IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:NEW DELHI

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CCP No. 126/91 DATE OF DECISION: 3.12.1991
MP NO. 3369/91 &
MP No. 3370/91 in

OA NO. 442/91

HEMANT KUMAR SHARMA PETITIONER

VERSUS

UNION OF INDIA & ORS. RESPONDENTS

CORAM:

THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE PETITIONER SHRI P.P. KHURANA, COUNSEL

FOR THE RESPONDENTS SHRI P.H. RAMCHANDANI, SENIOR COUNSEL

O R D E R

In our order dated 25.9.1991, in CCP 126/91, we had observed that the respondents had failed to pass an order within 45 days in the disciplinary proceedings initiated vide memorandum of charge dated 18.6.1987 as stipulated in the interim order dated 21.3.1991 and consequently the relief provided to the applicant did not become inoperative. We also noted with concern that the Respondent No. 1 had "rested after the processing and sending the proposal for promoting the applicant to Junior Administrative Grade on adhoc basis to the Minister and it was not followed up."

Meanwhile the respondents received the advice of the Union Public Service Commission and the Department vide order dated 28.6.1991 imposed the penalty of 'withholding of increments of his pay for a period of two years without cumulative effect,'/ After discussing the facts and attending on the petitioner. circumstances of the case we came to the conlusion:

"We are firmly of the view that the order dated 17.5.1991 cannot abrogate the order passed by the Tribunal on 21.3.1991. That order had to be complied with and if there was any impediment in doing so, nothing prevented the respondents from approaching the Tribunal for clarifying the order or seeking further direction in the matter. Instead the respondents took it that the order dated 21.3.1991 had been abrogated by the opinion of the UPSC. This is an untenable plea.

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We are not satisfied that the respondents made any special effort to contact the Minster or send the file to the Minister of state concerned for obtaining his opinion/approval. The Secretary, Department of Posts having processed the case, sent it to the office of the Minister of State and left it there. We think in a case like this both the officers, viz. Shri Kailash Prakash, Secretary, Department of Posts, Respondent No.1 and Shri B. Parabrahmam, Deputy Director General (Vigilance), Respondent No.2 should appear before the Tribunal on 4th November, 1991 and give such explanation as they think fit. We order accordingly. Final orders on the CCP will be passed thereafter. Registry is directed to send copy of this order to the above two officers forthwith."

2. The matter came up for hearing on 4.11.1991 when Respondent No. 1 & 2 both were present in the court but since the Bench was not available, the matter was adjourned to 25.11.1991. The case was heard on 26.11.1991 when both the respondents were present in the Court.

3. Shri P.H. Ramchandani, Learned Senior Counsel, who appeared for the Resondents No. 1 & 2 at the outset submitted that a SLP No. 16912/91 - Union of India Vs. H.K. Sharma came up for hearing before a Bench of the Hon'ble Supreme Court on 25.11.1991 and their Lordships had passed a limited order exempting the personal presence of the named respondents in the CCP before the Tribunal. Shri Ramchandani also wanted us to look into the decision of the Hon'ble Supreme Court in the case of **Union of India etc. etc. Vs. K.V. Janakiraman etc. etc. - JT 1991 (3) SC 527.** The learned senior counsel further submitted that although Respondents No. 1 & 2 were exempted from putting up their personal appearance as per our order dated 25.9.1991, Shri Kailash Prakash, Respondent No.1 is present in the court and would like to give such personal explanation as he considers necessary to clarify the position in regard to circumstances in which the order of the Hon'ble Tribunal could not be implemented despite his efforts. The learned senior counsel also stated that disciplinary proceedings etc. in the present case do not abate in terms of Section 19(4) of the Administrative Tribunals Act, 1985 as the order dated 28.6.1991 was issued in pursuance of the directions of the Tribunal contained in the interim order dated 21.3.1991.

4. Shri P.P. Khurana, learned counsel for petitioner admitted that Respondent No.1 is present in the court and submitted that notwithstanding the sympathetic and helpful attitude of Respondent No.1 towards the petitioner, the fact remains that the orders of the Tribunal were not implemented. The learned counsel further submitted that consequent upon the imposition of penalty on the petitioner, vide order dated 28.6.1991, there has been qualitative change in the circumstances compelling him to file MP No. 3369/91 for amending the OA and MP No. 3370/91 for staying the operation of the order No. 10-2/87-Vig-II dated 28.6.1991. Shri Khurana prayed

for allowing the MP so that the matter is adjudicated in all respects in the interest of justice.

5. Shri P.H. Ramchandani, learned senior counsel for the respondents submitted that the MPs are not listed today and sought adjournment to enable him to obtain full instructions from the respondents. Accordingly the case was adjourned and ordered to be listed on 29.11.1991.

6. On 29.11.1991, Shri P.P. Khurana, learned counsel for the petitioner highlighted the fact that the petitioner has been made to suffer considerable mental hardship on account of the inordinate delay in completing the minor penalty proceedings initiated against the petitioner. The event for which the disciplinary proceedings were initiated against the petitioner in 1987, took place in 1980. In fact, there was no occasion for initiating disciplinary proceedings as the applicant had given his explanation to the charge levelled against him soon after the event took place and after considering the same the respondents had cautioned him to be more careful in future in 1982. The petitioner was therefore under the bona fide impression that the matter was closed. To his great dismay, however, the settled case was resurrected in 1987. The learned counsel further submitted that the respondents themselves have observed that the lapses and irregularities attributed to the petitioner "are procedural in nature without any mala fide, yet he has been punished by imposing the penalty of stoppage of increment for two years without cumulative effect." The penalty was unwarranted as the petitioner had not been found wanting in devotion to duty and thus had not committed any misconduct. The learned counsel submitted that in any case the order imposing penalty is the direct outcome of the issues agitated in the main OA and therefore his prayer to amend the application should be allowed.

7. Shri P.H. Ramchandani, learned senior counsel explained at length the procedural requirements in completing the disciplinary proceedings and submitted that there was no deliberate delay in completing the proceedings. He, however, submitted that the decision in the case required consultation with another constitutional authority, viz. Union Public Service Commission provided under the law and therefore such delays cannot be helped. He further submitted that Section 20 of the Administrative Tribunals Act, 1985 bars the amendment prayed for as the applicant has yet to make an appeal against the order dated 28.6.1991.

8. Shri P.P. Khurana, relying on State of Madhya Pradesh V. Bani Singh 1990 (2) JT SC 54 aubmitted that the power has to be exercised in a reasonable period of time, in a reasonable manner in such cases. The inordinate delay which took place in this case cannot be wished away on the ground that the decision is required to be taken in consultation with UPSC. The learned counsel further submitted that the amendment prayed for by the petitioner is on account of an order which is part of the same transaction and that amendment of the OA prayed for would lead to avoiding multiplicity of litigation. Further, the applicant has no remedy available to him except filing a memorial to the President, as the penalty has been imposed on him by a Presidential order; the memorial to the President as such does not constitute a statutory remedy. The amendment prayed for therefore is not barred by Section 20 of the administrative Tribunals Act, 1985.

9. We have considered the submissions made by the learned senior counsel for both the parties and perused the relevant record carefully. At this stage we are not required to go into the merits of the OA. As far as the CCP is concerned we observe that although the respondent No.1 had processed

the file of the applicant to secure implementation of our order dated 21.3.1991 and submitted the same for the approval of the then Minister, for promoting the applicant to JAG on adhoc basis, there is no evidence to indicate that the case was pursued diligently thereafter to get over the circumstances obtaining during the relevant period viz. the election to the LOK SABHA which would come in the way of getting the approval to the proposal from the Minister concerned in time. At the same time, we do not find sufficient evidence to come to the conclusion that there was any attempt to subvert the process of justice by 'wilful disobedience' which in this context means "the act (is) done deliberately and intentionally and not by accident or inadvertance..."

In the circumstances, we have come to the considered view that there is no justification for proceeding further against the respondents in the Contempt Petition No. 126/91. The same is accordingly disposed of and the notice of contempt issued to the respondents is hereby discharged.

We have also given our prfound consideration to the submissions made by Shri P.P. Khurana, learned counsel for the petitioner in MP No. 3369/91 and 3370/91 and to the arguments advanced by Shri P.H. Ramahandani, learned senior counsel for the respondents to rebut the prayer for amending the application and for staying the order dated 28.6.1991.

MP No. 3369/70

As far as the MP No. 3369/91 praying for amendment of the OA is concerned, we are of the view that the order dated 28.6.1991 is not a fresh transaction nor a new 'cause of action'. The amendment prayed for has intimate relation with the pleas taken in the O.A.

In **Peria Nachi V. Raju Thevar - AIR 1985 SC 817** their Lordships observed:

> "Normally amendment is not allowed if it changes the cause of action. But it is well recognised that where the amendment does not constitute an addition of a new cause of action, or raise a new case, but amounts to no more than addition to the facts already on the record, the amendment would be allowed even after the statutory period of limitation."

Again in **A.K. Gupta and Sons Ltd. V. Damodar Valley Corporation** - AIR 1967 SC 96, their Lordships in the Supreme Court held:

> "The expression "cause of action" in the present context does not mean "every fact which it is material to be proved to entitle the plaintiff to succeed" as was said in Cooke V. Gill (1873) 8 CP 107 (116), in a different context, for if it were so, no material fact could ever be amended or added and, of course, no one would want to change or add immaterial allegation by amendment. That expression for the present purpose only means, a new claim made on a new basis constituted by new facts. Such a view was taken in Robinson V. Unions Property Corporation ltd. 1962 All ER 24, and it seems to us to be the only possible view to take. Any other view would make the rule futile. The words "new case" have been understood to mean "new sets of ideas". Dornan V. J.W. Ellis and Co. Ltd. 1962-I All ER 303. This also seems to us to be a reasonable view to take. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time."

In the present OA 442/91, the applicant had challenged the memorandum of charge dated 18.6.1987 initiating minor penalty proceedings against him and prayed for the following reliefs:

(a) a writ of Certiorari or an order in the nature of Certiorari quashing the charge-Memo dated 18.6.1987;

(b) A Writ of Mandamus or an order, direction in the nature of Mandamus directing the respondents to grant the Junior Administrative Grade to the applicant with effect from the date the immediate junior the applicant was granted the said Grade."

When the case was heard on interim relief the applicant was provided relief as an interim measure vide order dated 21.3.1991. However, for a variety of reasons briefly discussed earlier, the order was not/could not be implemented by the respondents. Instead the order dated 28.6.1991 was issued by them imposing the penalty which is a sequal to the memorandum of charges dated 18.6.1987. The prayer made for amending the original application in consequence of the order dated 28.6.1991, to our mind, does not introduce a new cause of action or a new case with new set of ideas. It, merely updates the issues set up and agitated by the applicant. In the circumstances, we allow the prayer made in MP No. 3369/91 to amend the OA. The applicant may file the amended application and give a copy thereof to the learned counsel for the respondents, within two weeks from the date of this order, who may file counter affidavit/additional counter affidavit within four weeks thereafter. List the case on 27th January, 1992.

If the applicants wishes to file rejoinder, he may do so within this period.

MP No. 3370/91MP

In view of the fact that the charge memo of 1987 which has culminated in the issue of respondents' order dated 10-2/87-Vig-II dated 28.6.1991 withholding increments for two years without cumulative effect, is itself under challenge in the OA ,granting the stay from the operation of the said order would more or less be tantamount to granting the main relief without considering the merits of the case. We, therefore, do not find any merit in the plea for staying the operation of the respondents' order dated 28.6.1991. Admittedly, however, since the interim orders of 21.3.1991 have not been implemented by the respondents in the circumstances explained above, it would cause great deal of hardship to the applicant if his Original Application is allowed to take its normal turn for hearing. In these circumstances, we consider that the case merits to be heard expeditiously so that the application of the petitioner is decided at the earliest possible. Accordingly we order that the case be listed for final hearing on 27.1.1992 when the pleadings will be completed for final disposal.

(I.K. Rasgotra)
Member(A) 3/12/91

(Amitav Banerji)
Chairman