

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 550/2007

this the 19th day of February, 2009

C O R A M

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

T.X. Sebastian S/o T.O. Xavier
Chief Engineer Gr. II
Central Institute of Fisheries Nautical &
Engineering Training, Vizag
Permanent residence at Thekkeveettil House
Near Govt. Ayurveda Hospital
Nayarambalam PO, Ernakulam District.
PIN – 682 509

..Applicant

By Advocate Mr. T.C. Govindaswamy

Vs

- 1 Union of India represented by the
Secretary to the Government of India
Ministry of Agriculture
Department of Animal Husbandry,
Dairying & Fisheries
Krishi Bhavan, New Delhi.
- 2 The Director
Central Institute of Fisheries, Nautical &
Engineering Training (CIFNET)
Foreshore road, Cochin-682 016
- 3 Shri G.H. Manikfan
Director
Central Institute of Fisheries Nautical &
Engineering Training (CIFNET)
Foreshore Road, Cochin-682 016
- 4 Shri M.K. Devara
Inquiry Officer & Deputy Director
Central Institute of Fisheries Nautical &
Engineering Training (CIFNET)
No. 59, S.N. Chetthy, Royapuram
Chennai-13

5 The Joint Secretary to the Govt. of India
Ministry of Agriculture
Department of Animal Husbandry,
Dairying & Fisheries
Krishi Bhavan
New Delhi.

.. Respondents

By Advocate Mr. George Joseph, ACGSC

The Application having been heard on 15.1.2009 the Tribunal delivered the following

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant is aggrieved by memorandum No. 5-1/99-Admn dated 15.4.2004 issued by the 2nd/3rd respondent pertaining to an alleged incident said to have taken place during the period between 2.5.1994 and 6.4.1999.

2 The facts in short are as follows. The applicant who was initially appointed as Engine Driver Class-I on 17.10.1977 in the Central Institute of Fisheries Nautical & Engineering Training (for short CIFNET), was promoted to the post of Chief Engineer Grade-II in the scale Rs. 7450-11500 (Group-B Non-gazetted) on 3.6.1991. The applicant is presently working in the same grade at the Vizag. unit of the Institute. While the applicant was working at the Chennai unit, on 6.4.1999 a surprise check was conducted by the CBI and the then Dy. Director Shri R. Mohanam. A mahassar of the so called inspection was prepared on 6.4.1999 (Annexure A-2). On the alleged incident the applicant was transferred out of Chennai. The applicant was due for 2nd Financial Upgradation on completion of 24 years of service as on 16.10.2001. Since the same was not granted the applicant made representations and with the sole intention of denying the said benefit to the applicant, Annexure A-1 charge memorandum dated

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15.4.2004 was issued. The applicant filed a reply. An inquiry was contemplated and an Inquiry Officer was appointed. Preliminary hearing was held on 18.4.2005. The Inquiry Officer wrote a personal letter to the witness Shri R. Mohanam asking him to be present on the previous day of the next sitting of the enquiry. When applicant came to know about the unusual procedure adopted by the Inquiry Officer, he submitted a detailed objection dated 26.7.05. The applicant submitted supplementary and further representations alleging bias and prejudice against the Inquiry Officer and Disciplinary Authority which were finally rejected by Annexure A-9. Against A-9, another representation was submitted by the applicant. The applicant alleges that the 2nd Financial Upgradation w.e.f. 17.10.2001 was rejected by OM dated 9.7.2007 on the ground that Annexure A-1 charge memorandum is pending inquiry. The charge memorandum is already under challenge in O.A. 519/07 before the Tribunal.

3 The main grounds urged in the O.A. are that :

- (i) The charge memo ultra vires the statutory rules in so far as none of the Annexures to the charge memo has been signed by the Disciplinary or any of the authorities.
- (ii) The charge memo has not been issued in bona fide exercise of power, the unexplained delay in initiation of the departmental proceedings and continuation of the same not only defeats justice but prejudices the defence of the applicant, there is absolutely no lapses on the part of the applicant, it took more than two years for the said authority to take a decision on Annexures A-6, A-7 and A-8 which resulted in further delay in the finalisation of the proceedings and that the 2nd/3rd and the 4th respondents have ceased to be competent to exercise their respective jurisdiction on account of their bias and prejudice.



(iii) There is no provision enabling the Inquiry Officer to summon a witness for a private discussion in the presence of the Presenting Officer, therefore the entire proceedings stand vitiated on account of bias and prejudice as well.

4 The respondents in their reply resisted the claim. They stated that the CBI conducted a surprise check on board vessel M.V. Skipper-II belonging to CIFNET Unit, Chennai on 6.4.1999 and during the surprise check it was assessed that the vessel was having excess quantity of HSD Oil and Lube oil in various tanks and the CBI has concluded that the oil was kept in the vessel with the knowledge of the applicant. The applicant was directed to explain his lapses pointed out in the CBI report. The applicant has submitted his explanation admitting his mistake in not declaring the excess availability of oil (Annexure R-2). A departmental inquiry was ordered by issuing a charge memorandum to the applicant. They have submitted that the CBI is a body meant for conducting surprise checks in cases of cheating and corruption and they are independent agency. Therefore, they denied the "bias" and "extraneous consideration" alleged by the applicant. As regards grant of 2nd ACP to the applicant, they have submitted that the matter has been taken up with the 1st respondent and the applicant has filed O.A. 519/2007 before the Hon'ble Tribunal in this regard. They have submitted that the delay in the inquiry is attributable to the non-cooperation of the applicant and that the applicant is bringing in unnecessary allegations against officers regarding departmental inquiry. They also stated that Annexure A1 memo has been issued as per rules and procedures and that no malafide intention is involved. They have submitted that the inordinate delay in the enquiry is due to non-cooperation of the applicant alone. The Appellate Authority has

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ordered him to cooperate with the inquiry. The allegation against the Inquiry Officer is denied. They have submitted that the 2nd ACP of the applicant is delayed as the department is not a position to issue integrity/vigilance certificate to a suspected employee who is facing a departmental inquiry.

5 The applicant has filed rejoinder stating that the contents of Annexure R-2 letter cannot be treated as an admission of the guilt by the applicant. There was a long delay of five years in starting the disciplinary proceedings. The applicant has stated that when the charged employee has lost his confidence in the Inquiry Officer, the best way to go ahead with the disciplinary proceeding is to appoint another Inquiry Officer. This cannot be rejected simply by terming it as irrelevant without giving any valid reason.

6 The respondents filed additional reply statement stating that the applicant had not questioned the delay in initiating the departmental proceedings against him on earlier occasion and his present allegation is only to escape from the inquiry. They have reiterated that the delay in completion of inquiry is only due to the non-cooperation on the part of the applicant.

7 We have heard Mr. TC Govindaswamy the learned counsel appearing for the applicant and Shri George Joseph, ACGSC appearing for the respondents.

8 A quick glance of the facts of the case reveal that a surprise check in the vessel M.V. Skipper-II of CIFNET Unit, Chennai was conducted by then Deputy Director on 6.4.1999 and that there was 9975 litres of excess of HSD and Lub Oil available in the tank. The applicant who was the Chief Engineer Grade-II of the vessel was maintaining the engine log book and allegedly responsible for the same, was asked to

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explain the reasons for the availability of excess quantity of HSD oil and Lub oil on board. The applicant submitted explanation on 2.9.1999 giving his reasons for the availability of excess quantity of HSD and Lub Oil. Not satisfied with the explanation, the respondents transferred the applicant to Visakhapatnam Unit. After a lapse of more than 4 ½ years charge memo dated 15.4.2004 was issued to the applicant proposing to hold an inquiry. Two article of charges were framed against the applicant. The inquiry proceedings are still going on. The allegation of bias raised by the applicant against the Inquiry Officer has been rejected by the competent authority. One of the defence of the applicant was that the officials like Senior Instructor and Electrical Engineer have been duty bound to check the measurements of oil levels in the fuel tanks fixed to the vessel every months and compare it independently with the measurement in the log books and that has not been done. (A-11, A-12 and A-13). During the period from 19.2.1994 to 11.10.1999 when the applicant was on duty there was no discrepancy found in maintaining the log book. The delay in the departmental proceedings affects grant of 2nd ACP to the applicant. The respondents state that the applicant is responsible for the delay in the departmental proceedings and that the ACP is delayed for want of integrity/vigilance certificate.

9 The applicant has cited the following judgments in support of his case:

- 1 Ashok Kumar Uppal and Others Vs. State of J & K and Others (1998 SCC (L&S) 1044)
- 2 RS Sagar V. Union of India (2002(2)ATJ (DL.HC)367)
3. P.V. Mahadevan Vs MD, Tamil Nadu Housing Board (2006(1)SLJ(SC)67
4. T.P. Jain Vs. UOI & Ors (2006(1)SLJ (CAT)91)

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5. Dr. Anil Kumar Mukhi Vs. The Chief Soil Survey Officer and Ors. (2000(2)SLJ (CAT) 105
6. Than Singh VS. UOI and Ors. (2003(3)ATJ (DL.HC)42
7. 2003(3) ATJ(CAT)(Ekm)
8. Kailash Naik Vs. UOI (2006(3) ATJ (Jabalpur)77)
9. Sardara Prakash Singh Badal V. V.K.Khanlra and Ors (AIR 2001 SC 343)

The crux of the argument of the learned counsel for the applicant relying on the above cited judgments is that inordinate delay in the issue of charge sheet and completion of inquiry proceedings would vitiate the disciplinary proceedings and cause serious prejudice to the applicant.

10 We have gone through the judgments relied on by the learned counsel for the applicant. In Ashok Kumar Uppal and Others Vs. State of J & K and Others (1998 SCC (L&S)1044), the Hon'ble Supreme Court held as follows:

"It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated, each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated 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 in unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the 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 path he is to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown

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that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

11 In R.S. Sagar Vs Union of India the Hon'ble Delhi High Court held as follows:

"....This indicates that the petitioner had submitted his reply to the memo dated 31st March 1986 as early as on 2nd September, 1986 yet the department chose not to take any action thereon for more than seven years. So the contention of the petitioner that the memo dated 10th September 1993 was served on him only with a view to prejudice his chance of promotion because of DPC was to meet shortly thereafter, cannot be said to be without substance."

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"Viewed in this legal perspective, we think that inordinate delay in the case has vitiated the disciplinary proceedings and has caused serious prejudice to the petitioner who, would have got regular promotion along with his junior as his for promotion was cleared by the DPC held in October, 1994."

12 The Hon'ble Supreme Court in the first cited case held that It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings and whether on that ground the disciplinary proceedings are to be terminated, each case has to be examined on the facts and circumstances in that case. In the case on hand the respondents have explained that the delay in the completion of the disciplinary proceedings is due to non-cooperation of the delinquent official. According to them even the efforts made by the Appellate Authority requesting the applicant to co-operate with the inquiry have not been successful as the delinquent employee is not cooperating and dragging the whole issue. They also submitted that the delay in the issue of charge sheet was not intentional, the same has occurred due to various official formalities to be

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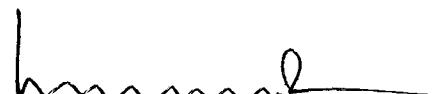
completed by the second respondent.

13 As regards grant of 2nd financial upgradation to the applicant w.e.f 16.10.2001, it is found that the applicant has agitated the matter through O.A. 519/2007 which was allowed by the Tribunal by its judgment dated 11.7.2008.

14 Having heard the learned counsel for both parties and gone through the rival contentions and after perusal of the judgments cited by the learned counsel for the applicant, we are of the opinion that taking into consideration all the relevant factors and the explanation given by the respondents in the reply statement, we are of the view that the O.A. can be disposed of with direction to the respondents to complete the disciplinary proceedings in accordance with the rules, within six months from today. However, we make it clear that it shall be open to the applicant if he is aggrieved by the conduct and conclusion of the departmental proceedings to avail such remedies as are available in law. With these observations the O.A. is disposed of. No costs.

Dated 19th February, 2009.


K. NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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