CAT/7/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 2005/1991
CCP ~~XXXX~~ No. 271/1991 199

DATE OF DECISION January 21, 1992.

Shri Guru Dayal Singh Petitioner

Shri B.S. Mainee, Advocate for the Petitioner(s)

Versus

U.O.I. & Ors. Respondents

Shri O.P.Kshatriya, Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice V.S. Malimath, Chairman.

The Hon'ble Mr. P.C. Jain, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? —
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? —
4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes

(V.S. MALIMATH)
CHAIRMAN
21.1.1992.

(13)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A. No.2005/1991. Date of decision: January 21, 1992.
CCP 271/1991.

Shri Guru Dayal Singh .... Applicant.

Vs.

Union of India & Others .... Respondents.

CORAM :

HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.

HON'BLE MR. P.C. JAIN, MEMBER (A).

For the applicant ... Shri B.S.Mainee, counsel.

For the respondents ... Shri O.P. Kshatriya, counsel.

JUDGMENT (ORAL)

(HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN)

The applicant in this case was subjected to a disciplinary inquiry. He was removed from service where-upon he challenged his removal in a Suit filed in the Court of the Sub Judge at Delhi which came to be transferred to the Tribunal consequent on coming into force of the Administrative Tribunals Act, 1985. The suit came to be decreed on 15.11.1990 on the short ground that there has been a denial of reasonable opportunity of showing cause, the Inquiry Officer's report not having been served and no opportunity having been given to him before the Disciplinary Authority

made up its mind to accept the report and impose the penalty of removal. The Tribunal held that serving a copy of the Inquiry Officer's report along with the order imposing penalty does not meet the requirements of reasonable opportunity contemplated by Art.311 (2) of the Constitution. The applicant was directed to be reinstated in service and the back wages were directed to be paid within a period of three months. The Tribunal reserved liberty to the respondents if they so desired to proceed with the inquiry from the stage at which the infirmity in the inquiry was noticed by the Tribunal. The Tribunal clearly indicated that the inquiry if initiated should be concluded expeditiously and not later than six months.

2. On the ground that though reinstatement has been made, but back wages were not paid within a period of 3 months, the applicant filed C.C.P. No.121/1991 which was disposed of on 30.9.1991 noting that during the pendency of the said proceedings back wages had been paid. In regard to the initiation of disciplinary proceedings, submissions appear to have been made before the Tribunal in the said proceedings. It was submitted on behalf of the respondents that inquiry has since been completed and orders have been passed in the said proceedings. Noting these submissions of the respondents, the Tribunal observed that it was

open to the applicant to challenge the said decision in accordance with law.

3. In the meanwhile, when the respondents decided to proceed with the inquiry and they issued a show cause notice on 31.5.1991, which according to the applicant was served only on 31.7.1991, he took the stand by his reply dated 12.9.1991 that the respondents not having commenced the inquiry and not having completed the same within the prescribed period of six months granted by the Tribunal, have no jurisdiction to issue the notice and to conduct disciplinary inquiry against him. Though time was extended for filing a reply, on more than one occasions, the applicant persisted in his stand that the respondents have no jurisdiction to proceed with the inquiry after the expiry of six months and , therefore, he is not obliged to give a reply on merits. As he apprehended that disciplinary proceedings would be completed and an adverse order would be passed against him, he filed the O.A. No.2005/1991 before the Tribunal on 30.8.1991. The prayer in this O.A. is for direction in the nature of a writ of prohibition restraining the respondents from proceeding with the inquiry on the ground that they had no jurisdiction to initiate or conclude the inquiry after the expiry of six months fixed by the Tribunal for

this purpose by its judgment dated 15.11.1990. During the pendency of this O.A., an interim order was granted in favour of the applicant on 9.9.1991 to maintain status quo which came to be continued by further orders till 2.1.1992.

4. The respondents have passed the order in pursuance of the show cause notice dated 31.5.1991 compulsorily retiring the applicant from service by order dated 3.10.1991 effective from 5.10.1991. Copy of the said order produced by the respondents is at Annexure R-4.

5. The principal contention for consideration is as to whether the respondent had no competence to hold the enquiry after the expiry of six months granted by the Tribunal. In other words, the contention is that the Respondent forfeited its right to hold the enquiry it having failed to do so within the period of six months fixed by the Tribunal. The Tribunal has the power to forfeit the right of the party to hold the enquiry if it failed to hold one within the time fixed by it. It is also competent to direct the party to complete the enquiry within the time fixed by it without forfeiting its right to hold the enquiry after the expiry of the time fixed. The question for consideration is as to what did the Tribunal intend. If in every case the Tribunal has

fixed time for complying with the particular directions, it is inferred that delayed compliance would be without jurisdiction, it will in many cases result in great hardship and manifest injustice. Let us take a case where the Tribunal has directed the respondent to pay arrears of emoluments within the stipulated period. Would it be reasonable to hold that the arrears cannot be paid after the expiry of the stipulated period? On the other hand, can it then be said that the fixing of the time by the Tribunal is of no consequence and that the party is not obliged to comply with the directions within the stipulated period? We cannot subscribe to such a view either. When the Tribunal stipulates the period for doing a certain thing the party is bound to comply with the direction. If it acts in violation of such a direction and delays compliance the party does so at its own peril. It can be dealt with under the Contempt of Courts Act. The party is, therefore, obliged to comply with the stipulation regarding time. From this it does not necessarily follow that compliance after the stipulated period is without jurisdiction. That depends upon the terms of the order. When the order fixes the time for doing something, it is not proper to construe the direction as taking away the right to do it after the stipulated period. Whether the party is precluded from doing something after the stipulated period has to be gathered from the terms of the order read as a whole. If two views are possible, we should lean in favour of the view that the right is not taken away.

(18)

6. In this case time for completing the enquiry was fixed as six months. The order does not convey that the right to hold the enquiry stands forfeited if the enquiry is not completed in six months. Having regard to the terms of the judgment dated 15.11.1990 which only fixed the time of six months, we are inclined to take the view that the Tribunal did not intend that if inquiry is not completed within a period of six months fixed by it, the respondents would have no competence or jurisdiction to initiate or conclude the inquiry after the expiry of the said period fixed by it. Hence, we have no hesitation in taking the view that the order of the respondents passed after the prescribed time cannot be regarded as one passed without jurisdiction.

7. We shall now examine the second contention that on merits the order of termination is not sustainable. We must bear in mind that the Tribunal when it rendered its judgment on 15.11.1990 and reserved liberty to the respondents to hold further inquiry from the stage the infirmity in the inquiry was noticed, it did convey in express terms that the principles of natural justice have to be complied with when a fresh inquiry is held. The applicant bonafide believed that the respondents had no competence to pass any order in the disciplinary inquiry after the expiry of six months fixed by the

(19)

Tribunal. That is the reason he consistently refused to submit himself to the jurisdiction of the respondents and all along maintained that the respondents had no competence to issue the notice and complete the inquiry after the stipulated period. He, therefore, did not answer the notice on merits. The respondents have contributed considerably to the predicament in which the applicant is placed by not holding the inquiry within the period fixed. The applicant bonafide believed that the notice having been served after the expiry of six months, the respondents had no competence to hold the inquiry and that, therefore, he was not obliged to reply. When the applicant raised the plea regarding competence, the respondents in fairness should have made their stand known and given an opportunity of showing cause in the matter. When the earlier C.C.P No.121/1991 was disposed of on 30.9.1991, it was submitted by the respondents before the Tribunal that final order in the disciplinary proceedings has already been passed. But we find that the order was actually passed on 3.10.1991. But for this incorrect statement the applicant could have even at that stage sent a reply on merits. The applicant is denied of this right by the incorrect statement made by the respondents. That opportunity was denied to the applicant having regard to the peculiar circumstances in this case. Hence, it is but proper that we

should annul the order made by the respondents so that a real and meaningful opportunity of showing cause is afforded to him.

8. We, therefore, declare that the order made on 3.10.1991 imposing the penalty of compulsory retirement is null and void. We, however, reserve the liberty to the respondents to proceed with the inquiry in pursuance of the notice dated 31.5.1991 which they had already served on the applicant. We grant one month's time to the applicant from this date to submit his reply on merits to the said notice. The respondents shall on consideration of the cause that the applicant may show in pursuance of the directions in this case proceed to pass a fresh order in accordance with law. If the applicant fails to avail of the opportunity given by us and does not submit his reply within a period of one month from this date, the respondents shall be at liberty to proceed to pass a fresh order on the basis that the applicant has no cause to show. We further direct that the applicant shall be deemed to be in service and direct the respondents to pay arrears of pay and emoluments till he is taken back in service. It is in the interest of the respondents themselves to complete the process of finalising the disciplinary proceedings with utmost expediency. It is needless to observe, if an adverse order is passed against the applicant, it would be open to him to work out his right

in appropriate proceedings as may be available in accordance with law. No costs.

CCP 271/1991. In the light of the judgment which we have just rendered in O.A. No.2005/1991, the proceedings in the C.C.P. are dropped.

(P.C. JAIN)
MEMBER (A)
21.1.1992.

(V.S. MALIMATH)
CHAIRMAN
21.1.1992.

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