

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 798 of 2007

Allahabad this the 67th day of March, 2012

**Hon'ble Mr. Justice S.C. Sharma, Sr. J.M./HOD
Hon'ble Ms. Jayati Chandra, Member (A)**

Surendra Nath Sharma Son of late Hira Lal Sharma, Aged about 55 years, R/o Village Murarpatti, Post-Lalganj, District-Balia.

By Advocate: Mr. S.S. Sharma

Applicant

Vs.

1. Union of India through The General Manager, North Central Railway, Headquarters Office, Allahabad.
2. The Divisional Railway Manager, North Central Railway, DRM Office, Allahabad.
3. The Senior Divisional Signal & Telecom Engineer, North Central Railway, D.R.M. Office, Allahabad (The Appellate Authority).
4. The Divisional Signal & Telecom Engineer, North Central Railway, Aligarh. (The Disciplinary Authority)
5. The Assistant Signal & Telecom Engineer, North Central Railway, Aligarh. (The Enquiring Authority)

Respondents

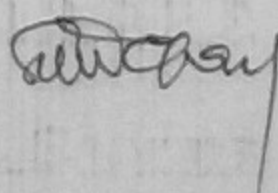
By Advocate: Mr. Rajeev Sharma

Reserved on 08.02.2012

ORDER

By Hon'ble Mr. Justice S.C. Sharma, Sr. J.M./HOD

Under challenge in this O.A. are the memorandum of charges for major penalty dated 01/21-09-1988, penalty order passed by the Assistant Divisional Signal & Telecom Engineer, North Central Railway, Aligarh, appellate order dated 07.04.2007 issued by the Divisional Signal & Telecom Engineer, North Central Railway, Allahabad. Further prayer has also been made for giving



direction to the respondents to issue promotion orders of the applicant in higher posts and grades i.e. ESM Grade II, ESM Grade I, MCM and JE Grade-II on which juniors to the applicant have already been promoted during the last 18 years from 21.09.1988- the date of issue of charge sheet for major penalty with consequential benefits and fixation of salary accordingly. Further prayer has also been made for awarding compensation of ₹ 5,00,000/- or as decided by the Tribunal for torturing the applicant continuously for 18 years, spoiling his total service career, compelling him to work on initial post with mental agony, humiliation and demoralization during 18 years along with his family members though no fault of the applicant, and due to arbitrariness and malafides of the authorities. Prayer has also been made for initiating strict action and passing strict strictures against the officer concerned for keeping pending the disciplinary proceeding for 18 years. Further prayer has been made to award heavy cost on the respondents.

2: The facts of the case may be summarized as follows: -

It has been alleged by the applicant that a memorandum of charges for major penalty was issued against the applicant on 21.09.1988 by the Assistant Signal and Telecom Engineer (for short ASTE), Northern Railway, Allahabad. Later on, a penalty order was also issued against the applicant on 07.09.2006 by the Assistant Divisional Signal And Telecom Engineer (for short ADSTE) imposing the penalty of withholding of increment temporarily for one year w.e.f. 01.04.2007 and appellate order was also passed on 07.04.2007 by the Divisional Signal &

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Telecom Engineer (for short DSTE) North Central Railway, Allahabad reducing penalty of withholding of increment temporarily for two months. The applicant was initially appointed on the post of ESM Grade III in the pay scale of ₹ 260-400/- on 24.09.1984 through Railway Service Commission. He possessed Diploma in Electrical and ^{was} also a B.A. pass. The applicant was posted at Fatehpur under Chief Signal and Telecom Inspector (West), Northern Railway, Allahabad, and the applicant continued to retain his lien and seniority on the post of ESM Grade III in the pay scale of ₹ 3050-4590/- in the Signal and Telecom Department in Northern Railway. While working as ESM Grade III, Fatehpur, applicant was served with a memorandum of charge sheet for major penalty. On receipt of the charge sheet, applicant submitted the reply to ASTE, Northern Railway, Allahabad - Disciplinary Authority. The applicant demanded the copies of documents relied by the respondents in a charge sheet. The applicant also denied the charges leveled against him. Before issuing the charge sheet, an inquiry was also made by the Chief Signal Inspector (West), Northern Railway, Allahabad, and relevant documents were submitted. From the report of telegram message, it was established that on 26.08.1988 at 02.47 hours Up Advance Starter Signal was failed and the applicant was informed at 03.30 hours, and after knowing this fact, applicant replaced the fuse bulb of the signal and ^{it} started functioning. Again applicant got a message from the Porter of Bindki Road station about failure of signal, he immediately went to West Cabin and when he lowered the signal it indicated red instead of green, hence there was some big fault in signal. He came to station and

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he took key of relay room at 5.50 hours and opened the cabin and he saw TPR and SR relays were down. The applicant thereafter immediately went ~~to~~^{to} up advance signal with the Khalasi and he found that the advance signal was broken, and information was given by the applicant to Signal Inspector-I, Fatehpur. He also gave a memo to the RPF at 5.50 hours for theft and submitted the correct position of the spot. From all these facts it is evident that the fault was in signaling which occurred two times on 26.08.1998 and the defect was removed by him. A charge sheet was served upon the applicant and it was wrongly alleged therein that the fault occurred only once to save the Signal Inspector-I, Bindki Road, Fatehpur. The applicant was also put under suspension w.e.f. 28.08.1988 by the ASTE, N. Railway, Allahabad without any reason. The applicant made a representation. He submitted the written statement of the defence against the charges and the Disciplinary Authority appointed Sri A.K. Chakravarty, Signal Inspector (D-II), N. Railway, Allahabad as Enquiry Officer vide order dated 01.03.1989. The action of respondent No. 4-Disciplinary Authority was in violation to Rule 9 (9) (a) (i) of the Railway Servants (D&A) Rules, 1968. When no action was taken by Sri A.K. Chakravarty, Enquiry Officer then, Sri M.N. Singh, A.S.T.E. Tundla was appointed as Enquiry Officer by the Senior Divisional Signal & Telecom Engineer. A charge sheet was served by the A.S.T.E. and he was also the Disciplinary Authority, and appointed Sri A.K. Chakravarty as Enquiry Officer but in gross violation of the Rules, the Senior Divisional Signal & Telecom Engineer, N. Railway, Allahabad - the Revisional Authority interfered in the matter and appointed Sri M.N. Singh as Enquiry

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Officer (for short EO). Thereafter, Sri Sandeep Mathur was appointed in place of Sri M.N. Singh as EO and no action was taken by Sri Sandeep Mathur, EO and thereafter D.S.T.E., N. Railway, Allahabad-Appellate Authority appointed Sri A.K. Saxena, A.S.T.E., N. Railway, Kanpur as EO. All irregularities were committed by the respondents in appointing the EO, serving the charge sheet, replacing the EO thereafter. The enquiry was started and continued for a period of more than 8 years from the date of issue of charge sheet. The witnesses were examined; enquiry report was submitted on 16.12.1997; and applicant submitted his representation on 28.01.1998 against the enquiry report to D.S.T.E., N. Railway well within time. The charges were not proved against the applicant. When no action was taken in the matter then, a notice was also served to the D.R.M., N.C. Railway, Allahabad through an Advocate and even after serving the notice, action was not taken; then, a letter was sent on 20.04.1996 requesting the D.R.M. to finalize the disciplinary proceedings pending against the applicant and a representation was also made by him on 18.08.2006 in order to promote him on the post of ESM Grade II, ESM Grade I, MCM and Junior Engineer-II as several juniors to the applicant were also promoted. The EO imposed minor penalty of withholding the increments temporarily for a period of one year w.e.f. 01.04.2007 raising the pay from Rs. 4350/- to Rs. 4430/- in the pay scale of Rs. 3050-4590/-. Appeal was also preferred to the Appellate Authority. The Appellate Authority passed a non-speaking order without considering the facts, as alleged by the applicant in his appeal, and vide order dated 07.04.2007 the Appellate Authority reduced

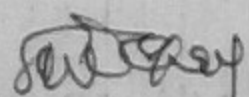
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the penalty of withholding of increment for a period of one year to a period of two months w.e.f. 01.04.2007. From all these facts, it is evident that there was inordinate and unreasonable delay on the part of the Disciplinary Authority in finalizing the disciplinary proceedings. The major penalty charge sheet was issued on 21.09.1988 and enquiry was concluded on 16.12.1997 and against the enquiry report, applicant submitted the reply on 28.01.1998 but the Disciplinary Authority passed the order in the matter on 07.09.2006 and penalty was imposed and thereafter the Appellate Authority reduced the punishment. As delay is occurred hence during this period the junior persons were promoted on higher posts. In view of the Judgment of the Hon'ble Supreme Court if there is inordinate delay in finalizing the departmental proceedings then, the charge sheet as well as the order of punishment must be quashed. From the date of initial appointment and till date the applicant continued to remain on the same post without any promotion. Hence, he is entitled for promotion with consequential benefits and compensation.

3. The respondents contested the case, filed the Counter Reply and denied from the allegations made in the O.A. It has been alleged that it is a fact that the major penalty charge sheet was served upon the applicant on 21.09.1988 and the Enquiry Officers were appointed. It is evident from perusal of the enquiry report that the enquiry was delayed due to non-cooperation of the applicant during the enquiry proceedings. Sri A.K. Chakravarty and Sri M.N. Singh were appointed as EO, and vide letter dated 30.09.1995 the applicant requested for changing the EO and

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considering the letter of the applicant, the EO was changed and Sri Sandeep Mathur was appointed as EO. The applicant submitted an application for appointment of Defence Assistant and he engaged Sri O.P. Dubey as his Defence Counselor but it was rejected by the EO on the ground that Sri O.P. Dubey was removed from service and hence he cannot be appointed as the Defence Assistant rather some other person may be engaged as Defence Assistant but the applicant insisted that Sri O.P. Dubey alone be appointed as Defence Assistant. A reply was submitted by the applicant on 16.12.1997 before the D.S.T.E., Allahabad. Vide letter dated 06.03.1998 the applicant was nominated for promotion with the condition that no DAR/SPE/VIG case is pending but as a DAR case was pending against the applicant, he was not promoted. A letter was sent to the applicant which was served on him in the year 2006 and the reply was submitted by the applicant of that letter on 16.05.2006 and afterwards the entire case was transferred to D.S.T.E., Moradabad for decision and thereafter A.D.S.T.E. decided the enquiry by passing a speaking order. It is wrong to allege that the respondents' authorities had taken a decision with malafide intention. The entire case of the applicant was considered. Full opportunity was given to the applicant to peruse the documents relied by the respondents. It is an admitted fact that the charge sheet was received by the applicant on 22.09.1988 but prayer was made for providing some more time, as sufficient time was not provided. The EO was appointed but the applicant did not submit the representation and the EO was also transferred. The delay was due to the applicant. Sri M.N. Singh, EO was changed considering



the request of applicant and Sri Sandeep Mathur was appointed as EO but as Sri Sandeep Mathur was also promoted hence Sri A.K. Saxena was appointed as EO. The change of Enquiry Officers was due to transfer and promotion of the EOs or on the request of applicant. After considering the applicant's request and arguments of the Defence Counselor, a speaking order was passed. During the pendency of enquiry, applicant was transferred at Doud Khan Station, which was under the jurisdiction of ADSTE, Aligarh and hence the order was passed by the Disciplinary Authority, ADSTE, Aligarh. As the matter remained pending since long hence the Disciplinary Authority took a lenient view and in spite of the fact that the charges were proved, minor punishment was awarded. The Appellate Authority also passed a speaking order and on the compassionate ground lenient punishment was awarded and the punishment awarded by the Disciplinary Authority was reduced by the Appellate Authority. The applicant adopted a dangerous way in permitting the trains to pass and accident could have taken place resulting in death of several persons. It is wrong to allege that intentionally the enquiry was kept pending for an indefinite period. It is due to dilatory tactics adopted by the applicant himself. Hence, O.A. lacks merit and is liable to be dismissed.

4. Rejoinder Affidavit has also been filed by the applicant and in the RA applicant disputed the allegations made in the Counter Reply and also reiterated the facts which have been alleged in the O.A.

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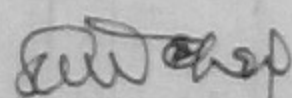
5. We have heard Sri S.S. Sharma, Advocate for the applicant and Sri Rajeev Sharma, Advocate for the respondents and perused the entire facts of the case. Although the arguments were heard on 08.08.2012 but on behalf of the parties a request was made for filing the Written Arguments and one week's time allowed but after about two weeks Written Arguments were submitted by the parties.

6. Although the pleadings are very lengthy and mostly there had been repetition of the facts. The pleadings could have been more precise and it is always better that the pleadings must be precise and to the point, and the repetition must be avoided.

7. The main argument of learned counsel for the applicant is that a very long period was consumed by the respondents in concluding the enquiry and due to dilatory tactics of the respondents, the applicant had been put to a great loss. During the period, enquiry remained pending against the applicant, he was not promoted whereas his juniors were given promotion on higher posts, and considering that the enquiry was kept pending intentionally in order to cause wrongful loss to the applicant, the charge sheet as well as the order of punishment deserve to be quashed. Undisputedly, the charge sheet was served upon the applicant of major penalty on 21.09.1988 and the charge against the applicant was that while the applicant was posted as ESM-III at Fatehpur under Chief Signal Inspector (West), Northern Railway, he gave pass to the Up trains in a dangerous manner by adopting a short cut method and he concealed the true facts. It is also a fact that the enquiry was concluded on 16.12.1997 when

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last EO Sri A.K. Saxena submitted the enquiry report to the Disciplinary Authority. The facts have also been alleged that how much time was consumed in appointment of the EO. From perusal of the facts, it is evident that after serving the charge sheet on 21.09.1988, EO was appointed on 01.03.1989 by the ASTE, Aligarh and Sri A.K. Chakravarty, Signal Inspector was appointed as EO. After serving the charge sheet, five months' time was consumed in the appointment of an Enquiry Officer whereas it has also been alleged that after receipt of major penalty charge sheet, he submitted the reply on 28.09.1988. No proceeding was conducted by Sri A.K. Chakravarty, EO and hence vide order dated 06.09.1995, Sri M.N. Singh, A.S.T.E., Northern Railway, Tundla was appointed as EO. Since 01.03.1989 up to 06.09.1995 the enquiry remained pending with Sri A.K. Chakravarty with no proceeding, and there is no explanation of this delay. On 16.10.1995, Senior DSTE, Northern Railway, Allahabad appointed another EO Sri Sandeep Mathur, ASTE, Northern Railway, Kanpur as EO. No proceeding was conducted even by Sri Sandeep Mathur and vide order dated 17.04.1996 Sri A.K. Saxena was appointed as EO and since 17.04.1996 enquiry remained pending with Sri A.K. Saxena, and he concluded the enquiry on 08.05.1997. But intentionally the enquiry report was submitted by the EO on 16.12.1997. On 22.12.1997, DSTE, Northern Railway send a copy of the enquiry report to the applicant for submitting the representation against the enquiry report and on 28.01.1998 applicant submitted the representation against the enquiry report. The applicant approached the respondents to finalize the matter of charge sheet and to promote



him. But in spite of the fact that the representation was submitted by the applicant against the enquiry report, no decision was taken by the respondents in the matter up to 07.09.2006, and even after submission of the charge sheet, the matter was kept pending intentionally by the respondents, and on 07.09.2006 minor penalty of withdrawal of increment for a period of one year w.e.f. 01.04.2007 was imposed whereas the charge sheet was submitted for major penalty, and the punishment imposed was of minor in nature. Against the order of the Disciplinary Authority, the applicant preferred an appeal on 09.10.2006 and vide order dated 07.04.2007, the DSTE, North Central Railway disposed of the appeal of applicant without the fact that the enquiry remained pending for such a long period. However, the punishment awarded by the Disciplinary Authority was reduced from the period of one year to two months w.e.f. 01.04.2007. It is apparent that the matter was kept pending for a long period of 18 years without any explanation.

8. The respondents in their Counter Reply disputed the facts which have been alleged by the applicant. Although it has been admitted that the enquiry remained pending for a long period of 18 years but it has been alleged by the learned counsel for the respondents that the delay cannot be attributed exclusively to the respondents. The applicant himself also delayed the enquiry. It has been alleged that after serving the charge sheet and submission of the representation when the applicant was required to nominate the defence helper then, the applicant nominated Sri O.P. Dubey, Former S.I as defence helper. But the nomination of

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Sri O.P. Dubey was opposed by the EO, as Sri Dubey was removed/dismissed from the railway service and hence as per rules he cannot be appointed as defence helper. But the applicant insisted that Sri O.P. Dubey be appointed as Defence Helper. However, the EO rejected the request of the applicant. The order of the EO was challenged before the Appellate Authority and in the appeal also it has been alleged that Sri O.P. Dubey alone be appointed as the Defence Helper. As per respondents, it is dilatory tactics on behalf of the applicant in order to delay the enquiry. Sri A.K. Saxena vide order dated 27.01.1997 nominated Sri P.S. Sachdeva as Defence Helper of the applicant. Such a long period of six years was consumed in nomination of Defence Helper and hence this delay is attributed to the applicant. It has also been alleged by the respondents that initially Sri A.K. Chakravarty was appointed as EO but the applicant did not cooperate with the EO Sri A.K. Chakravarty and he requested for change of Sri A.K. Chakravarty and an appeal was also filed by the applicant for change of the EO-Sri A.K. Chakravarty. Thereafter, Sri M.N. Singh was appointed as EO. But an objection was raised by the applicant even for the appointment of Sri M.N. Singh as EO, and on the objection of the applicant, Sri M.N. Singh was changed and Sri Sandeep Mathur was appointed as EO but he promoted and transferred hence, Sri A.K. Saxena was appointed as EO and he concluded the enquiry. It has also been alleged by the respondents that on most of the dates, applicant as well as his defence helper failed to participate in the enquiry proceeding on flimsy ground, and the applicant also requested to get his statement recorded and due to non-cooperative attitude of the

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applicant, enquiry was delayed. All the facts have been alleged in detail by the respondents that how the applicant attributed in dealing the enquiry proceedings. But it is a fact that Sri A.K. Saxena submitted the enquiry report on 16.12.1997. The enquiry report was sent to the applicant but he did not receive the same and thereafter again on 25.04.2006 copy of the enquiry report was sent to the applicant and he received the same on 02.05.2006, and the reply was submitted by the applicant on 19.05.2006 hence there was a long delay on the part of applicant in submitting the reply against the enquiry report and it is the applicant who is solely responsible for delaying the matter. Opportunity of personal hearing was afforded to the applicant.

9. It has also been alleged by the respondents' Advocate that the charges framed against the applicant were of serious nature as applicant adopted dangerous way and allowed the trains' No. 101 Up and 191 Up to pass. The charges were proved against the applicant. In case, accident might have taken place then numerous persons might have died and irreparable loss might be caused to the railways. The nature of charges were of such that the applicant ought to have removed from service but as the enquiry was delayed hence the Disciplinary Authority while awarding the punishment adopted a lenient view and passed order of withholding of increment for one year and again the Appellate Authority reduced the punishment from one year to two months vide order dated 07.04.2007 and it was done adopting the humanitarian attitude towards the applicant. By narrating all these facts, learned counsel for the respondents tried to

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demonstrate that the matter of enquiry was delayed due to non-cooperative attitude of the applicant. Firstly, he desired to take the help of Sri O.P. Dubey-a removed employee, as defence helper, which is not feasible as per rules and afterwards also the applicant as well as the defence helper Sri P.S. Sachdeva failed to attend the enquiry. The applicant remained on sick leave on most of the dates but it is a fact that the major punishment charge sheet was served upon the applicant on 21.09.1988, and the order of punishment was passed by the respondents on 07.09.2006. From perusal of the facts of the case, it is evident that the delay cannot be attributed exclusively to the applicant. The respondents also delayed the enquiry proceedings. Firstly when the charge sheet was issued and served upon the applicant on 21.09.1988 then the EO ought to have been appointed at the earliest whereas the EO was appointed after a period of five months on 01.03.1989 and after a period of 6 years up to 06.09.1995 nothing was done by Sri A.K. Chakravarty. There is no explanation of this fact that why no proceeding was conducted by Sri A.K. Chakravarty for this long period of six years. If the applicant was insisting for change of EO then, the respondents were not justified in keeping this matter pending for a long period of six years. If the contention of the applicant was justified then without wasting the time, EO could have been changed and another EO could have been appointed. Sri M.N. Singh was appointed as EO on 06.09.1995 but again a request was made by the applicant for change of the EO and thereafter vide letter dated 16.10.1995 Sri Sandeep Mathur was appointed as EO but Sri Sandeep Mathur was also promoted/transferred and hence Sri

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A.K. Saxena was appointed as EO on 17.04.1996. Moreover, there is also inordinate delay and there appears no plausible explanation of this delay that when the charge sheet was submitted by Sri A.K. Saxena on 16.12.1995 then why the matter of punishment was dragged for such a long period up to 07.09.2006. If this contention of the respondents is to be accepted that the applicant did not receive the copy of enquiry report then by the registered post copy of the enquiry report could have been sent to the applicant. There was no justification for serving a copy of the enquiry report on the applicant on dated 25.04.2006. There appears delay of nine years in serving copy of the enquiry report. By registered post or any mode of service, the charge sheet could have been served upon the applicant. Moreover, the charge sheet was served for a major penalty but the minor punishment was awarded of withholding of increment for a period of one year, which was subsequently reduced to the period of two months. It is a fact that the applicant was initially appointed as ESM-III on 24.09.1984 and thereafter on 21.09.1988 minor penalty charge sheet was served upon the applicant and till date applicant continued to work on the same post on which he was initially appointed for the last more than about 30 years. The applicant is continuing on same post and he has been deprived of from the promotions.

10. It has been argued by learned counsel for the applicant that as per railway rules, the enquiry must be concluded expeditiously and specific time has been provided for completion of enquiry. We have perused the time schedule provided by the respondents

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for completion of the enquiry, and we are of the opinion that as per the schedule of the respondents, enquiry was not completed and conducted by the respondents. Moreover, there can be no reason for abnormal delay of more than 18 years. It has been argued by learned counsel for the applicant that as the matter was abnormally delayed hence the disciplinary proceedings stand vitiated, and the same is illegal. Learned counsel for the applicant also argued that in view of the Judgment of Hon'ble Supreme Court that if there are mistakes and lapses or fault on the part of the respondents then, the employee should not be allowed to suffer as it is violative of article 14 of the Constitution of India. Arguments have also been placed regarding the allegations made in the charge sheet and it has been alleged that as per the charge sheet, applicant adopted a short cut method in giving pass to the trains in a dangerous manner and it could have been resulted in death of passengers and loss of railway properties. Learned counsel for the applicant argued that the applicant observed and adopted the procedure prescribed in the rules and it has not been shown by the respondents that what was the default of the applicant, and what dangerous way has been adopted by the applicant. Even one Sri B.L. Gupta was examined as a witness during the enquiry but he failed to explain that how the applicant adopted dangerous way. Learned counsel also argued that there had been gross violation of the statutory rules in conducting the enquiry proceedings. For the last more than 30 years, the applicant is continuing on the same post on which he was initially appointed and it was due to pendency of major penalty enquiry. If the charge sheet is to be treated of minor penalty then the

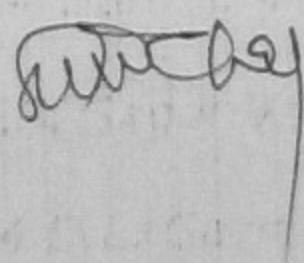
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permission could not have been refused, and the applicant ought to have been promoted on higher posts of ESM-II, ESM-I, MCM and Junior Engineer. But all the benefits were denied to the applicant.

11. We have mentioned above elaborately that there had been delay in conducting the enquiry and it is also a fact that the applicant was deprived of from promotions on the strength of pendency of DAR case whereas his juniors were promoted and it is also a fact that the charge sheet was served upon the applicant for major penalty but the punishment was awarded of minor penalty. Initially the Disciplinary Authority awarded the minor punishment of withholding of increment for one year and thereafter this period was reduced by the Appellate Authority from one year to two months. After considering the fact that such a minor punishment was awarded to the applicant then there was no justification that the entire career of the applicant was ruined due to pendency of the major penalty charge sheet. Learned counsel for the applicant placed reliance on the several Judgments of the Hon'ble Supreme Court, which are as follows: -

- (i) 1998 SCC (L&S) 1044 State of A.P. Vs. N. Radhakishan;
- (ii) 2002 (2) ATC 376 R.S. Sagar Vs. Union of India;
- (iii) 1994 (26) ATC - 164 D.L. Gawade Vs. Union of India and others;
- (iv) 1996-32-ATC-363 B.B. Gupta Vs. Union of India and others;
- (v) (2001) 1 ATC-289 B. Lognathan Vs. Union of India.

In 1998 SCC (L&S) 1044 State of A.P. Vs. N. Radhakishan, referred above, the Hon'ble Supreme Court held as under: -



"Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

In all the aforesaid Judgments, it has been held by the Hon'ble Supreme Court that if there is inordinate delay in the disciplinary proceedings then it causes prejudice to the employee and it vitiates the disciplinary proceedings. We have decided above that there had been extra ordinary delay in concluding the enquiry and there is no reasonable explanation on the part of the respondents for the delay. Moreover, delay cannot be attributed exclusively to the applicant.

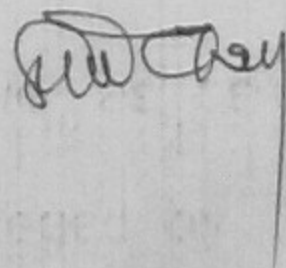
12. Further it has been argued by learned counsel for the respondents that from narration of the facts, inference can be drawn that the delay also occurred due to non-cooperative attitude of the applicant. The delay took place due to nomination of defence helper as well as for not submitting the reply etc. and most of the date's applicant remained absent. But if there was intentional delay on the part of the applicant then, the respondents were at liberty to proceed with the enquiry according to rules. The indifferent and non-cooperative attitude of the applicant could have been mentioned in the enquiry proceedings, and the EO was at liberty to proceed with the enquiry. But it has not been done by the respondents and there is also delay which could have been avoided by the respondents. When the applicant requested for change of EO-Sri A.K. Chakravarti then, there was

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no justification for allowing more than 6 years' time for change of the EO. Moreover, the enquiry report was submitted on 16.12.1997 whereas the punishment order was passed on 07.09.2006 after about 9 years. At least this delay could have been avoided and this delay can be attributed to the respondents alone. The learned counsel for the respondents produced certain Judgments, which are as under: -

- (i) 1996 SCC Volume-3 page 134 SC Deputy Registrar,
Cooperative Society, Faizabad Vs. Sachindra Nath Pandey;
- (ii) 1995 SCC Volume-3 page 157 SC Secretary to Government
Prohibition and Excise Department Vs. L. Srinivasan;
- (iii) 1998 SCC Volume-4 page 154 S.C. State of A.P. Vs. N.
Radhakishan

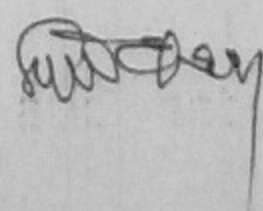
and on the basis of the aforesaid Judgments, learned counsel for the respondents argued that merely on the ground of inordinate delay it is not justified to quash the charge sheet if there are allegations of serious nature. We have discussed about the nature of charges against the applicant. It has been alleged by the respondents that the applicant adopted a short cut method in order to give pass to the trains, which could have been resulted in loss of human beings as well as loss of railway property, but it has not been specifically alleged by the respondents that what wrong method has been adopted by the respondents. There were defects in the signal and hence some method was adopted by the applicant to remove the defects. Moreover, the charge sheet was served of major penalty but the punishment was awarded of minor penalty considering that there had been inordinate delay in



concluding the enquiry. Hence no benefit can be given to the respondents on the basis of these rulings.

13. Considering all the facts and circumstances, we arrived at the conclusion that there had been inordinate delay of more than 18 years in concluding the enquiry from the date of serving of the charge sheet and up to the date of imposition of punishment. It is a fact that the charge sheet was served for major punishment and ultimately minor punishment was imposed upon the applicant. Due to long pendency of the DAR, the matter of promotion of the applicant was delayed, and it caused immense loss to the applicant and due to this reason, no promotion at all was given to the applicant. He joined the railway service in the year 1984 as ESM-III, and in the year 1988 charge sheet was served upon him hence he has been continuing on the post of ESM-III. However, if the enquiry could have been completed within the reasonable period then, applicant could have been given promotion. Under these circumstances, we are of the opinion that the O.A. deserves to be allowed and the charge sheet as well as the order of punishment deserves to be quashed.

14. O.A. is allowed. Memo of charge sheet for major penalty dated 21.09.1988 is quashed and set aside. The order of punishment dated 07.09.2006 passed by the Disciplinary Authority and the order of punishment awarded by the Appellate Authority dated 07.04.2007 are quashed and set aside. The respondents are directed to consider the matter of promotion of the applicant to the grades i.e. ESM-II, ESM-I, MCM and JE Grade II from the date when his juniors were given promotion. The



respondents are directed to comply the order passed by this Tribunal within a period of three months from the date when a copy of this Order is produced before them. The applicant shall produce a copy of this Order before the respondents at the earliest. No order as to costs.

J. Chandra

Member - A

Sr. J.M./H.O.D.

/M.M/

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