

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

(7)

DATE OF ORDER : 07.01.1999.

O.A.NO. 268/1998

Surendra Kumar Dewan, S/o Late Shri Rajendra Nath Dewan, age 57 years, Executive Engineer (Electricals), Postal Electrical Division, Jaipur, Official Address : Jawahar Nagar, Head Post Office Building, Jaipur, R/o 347, Street No. 1, Rajapark, Jaipur.

.....APPLICANT

VERSUS

1. Union of India through Secretary, Ministry of Communication, Department of Telecommunications, 1300-A, Sanchar Bhavan, 20, Ashoka Road, New Delhi.
2. Desk Office (Vig.II), through Ministry of Communication, Department of Telecom, West Block - I, Wing 2, Ground Floor, R.K.Puram, Sector - I, New Delhi.

.....RESPONDENTS.

CORAM

HON'BLE MR. A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

Mr. S.K.Singh, Counsel for the applicant.

Mr. Vineet Mathur, Counsel for the respondents.

O R D E R

(Per Mr. A.K.Misra)

The applicant who is presently working as Executive Engineer (Electricals) Postal Electrical Division, Jaipur, has filed this O.A. with the prayer

3/11

given hereunder :

"1. That the promotion of the applicant on the post of Superintendent Engineer (Electrical) may not be withhold on the basis of proposed enquiry memorandum dated 3.11.97 and junior may not be promoted on the same post in the garb of aforesaid letter.

2. That memorandum dated 3.11.97 for proposed enquiry be quashed and set aside.

3. That the retirement benefits of the applicant may not be withhold on the basis of proposed enquiry and subsequent proceeding thereunder. The retirement service benefit be given to the applicant in time"

2. Notice of the O.A. was given to the respondents who have filed their reply in which it is stated that during the pendency of the departmental inquiry, the applicant is not entitled to get the relief of promotion. The inquiry has been initiated on sufficient prima facie evidence against the applicant. Therefore, the Chargesheet is not liable to be quashed.

The O.A. is premature and deserves to be dismissed.

3. We have heard the learned counselr for the parties and gone through the case.

4. At the time of arguments, the learned counsel for the applicant had submitted that he does not want to press reliefs No. 1 and 3 at this stage. In view of this, no discussion and decision is required to be given in respect of these two reliefs.

5. The only relief which is left to be considered

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is whether the Memorandum dated 3.11.97 Annex.A/1 along with the statement of articles and statement of imputations of mis-conduct etc. deserves to be quashed.

6. The learned counsel for the applicant has argued that the applicant was posted as Executive Engineer at Jaipur during 1980 to 1982 and had supervised the AC plant of Tax building. The incident as per the statement of imputation of mis-conduct relates to a period starting from May 1982 to October 1982 for which the applicant has been served with a Chargesheet on 3.11.97 when he was due to be promoted as Superintending Engineer. It is stated by the applicant that the incident relates to a remote past. The A.C. plant in respect of which alleged irregularities were allowed to occur by the applicant has since been scrapped and a new plant has been installed thus the vital evidence has been destroyed and no factual verification of alleged irregularities is now possible. Therefore, the inquiry deserves to be quashed. He has cited the following rulings in support of his contention.

1. AIR 1990 SC Page 1308 - State of M.P. Vs. Bani Singh and Others.
2. J.T. 1998 (3) SC Page 123 - State of A.P. Vs. N.R. Radhakrishnan.
3. 1994 (4) SLR Page 365 - Hayat Hussain Khan Vs. State of U.P. and Others.

On the other hand the learned counsel for the

9/11

respondents has submitted that the applicant who was Incharge Executive Engineer of the said plant during installation had by his lapses caused overpayment to the contractor and had also failed to properly check and supervise the installation and construction of the plant, therefore, he has been served with a chargesheet after due inquiry by the vigilance cell. The applicant has submitted his reply to the chargesheet etc. and the departmental inquiry is in progress, therefore, the chargesheet is not liable to be quashed. The applicant has not been able to show that the chargesheet is patently without any foundation and inordinate delay has ~~been~~ taken place in inquiry.. Therefore, the O.A. deserves to be dismissed. He has cited the following rulings in support of his contention :



1. (1994) SCC (L&S) 768 - Union of India and others Vs. Upendra Singh
2. (1997) SCC (L&S) 1749 - Government of Tamilnadu Vs. K.N.Ramamurthy
3. JT 1996 (10) SC 40

7. We have gone through the pleadings of the parties and the rulings cited by the learned counsels.

8. From the facts as have been pleaded it appears that the charges are related to a period starting from March 1982 to October 1982 during which the lapses as alleged had occurred or were allowed by the applicant to go un-noticed by the higher authorities. But there is nothing on record to show that consequent to such lapses the department had suffered any financial loss.

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The so called over-payment was recovered from the outstanding dues of the contractor as is also clear from the chargesheet. This also shows that the lapses which are attributed to the applicant were ~~detected~~ long before serving of the present chargesheet. The letter dated 14.10.87 (Annex.A/1) written by the then Executive Engineer to the Director, Vigilance, indicates that the information supplied by this letter was in response to some query raised by the Director, Vigilance. This shows that the matter in question relating to so called irregularities etc. was in the hand of vigilance much prior to 1987 and in any case the alleged illegalities and irregularities were detected much prior to 1987. Therefore, serving a chargesheet on the applicant in the year 1997 i.e. almost 15 years after the alleged occurrence cannot be ~~treated~~ as bonafide timely action. The respondents have not stated as to when these irregularities and dereliction of duties by the applicant had come to the notice of the higher authorities. It would have been altogether a different story if the alleged irregularities and negligent actions of the applicant had come to the notice of the authorities only in the year 1996 or 1997 but letter Annex.A/3 dated 14.10.87 clearly goes to show that lapses had come to the notice of the higher authorities from some earlier date. This letter also reveals that AC plant was handover to DMT, Jaipur on 31.1.86. This fact goes to show that finalisation of all account matters must have been in the hands of authorities around that time. Counting

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from this date, the present chargesheet can be said to have been served on the applicant ten years thereafter. This period is also in our opinion quite un-justified. In the chargesheet, it has been stated that un-due benefits derived by the contractor because of the lapses of the applicant were recovered from the bills of the contractor but again this has not been clearly shown as to when this recovery was made. The only conclusion that could be derived at by these facts is that during finalisation of accounts of that contractor the recovery was made from the contractor or the amount was deducted out of his bills relating to over-payment etc. Therefore, it was necessary for the respondents to show as to when for the first time, the so called lapses and over-payment relating to these matters came to the notice of higher authorities but the respondents are silent on this point. Therefore, it can be derived that the applicant has been served with a chargesheet at a time when he was to be considered for his next promotion. Whether the applicant is fit to be considered and whether the applicant is fit to be promoted, is another matter but a person cannot be deprived from consideration for promotion only because of pendency of a chargesheet which relates to an incident which is fifteen years old. Such instances can be categorised as incidents relating to remote past. Such incidents in our opinion cannot be allowed to deprive a candidate for consideration for promotion.

9. We have considered the rulings cited by the

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learned counsel for the respondents. In our opinion, the rulings are not applicable in the instant case. In the case cited in 1994 SCC (L&S) 768 it was observed by Hon'ble Supreme Court that Central Administrative Tribunal cannot go into the correctness of the charges against the respondents on the basis of material produced by him and quash the same. In view of this order of the Administrative Tribunal was held to be bad in law. But in the instant case a chargesheet has been challenged on the ground of inordinate delay, correctness or otherwise of the same is nowhere in question, hence, the aforesaid ruling is not applicable in the instant case.

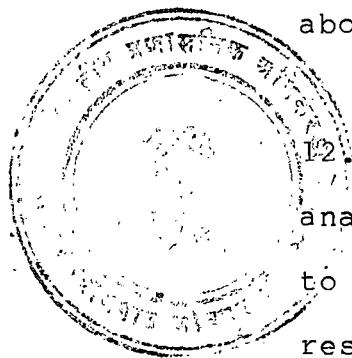
10. The case reported in 1997 SCC (L&S) 1749 relates to a punishment in departmental inquiry wherein Hon'ble Supreme Court has held that the Tribunal or the Court can interfere only if on the charges no misconduct or other irregularities alleged can be said to have been made out for charges framed are contrary to any law. Needless to say in the instant case the applicant has challenged the charges not on the basis of their correctness but has challenged the service of chargesheet after such a long delay and that too when the promotion of the applicant was due and he was shortly to retire. Therefore, this ruling also does not help the respondents.

11. In ruling cited by the learned counsel for applicant and reported in AIR 1990 SC 1308, it has been held by Hon'ble Supreme Court that disciplinary

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proceedings-delay and laches-department aware of involvement of officer in alleged irregularities-No satisfactory explanation for inordinate delay in issuing the charge memo-disciplinary proceedings initiated against him after more than 12 years-liable to be quashed. In JT 1998 (3) 584 it was held by Hon'ble Supreme Court that that Administrative Tribunal was justified in ordering that delay vitiates the disciplinary proceedings and directed that respondent be promoted ignoring the charge memo. In 1994 (4) SLR 365, it was held by Hon'ble Allahabad High Court that charges relate to a period ten years back,-chargesheet served after more than 8 years-inquiry proceedings after much delay-chargesheet as well as the disciplinary proceedings set aside. The Hon'ble High Court followed Bani Singh's case while laying down the above proposition.



12. ^{In view} of the foregoing rulings if the facts are analysed then it comes out that for an incident relating to the year 1982, the fact of which were known to the respondents in the year 1987 when vigilance inquiry was conducted, a chargesheet was served on the applicant only in the year 1997 i.e. almost 15 years after the alleged incidence had taken place which in our opinion is nothing but an instrument to deprive the applicant from being considered for promotion and in view of this fact the chargesheet deserves to be quashed simply on the point of inordinate delay. We are not concerned at

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this stage whether the same is correct on facts and well founded on material.

13. In view of the foregoing discussion, the O.A. deserves to be accepted and the impugned Chargesheet Annex.A/1 dated 3.11.1997 deserves to be quashed.

14. The O.A. is, therefore, accepted. the Memorandum Annex.A/1 dated 3.11.1997 along with its annexures i.e. Chargesheet and statement of Impugnations etc., is hereby quashed and treated non-est with all consequential benefits to the applicant viz. consideration for promotion of the applicant to the next higher rank, which should be done within a period of two months from the date of communication of this order.

15. The parties shall bear their own costs.

Gopal Singh
(GOPAL SINGH)
Member (A)

31-11-99
(A.K.MISRA)
Member (J)

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