

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

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O.A. No. 954/92
T.A. No.

199

DATE OF DECISION 8-11-97

Sh. A. . Wayer

Petitioner

Mrs. Neer Chhibber

Advocate for the Petitioner(s)

Versus

Union of India through
Secretary & Co.

Respondent

None for the respondents

Advocate for the Respondent(s)

CORAM

The Hon'ble Smt. L. Chai Guaminathan, Member (3)

The Hon'ble Shri K. Muthu Kumar, Member ()

1. To be referred to the Reporter or not? *yes*

2. Whether it needs to be circulated to other Benches of the Tribunal?

Lakshmi Guaminathan
(Smt. Lakshmi Guaminathan)
Member (3)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

...

OA.No.954 of 1992

Dated New Delhi, this 8th day of April, 1997.

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER(J)
HON'BLE SHRI K. MUTHUKUMAR, MEMBER(A)

M. V. Nayar
R/o A-1/13
Safdarjung Enclave
NEW DELHI-110029.

... Applicant

By Advocate: Mrs Meera Chhibber
versus

1. Union of India, through
The Secretary
Department of Revenue
Ministry of Finance
Government of India
North Block
Central Secretariat
NEW DELHI.

2. Under Secretary to the
Government of India
Department of Revenue
Ministry of Finance
Government of India
North Block
Central Secretariat
NEW DELHI.

... Respondents

None for respondents.

O R D E R (Oral)

Smt. Lakshmi Swaminathan, M(J)

The grievance of the applicant in this case is the action of the respondents in not granting him Selection Grade (Non Functional) in the scale of Rs.4500-5700 with effect from the date his immediate junior has been given vide Notification dated 23.1.1991.

2. The brief facts of the case are that the applicant who is working as Deputy Commissioner of Income Tax had been chargesheeted under Rule 14 of the CCS(CCA) Rules, 1965. According to Mrs Meera Chhibber,

learned counsel for the applicant, that chargesheet is still pending and the respondents have not proceeded with the same or passed any final orders thereon. In this connection, she has drawn our attention to the order passed by this Tribunal in the earlier case filed by the applicant in OA.No.1080/87 dated 1.6.93 (M. V. Nayar Vs UOI & Ors.) In that case, the applicant had prayed for quashing of the Memorandum/Chargesheet dated 6.4.1987 and to furnish him copies of certain documents sought for in his representation dated 19.4.87 to enable him to defend his case in the departmental enquiry. The Tribunal vide its order dated 1.6.93 came to the conclusion that it would not be justified in interfering in the disciplinary proceedings at that stage and it was observed that since the chargesheet was not finally disposed of, the applicant should be given an opportunity to defend his case in the departmental enquiry where he can press all the points he has taken before the Tribunal. Finally dismissing the application without interfering with the disciplinary proceedings at that stage, and vacating the interim order staying the departmental proceedings, a further direction was given to the respondents which is as follows:-

"The respondents are directed to conclude the departmental proceedings as expeditiously as possible."

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3. The learned counsel for the applicant relies on the judgement of the Supreme Court in **State of Punjab & Ors. Vs Chaman Lal Goyal** [(1995) 2 S.C.C. 570]. She submits that in the circumstances of the case, since the respondents have failed to conclude the departmental proceedings, inspite of the Tribunal's order the same should be ordered to be dropped and the recommendations of the DPC, stated to be kept in a sealed cover, should be opened and further action be taken accordingly, in respect of giving the applicant the Selection Grade (Non Functional) from the date ¹⁸⁻ ~~when~~ his immediate junior had been given.

4. It is seen from the reply that the only ground the respondents have taken for denying the applicant the Selection Grade (Non Functional) is the pendency of the departmental proceedings. It is also relevant to note that the departmental proceedings have been pending since 6.4.1987 and inspite of the Tribunal's order dated 1.6.1993 in OA.No.1080/87 directing them to conclude the same as expeditiously as possible, we are informed that no such action has been taken till date. While the proceedings are still pending, they have issued the impugned Notification dated 23.1.1991 granting Selection Grade (Non Functional) to other persons including 76 juniors to the applicant. From the reply filed by the respondents it appears that

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the name of the applicant has not been included in the impugned Notification dated 23.1.1991 as the recommendations of the DPC in his case have been kept in a sealed cover. The respondents have stated that their action is in order since the departmental proceedings are pending against the applicant where the chargesheet had been issued in 1987.

5. From the above facts it is, therefore, clear that the respondents have resorted to the sealed cover procedure in the case of the applicant only because a chargesheet which they had issued as early as in 1987 is still pending for 10 years. Unfortunately, inspite of notice, no one has appeared on behalf of the respondents to clarify the present position of the departmental proceedings. On the other hand, the learned counsel for the applicant states that the respondents have not taken any further proceedings to conclude the departmental enquiry even after the order of the Tribunal in OA.No.1080/87 dated 1.6.1993.

6. The Supreme Court in **State of Punjab & Ors. Vs Chaman Lal Goyal (supra)** has held as follows:-

"12. Applying the balancing process, we are of the opinion that the quashing of the charges and of the order appointing enquiry officer was not warranted in the facts and

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circumstances of the case. It is more appropriate and in the interest of justice as well as in the interest of administration that the enquiry which he had proceeded to a large extent be allowed to be completed. At the same time, it is directed that the respondent should be considered forthwith for promotion without reference to and without taking into consideration the charges or the pendency of the said enquiry and if he is found fit for promotion, he should be promoted immediately. This direction is made in the particular facts and circumstances of the case though we are aware that the rules and practice normally followed in such cases may be different. The promotion so made, if any, pending the enquiry shall, however, be subject to review after the conclusion of the enquiry and in the light of the findings in the enquiry. It is also directed that the enquiry against the respondent shall be concluded within eight months from today. The respondent shall cooperate in concluding the enquiry. It is obvious that if the respondent does not so cooperate, it shall be open to the enquiry officer to proceed ex parte. If the enquiry is not concluded and final orders are not passed within the aforesaid period, the enquiry shall be deemed to have been dropped."

6. Therefore, in the facts and circumstances of the case and having regard to the judgement of the Supreme Court in **State of Punjab & Ors. Vs Chaman Lal Goyal (supra)**, this OA is disposed of with the following directions:-

(1) In case the respondents have concluded the departmental proceedings mentioned above before receipt of this order, they may take further action in accordance with the rules and instructions with regard to ^{considering JS} grant of Selection Grade (Non Functional) in the scale of


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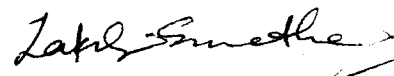
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Rs.4500-5700 to the applicant from the date his immediate junior had been given that grade;

(2) In case the respondents have failed to conclude the departmental proceedings as already directed by the Tribunal's order dated 1.6.1993, further time of four months is granted to the respondents to conclude the departmental proceedings and thereafter immediately pass final orders thereon.

7. The O.A. is disposed of as above. No order as to costs.


(K. Muthukumar)
Member(A)


(Smt. Lakshmi Swaminathan)
Member(J)

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