

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 43/2005

MONDAY, THIS THE 10th DAY OF APRIL, 2006.

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HONBLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

V.A. Mathew
Upper Division Clerk
Sub Regional Provident Fund Officer Kochi. Applicant

By Advocate Mr.Vellayani Sundararaju.

Vs.

1 Union of India represented by
the Secretary to Government
Ministry of Labour , New Delhi.

2 The Regional Provident Fund
Commissioner-I, Kerala Region
Bhavishya Nidhi Bhavan, Pattom
Thiruvananthapuram. Respondents

By Advocate Mr. N.N.Sugunapalan for R-2
By Advocate Sunil Jose ACGSC for R-1

ORDER

HONBLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant who is working as an Upper Division Clerk in the Sub Regional Provident Fund Office, Kochi is aggrieved by the non-completion of the disciplinary proceedings initiated against him in the month of November, 1998 while he was working under the second respondent, even after the Tribunal has fixed a time limit as per the

Annexure A-4 order. He seeks the following reliefs:

(a) To direct the 2nd respondent to drop the unfinished disciplinary proceedings against the applicant as Annexures A1 to A3 or to quash them on the failure of 2nd respondent in not issuing final orders on it within the time limit prescribed by this Hon'ble Tribunal in Annexure A4 order by holding that the continuance of the disciplinary proceedings against the applicant is against the reported decisions of the Hon'ble Supreme court in 1995 (2) SCC 570, (2003) (3) ATJ 96 and (2003) (3) ATJ 351 of Cuttack and Calcutta Benches of this Hon'ble Court and also against the time schedule prescribed by the Central Vigilance Commission for completing the departmental enquiries in Annexure A-9, A-10 and A-12.

b) To direct the 2nd respondent to initiate disciplinary actions against the enquiry officers of Annexures A1 to A3 as they have adopted dilatory tactics in concluding the disciplinary proceedings against the applicant, which prejudicially affected the promotional prospects of the applicant and also caused acute mental agony and the 2nd respondent is bound to act in accordance with Annexure A-11.

© To issue any other order or direction which this Hon'ble Tribunal may deem fit on the facts and circumstances of the case;

and

(d) To allow costs to these proceedings.

2 According to the facts submitted by the applicant, he was one of the Executive Committee members of the Staff Association which is a recognised Association. The Association had made certain demands to the concerned authorities which had not been conceded and hence collective bargaining took place with the second respondent on 24.11.1998 on which several members and office

bearers of the Association participated but the applicant had not participated since he was under medical treatment. But the second respondent issued charge memorandum to as many as twelve persons including the office bearers of the Association and himself. There was also bias on the part of the second respondent in appointing the enquiry officer. The applicant challenged the delay in conducting and completing the enquiry proceedings against him and against the non-disposal of the bias petition filed by him in O.A. 380/2002. That OA was disposed of on 27.7.2004 directing the respondents as follows:

“We direct the 2nd respondent to consider the Bias Petition (Annexure A-21) filed by the applicant and to dispose it of with a speaking order within two weeks from today and further direct the 2nd respondent to have the enquiry held and completed and to issue a final order in the proceedings within a period of four months from the date of disposal of the Bias Petition.”

3 In compliance of the above direction the Bias Petition was disposed of on 12.8.2004 and a new Presenting Officer was appointed by the second respondent. A new Enquiry Officer was also appointed and the Enquiry Officer was directed to conclude the enquiry within 4 months from 12.8.2004. The enquiry was held but has not been concluded within the prescribed time limit due to dilatory attitude of the Enquiry Officer. The Enquiry Officer had been transferred to Delhi and no report had been submitted. A new Enquiry Officer was appointed on 9.11.2004 and till the date of filing of the OA. the enquiry has not been concluded. It is further submitted that the inordinate delay in finalising the disciplinary proceedings has caused

2

prejudice to the applicant by denying him the time bound promotion to the post of UDC(SG) from 21.1.2000 on the basis of the DPC meeting held on 14.9.2004. The inaction on the part of the respondents in completing the disciplinary proceedings is against the instructions of the Central Vigilance Commission as well as the Department of Personnel & Training, on the subject of expeditious disposal of disciplinary enquiries. The decision of the Apex Court in Government of Punjab and Others Vs. V. Chaman Lal Goyal (1995(2) SCC 570) and the decision of the Cuttack and Calcutta Benches of the Tribunal in Uttam Charan Jena Vs. Union of India (2003(3)ATJ 96) and 2003(3) ATJ 351 have been relied on by the applicant for quashing the disciplinary proceedings on the ground of delay.

4 The respondents have submitted that in accordance with the direction of this Tribunal in the earlier O.A. 380/2002, the enquiry proceedings were re-commenced on 3.9.2004 and the Presenting Officer submitted his argument note on 20.10.2004 after recording the evidence of prosecution and defence witnesses. At that stage Shri Sethumadhavan the Enquiry Officer was promoted and posted at New Delhi and the present Enquiry Officer was appointed on 17.11.2004. The applicant had meanwhile filed his reply on 11.11.2004 and he was informed that he could argue his case on 14.2.2005 and in case he fails to attend the enquiry, his argument note would be taken on record and the matter would be finalised. On 14.2.2005 the applicant did not attend the enquiry stating that time granted by the Tribunal for completion of the enquiry proceedings had

expired and in the meanwhile had approached this Tribunal by filing this O.A. Since there was no stay of the matter, the disciplinary authority has since passed orders dated 20.3.2005 and 31.3.2005 finalising the disciplinary proceedings imposed a minor penalty on the applicant in all the three disciplinary proceedings. It is further submitted that the applicant had been attempting to stall the disciplinary proceedings by filing O.As. before the Tribunal and raising technical objections and in the light of the completion of the disciplinary proceedings and issue of orders in Annexure R-2(a), R-2 (b) and R-2(c) the OA has become infructuous and is liable to be dismissed.

5 The main grievance of the applicant is about the delay in finalisation of the disciplinary proceedings which according to him has resulted in non-consideration of his case for promotion. The applicant had earlier approached this Tribunal in O.A. 380/2002 against the delay which had occurred in the finalisation of the disciplinary proceedings initiated by the three memos issued to him on 11.1.2000 containing the alleged charges of misconduct on 23.11.1998 and also against the non-disposal of the Bias Petition submitted by him against the Enquiry Officer. The Tribunal had already taken into consideration of the delay which had occurred till then but had not chosen to intervene to quash the charge memo but had only directed that the disciplinary proceedings be completed early within a period of four months from the date of disposal of the Bias Petition. Now the applicant is challenging the further delay that has occurred in

2

complying with the above direction of the Tribunal. It is stated in the reply statement of the respondents that the enquiry had recommenced on 2.8.2004 after the disposal of the O.A. 380/2002 and a new Enquiry Officer and Presenting Officer were also appointed. Some delay had occurred thereafter since the Enquiry Officer was changed as the earlier incumbent was promoted and transferred. The enquiry could be finalised only on 14.2.2005 by the time the applicant had filed this O.A. The time of four months given by the Tribunal had expired on 12.12.2004. Due to change in the Enquiry officer the respondents had thought it fit to give another opportunity to the applicant to argue his case though strictly it was not necessary. The Disciplinary Authority has passed the final orders on 23.3.2005, thereby the total delay that has occurred is approximately three months. We do not think that a delay of three months has vitiated the entire disciplinary proceedings as argued by the applicant. He has relied mainly on the judgment of the Apex Court in the State of Punjab and Others V. Chaman Lal Goyal (1995 (2) SCC 570) in which case the respondent therein was chargesheeted after a long period of five and half years of the alleged incident and the departmental enquiry had dragged for about three years thereafter. After considering the factors for and against the applicant, considering that the charges were very grave the Court was of the opinion that quashing the charges was not warranted in the facts and circumstances of the case and it was only directed that the enquiry will be concluded within eight months. In fact it was observed that:

lv

"Wherever delay is put forward as a ground for quashing the charges, the court has to weigh all the facts both for and against the delinquent officer and come to a conclusion which is just and proper in the circumstances. In the circumstances, the principle of the said decision cannot help the respondent."

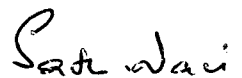
6 In the facts and circumstances of the case as narrated above this decision cannot help the applicant in this case also. The delay is not 'so long' as to warrant interference particularly since the filing of the OA, the enquiry was also concluded and final orders was passed imposing minor penalties on the applicant and no grave prejudice has been caused to the applicant.

7 In this view of the matter, the reliefs prayed for by the applicant have become infructuous. The only grievance that remains is the non-consideration for promotion. Though he has not sought any specific relief in this regard, we would in the circumstances direct the respondents to consider the applicant for promotion in accordance with the rules and if otherwise eligible as the departmental proceedings against him have been concluded. With these directions the O.A is disposed of. No costs.

Dated 10.4.2006.



GEORGE PARACKEN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN