



CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 871/04 & OA 557/05

.....Monday.....this the 23rd day of January, 2006

CORAM

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

OA 871/04:

Dr.B.Sivaraju, IFS
Managing Director,
Kerala State Development Corporation for
Scheduled Castes and Scheduled Tribes,
Thrissur.

....Applicant

(By Advocate Mr.CPSudhakaraprasad (Sr) and Shri PN Santhosh)

V.

- 1 State of Kerala, represented by the Chief Secretary to Government, Government Secretariat, Thiruvananthapuram.
- 2 The Screening Committee for Selection to the post of Chief Conservator of Forests, represented by its Chairman and Convenor, Chief Secretary to Government, Government of Kerala, Thiruvananthapuram.
- 3 Union of India, represented by the Secretary, Ministry of Environment & Forests, New Delhi.
- 4 R.R.Shukla, Managing Director, Rehabilitations Plantations Ltd, Punalur.Respondents

By Advocate Mr.A.Renjil, GP (R.1-2)

TPM Ibrahim Khan, SCGSC (R3)

OA 557/2005:

Dr.B.Sivaraju, IFS
Managing Director,
Kerala State Development Corporation for
Scheduled Castes and Scheduled Tribes,
Thrissur.Applicant

(By Advocate Mr.CP Sudhakaraprasad (Sr) and Shri PN Santhosh)

V.

1 State of Kerala, represented by the Chief Secretary to Government, Government Secretariat, Thiruvananthapuram.

2 The Secretary to Government, Forest and Wildlife Department, Government Secretariat, Thiruvananthapuram.

3 Union of India, represented by the Secretary, Ministry of Environment & Forests, New Delhi.

Respondents

By Advocate Mr.A.Renjit, GP (R.1-2)
TPM Ibrahim Khan, SCGSC (R3)

These applications having been heard jointly on 4.1.2006, the Tribunal on 23.1.2006 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

Both these O.As are filed by the same applicant. OA 871/04 is preferred against the Annexure A4 order dated 13.7.04 issued by the 1st Respondent, namely, the State of Kerala to the extent that the 4th respondent Shri R. R. Shukla who is junior to the applicant has

been promoted to the grade of Chief Conservator of Forests. The reason given by the Respondent State is that even though at the time of the convening of the screening committee meeting for considering the promotion of 1981 batch IFS Officers to which the applicant also belongs, no charge sheet against him was issued but before he could be actually promoted, the charge sheet was issued and accordingly he has not been promoted. The applicant has sought the following main reliefs in this OA.

"(i) Issue an order setting aside Annexure.A4, to the extent it directs promotion of the 4th respondent as Chief Conservator of Forests in preference to the applicant.

(ii) Issue a direction to respondents 1 and 2 to promote the applicant as chief Conservator of Forests in preference to the 4th respondent and to give him arrears of salary and all other consequential benefits.

(iii) Issue a direction that the contemplated disciplinary proceedings made mention of in Annexure A5 which was recommended to be dropped should not have been taken into account for the non-inclusion of the applicant's name in the select list prepared by the Screening Committee and consequential promotion order issued by Annexure.A.4."

During the pendency of this OA, the Article of Charge was issued to the applicant vide letter No.91306/Spl.C1/1998/GAD dated 3.6.05 and the same has been challenged in OA 557/05. The main relief sought by the Applicant in this OA are the following:

(i) Issue an order setting aside Annexure.A6 Charge Memo issued to the applicant initiating disciplinary proceedings against him.

(ii) Issue a direction declaring that the Respondents are not competent to initiate disciplinary proceedings against the applicant at this stage for the matters made mention of in Annexure.A6.

(iii) Issue a direction to the Respondents not to proceed with Annexure.A6 Charge Memo any further for the long delay in initiating disciplinary proceedings and considering the facts and circumstances of the case."

Since non-promotion of the applicant to the grade of Chief Conservator of Forests vide Annexure.A4 order dated 13.7.04 in OA 871/04 is due to Annexure.A6 article of charge dated 3.6.05 in OA 557/05, both the impugned orders are inter related and, therefore, both these O.As are disposed of by this common order.

2 The undisputed facts necessary for the disposal of these O.As are as follows:-

3 The applicant is an Indian Forest Service (IFS for short) Officer of the Kerala Cadre of 1981 batch. In the gradation list of IFS Officers as on 1.7.04 the name of the applicant was shown at Sl.No.25 whereas the name of his immediate junior, Respondent No.4 in the OA, has been shown at Sl.No.26. The Selection Committee considered the names of the eligible Conservators of Forests for promotion to the post of Chief Conservator of Forests and the first respondent issued the Annexure.A4 order in OA 871/04 promoting 5 Conservators of Forests as Chief Conservators of Forests including Respondent No.4 who is junior to the applicant. Respondent No.1, the State of Kerala has submitted that it had

decided to take disciplinary action against the applicant in respect of certain alleged irregularities committed by him in the matter of construction of some quarters at Puranipoyil in Thamarassery Range of Kozhikode Division. Screening Committee had considered the name of the applicant also but sealed cover procedure was adopted in his case. The applicant aggrieved by his non-promotion and promotion of Respondent No.4 who is junior to him made Annexure.A7 representation dated 20.7.04 and the Annexure.A8 representation dated 28.10.04 inviting attention to the Annexure.A6 communication No.20019/02/200-IFS.II dated 22.12.2000 issued by the Ministry of Environment and Forests, Government of India wherein it has been stipulated that the sealed cover procedure shall be followed only in the case of the following categories of officers:

- “(a) Officers under suspension
- (b) Officers in respect of whom a charge sheet has been issued and disciplinary proceedings are pending and
- (c) Officers in respect of whom prosecution for criminal charge is pending.”

4 The applicant has also invited the attention of the respondents to the judgment of the Hon'ble Supreme Court of India in *Union of India V. K.V.Janakiraman and others* (AIR 1991 SC 2010) wherein it was observed in para 6 as follows:

“The sealed cover procedure is to be resorted to only after the charge memo/charge sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to

adopt the sealed cover procedure".

5 Considering the aforesaid representation of the applicant, the Respondent No.1 has got the proceedings of the earlier Selection Committee reviewed and opened the sealed cover and found that the applicant was declared fit for promotion. However, before the actual promotion order could be issued the charge sheet against the applicant in the aforesaid case was issued vide Ann4xurc.A6 Memo dated 3.6.05 in OA 557/05 and, therefore, the Respondent State did not issue the promotion order in his favour.

6 The following submission made by the respondent State in their reply statement is relevant and therefore, the same is reproduced below:

"Sealed Cover procedure arises after the recommendations of the committee are received but before the officer is actually promoted, his case will be considered to have been placed in sealed cover by the Departmental Promotion Committee and he shall not be promoted until he has been completely exonerated of the charges against him and the provisions covering sealed cover will be applicable in his case also."

As noted earlier, in OA 557/05, the applicant is challenging the aforesaid article of charge dated 3.6.05 according to which while Applicant was working as DFO Kozhikode Division during the period from 10.8.92 to 10.1.94 he had undertaken construction of Type II Quarters in Poranipoyil, Thamarassery Division, in Kozhikode along with Shri K.Viswnathan, Range Officer and there

was serious irregularities in the construction of those quarters. The challenge of the applicant to the aforesaid memo dated 3.6.05 were mainly on the following two grounds which are reproduced below:

"The disciplinary proceedings in the facts and circumstances of the case was one issued to defeat the contentions taken by the applicant in OA 871/2004. It is evident from the facts already submitted that the sealed cover procedure adopted by the Screening Committee was patently illegal. But for the sealed cover proceedings initiated, it has now come out from the statements contained in Annexure.A5 that the applicant would have been placed above his junior Mr.R.R.Shukla in the select list and hence but for the illegal sealed cover proceedings initiated against him he would have been appointed in preference to his junior Mr.R.R.Shukla when Annexure.A3 order was issued on 13.7.2004. Hence the initiation of disciplinary proceedings by issuing Annexure.A6 Charge Memo is one intended to deny the promotion legitimately due to the applicant in preference to his junior and hence it is lacking in bonafides. For this reason also Annexure.A6 is illegal and liable to be set aside.

The incident based on which disciplinary proceedings was initiated by Annexure.A6 was the matter alleged to have taken place more than 12 years before Annexure.A6 was issued. Hence there is a long delay in initiating disciplinary proceedings against the applicant. For this reason also the proceedings initiated against the applicant under Annexure.A6 is illegal and liable to be set aside. This has been settled by the decisions of the Hon'ble Supreme Court. In the decision reported in 1990 (Suppl). SCC 738, the Hon'ble Supreme Court has upheld the order passed by the Central Administrative Tribunal, Jabalpur Bench in respect of quashing of a charge memo and the departmental inquiry on the ground of inordinate delay of over 12 years in initiating of the departmental proceedings with reference to an incident happened. Again in the decision reported in 1995(2) SCC 570 the Hon'ble Supreme Court has held that the delay of 5 $\frac{1}{2}$ years in initiating disciplinary proceedings for denying promotion when the turn of the delinquent

officer came was held to be illegal. In the decision reported in 1998(4) SCC 154 the Hon'ble Supreme Court has held that the delay in conclusion of disciplinary proceedings initiated after more than 8 years from the date of incident was held to be illegal. This Hon'ble Tribunal in the decision reported in Administrative Total Judgments 2003(3) page 287 has interfered with the charge memo issued in 2001 for an incident happened in 1991 which was brought to the notice of the authorities in 1995 was held to be illegal on the ground of delay. Here in this case, the alleged incident took place more than 12 years back. For that the disciplinary proceedings was initiated against the Officer concerned, namely, Range Officer, Thamarassery by issuing charge memo in May, 1997. But no proceeding was initiated against the applicant regarding that. The alleged loss caused to the Government was remitted by the Range Officer concerned long before. This being the position, the delayed initiation of disciplinary proceedings at this stage is not permissible. Hence on the ground of long delay the present Memo of Charge issued is illegal and liable to be set aside."

7 The contesting respondents 1&2 in their reply statement in OA 871/04 submitted that before the applicant could be promoted on the basis of the recommendations of the review committee, the charge sheet against the applicant in the above case was issued and accordingly he has not been promoted in pursuance of the instructions which stipulate that in cases where any of the circumstances warranting invocation of Sealed Cover Procedure arises after the commendations of the Committee are received but before the Officer is actually promoted, his case will be considered to have been placed in Sealed Cover by the Departmental Promotion Committee and he shall not be promoted until he has been

completely exonerated of the charges against him and the provisions covering sealed cover will be applicable in his case also. In reply to OA 557/05, except for facts leading to the issuance of Annexure.A6 Charge Memo dated 3.6.05 for the alleged irregularities committed by the Applicant during his tenure as the Divisional Forest Officer, Kozhikode Division from 10.8.92 to 11.7.94, no explanation whatsoever has been given for the inordinate delay of about 12 years in issuing the charge.

8 The question in OA 871/04 is whether Respondents 1 to 3 therein are justified in denying promotion to the applicant to the grade of Chief Conservator of Forests (Rs.18400-22400) when the IFS Officers of 1981 batch including Respondent No.4 who is junior to the applicant was promoted vide Annexure.A4 order dated 13.7.04. In our considered opinion, the respondents 1 to 3 are totally unjustified in their action for the reasons that this action was contrary to the "principles regarding promotion of members of the Indian Forest Service and composition of Departmental Promotion Committees" issued vide Annexure.A.6 letter dated 22.12.200. The procedure to be followed in respect of officers against whom disciplinary/court proceedings are pending or whose conduct is under investigation has been specified in paragraph 11 of the said principles in which it has been stated that "at the time of consideration of the cases of officers for promotion, details of such

officers in the zone of consideration falling under the following categories should be specifically brought to the notice of the concerned Screening Committees:

- (a) Officers under suspension;
- (b) Officers in respect of whom a charge sheet has been issued and disciplinary proceedings are pending;
- (C) Officers in respect of whom prosecution for criminal charge is pending.

Admittedly the Applicant does not belong to any of the above categories.

9 Secondly, the case of the Applicant is fully covered by the three Judge judgment of the Apex Court in **Union of India Vs. K.V.Janikaram and others**, AIR 1991SC 2010. (supra). This position has been reiterated by the Hon'ble Apex Court in **Union of India and others Vs. Dr.Sudha Salhan (Smt)**, (1998) 3 SCC 394 wherein it has been held as under:

"5 The Tribunal has found it as a fact that on the date on which the Departmental Promotion Committee met to assess the case of the petitioner she was neither under suspension nor was any charge-sheet issued to her. The Tribunal, consequently, replying upon its own Full Bench decision as also a decision of this Court in **New Bank of India V. N.P.Sehgal** (1991) 2 SCC 220 allowed the original application and issued the directions noted above.

6 The question, however, stand concluded by a three Judge decision of this Court in **Union of India V. K.V Janakiraman** (1991) 4 SCC 109 in which the same view has been taken. We are in respectful agreement with the above decision. We are also of the opinion that if one the date on which the name of a person is considered by the Departmental Promotion Committee for promotion to a higher post, such person is neither under suspension nor has any departmental proceedings been initiated against

him, his name, if he is found meritorious and suitable, has to be brought on the select list and the sealed cover procedure cannot be adopted. The recommendation of the Departmental Promotion Committee can be placed in a 'sealed cover' only if on the date of consideration of the name for promotion, the departmental proceedings had been initiated or were pending or on its conclusion, final orders had not been passed by the appropriate authority. It is obvious that if the officer, against whom the departmental proceedings were initiated is ultimately exonerated, the sealed cover containing the recommendation of the Departmental Promotion Committee would be opened, and the recommendation would be given effect to"

10 Accordingly the OA 871/04 is allowed and the respondents are directed to promote the applicant as Chief Conservator of Forests in preference to the 4th respondent and to give him arrears of salary and all other consequential benefits.

11 The question in OA 557/05 is whether Annexure A6 Article of Charge and Statement of Imputation dated 3.6.05 is sustainable at this belated stage. In our considered opinion this action of the respondents is also unsustainable. In a catena of judgments the Apex Court has held time and again that if there is inordinate unexplained and unsatisfactory delay in issuing charge memo, it would be unfair to permit the departmental inquiry to proceed at the late stage and some of these are mentioned here.

12 In State of Madhya Pradesh Vs. Bani Singh and another, 1990 (supp) SCC 738 the Hon'ble Supreme Court has held as under:

"The appeal against the order dated December 16, 1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the inquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned counsel. The irregularities which were the subject matter of the inquiry is said to have taken place between the years 1975-77. It is not the case of the departmental that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April, 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental inquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

13 In State of Punjab and others Vs. Chaman Lal Goyal, (1995) 2 SCC 570, the Hon'ble Supreme Court held as under:

"9. Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations bias, malafides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to

the delinquent officer in defending himself, the inquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the court has to indulge in a process of balancing. Now, let us see what are the factors in favour of the respondent. They are:

- (a) That he was transferred from the post of Superintendent of Nabha Jail and had given (sic up) charge of the post about six days prior to the incident. While the incident took place on the night intervening 1.1.1987/2-1-1987 the respondent had relinquished the charge of the said office on 26.12.1986. He was not there at the time of incident.
- (b) The explanation offered by the government for the delay in serving the charges is unacceptable. There was no reason for the Government to wait for the Sub Divisional Magistrate's report when it had with it the report of the Inspector General of Prisons which report was not only earlier in point of time but was made by the highest official of the prison administration, Head of the Department, itself. The Inspector General of Prisons was the superior of the respondent and was directly concerned with the prison administration whereas the Sub Divisional Magistrate was not so connected. In the circumstances, the explanation that the Government was waiting for the report of the Sub-Divisional Magistrate is unacceptable. Even otherwise they waited for two more years after obtaining a copy of the said report. Since no action was taken within a reasonable time after the incident, he was entitled to and he must have presumed that no action would be taken against him. After a lapse of five and a half years, he was being asked to face an inquiry.
- (C) If not in 1992, his case for promotion was bound to come up for consideration in 1993 or at any rate in 1994. The pendency of a disciplinary inquiry was bound to cause him prejudice in that matter apart from subjecting him to the worry and inconvenience involved in facing such an inquiry.

14. In State of A.P. Vs. N.Radhakrishan (1998) 4 SCC 154 the Apex Court has held as under:

"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 ad 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 mental agony and also monetary loss when these are unnecessarily prolonged 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 is 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 suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed 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 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."

15. From the facts of the present case, it is seen that the incident

based on which the disciplinary proceedings have been initiated by the Annexure.A6 Memo of Charge dated 3.6.05 contain irregularities alleged to have committed by the Applicant more than 12 years back from 10.8.92 to 11.7.94. No explanation whatsoever has been offered by the Respondents for the delay in serving the charges, in spite of the specific allegation to that effect has been made by the Applicant in the OA. The delay in initiating the proceedings has caused great prejudice to the Applicant and the Respondents are entirely responsible for causing such long delay and the Applicant is not blameworthy at all in this regard. We, therefore, quash and set aside Annexure.A6 Charge Memo issued to the Applicant initiating disciplinary proceedings against him and declare that the respondents are not competent to initiate the disciplinary proceedings against him at this stage for the allegations made in Annexure.A6. The Respondents are further directed not to proceed with the Annexure.A6 Charge Memo any longer.

16 In the facts and circumstances of the case, both the O.As stand allowed. There is no order as to costs.

Dated this the 23rd day of January, 2006

GEORGÉ PARACKEN
JUDICIAL MEMBER

S.

CERTIFIED TRUE COPY
Date

SATHINAIR
VICE CHAIRMAN

Deputy Registrar