

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00216/2020

Date of Order: This, the 22nd day of April 2021

THE HON'BLE SMT. MANJULA DAS, MEMBER (J)

THE HON'BLE MR. NEKKHOMANG NEIHSIAL, MEMBER (A)

MES No. 439169

Shri Vinod Kumar Gupta

Son of Shri Devata Deen Gupta

Joint Director

Office of the Additional Director

General (NEI), Narangi Military Station

P.O. – Satgaon, Guwahati-781027 (Assam).



... Applicant

By Advocates : Sri Adil Ahmed & Smt. D. Goswami

- Versus -

1. The Union of India
Represented by the Secretary
To the Government of India
Ministry of Defence, South Block
New Delhi, Pin – 110011.
2. The Engineer-in-Chief
Military Engineer Services
Engineer-in-Chief's Branch
Integrated Head Quarter
Ministry of Defence (Army)
Kashmir House, Rajaji Marg
New Delhi – 110011.

O.A. No. 040/216/2020

3. The Chief Engineer
Pune Zone, Dakshin Kaman Marg
Sir Maneckji Mehta Road
Camp, Pune, Pune-411001.
4. The Secretary
Union Public Service Commission
Dholpur House, Shahjahan Road
New Delhi, Pin – 110069.

...Respondents.

By Advocate: Sri A. Chakraborty, Addl. CGSC



ORDER

MANJULA DAS, MEMBER (J):-

Being aggrieved by the Memorandum of Charges dated 12.02.2018, the applicant has approached this Tribunal claiming the following reliefs:-

- “8.1 To set aside and quash the Show Cause Notice bearing No. 1005/4/SWT/Dehu Road/2225/E1B (C) dated 24.08.2017.
- 8.2 To set aside and quash the Memorandum of Charges bearing No. 5(13)/2017-D(Lab) dated 12.02.2018.
- 8.3 To set aside and quash the rejection order bearing No. 35(01)/2019-D(Lab) dated 30.07.2019.
- 8.4 To Pass any other appropriate relief (s) as may be deemed fit and proper by the Hon’ble Tribunal; and
- 8.5 To pay the cost of the application.”

O.A. No. 040/216/2020



2. Brief facts of the case, as narrated by the applicant, are that: the applicant was appointed on 05.11.2005 as Assistant Director, Group 'A' Civilian Officer at the office of the Chief Engineer, Lucknow Zone under the Ministry of Defence, Government of India. He was under probation for two years from 05.11.2005 to 04.11.2007. He is a Defence Civilian Officer in Military Engineer Services under the Ministry of Defence, Government of India. Presently he is working as Joint Director in the office of the Additional Director General (NEI), Narangi Military Station, Satgaon, Guwahati. After completion of his probation period, his service was confirmed w.e.f. 05.11.2007 by the respondents. He got his first promotion on 22.10.2010 as Executive Engineer and second promotion as Executive Engineer (Non-Functional Selection Grade) w.e.f. 01.12.2015. Presently, he is due for his third promotion to the grade of Superintending Engineer year 2020-21.

3. The applicant has further stated that on the basis of complaint lodged by the Chief Engineer Pune

Zone, Commander Works Engineer (CWE) Army Mumbai and other higher officials before the Head Quarter Maharashtra Gujarat & Goa area for certain alleged lapses during execution of works of year 2006-2008 at Garrison Engineer Dehu Road, the Head Quarter Maharashtra Gujarat & Goa vide their letter No. 3031(A)/AD Dehu Rd/PMG/Q3P dated 07.07.2021 has ordered a Staff Court of Inquiry. Accordingly, the opinion of the Staff Court of Inquiry was submitted on 04.05.2012. Thereafter, Second Staff Court of Inquiry was subsequently ordered in the month of July 2013 for same execution of works of year 2006-08 at Garrison Engineer Dehu Road. The Second Staff Court of Inquiry was completed. Based upon the findings of the Second Staff Court of Inquiry, the applicant was issued Show Cause Notice vide HQ Chief Engineer Pune Zone Show Cause Notice bearing No. 1005/4/SWT/Dehu Road/2225/E1B (C) dated 24.08.2017 which was communicated to the applicant by the Headquarters, Chief Engineer, Siliguri Zone by letter dated 08.09.2017 as he was posted as



Executive Engineer under HQ CE, Siliguri Zone. Against the said Show Cause Notice, applicant submitted his reply on 01.10.2018. However, he is not aware about the present status of departmental action on the said Show Cause Notice. Till date two courts of inquiries have been completed and one court of enquiry is under progress even after 12 years.



4. The applicant has further stated that on the basis of the opinion of First Staff Court of Inquiry dated 04.05.2012, he has been served with Memorandum of Charge dated 12.02.2018 containing 5 (five) Article of charges i.e. after more than 6 years of opinion of the First Court of Inquiry and relating to the alleged lapses during execution of works year 2006-08 which occurred 12 years back while he was posted as Assistant Garrison Engineer (Probation Part) at the office of the Garrison Engineer Dehu Road. The alleged charges were framed against the applicant relates to some alleged misconduct occurred 12 years back without any explanation/reason for issuance of such belated charge

sheet. Since the applicant is due to consideration for promotion to the next higher grade of Superintending Engineer for year 2020-21, he will be seriously prejudiced for the aforesaid Memorandum of charge sheet which was issued by the respondent authority with some ulterior motive in pick and choose manner to make him scapegoat after lapse of 12 years just to deprive him consideration of promotion to the grade of Superintending Engineer. The grading in ACR/APAR of the applicant since last 12 years is "Outstanding" to "Very Good".



5. Being aggrieved by the alleged Memorandum of charged dated 12.02.2018, applicant asked for the copies of relied upon documents of charged memorandum for the purpose of submitting his reply/written statement of defence. However, the respondent authorities deliberately not provided any documents which are major procedural irregularity on the part of the respondents. However, he received the documents relating to Memorandum of charge sheet

dated 12.02.2018 after delay of 6 (six) months in the month of September 2018 and submitted his reply on 29.09.2018.

6. The applicant emphasised that the impugned charge memo dated 12.02.2018 has been initiated after inordinate and unexplained delay of more than 12 years at a time when the applicant was due for promotion to the grade of Superintending Engineer. According to the applicant, the impugned memorandum of charge was issued by the respondents deliberately with a malafide intention to deny the legitimate promotion. The respondent department charged the applicant in a biased and pick and choose manner. According to the applicant, from the above facts and circumstances, the memorandum of charge is not sustainable in the eye of law.

7. The respondent No. 3 vide his written statement controverted the averments made by the applicant and stated that, the irregularities and lapses on the part of the applicant were noticed by the department





during 2011-12 after his first promotion on 22nd October 2010. Further, 2nd promotion dated December 2015 could not be withheld as though the applicant was involved in disciplinary action but the charge sheet was not issued. Charge Memorandum was issued by the Ministry of Defence on 12th February 2018 based on findings of Staff Court of Inquiry conducted during the period 2011-12 and this case is now sub-judiced. The Second Staff Court of Inquiry was convened by Headquarters MG & G Area vide letter No. 3031/53/AD Dehu Road/Q3P dated 02 Jul 2013 to investigate issue/lapses and pinpoint responsibility/accountability of overpayment made for two static water tank and shortage of stores at Dehu Road under Contract Agreement No. CEPZ/Mum/53 of 2004-05 which was quantitative in nature in which the blameworthy official was given opportunity to submit his version. Show Cause Notice for above lapses was issued on 24th August 2017 to Charged Officer (applicant) through his then present office CE Siliguri Zone. It was received by the applicant

on 8th September 2017, whereas reply of prescribed time of 10 days which shows intentional delay by the applicant. At present, disciplinary folders have been forwarded to competent authority for further disposal.



8. The respondents further stated that the applicant is not addressing the charges in Charge Memorandum. The applicant served with Garrison Engineer, Dehu Road as Assistant Garrison Engineer (Building/Road) (P) from May 2006 to December 2009. The irregularities and lapses in execution were found out in a serial manner over a period of time starting from the year 2011. The Charge Memorandum was finally issued by Ministry of Defence dated 12th February 2018. The charged officer did not respond to said Charge Memorandum within prescribed time limit despite reminders. Accordingly, disciplinary action proceeded further as per CCS (CCA) Rules, 1965 and CCS (Conduct) Rules, 1964.

9. Respondents further stated that when departmental proceedings were in progress, the



applicant filed O.A. No. 350/284/2019 before CAT, Kolkata Bench. In view of that, departmental action remained pending till finalization/directions of the said case which was decided on 5th March 2019. Accordingly, proceeding of inquiry were held up till serving of speaking order to applicant which was issued on 30th July 2019 and acknowledged by the applicant on 24th August 2019. Thereafter, only Departmental Inquiry resumed and completed and report submitted to convening authority by Inquiring Officer on 20th March 2020 for further disposal. Further disciplinary process will be progressed as per laid down rule, if no disciplinary ban imposed.

10. Sri Adil Ahmed, learned counsel for the applicant, at the outset, pointed out that the disciplinary proceeding initiated against the applicant after an inordinate and unexplained delay of more than 12 years. According to Sri Ahmed, the case of the present applicant is squarely covered with the judgment and order of this Tribunal dated 24.04.2015

passed in O.A. 040/00247 of 2014. He fairly submitted that when the same principle is laid down, it should be applicable to all other similarly situated persons and should be granted the same benefit without requiring them to approach the Court of law. He further submitted that civilians in the Defence Services are not liable for any disciplinary action on the basis of Staff Court of Inquiry.



In support of his case, Sri Ahmed has relied on the decision of CAT, Chandigarh Bench in O.A. No. 060/01111/2016 (Dev Raj Vs. UOI & Ors.) where it was held that the jurisdiction of the Military Court of Inquiry does not cover civilian employees posted in defence establishments.

11. Heard Sri Adil Ahmed, learned counsel for the applicant and Sri A. Chakraborty, learned Addl. CGSC for the respondents.

12. The issue before us as to whether Memorandum of charge dated 12.02.2018 issued by the Disciplinary Authority is sustainable on the issue of delay in proceedings initiated against the applicant. The Disciplinary Authority issued the said Memorandum of

charge dated 12.02.2018 by levelling five Articles of charges which reads as follows:-

Article-I

That MES-439169 Shri VK Gupta, EE, while functioning as AGE B/R (Project) under GE Dehu Road during the period from 23.05.2006 to 31.12.2009 was responsible for execution for Job No. S/2502. He had allowed the contractor to execute the walls of 16xESHs with cavity instead of 60 cm thick solid walls and thus he had shown gross negligence and poor monitoring of construction of walls under CA No. CEPZ/MUM/53 of 2004-05.

Article-II

That during the aforesaid period and while functioning in the aforesaid office, the said MES-439169 Shri VK Gupta, EE, had not done adequate supervision and physical monitoring of works which led to poor quality and incorrect construction of loading platforms, hard standing, fire breaks and ramps (Job No. S/2431 and S/2502).

Article-III

That during the aforesaid period the said MES-439169 Shri VK Gupta, EE, while functioning as AGR B/R (Project) was responsible for poor layout of area drainage (Job No. S/2431 & S/2502).

Article-IV

That during the aforesaid period the said MES-439169 Shri VK Gupta, EE, while functioning as aGE B/R (Project) was responsible for poor maintenance of site documents under Job No. S/2431 & S/2502.

Article-V

That during the aforesaid period the said MES-439169 Shri VK Gupta, EE, while functioning as AGE B/R (Project) failed to bring to the notice of higher MES authorities, various user requirements omitted during planning stage like inadequate qtys of



road network under Job No. S/2431 & S/2502, omission of loading platform under Job No. S/2431, wrong specification of 'Z' types ventilators under Job No. 2431 and Job No. S/2502 and omission of fire breaks under Job No. S/2431.

13. The stand of the respondent authorities for initiation of proceedings in delay is that the respondents came on notice of the irregularities and lapses on the part of the applicant during 2011-12 after his first promotion on 22 October 2010. Second promotion dated December 2015 was made to the applicant as there was no charge sheet issued and the charge sheet was issued based on the findings of the Staff Court of Inquiry conducted during the period of 2011-12. From the statement made by the respondents in Para 6 of their written statement, it is ample clear that the period if any allegations or lapses on the part the respondents was in between 23.05.2006 to 31.12.2009 and the authority was sitting with the matter up to 2011-12 i.e. more than 5 years. Noticeably, the applicant got his two promotions. Thus it is explicit clear that the proceedings initiated by the Disciplinary Authority after 12 years on 12.02.2018. If the authorities have any doubt or found



any irregularities or lapses on the part of the applicant, which was the subject matter of the enquiry stated to have taken place between 2006-2009 as aware in 2011-2012, that too, no proceeding was initiated and awaited till 2018 and as per our opinion, it is a clear case of inordinate delay in initiating disciplinary proceeding against the applicant. The protracted disciplinary enquiry against a government employee should be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in minds of government employee. The Hon'ble Apex Court in the case of **P.V. Mohadevan Vs. MD. T.H. Housing Board (2005) 6 SCC 636** noted that –

"The litigants suffered enough and more on account of the disciplinary proceeding. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment."

14. In **State of Madhya Pradesh Vs. Bani Singh reported in 1990 (Supp) SCC 738**, the Hon'ble Supreme Court has held that:-



"The appeal against the order dated December 16, 1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go to decide the matter on merits. We are unable to agree with the contention of the learned counsel. The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, came to know it only in 1987. According to them even in April 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going to on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage..."

15. In **P.V. Mahadevan Vs. Managing Director, T.N.**

Housing Board, (2005) 6 SCC 636, the Hon'ble Supreme Court held that –

"The Tribunal quashed the charge memo and the departmental enquiry on the ground of inordinate delay of over 12 years in the initiation of the departmental proceedings with reference to any incident that took place in 1975-76. The appeal against the said order was filed in this Court on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. This court rejected the contention of the learned counsel. While dismissing the appeal

this Court observed as follows: (SCC P. 740, para 4).

"The irregularities which were the subject matter of the enquiry are said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1986. According to them even in April 1977 irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."



16. In **State of A.P. V. N. Radhakishan (1998) 4 SC 154**, the Hon'ble Apex Court has held that –

"In considering whether delay has vitiated the disciplinary proceedings, the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained, prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employees. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path, he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then

delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that there is to blame for the delay or when there is proper explanation for the delay in conducting disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

17. In **Prem Nath Bali Versus. Registrar, High Court of Delhi, Civil Appeal No. 958 of 2010, the Hon'ble Delhi High Court** has observed that –



"we are of the considered opinion that every employer (whether State or private) must make sincere endeavour to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of inquiry but not more than a year."

18. In **Shri V. Vaite Vs. Union of India and Ors. T.A. No. 05/2012**, decided by this Tribunal vide order dated 18.06.2012, which has been upheld by the Hon'ble Gauhati High Court in W.P.(C) No. 214 (SH), it was held that:-

"In the facts of the present case, we do not find any satisfactory explanation for the inordinate delay in issuing the charge memo. In our opinion, there exist no valid reason for inordinate delay in initiation and completion of the disciplinary proceedings. Therefore, proceedings are liable to be quashed on the ground of unexplained delay in initiating the charge sheet. Accordingly, charge memorandum dated 22.03.2006 is quashed and set aside."

19. In **Union of India Vs. Hari Singh, 2013 (298) E.L.T.**

335 (Del), the Hon'ble Delhi High Court has held that –



"...delay in initiating disciplinary proceedings would constitute denial of reasonable opportunity to defend the charges in the case and therefore, amounts to violation of principles of natural justice."

20. In **Bamin Tari Vs. Union of India, O.A. No.**

040/00247 of 2014 decided by this Tribunal on 24.04.2015

which has been upheld by the Hon'ble Gauhati High

Court vide order dated 02.05.2016 in **WP(C) No.**

7682/2015 [2016 (3) GLT 353], it was held that:-

".....Further, no explanation for the delay whatsoever has been given. Thus, in such a situation, the initiation of the proceedings after long 12 years is neither permissible nor acceptable under the law.

In view of the discussions made in the foregoing paragraphs and following the ratio laid down by the Hon'ble Supreme Court, the

Hon'ble Delhi High Court as well as the decisions of the Central Administrative Tribunal ,we accordingly, set aside and quash the impugned Memorandum of Charges dated 05/07.03.2014."



21. In view of the discussions made in the foregoing paragraphs and following the ratio laid down by the Hon'ble Supreme Court, the Hon'ble Delhi High Court as well as the decisions of the Central Administrative Tribunal, we are in view that the disciplinary proceedings initiated vide order dated 12.02.2018 is not permissible under the law. Accordingly, Memorandum of Charges No. 5(13)/2017-D Lab dated 12.02.2018 is hereby quashed and set aside

22. In the result, the O.A. is allowed. No order as to costs.

(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)

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O.A. No. 040/216/2020