

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.16/2006

.....FRIDAY..... this the ..21st July 2006

C O R A M:

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

K.Nagarajan, S/o K.Karuppaiah Thevar,
Assistant Administrative Officer,
Regional Centre of Veraval, Central Marine
Fisheries Res.Institute, Veraval Junagadh, Gujarat.
R/o No.15196, Yadava Street, Mandapam,
Ramanathapuram, District Tamil Nadu.

(By Advocate Mr.T.C.G.Swamy)

Applicant.

Vs.

- 1 Indian Council of Agricultural Research represented
by the Secretary, ICAR, Krishi Bhawan, New Delhi.
- 2 The Director, Central Marine Fisheries Research
Institute, North Post Office, Ernakulam.
- 3 Dr.M.Rajagopalan, Head, (FEMD) (Inquiry officer)
Central Marine Fisheries Research Institute,
North Post Office, Ernakulam.

(By Advocate Mr.P.Jacob Varghese)

Respondents.

HON'BLE SMT SATHI NAIR, VICE CHAIRMAN

ORDER


The applicant who was working as Assistant Administrative
Officer under the respondents is aggrieved by the charge memo issued

to him vide Annx.A5, the order appointing the Inquiry Officer at Annx.A14 and the proceedings of the Inquiry Officer dated 19.4.2005, which according to him are totally opposed to the principles of natural justice and violative of the constitutional guarantees enshrined in Articles 14, 16 and 311 of the Constitution. The applicant has challenged the above orders mainly on the following grounds:

- (i) the alleged incident had taken place in March 2001 and when his explanation had been called for, he had explained the matter at length as in Annx.A2 that there have been no lapses and he is not in any way responsible for the same, no reply was given to his representation and about two years thereafter Annx.A5 memorandum of charges has been issued, again three months after issue of the charge memorandum the Inquiry Officer was appointed by Annx.A14 and the Inquiry Officer commenced the enquiry after five months on 18.4.05, on that date the applicant requested for providing copies of the statement of witnesses listed in the charge memo and the applicant has been informed that they would be provided on the same day and on 19.4.05 it was stated that these documents were not available with the prosecution and the enquiry was adjourned and thereafter there is no action to proceed with the enquiry.
- (ii) The applicant has in no way contributed to the delay in initiation of the proceedings or the finalisation of the same. The delay are directly attributable to the respondents only.
- (iii) None of the annexures to the charge memo at Annx.A5 has been signed or authenticated by the disciplinary authority and finally the

applicant has submitted that the entire proceedings are actuated by ulterior reasons and he is due to retire in about 18 months and if the proceedings are allowed to continue indefinitely, substantial prejudice would be caused to him.


2 Per contra, the respondents have submitted in the reply statement that the Central Marine Fisheries Research Institute is one of the constituent units of the Indian Council of Agricultural Research, an autonomous organisation and the rules and orders issued by the Ministries/ Departments of the Govt of India are being mutatis mutandis followed in this organisation. The applicant was working as Assistant Administrative Officer, at the Mandapam Regional Centre of the Institute and he was responsible for processing the case of purchase of a 200 KVA Transformer for the Centre during March 2001. Based on certain complaints against the applicant regarding irregularities in the purchase, the Anti Corruption Branch of Central Bureau of Investigation, Chennai had conducted a detailed investigation and on the basis of the report of the CBI and on advice of the Chief Vigilance Officer of the organisation the 2nd respondent who is the disciplinary authority of the applicant issued Annx.A5, the charge memorandum dated 3.8.04. The Ministry of Home Affairs vide OM No.234/18/65 AVD (2) dated 5.3.66 have issued instructions that the Ministry of Law have advised on the format to be followed in issuing charge sheets, that the annexures to the charge memo need not be signed by the disciplinary authority. Hence the allegation of the applicant that the annexures



attached to the charge memo are not signed is not valid. The appointment of the Inquiry Officer cannot be faulted as the applicant vide his letter dated 4.10.04 had denied the charges, it had thus become obligatory on the part of the disciplinary authority to appoint an Inquiry Officer as required under the provisions of CCS(CCA) Rules. Several reminders have been issued to the Inquiry Officer for expediting the Inquiry Report and the delay on the part of the Inquiry Officer is due to his busy schedule as he is also functioning as the Chairman of the Consultancy Processing Cell and the Principal Investigator of Research Project funded by outside agencies. The investigation report of the CBI was made available to the respondents only in the month of July 2004 and the case was not delayed by the respondents thereafter. Hence it is contended that the allegation of the applicant that undue hardship has been caused to him is baseless.


3 The applicant in a rejoinder has disputed that the memorandum of charges was based on a report of the CBI and also the contention of the respondents that the annexures to the charge memo need not be signed by the disciplinary authority. He has also submitted that if the Inquiry officer is unable to conduct the enquiry within a reasonable time, it was incumbent upon the disciplinary authority to change the Inquiry Officer and have some one else posted to discharge the duties.

4 The respondents have also filed additional reply statement submitting that the applicant could have produced all the facts in



connection with the charge before the Inquiry Officer and he has resorted to file the present OA before exhausting the remedies available to him and his contentions are not supported by any rule provisions.

5 We heard Mr.TCG Swamy, for the applicant and Mr.P.Jacob Varghese for the respondents. The learned counsel for the applicant has argued that the applicant is being made a scape goat and the disciplinary proceedings have been prolonged intentionally by the respondents in order to benefit certain other officers involved in this case and the Inquiry Officer after adjourning the case on 19.4.05 has not chosen to take up the enquiry even during the last six months after filing the O.A. The respondents cannot escape their responsibility by arguing that the Inquiry Officer was pre-occupied with other important work. On the question of annexures to the charge memorandum not being signed by the disciplinary authority, he relied on a judgment of this Tribunal in OA No.514/02 wherein the effect of no signatures has been thoroughly discussed and argued that the decision of this Tribunal should govern the issue in this case too. The counsel for the respondents on the other hand argued that there has been no delay in initiation of the disciplinary proceedings as far as the respondents are concerned and whatever delay had occurred before the issue of the charge memorandum cannot be equated with inordinate delays which have been adversely commented upon by the Courts and Tribunals. The applicant has also not chosen to make any representation after 19.4.05, the last date of enquiry. The respondents have also not been keeping quiet as stated in the reply



statement, reminders to the Inquiry Officer for expediting the Inquiry Report by Memorandum dated 6.1.05, 9.2.05, 11.3.05 and 5.1.06 (at Annx.R4 series) have been sent.

6 We have given due consideration to the arguments advanced and perused the judgment/ Rules referred to. As stated above, the applicant has assailed the impugned orders mainly on the grounds of inordinate delay, non-application of mind, non-appending of signatures to the annexures and the inaction of the Inquiry Officer. The applicant has also inter alia contended that he was not responsible for the lapses and that his explanation at Annx.A2 has not been considered properly before the charge memorandum was issued. In the first instance we are unable to accept the contention of the applicant regarding his involvement as he was working as the Assistant Administrative Officer at the Centre and being the in-charge of the administration he was squarely responsible for ensuring that the procedures prescribed for making purchases are scrupulously adhered to and statutory requirements are satisfied. He cannot absolve himself of the responsibility by stating that the UDC, the Accounts Officer and other Assistants did not cooperate with him and that it was their duty to see that Administrative and Audit instructions are complied with. In any case, the extent of his responsibility and culpability would be determined in the enquiry as he had denied the charges. Therefore, this cannot be a reason for setting aside the charge memorandum.

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7 As regards not signing the annexures to the charge memorandum, the respondents have produced an Office Memorandum of the Ministry of Home Affairs, furnishing the advice of the Law Ministry that annexures need not be signed by the disciplinary authority and they have accordingly followed these instructions. The counsel for the applicant has relied on the judgment of this Tribunal in OA 514/02, reported in 2003(3) ATJ 287 regarding the effect of signatures. This has been rendered in a different context. The applicant in OA 514/02 was a Group A Officer appointed by the President of India who contended that his disciplinary authority is the President and that the orders of the Member concerned should have been obtained for the purpose of initiation of disciplinary action. The Tribunal considered the above contentions and recorded their findings as under.

“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 Annx.A1 which would show that the articles of charges mentioned therein has been approved by the competent authority. Although it is seen stated in Annx.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 Annx.A1 memorandum of charge is without jurisdiction and not valid, has therefore, considerable force.”

The observation of the Tribunal were with reference to the absence of approval by the competent authority. Apart from the above

observation, there were other grounds which were also held to be valid resulting in quashing the charge memo. In the case on hand it is not the contention that the charges are not approved by the competent authority. In this case, the charge memorandum has been signed duly by the disciplinary authority. The annexures which are unsigned pertain to the list of documents, list of witnesses and also the statement of imputations in support of the articles of charges. Even if this is an omission it is a minor technicality. Since the charge memorandum to which annexures referred to in the body of the memorandum are only enclosures and the main memorandum itself itself has been duly signed, we do not consider that this omission to sign individual annexures would vitiate any of the provisions of Rule 14 of the CCS(CCA) Rules inasmuch as the rules themselves do not stipulate such a condition that each and every annexure should be signed.

8 This leaves us with only the question of delay. No doubt there has been a delay in the initiation of the proceedings, as the alleged incident took place in March 2001 and the charge memo has been issued in August 2004. The respondents have explained the delay on the ground that the CBI report was made available to the second respondent, the disciplinary authority, only in the month of July 2004 and the charge memo had been issued immediately thereafter in August 2004. From what could be observed from the record, the applicant's explanation was called for vide Annx.A1 in 2002 itself and he had submitted a reply immediately and the matter seems to have been handed-over to the CBI


thereafter and since the respondents were awaiting the report of the CBI no further action was taken on the explanation furnished by the applicant. The delay in initiation of the proceedings is not attributable to the respondents as the charge memorandum had been issued immediately on receipt of the report of the CBI. The time taken by the CBI cannot be attributed as delay on the part of the respondents. Therefore, this delay has been satisfactorily explained.

9 The second stage of delay had occurred at the level of the Inquiry Officer. The Inquiry officer was appointed on 10.11.04 by Annx.A14 order. However, he commenced the enquiry only after six months in April 2005 and after conducting the enquiry on two consecutive days i.e. 18.4.05 and 19.4.05, has chosen to keep the enquiry on hold informing that the next date will be intimated in due course. The Inquiry Officer has also not responded to the reminders from the respondents. It has to be noted that out of the four reminders issued by the respondents, the first three were issued before the commencement of the enquiry and probably the Inquiry Officer was compelled to commence the enquiry because of these reminders and the fourth reminder has been sent in January 2006, just before filing of the O.A. These facts lead us to the conclusion that the respondents including the Inquiry Officer have not shown any urgency in completing the enquiry proceedings. In respect of delay and in determining whether the delay has vitiated the disciplinary proceedings, the Apex Court has laid down clear guidelines in a series of judgments and we would refer in particular to the case of State of A P

Vs. N.Radhakishan reported in (1998) 4 SCC 154.


“19 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 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.”

10 In the present case we find that there was no omission on the part of the applicant in cooperating with the Inquiry officer. He had requested for certain documents which was stated to be not in possession of the respondents as recorded by the Inquiry Officer in the daily order sheet for 19.4.05 but it was also clarified that these documents are available in the file referred to in the list of documents



Annx.A3 which had already been furnished to the applicant. Thus there was no possible hurdle for the Inquiry Officer to proceed with the enquiry as both Presenting Officer and Defence Assistant were also in position. It has therefore, to be held that the Inquiry Officer has defaulted in his responsibility to complete the enquiry and has shown total disregard of the provisions of the statute under which he was appointed and the directions of the higher authorities for which in accordance with the provisions of the CCA Rules itself he is liable for disciplinary action. The question here is whether for the fault of the Inquiry Officer, the applicant should be absolved of the charges which were based on a detailed investigation conducted by the CBI and related to financial irregularities. As per the ratio of the above judgment, each case has to be examined on the facts and circumstances and the court should take into consideration all the relevant factors and balance the two diverse considerations. By undertaking this balancing process with due regard to the charges against the applicant, we are of the view that the disciplinary proceedings should be allowed to take its course and a final opportunity be given to the Inquiry Officer to complete the enquiry within a fixed time frame. Since the applicant is stated to be retiring within a period of 18 months, we consider it all the more proper that a reasonable time limit for not only completion of enquiry but also the finalisation of the disciplinary proceedings should be fixed.

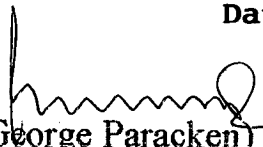
11 In the light of the legal position and the reasons stated above, we direct the 3rd respondent, the Inquiry Officer, to complete the enquiry

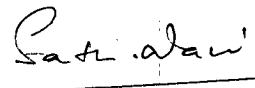


and submit his report within a period of three months and the applicant shall cooperate with the enquiry and the 2nd respondent, namely the disciplinary authority shall on receipt of the Inquiry Report finalise the disciplinary proceedings and issue appropriate orders within a further period of three months from the date of receipt of the Inquiry Report.

The O.A is accordingly disposed of. No order as to costs.

Dated 21.7.2006.


(George Paracken)
Judicial Member


(Mrs Sathi Nair)
Vice Chairman.

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