

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

Present : Hon'ble Mr. Justice A.K. Chatterjee, Vice-Chairman

Hon'ble Mr. M.S. Mukherjee, Administrative Member

(1) M.A. No. 348 of 1996
(O.A.No.1471 of 1994)

Union of India & Ors.
(Ministry of Defence)

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Applicants

(Represented by Mr. M.S. Banerjee,
Counsel)

-vs-

Mahendra Pal Singh

.....

Respondent/Original Applicant

(Represented by Mr. S.K. Ghosh,
Counsel)

A N D

(2) M.A. No. 101 of 1997 with
O.A. No. 1382 of 1996

Mahendra Pal Singh, s/o Late Sujan
Singh, working for gain as Deputy
Director General, Ordnance Factory
Board, 10/A, Auckland Road, Cal-1,
residing at Flat No.8, Belvedere
Estate, Alipore, Calcutta-27.

Applicant

(Represented by Mr. S.K. Ghosh,
Counsel)

-Vs-

1. Union of India, service through
the Secretary, Ministry of Defence,
Govt. of India, New Delhi - 110 001 ;
2. Ordnance Factory Board, service
through the Chairman, 10/A, Auckland
Road, Calcutta-1 ;
3. The Joint Director(Vigilance),
Ordnance Factory Board, 10/A, Auckland
Road, Calcutta - 1.

Respondents

(Represented by Mr. M.S. Banerjee,
Counsel)

Heard on : 12.8.1997

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Order on : 17-9-1997

18.9.1997

Ji

O R D E R

A.K. Chatterjee, VC

These matters are taken up together for disposal by this
common judgment as they are related.

2. Barring unnecessary detail, facts relevant for disposal of these cases are as under.

3. The petitioner of the O.A. Shri Mahendra Pal Singh, while posted in Calcutta as Deputy Director General, Ordnance Factory Board, was issued with a major penalty charge-sheet dated 4.8.89. There were some litigations over it, which are no longer of any interest at the present moment, but as ^{the D/A was} it remained pending even in 1994, he brought O.A. 1471/94 in this Bench, which was disposed of on 3.4.96 with a direction to conclude the disciplinary proceeding within a specified period. However, as the proceeding could not be concluded within the period specified, the respondents made an application being M.A.262/1996 for extension of time to implement the judgment delivered in O.A. 1471/94, that is to say seeking extension of time to conclude the disciplinary proceeding. In the said M.A., an order was made on 18.9.96 allowing five weeks more time from the date of the order to implement the judgment. As the disciplinary proceeding was still not concluded, the respondents filed another ^{now under disposal} Misc.Application being M.A. 348 of 1996 on 23.10.96 for further extension of time by another two months. Sometime after the expiry of time allowed in M.A. 262/96 to conclude the disciplinary proceeding, Shri Mahendra Pal Singh, applicant herein filed O.A. 1382/96, inter alia, for a direction upon the respondents to declare that the disciplinary proceeding initiated against him is dropped and for other consequential benefit, such as promoting him to the post of Additional Director General of Ordnance Factories etc. He has also filed a supplementary application stating that he had received a communication dated 8/12.11.96 from the office of the Director General, Ordnance Factories enclosing therewith an order dated 5.11.96 indicating that the President.

had imposed a major penalty upon the petitioner, of reduction of pay by one stage from Rs.6700/- to Rs.6500/- for two years with immediate effect with further direction that he would not earn any increment during the period of reduction and on its expiry, it will have the effect of postponing his future increments. An interim order was made on 14.11.96 by this Bench staying the penalty so imposed upon the petitioner by the order dt. 5.11.96. It was further directed in the same interim order that any promotion given to the officers junior to the petitioner to the post of Additional Director General of Ordnance Factories or if such officer/officers is/are confirmed in the promoted post, the same shall abide by the result of the petition and the petitioner was directed to impleade all his juniors promoted or confirmed as respondents in the O.A. The petitioner thereafter came up with M.A. 101/97 on 18.3.97 stating that by order dated 14.3.97, several officers junior to him were promoted and made a prayer that they might be impleaded as party respondents in the O.A. An order was accordingly made on 18.3.97 directing the parties proposed to be added as respondents to be served with copy of the Misc.Application and calling upon them to file a reply. Service was duly made, but none of them filed any reply nor entered appearance.

4. The respondents in M.A. 348 of 1996 contend that despite sincere efforts made by them to conclude the disciplinary proceeding within the stipulated period, it could not be done for reasons beyond control and the records of the case could not be considered by the Minister concerned. In the O.A., the respondents contend in their reply that the disciplinary proceeding initiated against the petitioner should not be declared as dropped for not

passing final order within five weeks from 18.9.96. It was further stated that during the pendency of the disciplinary proceeding, the petitioner could not claim promotion to the post of Additional Director General of Ordnance Factories and the sealed cover procedure was adopted by the D.P.C., before whom his case for promotion to the said post came up for consideration. It was further stated that penalty order was passed on 5.11.96 during the pendency of M.A. 348 of 1996, whereby the respondents prayed for further extension of time to conclude the DA proceeding. It was also stated that ^{no} ~~any~~ rightful or legitimate claim of the petitioner for promotion to the post of Additional Director General of Ordnance Factories was ignored.

5. We have heard the Id.Counsel for the parties and perused the records before us. We propose to take up M.A. 348/96 in the first instance as in case the prayer of the original respondents for further extension of time is disallowed, this will to a large extent ^{decide} decide the fate of O.A.1392/96. Even though in this petition it has been stated that sincere efforts were made to comply with the direction given in O.A.1471/94 to conclude the disciplinary proceeding within the stipulated period, the supposed sincere efforts have remained obscure. Again, it has been stated that the matter could not be finalised for reasons beyond control, though the application does not spell out even in barest outline what the reasons beyond control were. It has no doubt been stated that the disciplinary authority being the President, final decision is required to be taken by the concerned Ministry and the Minister in-charge has to consider the records including the report of the Enquiry Officer and the

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representation submitted by opposite party No.1. It is on the record that the enquiry report was submitted as early as 25.3.91 and the representation of the petitioner was given after one round of litigation in November, 1994. In such situation, it falls short of satisfying the conscience of a Court as to why final decision could not be taken not only within the period as allowed by the order delivered in O.A. 1471/94 but even within the period as extended in M.A. 262/96. Thus, it is found that the time limit fixed by the Tribunal once in the said O.A. and again in the said M.A. failed to activate the respondents. Even then we might have considered allowing further time if only we were satisfied that the respondents were reasonably diligent in the matter.

6. In this connection, reference may also be made to the penalty order, which was ultimately passed on 5.11.96 beyond the period allowed by the order in M.A. 262/96 and apparently in anticipation of a favourable order in M.A. 348 of 1996. The penalty imposed on the petitioner on the said date was, as already pointed out, reduction of pay by one stage from Rs.6700/- to Rs.6500/- for two years with immediate effect. There was a further direction that during the period of reduction, Shri Mahendra Pal Singh would not earn any increment and on the expiry of the period, the reduction will have the effect of postponing his future increments. It has been stated on behalf of the petitioner and there was no dispute that he was due to retire on 30.6.97 and in such circumstances, penalty of reduction of pay w.e.f. 5.11.96 for two years and ^{the} ~~that~~ further direction that it would have the effect of postponing future increments can only betray total non-application of mind as this penalty was imposed only months before he was due to retire on

attaining the age of superannuation. Further even though the penalty order has stated about reduction of pay by one stage from Rs.6700/- to Rs.6500/-, it is on the record that on the relevant date, the petitioner was, in fact, drawing Rs.7300/- per month as he had earned three stagnation increments of Rs.200/- every two years. Thus, the penalty order does not also take any notice of the actual pay, which he was drawing when the penalty was imposed. It is a sad reflection on the care supposed to have been bestowed by the authorities in passing the final order after sincere effort for which they needed so much time. In such circumstances, the conclusion must be that even if the time for concluding the disciplinary proceeding was extended up to 5.11.96, the final order, which was passed ^{would} ~~could~~ not be sustained. In such situation, we are not disposed to allow any further extension of time to conclude the disciplinary proceeding. The result is that M.A. 348 of 1996 is liable to be dismissed.

7. Once this position is accepted, the relief prayed by the petitioner so far as he wants a direction regarding dropping of the proceeding must necessarily be allowed. He must also be granted all consequential benefits regarding consideration for promotion by opening the sealed cover.

8. In the O.A., the petitioner, however, has prayed for a direction upon the respondents to declare that the disciplinary proceeding initiated against him ~~is~~ ^{is} a nullity in the eye of law. This relief was, however, not pressed in view of the reference made by the Hon'ble Supreme Court in Ranjit Kr. Majumdar vs. Union of India & Ors., 1996(1) A.T.J. 282 to a larger Bench for a decision on the question whether the provisions of CCS(OCA) Rules ^{are} applicable in case of ^a civilian employees of the Defence service. ^{like the petitioner}

9. It has been noted that M.A. 101 of 1997 has been filed by the petitioner to implead some officers said to be junior to the petitioners, who were promoted to the grade of Senior General Manager by orders dated 14.3.97. They were duly served but did not enter appearance to contest the claim of the petitioner in the O.A. However, as it is found that the disciplinary proceeding is liable to be dropped for failure of the authorities to conclude it within the time allowed by the Tribunal and since the sealed cover has to be opened and the petitioner considered for promotion, we do not consider it necessary to bring such officers on the record of the O.A. Further as the petitioner has since retired, whatever benefit will be admissible to him at the present moment will be in the shape of monetary benefit and as such it is no longer relevant to bring on record of the O.A. the officers proposed to be added as respondents. Thus, no further order is called for on M.A. 101 of 1997.

10. For foregoing reasons, M.A. 348 of 1996 is rejected.

11. O.A. 1382 of 1996 is disposed of with a direction upon the respondents to treat the disciplinary proceeding against the petitioner as dropped on the expiry of the extended period allowed by this Tribunal in M.A. 262 of 1996.

12. M.A. 101 of 1997 does not call for any order and disposed of accordingly.

13. No order is, however, made as to costs.

(M. S. Mukherjee)	(A. K. Chatterjee)
Member (A)	Vice-Chairman
(a) No. of the "Appln"	
(b) Name of the applicant	
(c) Dt. of presentation of application for copy	
(d) No. of pages	
(e) Copying fee charged / urgent or ordinary	
(f) Dt. of preparation of copy	
(g) Dt. of delivery of the copy to the applicant	

15/5/88