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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH

JODHPUR

Date of order : 29.05.1998.

O.A.NO. 474 OF 1995.

P.R.Sisodia S/o Shri Chhela Ram, Aged about 47 Years, R/o of Moohiwada, Jetaran, District Pali, at present employed on the post of Telephone Inspector, Jetaran, District Pali.

..... Applicant.

VERSUS

1. Union of India through the Secretary to Government of India, Ministry of Telecommunication, Sanchar Bhawan, New Delhi.
2. The Director Telecom (South), Telephone Exchange Building, Udaipur.
3. The Telephone District Engineer, Pali Marwar.
4. The Chief General Manager, Telecom, Rajasthan Circle, Jaipur.

..... Respondents.

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CORAM :

HONOURABLE MR. A.K.MISRA, JUDICIAL MEMBER

HONOURABLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

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Mr. J.K.Kaushik, counsel for the applicant.

Mr. K.S.Nahar, counsel for the respondents.

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PER HONOURABLE MR. A.K.MISRA, JUDICIAL MEMBER :

The applicant has filed this Original Application with the prayer that the impugned order dated 8.11.1995 (Annexure A/1), order reopening of Charge sheet dated 30.12.1980 be

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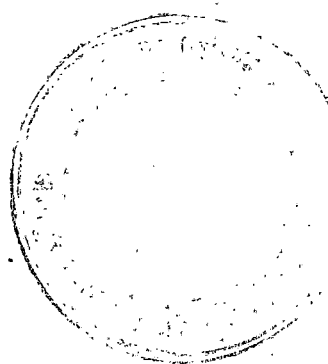
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declared illegal, without jurisdiction and the same be quashed and the applicant be allowed all consequential benefits. The applicant has also prayed that any other adverse order, if passed in pursuance of the Charge sheet dated 30.12.1980, be also quashed.

2. Notice of the O.A. was given to the respondents who have filed their reply to which the applicant has filed rejoinder.

3. We have heard the learned counsel for the parties and gone through the case file. Briefly, the facts of the case are as follows :-

4. The applicant was initially appointed on the post of Telecom Inspector on 25.12.1970. He was discharging his duties to the entire satisfaction of the authorities. However, the applicant was issued a Chargesheet dated 30.12.1980 which remained pending without any progress up to 1992. Thereafter, the applicant approached the Tribunal and filed an O.A. which was registered at No. 297 of 1992. After hearing the parties, the O.A. was disposed of with a direction to the respondents to complete the inquiry within three months, vide order dated 3.11.1992 (Annexure A/4). In spite of the direction as contained in Annexure A/4, the respondents did not complete the inquiry within the stipulated time and prayed for extension of time which was also granted vide an order dated 25.5.1993, Annexure A/5. As per the direction contained in the orders passed by this Tribunal, the applicant continued to cooperate with the inquiry. However, the respondents vide order Annexure A/6 passed in the month of Nov '93 cancelled the chargesheet without prejudice to further action on the same charges by the appropriate authority. Thereafter, the respondents again issued a Memo with a fresh Chargesheet on



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24.1.1994. This Chargesheet was challenged by the applicant on the ground of in-ordinate delay of 16 years and on many other grounds by filing an O.A. which was registered at No. 285/1995. During the pendency of this O.A., the Chargesheet which was issued vide Memo dated 24.1.1994, was again cancelled by the 3rd respondent without prejudice to further disciplinary action on the same charges, vide order dated 8.11.1995 (Annexure A/8). By the same order, the applicant was informed that appropriate disciplinary action would be taken against the applicant by the Director, Telecom (S), Udaipur, by re-opening of the old chargesheet dated 30.12.1980. This is, the order which has now been challenged by the applicant on the ground that the respondents have failed to mention any rule by which they could re-open the chargesheet dated 30.10.1980 which was cancelled earlier. He has also challenged the chargesheet on the ground of in-ordinate delay and has alleged that the action of the respondents is against the natural justice, fair play and against the rules.

5. The respondents in their reply have admitted almost all the facts relating to issue of chargesheet, applicant's filing of O.As at different times and cancellation of chargesheets. However, they have justified their action by alleging that during the course of inquiry, it was noticed that initially chargesheet was erroneously issued by the Director, Telegraph, who was the appellate authority in the matter, therefore, the chargesheet was cancelled. Thereafter, a chargesheet was issued to the applicant by the Telecom District Engineer (TDE) as he was the appointing authority for the Phone Inspectors. But subsequently, it was revealed that the applicant was a selection grade Phone Inspector and the disciplinary authority was the Director, Telecom, therefore the

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chargesheet issued by the TDE was cancelled vide order dated 8.11.1995, Annex.R/2 (Annexure A/8) and thereafter vide order dated 14.11.1995, Annexure R/3, the applicant was punished for the charges which were levelled against him initially, ~~as the~~ applicant had failed to offer any explanation against the inquiry report. This order is based on the inquiry completed by the Inquiry Officer on 11.8.1993 against which the applicant had not offered any explanation. The respondents have stated that the action taken against the applicant is well supported by the provisions of law. The departmental inquiry was completed against the applicant within the prescribed time, hence the applicant is not entitled to any relief whatsoever.

6. Both the learned counsels for the parties had argued their case supporting their contentions made in the pleadings. ~~The learned counsel for the applicant~~ has argued that the inquiry was not completed within the stipulated period as was directed by the Tribunal, but to cover up the short-coming of the department, the inquiry was dropped and was re-initiated without any support of rule. He has argued that the action of the department is against the departmental guidelines dated 18.8.1988 and 5.7.1979. On the other hand, the learned counsel for the respondents has supported the action of the department.

7. From the documents, as produced by the applicant it appears that the department was directed to complete the inquiry within three months from 30.11.1992. The Department had prayed for extension of time which was granted on 25.5.1993 and the respondents were directed to complete the inquiry within three months from the date of submission of

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the application for appointment of defence nominee. The date of submission of application for appointment of a defence nominee, is not available on the file but from the language of the order, it can be inferred that the application was to be filed immediately after the orders. The respondents have said in their reply that the inquiry was completed within three months i.e. on 11.8.1993. If it was so, there was no reason for cancelling the chargesheet in November '93 on the ground that for P.I. the actual appropriate authority for disciplinary action is, TDE and not the Director, Telecom. If this was the position, then the inquiry completed earlier, was of no avail to the respondents, when the department itself admits that the chargesheet was not issued by the appropriate authority. Therefore, all subsequent proceedings conducted by the Inquiry Officer, cannot be said to be in accordance with the rules. It is, in these circumstances the order passed on 14.11.1995 on the basis of Inquiry Report dated 11.8.1993, cannot be supported in the eyes of law by the department.

8. The initial chargesheet was issued in the year 1980 and till 1992, the department had not been able to finalise the chargesheet. On a direction by this Tribunal, the inquiry was completed as alleged by the respondents, but before any order was passed by the disciplinary authority, the chargesheet was ordered to be cancelled by the Director Telecom, who had initially issued the chargesheet. Even at that time, it was not examined as to who was the competent authority for issuing the chargesheet and the matter was again kept open for further necessary action by the appropriate authority. This in our opinion, was not appropriate. If the chargesheet was cancelled on the ground that the Director, Telecom, was not the appropriate authority for

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issuing the chargesheet then why subsequently the same chargesheet was re-opened by the same authority on the ground that the TDE was not the competent authority for issuing a chargesheet to the selection grade Phone Inspector. From all these confusing orders, it appears that the department was not sure as to who was the appropriate disciplinary authority, as against the applicant. Whether the applicant was ordinary grade Phone Inspector at the time of issue of chargesheet dated 30.12.1980, is not borne out from the record. The applicant as per his own allegation, had stated in Para 4(1) of his Application that he was granted selection grade w.e.f. 1.4.1979, therefore, there was no occasion for the respondents to observe that the TDE was the disciplinary authority against the applicant. The allegation of the applicant that he was granted selection grade on 1.4.1979, has not been disputed by the respondents. Therefore, it can be safely inferred that the applicant was a selection grade Phone Inspector when he was served with a chargesheet issued by the Director, Telecom (S), Udaipur, dated 30.12.1980 and, therefore, there was no reason to cancel the chargesheet against the applicant on the ground that the same was issued by the appellate authority and not by the disciplinary authority. The ground mentioned in Annexure A/6, therefore, in our opinion, is not a sufficient ground for cancelling the chargesheet and keeping the right for re-opening the chargesheet reserve. The respondents have also not produced any material on record to show that the inquiry was completed against the applicant on 11.8.1993. If the inquiry was completed against the applicant, as is alleged in the reply, then there was no necessity for passing the order dated 8.11.1995, Annexure R/2, again cancelling the inquiry and informing the applicant that the Director, Telecom (S), Udaipur, shall reopen the old chargesheet. The inquiry

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report, as such could have been sent to the concerned authority for further appropriate action against the applicant. From the letter dated 19.9.1995 (Annexure A/7), it appears that the copy of inquiry report was sent to the applicant for making any representation or submissions in writing addressed to the disciplinary authority within fifteen days and further informing the applicant that failure to make representation would enable the authorities to pass final order. At the cost of repetition, we may mention here that if the inquiry was completed way back in August '93 why the inquiry report was communicated to the applicant after two years. There is no explanation on record for such a great delay. Here again, we may mention that if the inquiry was completed on 11.8.1993 against the applicant, why again a Memo of charges was issued to him on 24.1.1994 as alleged by the applicant and further supported by the language of letter dated 8.11.1995 (Annexure A/8). The Memo of the charges as aforesaid, was cancelled by the same order and in the meantime, just within a week, order Annexure R/3 punishing the applicant was passed. We are unable to understand all these conflicting orders of the Department passed from time to time in the matter.


9. The charges against the applicant relate to remote past on which no action was taken for almost twelve years and then conflicting orders of cancelling, re-issuing, again cancelling and re-opening of the same chargesheet were passed, as if the department was not very eager to complete the inquiry but was only anxious to keep the matter pending against the applicant. The applicant has prayed for quashing the order dated 8.11.1995 (Annexure A/1) which is an order in continuation to order Annexure A/8. In a matter almost 18

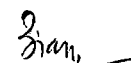
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years old, we would not be justified in re-issuing directions to the respondents for completing the inquiry. The respondents were given an opportunity in the past to complete the inquiry as per the rules but they not only failed to complete the inquiry but even failed to locate as to who was the appropriate disciplinary authority against the applicant. In view of this, we do not see any justification in remanding the case for completion of inquiry against the applicant, as the charges relate to the remote past and are almost 17 to 18 years old now. For all these reasons, the order Annexure A/1 dated 8.11.1995 deserves to be quashed.

10. The Original Application is, therefore, accepted. The impugned order Annexure A/1 dated 8.11.1995 ordering re-opening of the chargesheet dated 30.12.1980 is hereby quashed and set aside. Consequently, order dated 14.11.1995 (Annex.R/3) punishing the applicant on the aforesaid chargesheet is also quashed with all the consequential benefits.

11. The parties are left to bear their own costs.

  
(GOPAL SINGH)  
Administrative Member

  
(A.K.MISRA)  
Judicial Member

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