

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
CALCUTTA

No.O.A.1169/1997

Date of order : 10.11.2006.

Present : Hon'ble Mr. B.V. Rao, Judicial Member
Hon'ble Dr. A.R. Basu, Administrative Member

GOVINDA CHANDRA SAHA
VS.
UNION OF INDIA & ORS.

Case Laws referred :-

State of Andhra Pradesh v. N. Radhakishan, AIR 1998 SC-1833

P.V. Mahadevan v. M.D. Tamil Nadu Housing Board, 2005(2)SCSLJ-186

Pralay Shankar Dhar v. Union of India & Others

State M.P. v. Bani Singh & Others, AIR 1990 SC-1308

Tek Chand Dhanjal v. Union of India Through the Chief Administrative Officer(R), Diesel Component Works, Patiala and Others, (1994) 27 Administrative Tribunal Cases-673

K.K. Sood v. Union of India & Others, [1990] 13 Administrative Tribunals cases-156

For the applicant : Mr. M.A. Vidyadharan, counsel
For the respondents : Mr. R.M. Roychoudhury, counsel

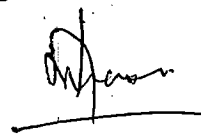
ORDER

Per Dr. A.R. Basu, A.M.

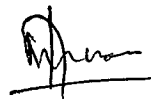
Facts of the case in brief are that the applicant was working as Sectional Engineer(Construction) at Jamalpur in Malda Division of Eastern Railway under the respondents. He retired from service on attaining the age of superannuation on 31.3.1997. During his service he was involved in diverse construction projects in Malda Division of Eastern Railway and from time to time he had submitted material statements on verification of



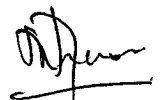
stores, technical checks etc. The applicant has stated in the O.A. that due to lack of cooperation from the open line staff there arose severe hardships in the matter of handing over charge of construction materials lying at various sites between Ratanpur to Bhagalpur and at Ekchari, BKSL and MZC where construction works had already been completed in early part of 1995. The applicant further states that time and again the open line staff were utilizing the construction materials by removing the same from the sites and he intimated about the pilferage and misuse of the construction materials to the concerned authorities both in Construction Department and Open Line Section. The applicant has stated that on 3rd April, 1995 he addressed a letter to the Assistant Engineer(Line), Jamalpur and Assistant Engineer, Sahebganj requesting them to give proper instructions to the concerned Permanent Way Inspectors under their administrative control to take over the charge of the surplus construction materials lying in Sections between Ratanpur to Bhagalpur and EKC, BKSL & MZC to get rid of critical problems of pilferage of materials and its misuse and to avoid future problems. The aforesaid correspondence was further followed by a series of letters by the applicant addressed to concerned authorities from time to time. By a letter dated 19.6.1995 the applicant further requested the Permanent Way Inspector, Jamalpur and C.P.W.I Bhagalpur to take over the charge of the materials lying at site and the same was endorsed to Senior District Engineer, Malda Town in charge of the open line and to Deputy Chief Engineer(Construction), Malda Town and others. However, no proper action was taken by them though the Deputy Chief Engineer vide his



letter dated 15.02.1996 and the District Engineer/Construction vide his letter dated 19.6.1996 issued instructions to the respondent authorities to take proper action in this regard. The applicant also by his letter dated 04.08.1996 addressed to all concerned authorities requested for submitting claims, if any, existing against him, so that he could submit no claim certificate before his retirement. Since no action was taken, the applicant issued another letter dated 24.10.1996 addressed the District Engineer(Construction), Malda Town at Jamalpur requesting him to relieve him of the charge of stores as he was about to retire from service. He thereafter apprised the Respondent No.3 i.e. the Deputy Chief Engineer(Construction) Malda Town about the difficulties in finalization of the bills and the insecure condition of the Permanent Way materials lying at various sites even after completion of construction work because of non-cooperation by the open line officers and asked for his help to tide over the crisis vide letter dated 26.11.1996. Thereafter, on 15.2.1997 the applicant was issued a minor penalty charge sheet by the Deputy Chief Engineer(Construction) for causing serious embarrassment to the administration and not making it possible for administration to check the bills/statements before he retires. The applicant submitted a reply to the chargesheet stating inter alia that he was not responsible for the delay in submitting papers for finalization of the relevant bills and that despite constraints and his failing health he submitted all the final bills. He also requested the Deputy Chief Engineer(Construction) i.e. the Disciplinary Authority, to exonerate him from the alleged charges. On 22.3.1997 i.e. just

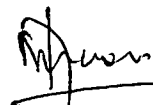


about 10 days before his retirement the applicant was issued a Major penalty charge sheet under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The applicant replied to the same on 31.3.1997 denying and disputing each and every charge and imputation thereof specifically mentioning that the purported memorandum of charge is untenable in law and facts. It was further stated by him that there cannot be any charge, as framed, for the alleged acts spreading over from 09.02.87 to 21.03.1997. Thereafter by an order dated 14.4.1997 the Disciplinary Authority ordered an enquiry into the alleged charges and appointed Mr. A. Banda, AEN(Con)MLDT as an Enquiry Officer, despite the fact that the said Enquiry Officer himself in performance of his official duties, was instrumental in creating the deadlock in the matter of handing over the charge of materials to open line and is therefore an interested party desirous of fixing responsibility upon others to save his position. The applicant further states that he retired on attaining the age of superannuation on 31.3.1997 and no order whatsoever has been passed for payment of cent percent provisional pension. The applicant appealed to the Deputy Chief Engineer(Construction) to grant such provisional pension so that extreme financial hardships and difficulties being faced by him could be overcome. The applicant applied for medical facilities for his treatment and that of his family members at B.R. Singh Hospital and submitted an application for complimentary passes on his retirement but had not received any response from the respondent authorities. The applicant states that impugned minor penalty chargesheet and major penalty charge and the departmental



proceedings initiated on stale, vague and indistinct charges, just on the verge of the retirement in a vindictive fashion, without any substantial grounds/materials therefore in a most arbitrary and malafide manner in utter violation of law and infraction of the Constitutional rights as guaranteed under Art.14, 16 and 21 of the Constitution of India, should be quashed.

2. The respondents have filed a detailed reply denying the claim of the applicant. The respondents have stated that the applicant joined at Jamalpur during February, 1997 and had been supervising the construction work of the department and was thus custodian of the permanent way materials. As soon as the work was completed the applicant was supposed to record the final measurement of the works so executed and completed by the contractor and to hand over the surplus materials to the concerned authority. The applicant failed to submit the final bill and material statement thereof for the work executed under his supervision approximately 2 to 5 years back. The applicant also failed to take proper care of Railway's materials for which a lot of litigation cropped up to regularize the transaction of materials. Some of the materials issued by the applicant to the SE/PW/I/Jamalpur was left unaccepted. Some final measurement of the works under his supervision were submitted a few days before his superannuation and one final measurement was submitted on the date of his superannuation. The respondents in Para 15 of the reply have stated that after lapse of 10 months serious confusion and dispute between the department and the consignee arose which would be evident from Annexure 'E' to the O.A. The respondents have admitted that the Open Line Inspectors had shown less



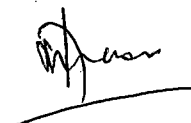
interest to take over the materials but it is also a fact that the applicant was not keenly interested to hand over the materials and to get the transaction of materials regularized for the reason best known to him. The respondents in Para 21 of the reply have stated that the applicant being custodian of the materials should have lodged theft report but he failed to do so. Finally the respondents have stated that the applicant failed to submit the final measurement of the works executed under his supervision and the material statement thereof in time. These works were outstanding on his part for the period of about 5 to 9 years approximately. Respondents have stated that the applicant was himself responsible for the delay and inaction on his part in not properly supervising the work, handing over of the materials and the delay in measurement and as such he was rightly penalized.

3. Ld. Counsel for the applicant Mr. M.A. Vidyadharan has stated that the applicant had been writing again and again to the superior officers regarding taking over of the surplus materials and issuing instruction to the concerned authorities so that the surplus materials could be handed over to the concerned persons. He further stated that there had been reluctance on the part of the Permanent Way Inspector in the open line to take over the charge of the surplus materials and the applicant cannot be blamed for negligence as he had been writing from the very beginning to issue instruction to the concerned staff to take over the surplus staff and materials which were lying at various sites. Even the applicant requested for shifting him from the position he was holding as nobody was taking charge of the surplus materials lying unattended and as such he cannot be blamed for



negligence. Ld. Counsel for the applicant has also mentioned that the applicant retired on 31.3.1997 and he was served minor penalty charge sheet on 15.02.1997 and major penalty charge sheet on 22.03.1997 just before 10 days of his superannuation for negligence alleged to have been committed about 5 to 10 years back. The Ld. Counsel has argued that by chargesheeting 10 days before his superannuation for alleged negligence of 10 years back shows malafide on the part of the respondents. He further argued that minor penalty charge sheet and major penalty charge sheet against the applicant are not maintainable under law and facts as stale charges were brought against him and no charge in respect of allegation prior to four years or so can be made just on the verge of retirement and in any case, if any offence has been committed the employee concerned should have been chargesheeted at least six months before the date of his retirement. Ld. Counsel for the applicant has cited various judgments of the Tribunal and the Hon'ble Apex Court and prayed that the purported chargesheets against the applicant be quashed.

4. Ld. Counsel for the respondents, Mr. R.M. Roychoudhury has argued that the applicant had been rightly chargesheeted as despite repeated opportunities he could not submit the final measurement and material statement of the construction work under his supervision, in time and failed to hand over the surplus unconsumed materials. Ld. Counsel has further stated that the administration provided lot of time to the applicant to improve his working and to regulate the ambiguities but all in vain, therefore, finding no other alternative the respondent No.3 had served major penalty chargesheet for violation of the Rule (3)(a)(i)(ii) of the Railway Service



Conduct Rules, 1966. Ld. Counsel for the respondents also argued that the CAO/Pension/Eastern Railway/Calcutta had already requested for making provisional pension in favour of the applicant due to non clearance of backlogs of the applicant and non finalization of Major Penalty Charge Sheet and the same has already been paid to the applicant.

5. We have heard the ld. Counsel for both sides and have gone through the record of the case. Three important factors are involved in the case. First is whether the respondents were justified in issuing chargesheet to the applicant on the verge of his retirement particularly when the alleged misconduct pertains to the period 5 to 10 years back. Second, is when the enquiry was initiated during 1997 for misconduct of 5 to 10 years back, what is the present status of the same and third, whether there was any irregularity in conducting the enquiry.

6. The Chargesheet can be assailed and can be subjected to judicial review and is liable to be declared invalid on any of the following grounds:-

- (1) If it is not in conformity with the law
- (2) If it discloses bias or prejudgment of the guilt of the charged employee
- (3) There is non application of mind in issuing the chargesheet
- (4) If it does not disclose any misconduct
- (5) If it is vague
- (6) If it is biased or stale allegation
- (7) If it is issued malafide



In the instant case we find that the allegations in the chargesheet relates to the period from 31.10.1988 to 07.06.1992. The respondents in Para 24 of the reply have stated that the applicant failed to submit the final measurement and the material statement of the works under his supervision in time which were outstanding on his part for the period of about 5 years to 9 years approximately. Moreover enquiry which was initiated in 1997 has not yet been finalized. No explanation has been given for the delay in issuing charge memo and in finalization of the enquiry proceedings. In the case of *State of Andhra Pradesh v. N. Radhakishan* reported in AIR 1998 Supreme Court- 1833 it has been held by the Hon'ble Supreme Court that :-

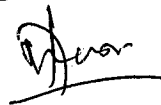
“(B) Constitution of India, Arts.16,311 – Disciplinary proceedings – Delay – Quashing of the charge memo – Charge memo relating to incident over ten years stale – Case depending only on departmental records – No explanation why inquiry officer for all these years did not examine them – Delinquent not contributing to delay – Charge memo liable to be quashed.”

Similar view has been taken in the case of *P.V. Mahadevan v. M.D. Tamil Nadu Housing Board* reported in 2005(2) SCSLJ-186. In the case of *Sri Pralay Shankar Dhar v. Union of India & Others* Bangalore Bench of this Tribunal held that :-

“(A) Delay – Chargesheet - Delay of 10 years in issuing the chargememo – No satisfactory explanation for delay – Charge memo quashed.”

In case of *State of M.P. V. Bani Singh & Others*, AIR 1990 SC 1308 it has been held by the Hon'ble Supreme Court that :-

“(A) Administrative Tribunals Act(198 5) Ss 14,19 – Disciplinary proceedings – Delay and laches – Department aware – involvement of officer in alleged irregularity – 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 case of *Tek Chand Dhanjal v. Union of India Through the Chief Administrative Officer(R), Diesel Component Works, Patiala and Others*, (1994)27 Administrative Tribunal Cases 673, the Chandigarh Bench of the Tribunal held that:-

“ Departmental Enquiry – Charge sheet – Scope of judicial review – Held, normally the Tribunal does not interfere with the charges – But where no prima facie case was made out, charges were highly belated and instances of alleged misconduct ranging over a long period(20 years in this case)were clubbed together, held, there was sufficient justification for Tribunal’s interference – Administrative Tribunals Act, 1985, S.14”

The Principal Bench of the Tribunal in case of *K.K. Sood v. Union of India & Others*, reported in [1990] 13 Administrative Tribunals Cases 156, held as under :-

“ Departmental Enquiry – Charge-sheet – Delay in issue of – Charge-sheet issued to the applicant on last working day of his retirement on superannuation – Applicant pleading that charge-sheet was issued on the basis of a complaint which was received about 2 years before his retirement – Charges related to alleged misconduct which took place during 1963 to 1970 – No satisfactory explanation given for delay – Held enquiry vitiated.”

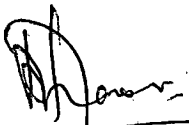
In the present case the alleged misconduct is relating to the period from 1988 to 1992 and the minor and major penalty chargesheets were issued to the applicant on 15.2.1997 and thereafter on 22.3.1997 respectively and he was superannuated from service on 31.3.1997. Moreover the enquiry which was initiated during 1997 has not yet been concluded. Thus the memorandum of charges alleging misconduct issued in such circumstances have become stale and the inordinate delay in completion of the enquiry cannot stand in the eye



of law and therefore, the chargesheets require to be quashed. The ld. counsel for the respondents could not explain satisfactorily the delay in issuing the chargesheet and in completion of the enquiry proceedings.

7. In view of the above facts the O.A. is allowed. The minor and major penalty chargesheets against the applicant along with the enquiry proceeding stand quashed. The respondents are directed to release the retiral benefits to the applicant including the medical facilities and Railway Passes within a period of 3 months from the date of receipt of a copy of the order.

With the above observations the O.A. is disposed of. No order as to cost.


MEMBER(A)


MEMBER(J)