

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

(13)

O.A. No. 312 of 1991  
T.A. No.

199

DATE OF DECISION 29-8-91.

Jaipal Singh

Petitioner

Shri Shankar Raju

Advocate for the Petitioner(s)

Versus

G.M. (Maintenance) NTR & Others

Respondent

Shri A.K. Sikri

Advocate for the Respondent(s)

### CORAM

The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J)

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 ? \*<sup>23</sup>
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 ? \*

(Judgment of the Bench delivered by Hon'ble Shri  
Justice Ram Pal Singh, Vice-Chairman (J).)

### J U D G M E N T

By this application, filed under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred as 'Act'), the applicant prays for quashing the chargesheet issued to the applicant vide Annexure A-5. He further prays for regularisation of the suspension period between 18.4.88 to 20.3.89 and payment of the dues as difference of salary of this period. The applicant has also prayed for a direction to the respondents to release his bonus etc. The applicant in his O.A., filed on 31.1.91 before this Tribunal, impleaded only General Manager (M) N.T.R., Maha Nagar Telephones Nigam Ltd. and its Divisional Engineer only but subsequently filed an amended O.A. in which the Union of India was also made a party.

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2. According to the applicant, he entered the service of the Telephone Department of the Union of India in the year 1972 and since the Telephone Department of the Union of India has been bifurcated as Mahanagar Telephone Nigam Ltd., and as the applicant has not been finally absorbed in the service of the Nigam, he contends that he is amenable to the jurisdiction of the Tribunal under Section 2 of the Act.

3. The applicant was appointed initially as a Lineman in the year 1972 though previous to this, he was engaged as a Gateman in the year 1968 with the Telephone Department. The applicant was suspended on 18.4.88 on contemplation of disciplinary proceedings and was served with a Memorandum on 17.10.88 vide Annexure A-3 and this Annexure A-3 was subsequently withdrawn on 30.11.88 vide Annexure A-4 and vide Annexure A-5 dated 6.1.89, a fresh chargesheet was issued to the applicant, including the charge wherein the applicant was alleged to have committed an act of gross misconduct on 15.4.88 by shouting and creating disturbance in the office premises after threatening Shri S.K. Gupta. Thus, vide Annexure A-7, another Inquiry Officer was appointed. The applicant requested the Inquiry Officer for permission to engage a lawyer to defend him in the inquiry as Defence Assistant, but the prayer was turned down by the Inquiry Officer. He further contends that in spite of his demand, certified true copies of the documents were not supplied to him. According to the O.A., the Presenting Officer submitted his Brief on 15.12.89 and the applicant submitted his Defence Statement on 17.1.90 and since 17.1.90, no decision has been arrived at by the Inquiry Officer nor the inquiry report has been submitted to the disciplinary authority in spite of representations by the applicant (Annex. A-14).

4. The respondents in their return raised preliminary objections; that the O.A. has been filed beyond the period of limitation; that the applicant has not approached this Tribunal against

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/in that incident.

any order and that the O.A. is premature. They further contended that the departmental remedy has not been exhausted before filing this O.A. The first chargesheet dated 17.10.88 was withdrawn by an order dated 30.11.88. According to the respondents, the reason for the withdrawal of the first chargesheet was that the S.D.O. (Phones) had issued the chargesheet who himself was a party/Therefore, the higher authorities, in the interest of justice and keeping in view that no prejudice should be caused to the applicant, withdrew the old chargesheet and issued a fresh chargesheet on 6.1.89 and appointed D.E.(OID), East, as the Inquiry Officer. They supported the order of the Inquiry Officer in rejecting permission to the applicant for engaging a lawyer for defending him. According to the respondents, the Inquiry Officer has sent his report in March/April 1990 to D.E. (OID), Tis Hazari, and action is being taken by the disciplinary authority on the said report who after supplying the applicant with a copy of the report and hearing his submissions is likely to pass orders in the near future. They further contended in their return that attested copies of the documents at the time of the charge-sheet are not allowed to be served upon the delinquent but after his submission of written statement of defence, during the inquiry, <sup>if</sup> he prays for the copies of documents, these shall be supplied to him, but this objection was never raised during the inquiry. In the end they contended that the O.A. is bereft of any merit and it should be dismissed.

4. We shall now take up the first contention of the applicant that it was illegal on the part of the disciplinary authority to have withdrawn the first chargesheet and changed the Inquiry Officer. The departmental inquiry against the applicant is being held under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 (hereinafter referred as 'Rules'). The entire procedure of inquiry has been described vividly in this Rule. Sub-rule (22) of Rule 14 of the Rules provides "Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has, and which exercises, such jurisdiction, the inquiring

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authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself.....". From this rule, it is evident that if in the view of the disciplinary authority, the first inquiry should be stopped, by the inquiring officer, then the disciplinary authority can appoint another inquiring officer for conducting the inquiry in accordance with the provisions of this Rule. It has rightly been mentioned in the return of the respondents that Shri S.K. Gupta, who was threatened and shouted upon by the applicant in the incident of 15.4.88, was himself the 1st inquiring officer and when this fact was brought to the notice of the disciplinary authority, the first inquiry was stopped and the <sup>second</sup> inquiring officer was appointed for conducting the inquiry according to law. This shows that the disciplinary authority was conscious of the golden rule of law that the accuser cannot himself act as a judge in quasi-judicial proceedings and that is why the disciplinary authority chose to stop the inquiry where it was and immediately appointed another inquiring officer vide Annex. A-7. Thus, there was nothing wrong on the part of the disciplinary authority to have appointed the second inquiry officer who issued the second chargesheet on the same facts. The first inquiry had not <sup>been</sup> completed nor any adjudication was made by the first inquiry officer. Thus, the step taken by the disciplinary authority in appointing another inquiry officer in place of Shri S.K. Gupta was completely in accordance with sub-rule (22) of Rule 14 of the Rules.

5. The second contention of the applicant is that the prayer of the applicant for permission to engage an advocate as his Defence Assistant was not allowed and he has been prejudiced in his defence. Sub-rule (8)(a) of Rule 14 of the Rules, which is being reproduced for convenience, indicates that the appointment of a legal practitioner as the Defence Assistant is prohibited by the provisions of this Rule:

"(8)(a) The Government servant may take the assistance of any other Government servant posted in any office either at his headquarters or at the place where the inquiry is held, to present the case on his behalf, but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits. ...."

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6. According to this provision of the Rule, unless the Presenting Officer is himself a legal practitioner, no permission can be granted to the delinquent Govt. servant for engaging a legal practitioner to act as his Defence Assistant in the departmental inquiry. Furthermore, the disciplinary authority in the facts and circumstances of a particular case, if thinks fit, then can permit the engagement of a legal practitioner in the departmental inquiry. The application at Annexure A-8 was filed by the applicant for permission seeking the appointment of a legal practitioner as his Defence Assistant. Annexure A-9 was the order of the Inquiry Officer rejecting such request. The reason given in this order is that as the Presenting Officer is not a legal practitioner, hence no permission can be given to the applicant for engaging a legal practitioner as his Defence Assistant. This order is in accordance with the spirit of the provision contained<sup>ed</sup> in sub-rule (8)(a) of Rule 14 of the Rules.

7. Another contention of the applicant is that the applicant was not supplied with true attested copies of the documents when he was issued the Memorandum of Charges as required by Rule 14(4) of the Rules. Under sub-rule (4) of Rule 14, the disciplinary authority is required to deliver to the delinquent a copy of Articles of Charge, the statement and imputations of misconduct or misbehaviour and a list of documents and witnesses by which each Article of Charge is proposed to be substantiated.... On perusal of the documents, it appears that alongwith the Memorandum of Charges (Annexure A-1), the applicant was supplied a list of the documents by which the articles of charges framed against the applicant were proposed to be sustained. Annexure A-3 is the list of documents and Annexure A-4 is the list of witnesses proposed to be examined during the inquiry. Sub-rule (4) of Rule 14 does not contain any provision that copies of documents or statements of witnesses are required to be served alongwith the articles of charge to the delinquent by the Inquiry Officer. Only a list of the documents and list of the names of the witnesses has to be supplied

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and this provision of the Rule has also been complied because Annexure A-3 and Annexure A-4 prove the fact beyond any shadow of doubt.

8. The last contention of the applicant is that there has been an unexplained delay in the conclusion of the inquiry in consequence of which his promotion has been withheld and he has suffered irreparable loss. The scheme of Rule 14 points out that the inquiry proposed to be made under Rule 14 contains the time-bound programme and the intention appears that the inquiry should be concluded as early as possible. Sub-rule (11) of Rule 14 describes the time-bound programme. The intention of the Rule appears to be that the inquiry should be concluded as early as possible, but no period has anywhere been provided in the Rule as to what the time should be within which the inquiry is required to be concluded. The question, therefore, arises as to whether delay or long delay in concluding the inquiry shall vitiate the entire proceedings? A Division Bench of this Tribunal in the case of G.R. RAJAMUNRI vs. U.O.I. & Ors ((1990) 12 A.T.C. 543) has held that the long delay in the conclusion of the entire proceeding of inquiry does not itself vitiate the inquiry. The Orissa Administrative Tribunal in the case of Purna Chandra Mohaptra vs. State of Orissa & Others (SLJ 1991(1) (CAT) p. 135) has held that unexplained and inordinate delay of 4-1/2 years in the conclusion of the inquiry vitiates the inquiry and it should be dropped and the explanation given by the delinquent should be accepted. This is not a case where a very long delay, as it was the case in Purna Chandra Mohaptra (supra), has taken place. The chronological order in which the dates have been mentioned hereinbelow indicates that the delay has occurred only due to the withdrawal of the first chargesheet and due to the appointment of the second Inquiry Officer. The first inquiry was withdrawn on 30.11.88. A fresh chargesheet was issued on 6.1.89. Thereafter the second inquiry proceeded swiftly. The Presenting Officer submitted his brief on 15.12.89 and the defence statement was submitted on 17.1.90 and it is from 17.1.90 that the inquiry is pending adjudication. This O.A. was filed on 31.1.91. Thus, there appears to be a delay of about a year and it cannot be said to be an inordinate

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delay in view of the decisions enumerated hereinabove.

9. The different departmental views and case laws may be summarised in the following order: (1) The Inquiry Officer must not have any personal interest in the case and he must be impartial and have an open mind. Shri S.K. Gupta was himself a witness as the alleged misconduct was committed against him. Hence, the disciplinary authority acted swiftly in withdrawing the first inquiry from him and has appointed another person who was impartial, independent and had no personal interest so that prejudice may not be caused to the delinquent. The Inquiry Officer should act with the detachment of a judge since he is professing to exercise that dignified position. (2) The charged officer should be allowed the defence assistance by a legal practitioner only where the Presenting Officer is himself a legal practitioner or a Law Officer. This Rule is based on the salutary principles and those principles have to be honoured and respected.

10. Rule 14 begins with the words "No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this Rule....." The Full Bench of this Tribunal in O.A. No. 2206/1990 (R.D. Gupta vs. U.O.I & Anr.), in which one of us (Hon'ble Shri Justice Ram Pal Singh) was a member, had the occasion to consider the words underlined hereinabove. It indicates that the inquiry has to be held, as far as may be, in accordance with the procedure laid down in Rule 14.

11. We, therefore, have to conclude that this O.A. is bereft of any merit and the applicant, therefore, does not deserve any relief. His promotion or payment of difference in the salary can be adjudicated by the respondents/employers only when the pending second inquiry is completed. Furthermore, regularisation of the suspended period can only be considered when the second

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inquiry is concluded. This O.A. is premature and has been filed in a hurry, but we shall refrain from commenting upon the merits of the inquiry itself as it is pending adjudication. We, therefore, dismiss this O.A. with the direction that the parties shall bear their own costs, but before parting we express our pious hope that the inquiry pending against the applicant shall be concluded as early as possible, according to law.

*Cec* 29/8/1991  
(P.C. JAIN)

MEMBER (A)

*Ram* 29/8/1991  
(RAM PAL SINGH)

VICE-CHAIRMAN (J)