or by Mr. B.K. Biswas, who was appointed as the Enquiring Officer.

13. In the instant case the charges framed in respect of the incident which allegedly occurred at the chamber of the Collector of Calcutta, the respondent No.2, on 3rd March, 1981. In substance, the charge against the appellants was that they, inter alia, held a violent demonstration. The annexure of the charge-sheet indicated that the charges against the appellants were proposed to be sustained by oral evidence of eight persons. The charge-sheet did not mention any documentary evidence in support of the prosecution case. Presumably, on the basis of the oral evidence the respondents proposed to establish the said charges against the appellants. The appellants are likely to be seriously prejudiced if the disciplinary proceeding against them is now started. We are not prepared to allow the respondents further time to hold enquiry when they themselves have not explained whey they did not hold the disciplinary proceedings for such a long time".

(C)

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6. Coming now to the second ground, Shri Verghese has relied on certain instructions contained in office memorandum No. 22011/2/86-Estt. (A) dated the 12th January, 1988 (Encl. 3) relating to the procedure and guidelines to be followed in respect of promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation. Paragraphs 4 and 6.1 of this circular provide for six-monthly review of 'sealed cover' cases as well as for ad hoc promotion where the disciplinary cases get unduly prolonged. It is the admitted case of the applicant that no DPC was held between 1982 and 1985. It is also not in dispute that the 'sealed cover' procedure was not attracted in respect of the applicant when the first DPC met in 1985. The second DPC was held in 1987 and it appears from paragraph 2(B) of the reply by the Executive Engineer(HQ) on behalf of the respondents to the prayer for interim stay that 'sealed cover' procedure was adopted by this DPC in the case of the applicant. The grievance of the applicant is, however, confined to the fact that the six-monthly review provided for in the aforesaid circular of 12th January, 1988, was never made in his case. We find that there is substance in his grievance. Mr. P.P. Khurana, learned counsel for the

respondents could not come forward with any specific reason for such omission or contravention of the instructions beyond saying that these points had not been pleaded in the main application and that they could not be raised at the stage of hearing. In ~~my~~ ^{our} ~~case~~ view the objection raised by Mr. Khurana is not tenable, particularly in view of the inordinate delay in proceeding with the departmental proceeding, various representations made by the applicant, promotion of juniors over the head of the applicant, and his impending superannuation.

7. As for the third ground, Shri Verghese has relied on paragraph 5 of Vigilance ~~Commissioner~~ ^{Manual, Vol. II on}, Part II wherein the role of ~~Commissioner~~ ⁵ for Departmental Inquiries has been briefly outlined. Mr. Verghese's argument, in short, is that the Central Vigilance Commission is concerned with cases relating to Gazetted Officers only and that the applicant, being a Class-III employee, did not come within the purview of CVC or ~~Commissioner~~ ⁵ for Departmental Inquiries. We are unable to uphold this contention for two reasons. Firstly, the appointment of an Inquiring Authority is made by the Disciplinary Authority under the provisions of Rule 14(5)(a) of the CCS (Classification, Control & Appeal) Rules, 1965. There is nothing in the rule to prevent or prohibit, the Disciplinary Authority from appointing someone, e.g., the

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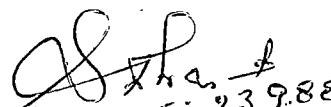
Commissioner for Departmental Inquiry in CVC from acting as an Inquiring Authority. Secondly, in paragraph 4 preceding the paragraph relied upon by Shri Verghese, there is a provision that the Central Vigilance Commission may extend the procedures outlined in the above sub-paragraphs to certain specific categories of Non-Gazetted Officers also. Mr. Verghese has produced no material before us to indicate that the applicant was not included in the category of Non-Gazetted Officers to whom the procedure outlined therein had been extended. The position being so, this ground must be rejected.

8. The fourth and the last ground does not really raise a point of law nor does it relate directly to the impugned disciplinary action. There is no right to promotion as such. However, the fact that juniors to the applicant have got promoted while the petitioner has suffered due to his involvement in the disciplinary proceeding, which has been unduly and inordinately prolonged, does not provide a justifiable ground in support of at least a consideration for the second relief, namely, promotion to ^{the post of OM} Assistant Engineer/claimed by him.

9. In view of the foregoing discussion and on a careful consideration of the facts and circumstances of the case, we hold that the disciplinary proceeding instituted against the petitioner, vide memorandum

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dated the 16th May, 1985 (Annexure-III), must be quashed for the reasons indicated already. We also direct that the respondents must consider the case of the petitioner for promotion to the next higher rank in accordance with law within a period of three months from the date of communication of this order. In our view, he seems to be entitled to promotion with effect from 18.9.1987, the date from which many of his juniors ~~soon to have~~ got promoted, vide Encl-1, provided the DPC had in their 'sealed cover' recommendation found him fit for such promotion. The application is accordingly allowed but without any order as to costs.


23.9.88

(S.D. PRASAD)
ADMINISTRATIVE MEMBER


23/9/88

(P.K. KARTHA)
VICE CHAIRMAN (J)