

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

O.A.No.514/2002

Wednesday this, the 15th day of January, 2003.

CORAM:

HON'BLE SHRI A. V. HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI T.N.T. NAYAR, ADMINISTRATIVE TRIBUNAL

V. Pachinathan,
Deputy Director,
Department of Light Houses and Light Ships,
Kochi, Residing at: No. 2346, Temple Street,
Kadavantra, Kochi-682020. .. Applicant

(By Advocate M/s.T.C.G. Swamy, K.M. Anthru, Martin G. Thottan)

vs.

1. Union of India rep. by the
Secretary to the Govt. of India,
Ministry of Shipping, New Delhi.
2. Director General,
Department of Lighthouses & Lightships,
A-13, Sector 24, Gautam Budha Nagar,
NOIDA, U.P. Pin -201301.
3. J. Ramakrishnan,
Director General,
Department of Lighthouses & Lightships,
A-13, Sector 24, Gautam Budha Nagar,
NOIDA, U.P., Pin-201301. .. Respondents

(By Advocate Sri C. Rajendran, SCGSC(R1-2)

The Application having been heard on 12.11.2002, the
Tribunal on 15.1.2003 delivered the following:-

ORDER

HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN

The applicant who was Deputy Director, Department of
Light Houses and Light Ships, Kochi, when he filed this
application and was to retire on superannuation on
31.10.2002 has filed this application impugning the
memorandum of charges dated 20th August, 2001 informing the
applicant that the President has proposed to hold an enquiry

against him for certain misconducts. The material allegations in the application can be stated as follows.

2. The applicant initially appointed as a Overseer under the respondents in the year 1965 , was being successful in a selection undertaken by the UPSC appointed directly as Assistant Executive Engineer(Civil),Group-A in June, 1993.He was thereafter promoted as Deputy Director of the present Chennai region. While he was working as Assistant Executive Engineer of the then Chennai region, till 1993 he was incharge of execution of work at various places. During the period 1991-93, he was incharge of construction of twin Group-D quarters at Kanyakumari which work was actually executed by Junior Engineer(Civil) by name Kannan. While the applicant was working as Deputy Director, Chennai region, the 3rd respondent took up as Regional Director, Chennai. The applicant is a member of the Scheduled Caste. As the applicant did not yield to unlawful pressures of the third respondent who joined as Director, Chennai region, the third respondent started harassing him. Harassed, humiliated and aggrieved by the harassment, the applicant submitted a representation dated 13.6.95(Annexure A2) to the then incumbent of the second respondent. At the intervention of the then incumbent of the second respondent, the third respondent did not further harass the applicant for the time being. However in 1999 when the third respondent became the Director General, he started harassing the applicant again. During June 2001, the applicant was denied promotion and many of his juniors superseded him.The applicant complained to the various authorities including



the National Commission for Scheduled Castes and Scheduled Tribes. While so, the Annexure A1 order was issued along with the memorandum of charge raising certain allegations of misconducts which was said to have been committed by the applicant during 1991-92. The annexures appended to the Annexure A1 are not signed and they are not therefore valid in law. The applicant submitted Annexure A3 explanation denying the allegations against him and stating that the memorandum of charge was untenable. However one J.S.Chauhan who was junior to the applicant as Deputy Director and against whose promotion superseding the applicant, the applicant had submitted representation to various authorities , was appointed Enquiry Officer. Though the applicant protested , the appointment of Shri Chauhan as Enquiry Officer and requested for a change of the Enquiry Officer, the same was not considered. The request of the applicant for making available to him certain documents have not been acceded to. The memorandum of charges has not been issued bona fide, and the charge has been issued to him to wreck vengeance by the third respondent after an inordinate delay which is unexplained. In terms of the instructions contained in the Ministry of Home Affairs O.M.No.F 39/1/69 dated 16th April 1969 and No.11012/7/79-Estt(A) dated 7th September 1979 , the initiation of disciplinary proceedings against a Group-A officer where the Disciplinary Authority is the President should be approved by the Minister. In this case as the approval of the Minister has not been taken, the Annexure A1 order and the memorandum of charge are without jurisdiction. For the long and unexplained

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delay, the applicant has been greatly prejudiced. The Assistant Engineer(Civil) Kannan who executed the construction in question had not at the relevant time made any report against shortage of steel or other material and therefore the whole proceedings have been concocted by the third respondent with a view to see that the applicant is not till the date of his superannuation promoted to the higher post. Under the above facts and circumstances, the impugned memorandum of charge is liable to be set aside. The applicant has therefore filed this application seeking to set aside Annexure A1.

3. A reply statement has been filed on behalf of the respondents by the second respondent. Although allegations of personal malafides have been levelled against the third respondent who has been impleaded by name in his personal capacity, the third respondent has not chosen to file an affidavit in reply in his personal capacity, but has filed only a verified statement on behalf of respondents 1 and 2 based on his knowledge and information received and believed to be true by him based on the records. The material contentions in the reply statement are as follows. Before entrusting the Mahabalipur Light House maintenance work in April 1995 to Sri Kannan, JE(Civil), the third respondent who was then Director wanted him not to delay the completion of work as in the case of Group D quarter at Kanyakumari. Sri Kannan then stated orally that the delay of completion of Group D quarter at Kanyakumari was on account of non-availability of material which he confirmed in writing

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as instructed by the third respondent who was then Director vide his letter Annexure R1(a). From what is stated in the letter of Sri Kannan , Junior Engineer(Civil) dated 10.4.95(Annexure R1(b)) it was found that there has been irregularities committed by the applicant during 1991-92. At the instruction from the second respondent, a preliminary enquiry was conducted and a report was submitted . On the basis of the report, the headquarters directed initiation of disciplinary proceedings against the applicant by letter dated 25 August,1995.The matter was referred to CVC and thereafter with the approval of the competent authority, the Ministry by order dated 26th July,2001 directed the second respondent to serve a charge sheet on the applicant. Therefore a memorandum of charge has been issued. There is no delay in issuing the memorandum of charge.The Annexure A2 representation of the applicant complaining harassment is not seen in the record of the headquarters. From the personal file of the applicant it is seen that the representation of the applicant dated 13.6.1995 was returned for being resubmitted with a duplicate with letter dated 16.6.1995(Annexure R4(a)).The disciplinary proceedings having been initiated with the approval of the competent authority and on receipt of advice from CVC the allegation that the memorandum of charge is unsustainable on the ground of delay has no force. The applicant when he submitted his representation on receipt of Annexure A1 did not raise any complaint of the annexures to A1 not being signed and therefore the contention that the memorandum of charge is

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invalid for not containing the signatures in the annexure is not valid. The application which is devoid of merit is required to be dismissed.

4. We have with meticulous care gone through the entire pleadings and the materials placed on record and have heard Sri T.C.G.Swamy, the learned counsel of the applicant and the Sr.Central Govt.Standing Counsel Sri Rajendran, who appeared for the respondents 1 and 2.

5. The memorandum Annexure A1 dated 20th August,2001 contained Annexure 1 statement of articles of charges. All the 5 articles of charges related to certain alleged irregularities pertaining to the period 1991-92. The Article 1 of the charge related to alleged temporary misappropriation of Rs.20,251/- and permanent misappropriation of Rs.15,035/- by the applicant from 1991 to July 1992. The Article 2 of the charge referred to alleged temporary misappropriation of Rs.78,471.25 and permanent misappropriation of Rs.15,370.60. Articles 3 , 4 and 5 referred to certain mal practices during the same period alleged to have been committed by the applicant. " In the reply submitted by the applicant to the second respondent on 27.9.2001 on receipt of the memorandum of charge, the applicant has categorically denied the allegations pointing out that the construction in question took place during 1991-92, that if there had been shortage of any material , the JE(Civil) Sri Kannan should have reported that immediately, that the letter alleged to have

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been given by Kannan was written at the instance of the second respondent who wanted to harm the applicant and that by reason of the long delay, the applicant has been prejudiced in his defence as it would not be possible for him to defend with reference to records which are not available with him. The initiation of the disciplinary proceedings is assailed by the applicant mainly on 4 grounds:-

- (i). The memorandum of charges is not signed by the competent authority and is therefore invalid.
- (ii). The approval of the Minister has not been obtained before initiating the disciplinary proceedings against the applicant who is a Group-A officer and therefore, the proceedings is without jurisdiction.
- (iii). For inordinate and unexplained delay, the proceedings is to be set aside as vitiated, for the delay has caused prejudice to the applicant in the matter of defence and,
- (iv). the entire proceedings have been initiated out of mala fides of the third respondent against the applicant who had complained to higher authorities about the harassment meted out to him by the third respondent as also aggrieved by denial of promotion.

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6. We shall consider the points raised in the application one by one.

(i)Points (i) and (ii)

The learned counsel of the applicant argued that although the memorandum dated 20th August, 2001 informing the applicant of the proposal of the President to hold an enquiry against the applicant, the memorandum of charges or the annexures thereto do not contain the signature of the competent authority and therefore the proceedings are incompetent and invalid. On a perusal of the annexures appended to the memorandum dated 20th August, 2001(Annexure A1), we find that the article of charges ,the statement of imputations etc. have not been signed by the disciplinary authority or the competent authority. Therefore there is nothing in Annexure A1 which would show that the articles of charges mentioned therein has been approved by the competent authority. Although it is seen stated in Annexure R7 letter dated 26th July, 2001 from the Ministry of Shipping addressed to the third respondent that the articles of charges received along with the letter of the third respondent have been approved by the competent authority and the third respondent was requested to serve the chargesheet on the applicant . From Annexure A1 it is not seen that the articles of charges and the other annexures contained therein had the approval of the Minister nor it is seen signed by an authority. The argument of the learned counsel

of the applicant that Annexure A1 memorandum of charge is without jurisdiction and not valid, has therefore, considerable force.

(ii) Point No. (iii):

Learned counsel of the applicant with considerable vehemance argued that since all the articles of charges pertained to construction which took during the period 1991-92, the construction having been executed by JE(Civil), if there had any shortage of material or any delay in procurement of material, the same would have normally been reported immediately, that the belated information alleged to have been furnished by the Junior Engineer Kannan in the year 1995 at the instance of the third respondent even if for arguments sake, presumed to be correct, the delay long from 1995 till 2001 not having been explained, the proceedings are liable to be struck down because the long delay in the matter has rendered it practically impossible for the applicant to make a proper defence. That the matter relates to the year 1991-92 is not disputed. That the preliminary enquiry was completed and the proposal for taking disciplinary proceedings against the applicant was made by the second respondent on 25th August, 1995 is borne out from Annexure R5. The memorandum of charge has been issued only on 20th August, 2001. There is absolutely no explanation for the inordinate delay of 6 years after the proposal to initiate the disciplinary proceedings was made. In the reply statement what is stated is that on receipt of

the preliminary enquiry report , the proposal for initiation of action was placed before the CVC , that the Ministry vide letter dated 7.2.2000 informed the second respondent that CVC had opined initiation of major penalty and that there is no delay. We are not satisfied that what is stated in the reply statement amounts to any explanation for the inordinate delay of 6 long years. Since the alleged irregularities happened in the year 1991-92 and as the same has been brought to the notice of the concerned authorities in the year 1995 , if disciplinary action were required to be initiated it should have been initiated without unreasonable and undue delay. The imputations against the applicant are of such nature that after an inordinate delay of 6 years it would be next to impossible for the applicant to make a proper defence. The delay undoubtedly has caused substantial prejudice to the applicant's defence. Considering the question of delay, the Apex Court had in State of Andhra Pradesh vs. N.Radha Kishen, AIR 1978 SC 1833 observed as follows:-

" In considering whether delay has vitiates the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this part he is to suffer a penalty prescribe. Normally , disciplinary proceeding should be allowed to take it course as per relevant rules but then delay defeats justice. Delay causes prejudice to the

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charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings."

Observing as above, the Apex Court refused to interfere with the order of the Tribunal setting aside the chargesheet in that case. In this case also as no satisfactory explanation is given for the inordinate delay in initiating proceedings against the applicant and that this delay has greatly prejudiced the applicant , we are therefore of the considered view that the memorandum of charge is liable to be set aside.

(iii) Point No.(iv)

The learned counsel of the applicant argued that the issue of the memorandum of charge against the applicant was engineered by the third respondent who nurtured illwill against the applicant out of mala fides and has therefore the same is liable to be set aside. He referred us to Annexure A2 complaint made by the applicant against the third respondent to the then incumbent in the office of the second respondent. He also referred us to the averment in the application that the applicant was superseded by his juniors in the matter of promotion which was one of the harassments by the third respondent and that he having complained to the various authorities including the National Commission for Scheduled Castes, the third respondent has deliberately caused the Junior Engineer(Civil) to give a statement against the applicant and manipulated the disciplinary proceedings against him. The learned counsel of the respondents on the other hand argued that it has been

stated in the reply statement that Annexure A2 was not seen received in the office of the second respondent and therefore the allegation of mala fides has no basis and substance. From the reply statement of the respondents as also from Annexure R4(a) and R4(b) letters admittedly written by the third respondent it is evident that the applicant had on 13.6.95 submitted a complaint to the second respondent alleging illtreatment by the third respondent. Therefore the contention on behalf of the respondents that there is no basis for the allegation of mala fides would not stand. From Annexure R1(a) the letter written by the third respondent to Sri Kannan, JE stating of some oral statement regarding non-availability of building materials for construction of the Group-D quarter in Kanyakumari and procurement of the materials later by the applicant and asking his statement in writing and Annexure R1(b) letter written by Kannan in reply thereto would show that the third respondent was bent upon digging up old matters to frame the applicant. If there has been delay in execution of the work of construction of quarters in 1992, it is not understandable as to why immediately the reason was not sought for in writing from the JE. A reference to an oral statement by Kannan and getting a certificate in writing in 1995 causes a lot of suspicion on the bonafides of intention behind it. Although the applicant has categorically averred in the application that Annexure A1 memorandum and the initiation of disciplinary proceedings was engineered by the third respondent to wreck vengeance on the applicant, the third respondent did not choose to swear

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on affidavit refuting these allegations in his personal capacity. Since the allegation of personal mala fides has not been refuted by the third respondent by filing an affidavit, it has got to be accepted as correct. We therefore find that the circumstances establish that the memorandum of charges and the proceedings against the applicant is vitiated by mala fides.

7. In the conspectus of facts and circumstances, as discussed above, we are of the considered view that the applicant is entitled to succeed in this application. The application is therefore allowed. The impugned memorandum of charges and the proceedings thereunder are set aside with consequential benefits to the applicant. There is no order as to costs.


(T.N.T.NAYAR)
ADMINISTRATIVE MEMBER


(A.V.HARIDASAN)
VICE CHAIRMAN

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