

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

Date of decision: 17.2.1993.

OA No.2459/92

Shri M.R.Iqbal

.....

Applicant

versus

Union of India
through Secretary, Ministry
of Finance, New Delhi & Ors...

Respondents

For the applicant

For the respondents

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..

Sh.P.P.Khurana, Counsel.

Sh.R.S.Aggarwal, Counsel.

CORAM:

HON'BLE SHRI P.K.KARTHA, VICE-CHAIRMAN(J)
HON'BLE SHRI B.N.DHOUNDIYAL, MEMBER(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporters or not ? *Yes*

JUDGEMENT

(DELIVERED BY HON'BLE SHRI B.N.DHOUNDIYAL,
MEMBER(A))

This Original Application has been filed by Shri M.R.Iqbal, an Income Tax Officer, against the impugned order dated 19.12.91 imposing the penalty of censure and against his supersession by his juniors for promotion to the post of Assistant Commissioner of Income Tax.

2. The applicant was appointed as direct recruit Inspector in 1969 and was promoted as I.T.O. Group-B in January, 1978. On completion of 12 years of service and in accordance with his seniority, he should have been promoted to the post of Assistant Commissioner along with his batch-mates in March, 1991 when his juniors Shri B.K.Roy and Shri R.Jagannathan were promoted. In the DPC meetings that took place in October, 1991 and December, 1991, two

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hundred other officers have been promoted. Though his name was considered for promotion but the recommendations were kept in a sealed cover as he had been issued a charge memo on 22.12.84 alleging gross misconduct in the matter of issue of notice under Section 143(2) of the Income Tax Act, 1961 and for allegedly usurping a new bajaj scooter belonging to the relative of an assessee. The applicant alleges inordinateⁱⁿ delay in completing the departmental proceedings which has adversely affected his prospects for promotion. The original charge memo was revised on 18.4.85 and though he submitted his written statement of defence on 11.7.85 and though the respondents appointed Shri S. Lahri, Commissioner for Departmental Enquiry, New Delhi, as Enquiry Officer on 1.8.85, no action was taken till 15.1.90 when Shri J.C. Mishra, Deputy Commissioner of Income Tax, Raipur was appointed as Enquiry Officer. The enquiry proceedings commenced in June, 1990 and the Enquiry Officer gave his report on 30.4.91, which was given to the applicant on 6.6.91. On the basis that the Enquiry Officer had exonerated the applicant of all the charges, he requested the Disciplinary Authority to drop the proceedings vide his letter dated 24.6.91. However, a show cause notice for imposing minor penalty was issued on 3.12.91 and he submitted his representation on 24.6.91. Meanwhile, the matter had been referred to the C.V.C. and on his advice the impugned order dated 19.12.91 imposing the penalty of censure was issued. His request for supplying the copy of the recommendations of the C.V.C. was rejected. He then represented that in view of the fact that only a minor penalty of censure has been awarded, the recommendations

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of the DPC kept in sealed cover may be opened and he may be given his due promotion, if so recommended.

The appeal filed by the applicant against the said order of penalty is still pending. The following reliefs have been prayed for:-

- "a) to issue a writ of Certiorary or any other writ, order or directions quashing the charge-memo dated 20.4.85 and the order dated 19.12.91 imposing the penalty of censure of the applicant.
- b) to direct the respondents to promote the applicant with effect from the date the immediate junior of the applicant was so promoted and to grant him all consequential benefits like arrears of salary and allowances etc.
- c) to pass such other and further orders as deemed fit and proper by this Hon'ble Tribunal in the circumstances of the case to meet the ends of justice."

3. The respondents have stated that the applicant had been served with a charge-sheet before the Departmental Promotion Committee meeting was held in March, 1991, hence he could not be promoted and in his case sealed cover procedure was adopted. The same procedure had to be followed during the subsequent meetings of the DPC. A show cause notice was issued after considering the report of the Enquiry Officer, when it had been established that even though the applicant had issued notice under Section 143(2) of the Income Tax, he completed assessment under Section 143(1) of the Income Tax in an irregular manner. After considering his representation, the Disciplinary Authority passed the penalty order dated 19.12.91. An appeal has been filed by the applicant against the penalty of censure and in accordance with the prescribed procedure the matter is under consideration in consultation with the Union Public Service Commission. The Disciplinary Authority has the *be*

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right to disagree with the advice tendered by the Enquiry Officer or the Central Vigilance Commission. The investigation in this case was made by the Central Bureau of Investigation and hence it was thought fit to refer the case to Central Vigilance Commission for their advice. The Enquiry Officer has not totally exonerated the applicant. A penalty in this case was imposed by order dated 19.12.91 and has been recorded on the Annual Confidential Report of 1991-92. Any Departmental Promotion Committee holding its meeting after 19.12.91 is obliged to consider this fact.

4. We have gone through the records of the case and heard the learned counsel for the parties. The learned counsel for the applicant has taken us through the report of the preliminary enquiry as well as the report of the Enquiry Officer. There is unanimity in both the reports that the charges against the applicant were not proved. The Enquiry Officer has clearly stated as under:-

" I find no material substantiating the PO's submissions that the CO was habitually or regularly acting in the manner stated above. Considering the total number of disposals made by the CO during the relevant period, a few instances of irregularity do not establish the allegation of habitual conduct."

In case of the other charge also, the clear conclusion has been reached that the alleged misconduct of unauthorisedly taking away a scooter and retaining it for 63 days has not been established. The Disciplinary Authority did not mention any disagreement with the enquiry report while forwarding it to the applicant under their letter dated 6.6.91. Had detailed reasons for differing with ^{As}

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the Enquiry Officer been given, the applicant would have been able to submit his explanation on all the relevant points. The learned counsel for the respondents has argued that it is not for the Tribunal having only writ jurisdiction to evaluate the evidence produced before the Enquiry Officer. The applicant has already submitted an appeal and should wait for a decision in his case.

5. As mentioned by the respondents, the punishment of censure has been kept on record in the Confidential Roll of the applicant. It has been held by the Hon'ble Supreme Court that in case of adverse remarks, the representation made by the affected employee should be disposed of before taking into account the entry with a view to forming any opinion against him (Brij Mohan Chopra Vs. State of Punjab- AIR 1987 SC 948). The decision of the Disciplinary Authority seems to have been influenced by the recommendations of the Vigilance Commission to whom the case was referred. It has been held that the ^{by} Central Vigilance Commission cannot dictate to Disciplinary Authority as to how they should exercise their power and what punishment should be imposed (Nagaraj Shiva Rao Vs. Syndicate Bank-1991(1) SCALE 832). It was also necessary for the delinquent officer to know why the findings given in his favour by the Enquiry Officer should be disturbed which implies that the reasons why the disciplinary authority differed from the findings of the Enquiry Officer should have been made known to him (Narayan Mishra Vs. State of Orissa- 1969 SLR 657). Another weakness in the case of the respondents is the inordinate delay in finalising the proceedings. The events ^{by} relate to 1979-80 and the first chargesheet was issued in December, 1984. The respondents ^{by} have not explained the reasons for a long delay of five years thereafter and have ^{by}

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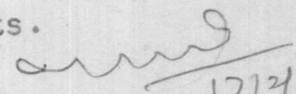
simply stated that the proceedings started with the appointment of the new Enquiry Officer in 1990. The applicant has already suffered much hardship due to a chargesheet pending against him and as a consequence thereof promotion due to him being denied. It has been held in (State of Madhya Pradesh Vs. Bani Singh-1990 SC 738) that undue delay in initiating and concluding departmental enquiry vitiates the proceedings. While it is necessary to punish the guilty official it is also necessary to ensure that such prolonged proceedings which ultimately result only in a minor punishment are not dragged on for years together, just to deny the due promotion.

6. In the conspectus of the facts and circumstances, we hold that the applicant is entitled to succeed and dispose of the application with the following directions:-

- (a) The respondents shall consider the appeal filed by the applicant expeditiously and pass a speaking order thereon.
- (b) Till such time as the appeal is finally disposed of, the remark of censure shall not be taken into account. A Departmental Promotion Committee shall be constituted to review the case of the applicant afresh in this light and in case the applicant is recommended for promotion, he shall be so promoted with all the consequential benefits including arrears of pay and allowances and seniority.
- (c) These orders shall be complied with expeditiously and preferably within four months from the date of communication.

There shall be no order as to costs.

B.N. DHOUDIYAL
(B.N. DHOUDIYAL) 17/2/93
MEMBER (A)


(P.K. KARTHI A) 17/2/93
VICE CHAIRMAN (J)