

±
CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No.127 of 1996

Present: Hon'ble Dr. B.C. Sarma, Administrative Member

Hon'ble Mr. D. Purakayastha, Judicial Member

Shri Sheo Prasad Pandey,
S/o Shri Ram Nagina Pandey,
Dy. Inspector General of Police,
Principal Staff Officer, Frontier Hqrs.
South Bengal, 2-B, Lord Sinha Road,
Calcutta

VS

1. Union of India service through
The Scretary,
Ministry of Home Affairs,
North Block, New Delhi

2. The Government of Madhya Pradesh
through the Principal Secretary,
Govt. of Madhya Pradesh
Home (Police) Department, Mantralaya,
Ballav Bhavan, Bhopal

3. Sri V.K. Bhalla,
Enquiry Officer,
Director of Public Prosecution,
Vaishali Kotra,
Sultanabad, Bhopal, M.P.

... Respondents

For the Applicant : Mr. R.K. De, counsel

For the REspondents: Mrs. U. Bhattacharyya, counsel
Mr. S.K. Mitra, counsel for the State of M.P.

Heard on 6.2.1998

: :

Date of order: 6.2.1998

O R D E R

B.C. Sarma, AM

The dispute raised in this application is about the disciplinary proceeding instituted against the applicant by a charge memo dated 20.7.94 and also about non-granting promotion to him to the post of D.I.G. The applicant is an IPS Officer of Madhya Pradesh Cadre and at the material time he was functioning on deputation in the B.S.F. in Calcutta. It is the specific contention of the applicant that the DPC meeting was fixed to be held on 30.8.91 for considering that the case of promotion as DIG, but before /date, certain adverse entries in the A.C.R. relating to year 1991 were communicated by the respondents to him. The applicant contends that this was done in order to ensure that

Contd...2/-

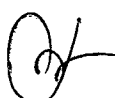
in the DPC meeting his case will not be considered for promotion. However, against the said adverse entries, the applicant had filed an OA bearing No.760/95 along with MA 88/96 which was disposed of by an order dated 25.6.97 in the following terms:

"In view of the above discussion, the application is disposed of with the direction that the memorial filed by the applicant on 16.5.1994 shall be disposed of by the President of India within a period of 5 (five) months from the date of communication of this order. The result of such consideration of the memorial, shall be conveyed by the appropriate authority after the final orders have been passed by the President of India within a period of one month of such decision. We give liberty to the applicant to approach this Tribunal in case he remains aggrieved by the action taken by the Government on such memorial. No order is passed as regards costs. The MA No.88/96 is also accordingly disposed of without passing any order as to costs."

The applicant's grievance is now that although initially a show cause notice for minor penalty was issued on him on 8.7.94, suddenly a chargememo was issued on 20.7.94 on the same charges. The applicant also contends that adverse entries also related to the same matter as reflected in the CRs. It is his specific contention that no specific explanation has been given as to why earlier showcause notice dated 8.7.94 was replaced by a chargememo 20.7.94. The applicant had submitted his explanation to earlier showcause notice on 20.7.94 from Ferozepur in Punjab. It is also the grievance of the applicant that despite the fact that the chargememo was issued in 1994, the proceeding has not progressed at all and, in fact, no hearing has taken place after the preliminary hearing was held on 14.12.94.

2. The applicant further contends that he had applied for certain documents to prepare his defence and although the matter was taken up repeatedly with the Enquiry Officer, no copy of the document has been supplied till the date of filing of this application and also till the date of hearing of this application. Being aggrieved thereby, the instant application has been refilled with the prayer that the respondents be directed to give him promotion to the post of DIG.

3. Both the Governments of Madhya Pradesh and Union of India have filed separate replies. In the reply filed by the Union of India



Contd...3/-

it is stated that as per the direction given by this Tribunal in OA 760/95, a memorial, which was filed to the President of India by the applicant, was considered and after such consideration it was rejected. In the reply filed by the Madhya Pradesh Government it has been contended that the applicant has been placed under suspension in connection with another case and the proceeding is continuing.

4. During the hearing Mr. De, learned counsel for the applicant stressed the point that the proceeding has been stalled and this cannot be done by the respondents. Moreover, before considering the reply to the showcause which was sent by the applicant on 20.7.94, the respondents had issued a chargememo for major penalty on 20.7.94. Therefore, it is not sustainable in law.

5. We have carefully considered the submission of the learned counsel of all the parties and perused the records. We have also perused the relevant file produced before us by the learned counsel of the Government of Madhya Pradesh. We find that as early as on 24.5.94, ~~Chief~~ Secretary to the Madhya Pradesh Govt had ~~ordered~~ that a major penalty chargesheet should be issued against the applicant. This recommendation was approved by the Chief Minister on 20.6.94. A showcause notice was issued on 30.6.94 by the Under Secretary which is clearly against the order of the Chief Secretary. This was amended subsequently and the Under Secretary was also cautioned as it appears from the notesheet. Subsequently, a chargesheet was issued under the signature of the Dy. Secretary on 20.7.94. It is true that the chargesheet for major penalty was issued without considering the reply to the chargesheet issued earlier by the respondents, but, the earlier showcause notice was issued by the Under Secretary who has no authority and it was clearly a mistake on the part of the Government particularly Under Secretary and particularly Home(Police) Department. In any case, we find that the appropriate authority did not earlier issue any major penalty chargesheet and, therefore, issuance of such a showcause notice by an authority other than the competent authority obviously cannot invalidate the major penalty chargesheet for which appropriate sanction has been obtained from the Chief Minister of the State.

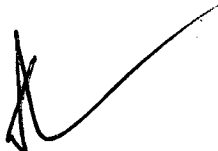


6. We further note that although the chargesheet was issued as early as in 1994, nothing much has been done about the proceeding. We further observed that the applicant had repeatedly asked for copies of certain documents which have not been ^{furnished} provided by the authorities of Madhya Pradesh Government as yet. The reasons are not clearly understood by us. The applicant is already under suspension in another case and he is also facing a major penalty chargesheet. As the applicant is an IPS officer, the case should be put to an end expeditiously in the interest of the applicant as well as in the interest of the public. Since the authority had issued a major penalty chargesheet after obtaining sanction, there is no reason why the copies of the documents cannot be supplied to the applicant despite a lapse for about three and a half years. Such delay is ^{condemned} condoned. Before us no document has been produced by the Government of Madhya Pradesh to show that the various representations filed by the applicant for getting copies has yet been disposed of. We are, therefore, of the view that a direction in this matter is called for.

7. We further note that the memorial filed by the applicant for expunction of the adverse remarks has been considered by the President and has been rejected. As we have already adverted, the gravity of the charge levelled against the applicant is very serious. But when a major penalty chargesheet has been issued under All India Services (Discipline and Appeal) Rules, it is the incumbent on the part of the authority to give independent findings on the basis of the chargesheet issued.

8. In view of the above, the application is disposed of with the direction that, within a period of one month from the date of communication of this order, the appropriate authority shall dispose of the representation filed by the applicant for furnishing copies of documents and if as a result of such decision, the applicant is found entitled to get copies, such copies shall be supplied to him within a period of 15 days from the date of taking such decision. Thereafter within a period of six months the disciplinary proceeding instituted against the applicant shall have to be completed upto the level of passing the order by the disciplinary authority and

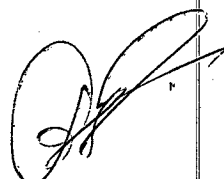
we direct the applicant to cooperate in the matter. If the applicant does not cooperate in the enquiry the proceeding shall be held exparte as per rule. We make it clear if the disciplinary proceeding instituted against the applicant is not completed within the period of six months as aforesaid upto the level of passing of the order by the disciplinary authority, the entire proceeding shall lapse and the applicant shall be exonerated from all charges levelled against him. No order is passed as regards costs.



(D. Purkayastha)

MEMBER (J)

6.2.1998



(B. C. Sarma)

MEMBER (A)

6.2.1998