

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 19th day of May, 2004.

QUORUM : HON. MR. D. C. VERMA, V.C.
HON. MR. D. R. TIWARI, A.M.

O.A. No. 351 of 1999

Surendra Nath Srivastava, Branch Post Master, Shankerganj
(Maharajganj) S/O Hridaya Narain Lal Srivastava P/O Village
Mahkucha, Post Shankerganj (Maharajganj), District Jaunpur.
.....

.....Applicant.

Counsel for applicant : Sri S.L. Kushwaha.

Versus

1. Union of India through Secretary, Ministry of Communication, New Delhi.

2. Chief Post Master General, U.P. at Lucknow.

3. Superintendent of Post Offices, District Jaunpur.

.....

.....Respondents.

Counsel for respondents : Sri A. Sthalekar.

O R D E R (ORAL)

BY HON. MR. D.C. VERMA, V.C.

By this O.A., the applicant has prayed for quashing of the enquiry proceedings being conducted by the respondents against the applicant.

2. In brief, in respect to some incident in 1992, the applicant was put off duty and a F.I.R. was lodged for alleged embezzlement of certain amount. During the course of argument, learned counsel for the parties submitted that in the criminal case, the chargesheet has been submitted in 1996 and the criminal case is still pending.

3. Though there is no stay in this case, the departmental enquiry has not proceeded. Learned counsel for the respondents has not been able to give us the present status. However, he states that due to filing of this O.A., the enquiry has not been proceeded. In our view, ^{even} if the criminal proceeding is pending, the department should have

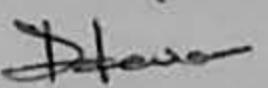
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been completed the enquiry proceedings. There is already a great delay in completing the enquiry proceedings. In the circumstances instead ^{of} ~~the OA~~ ^{the OA} deciding on merit, it would be sufficient to direct the respondents to complete the enquiry proceedings within a period of six months from the date, a copy of this order is served.

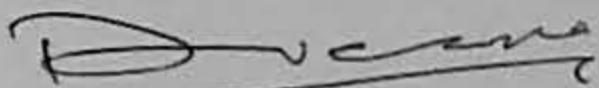
4. Counsel for the applicant submitted that though the put off duty allowance is being paid to the applicant but it has not been revised and enhanced, ~~the allowance~~. In this respect, the applicant may make a representation to the department and the department shall consider the same as per rules and pass appropriate order.

5. The O.A. is decided with direction to the respondents to complete the enquiry proceedings within a period of six months. The applicant shall cooperate in the enquiry so that the enquiry is completed within the stipulated period. It is, however, provided that in case applicant has any grievance thereafter, he may approach the Tribunal as per rules. The O.A. is decided accordingly.

No order as to costs.



A.M.



V.C.

Asthana/

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
CIVIL SIDE
ORIGINAL JURISDICTION

DATED ALLAHABAD THE :25.8.2015.

PRESENT

THE HON'BLE ARUN TANDON,
THE HON'BLE SHASHI KANT,

JUDGE.
JUDGE.

CIVIL MISC. WRIT PETITION NO.69028 OF 2006.

ORDER ON THE PETITION OF G.S. DHIMAN.

Petitioner.

IN RE:

G.S. Dhiman
S/o Late S.R. Dhiman
R/o 49, Kajlash Puri, Dehradun.

Petitioner.

VERSUS

The Union of India, though Secretary Govt. of India,
Ministry of Science and Technology,
Department of Science and Technology,
Technology Bhawan, New Mehrauli Road,
New Delhi.

Respondent

Counsel for the Petitioner : Sri Ajay Rajendra.

Counsel for the Respondent : A.S.G.I., Sri Harish Chandra Dubey, S.C.

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BY THE COURT

A.F.R.

Court No. - 9

Case :- WRIT - A No. - 69028 of 2006

Petitioner :- G.S. Dhiman

Respondent :- The Union Of India Thru' Secretary Govt. Of India

Counsel for Petitioner :- Ajay Rajendra

Counsel for Respondent :- A.S.G.I., Harish Chandra Dubey, S.C.

Hon'ble Arun Tandon, J.

Hon'ble Shashi Kant, J.

Heard learned counsel for the petitioner and learned A.G.A. for the State of U.P. and perused the record.

Petitioner before this Court seeks quashing of the order of the Central Administrative Tribunal, Allahabad dated 9.5.2006 passed in Original Application No. 351 of 1999 (G.S. Dhiman Vs. Union Bank of India) as well as punishment order dated 5.3.1999 passed by Under Secretary Government of India, Ministry of Science and Technology, New Delhi.

The petitioner was employed as Superintendent Surveyor, Drawing office, Survey of India, Dehradun. In respect of the acts and omission on the part of the petitioner, he was proceeded with departmental inquiry with the service of Charge sheet dated 15.3.1991. The petitioner responded to the charge sheet by submitting his detail reply on 3.4.1991. After enquiry report as submitted was forwarded to the petitioner with an opportunity to respond to what was recorded therein. The disciplinary authority after considering the enquiry report and the submissions made by the petitioner with respect thereto, proceeded to inflict the punishment of reduction by two stages in the time scale of 10000-325-15,200 for a period of two years with cumulative effect with further direction that he will earn the increments of pay during the period of reduction which is classified as one of the major penalty under the CCS (CCA) Rules 1965.

Not by satisfied, petitioner filed Original Application No. 351 of 1999, which has been dismissed under the order dated 9.5.2006. Hence this petition.

Counsel for the petitioner contended before us that the charges as levelled against the petitioner related to the period 1984 to 1986 while the charge sheet was served upon him in 1991 i.e. after more than 5 years of the alleged charges. It is then stated that the enquiry officer submitted his report with the disciplinary authority on 31.3.1994. The disciplinary authority took four years and ten months to pass the impugned order of punishment. He submitted that the enquiry proceedings have been prolonged for a considerable period only for the purposes of causing loss to the petitioner in the matter of promotion to the next higher post therefore bad. In support of this proposition he has placed reliance upon the judgment of the Apex Court in the case of **State of Andhra Pradesh Vs. N. Radhakishan reported in (1998) 4 SCC page 154**, as well as upon the judgment of the Division Bench of this Court in the case of **Union of India and others Vs. Surendra Nath Sharma reported in (2013)(3) ESC page 1371**.

It is next contended before us that the impugned order had been made by the Under Secretary who had no power to pass such order, therefore, it suffer for want of jurisdiction. Lastly it is contended that the punishment which has been inflicted upon the petitioner is not the one provided for under CCS (CCA) Rules 1965, in as much as the words 'cumulative effect' had been added which is not there in clause 4(v) of the CCS (CCA) Rules 1965 and therefore the order be quashed.

We enquired from counsel for the petitioner, as well as there any challenge to the departmental proceedings initiated against the petitioner, so far as the procedure adopted

therein is concerned. The answer given is in negative. We find that there is no illegality in the procedure in the matter of departmental enquiry which has been held against the petitioner.

So far as issue in respect of the delay in completion of the departmental inquiry is concerned, we find that the tribunal has dealt with the issue in paragraph 10 of its judgment. It has been noticed that the delay of 58 months on the part of disciplinary authority to take the final decision has been explained with reference to the procedural requirements of consultation with the Union Public Service Commission and vigilance department. The tribunal has found that there is no inordinate delay in conclusion of the proceedings.

The Apex Court in the case of **State of Andhra Pradesh Vs. N. Radhakishan** has laid down that if the delay is not explained in the conclusion of the proceedings same is an indication of prejudice being caused to the employee, but in paragraph 15 of this judgment, it has been laid down that it is not possible to lay down any predetermined principles which may be applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. It has further been held that each case has to be examined on the facts and circumstances of that case.

In the case of **State of Andhra Pradesh Vs. N. Radhakishan** and in the facts of that case it has been held that the delay of 18 years and 10 months had not been satisfactorily explained the judgment is therefore distinguishable in the facts of the case.

We find from the order of tribunal that it has examined the issue in respect of delay in the matter of departmental inquiry in the facts of this case. It has come to the conclusion that the delay has been explained satisfactorily. The delay

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could not be said to be deliberate in any manner. We see no reason to disagree with these findings, therefore the first ground raised has to be rejected.

So far as the authority of the under Secretary to sign the impugned order is concerned, it has been brought to the notice of the Court that a corrigendum was issued on 16.6.1999 under the signature of Joint Secretary, qua the order of punishment under challenge. The tribunal however has noticed that in view of the judgment of the Apex Court in the case of **State of Andhra Pradesh Vs. N. Radhakishan reported in (1998) 4 SCC** of the order is expressed to have been made is in the name of President duly authenticated then such need not be igone into by the tribunal.

In view of the article 166 (2) of Constitution of India, the signature of the concerned secretary, who is authorized to authenticate the order, would suffice. We are in agreement with the finding recorded by the tribunal on the said aspect of the matter also.

The last issue is raised on behalf of the petitioner qua use of the words 'cumulative effect' in the order of punishment has no substance. The word 'cumulative effect' means that he will not draw the next annual increment for a period of two years and at the end of two years he will draw the next increment and therefore the penalty which has been imposed is not in excess of the major penalty which have been provided under CCS (CCA) Rules 1956, the punishment is strictly in clause 11.5 of CCS (CCA) Rules 1956.

We find no merit in this petition, it is accordingly dismissed.

Order Date :- 25.8.2015/SA

Compared By
G.N.Te, V.O.P
22-9-2015

Sy- Arun Tandon, S.
Sy- Shashi Kant, S.

TRUE COPY

Section Officer
Copying 22/09/2015
Hir Court, Allahabad