

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Reserved on 06.05.2015.

Pronounced on 19.05.2015.

Original Application No.403/2003

**Hon'ble Mr. Navneet Kumar, Member (J)
Hon'ble Ms. Jayati Chandra, Member (A)**

Bharat Bhushan Singh, aged about 45 years, son of Sri B.N. Singh, R/o Mohalla-Humayunpur North, Gorakhpur.

-Applicant.

By Advocate: Sri Praveen Kumar.

Versus.

1. Union of India, through Secretary, Ministry of Communication, Department of Telecommunication, Sanchar Bhawan, New Delhi.
2. Chairman and Managing Director, Bharat Sanchar Nigam Ltd., New Delhi.
3. Chief General Manager, Bharat Sanchar Nigam Ltd. (East), Hazratganj, Lucknow.

-Respondents.

By Advocate: Sri S.P. Singh.

O R D E R

By Ms. Jayati Chandra, Member (A)

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, seeking the following relief(s):-

(i). To issue direction or orders thereby commanding /directing the respondents to consider the candidature of the applicant for promotion to the post of General Manager (Telecom) from the date similarly situated persons of the same batch have been promoted.

J. Chandra

(ii). To issue order or direction thereby quashing the impugned chargesheets dated 11.02.2002 and 27.08.2002 alongwith the enquiry proceedings if any pending against the applicant.

(iii). To issue order or direction order to the opposite parties thereby commanding them to extend all the service benefits to the applicant from the date the other batchmates have been allowed.

(iv). To issue any other appropriate order or direction which this Hon'ble Tribunal deem fit and proper in the interest of applicant."

2. Initially, the case was heard and decided by an order dated 09.1.2008. The order was challenged by means of Writ Petition No.1433 (S/B) of 2008 before the Hon'ble High Court of Judicature at Allahabad (Lucknow Bench). This case was remanded to the Tribunal by set-aside the order dated 09.01.2008 with the following directions and observations:-

"In view of the aforesaid, we set aside the impugned judgment and order dated 09.01.2008 passed by the Central Administrative Tribunal, Lucknow in Original Application No.403 of 2003 (Bharat Bhushan Singh Vs. Union of India & Others) and remit the matter back to the Tribunal by giving opportunity to the petitioner to bring the averments as stated in paragraph 10 of the writ petition and paragraph 4 and 5 of the supplementary affidavit by means of an affidavit before the Tribunal. Upon such being done by the petitioner Union of India within a period of one month from today sufficient opportunity to the other side be given to rebut such averments whereafter the Tribunal may decide the issue as expeditiously as possible and preferably within a period of four months thereafter. The writ petition stands disposed of. No order is passed as to costs."

3. The applicant in the OA challenged the charge-sheet dated 11.2.2002 (henceforth to be referred to as C.S.-1)

J. Chander

and 27.8.2002 (to be referred to as C.S.-II) (Annexure-1 and Annexure-2 respectively) on the ground that the C.S.-I relates to the period when he was posted as TDE, Gorakhpur from 05.01.1991 to 17.07.1993 has been issued after lapse of more than 10 years. The second charge-sheet dated 27.08.2002 relates to the alleged lapse during his posting as TDE, Sitapur in the year 1993-1995 and the charge sheet has been issued after a delay of about 10 years. Thus the two charge sheets are vitiated in the eyes of law and no penalty can be imposed on the basis of the aforesaid charge-sheets.

4. In compliance of the directions of the Hon'ble High Court the respondents have filed the contents of para-10 of writ petition and para-4 and 5 of the Supplementary in W.P. by which the reasons for the delay issue of charge sheets have been explained. The gist of the submission is summarized below:-

The requirements of natural justice and exhaustiveness in favour of Central Government officers in Disciplinary proceedings/Regular Departmental Action involves several independent autonomous Authorities and is divided in Two parts. Firstly the Investigation on Complaint, Secondly the Regular Disciplinary Proceedings based of report of first investigation proceeding and as such it takes time for completion. In the case of CS-1, a compliant dated 29.05.1995 was received on 05.06.1995. The preliminary investigation were conducted by the O/o Chief General Manager, Telecom, U.P. (East) Circle, Lucknow under Rule 16 of CCS (CCA) Rules, 1965. The investigation report was submitted on 03.01.1996 received in the department on 4.1.1996. It was examined in CVC for its first stage advice received on 24.4.2001 and the Memorandum of imputation of his conduct was issued on 11.02.2002 (Annexure-1).

J.Chandre

In the case of CS-II, Public Complaint dated 28.10.1994 as received on 14.11.1994 in the office of Senior Deputy Director General (Vigilance), and concerned UP (East) Telecom Circle was asked to investigate the case and a detailed investigation report via File No. VID/M-9/261/98/1, Dated 03.01.2.1998 was furnished by the said circle office via their letter dated 03.01.2.1998. The investigation report was duly examined by Vigilance Wing of the Deptt. Of Telecommunication in Consultation with Central Vigilance Commission vide its initial/1st stage advice dated 06.02.2001, it was decided by the Competent Disciplinary Authority i.e. Ministry of State for Communication to initiate a Regular Departmental Proceeding Vide File No.2-156/94-VM-III/II, dated 12/13.03.2001 against the applicant. In pursuance of the decision of the Disciplinary Authority a Memo of Imputation of charges of misconduct under Rule 14 of CCS (CCA) Rules, 1965 with the approval of above said Competent Authority was issued on 27.08.2002 (Annexure-2).

5. Through the para-4 and 5 of the supplementary in the writ petition which have also been filed in the OA alongwith the requisite affidavit the respondents have elaborated not only the background of the impugned charge-sheets, but also the subsequent progress made in the two disciplinary cases instituted vide the 2 charge sheets. In the case of CS-I, the applicant gave his reply on 24.10.2002 upon which comments were sought from the concerned circle which were received on 07.11.2003. Thereafter, the matter was duly examined in the Vigilance Wing and was referred to U.P.S.C. for their advice on 13.05.2004. The U.P.S.C. sought some information/clarification on 07.06.2004 which was submitted on 4.10.2004. The advice of U.P.S.C. was given

T. Chaudhary

on 29.06.2005 recommending the penalty of "Censure". A punishment of "Censure" was issued on 19.07.2005.

6. In the case of CS-II, after issue of Memorandum of charges (the date & events having been elaborated upon in para-4 above), the applicant denied the charges. Departmental enquiry was held and the enquiry report was submitted on 13.12.2005. The same was sent to CVC for obtaining the second stage advice which was given on 10.02.2006. The show cause notice alongwith second stage advice of CVC was sent to the applicant calling upon him to submit his representation. The applicant submitted his representation on 16.06.2006. The matter was duly examined and the advice of U.P.S.C. was sought on 22.05.2007 and the U.P.S.C. gave its advice on 29.01.2008.

7. The applicant has filed his reply to the affidavit filed by the respondents in compliance of the Hon'ble High Court order dated 18.09.2014. Their averment is that as per Central Vigilance Commission circular dated 23.05.2000 and 29.11.2012 a normal time of issuing a charge-sheet is 8-9 months after receipt of complain. The department has not explained as to why it took more than 04 years investigating the complaint dated 28.10.1994 received on 19.11.1994. It took more than 4 years and thereafter, the Vigilance Commission took three years to give its decision to initiate a departmental proceeding in the case of CS-II. Similarly, in the case of CS-I the delay of all most 5 years at the level of CVC has not been adequately explained. This appears to be some kind of harassment on the eve of the applicant's selection to the post of General Manager and is in keeping with the policy of harassing him

through frequent transfers to various places. The time schedule for dealing with cases referred to them as per CVC's order dated 23.05.2000 is as follows:-

S.No.	State of Investigation or inquiry	Time Limit
1	Decision as to whether the complaint involves a vigilance angle.	One month from receipt of the complaint.
2.	Decision on complaint, whether to be filed or to be entrusted to CBI or to be taken up for investigation by departmental agency or to be sent to the concerned administrative authority for necessary action.	-do-
3.	Conducting investigation and submission or report.	Three months.
4.	Department's comments on the CBI reports in cases requiring Commission's advice.	One month from the date of receipt of CBI's report by the CVO/Disciplinary Authority.
5.	Referring departmental investigation reports to the Commission for advice.	One month from the date of receipt of investigation report.
6.	Reconsideration of the Commission's advice, if required.	One month from the date of receipt of Commission's advice.
7.	Issue of charge-sheet, if required.	(i) One month from the date of receipt of Commission's advice. (ii) Two months from the date of receipt of investigation report.

The same has been elaborated in the subsequent order dated 29.11.2012.

8. During the course of hearing the learned counsel for the applicant has further relied upon the order dated 28.08.2011 passed in O.A.No.297/2009. The relevant para-10 of which reads as follows:-

"Finally, therefore, in view of the aforesaid discussions, we come to the conclusion that there was an inordinate delay of about 11 years in issuing the charge sheet for initiating disciplinary proceedings for which

T. Chandru

there is no proper explanation from the side of the respondents. Therefore, having regard to the aforesaid preposition of law laid down by the Hon'ble Apex Court in the above cases, the disciplinary proceedings in question, deserves to be quashed, including the order of recovery against applicant initiated through charge sheet dated 11.12.2008 along with recovery order dated 27.3.2009."

9. The Hon'ble High Court of Madras in the case of N. Ramakrishnan v.s The Deputy Inspector General of Police, Tirunelveli Range, Triunelveli in para-19 has held as quoted below:-

" The Supreme Court repeatedly held that the inordinate delay in initiation of the disciplinary proceedings is a ground for quashing the charge memo unless the respondent satisfactorily explains the delay. When no explanation is forthcoming with regard to the delay, necessarily the unexplained delay would cause serious prejudice to the employee."

10. We have heard the learned counsel for the parties and have perused the record.

11. In this case, as directed by the Hon'ble High Court the time gap (if any) in giving the impugned charge sheets have been examined as per statement of the respondents. The department took 7 months before the matter was send to the CVC for First stage advice in the case of CS-I. The department referred the matter to CVC on 03.01.1996, who gave its first stage advice after more than 5 years on 24.04.2001. In CS-II the departmental formality of enquiry into the veracity of

the substance of the complaint took about 4 years. The CVC have taken three years later on for its first stage advice dated 24.04.2001. Thus, the major delay occurred in the case of CS-I at the level of CVC and in the case of CS-II within the department. In the case of CS-II the allegations were many and detailed. Since the full body of the CS-II (Annexure-2) shows that the allegations were on financial nature dealing with alleged irregularities in multiplicity of transactions including five cases amounting to Rs.4.57 Lakhs, three cases amounting to Rs.2.61 lakhs and 35 cases amounting to several Lakhs. Four years time to conduct the enquiry is not justified, but is understandable. In the case of CS-I the departmental concluded its enquiry within 7 months. The delay at the level of CVC is far more crucial. The CVC by its own orders lays-down a time period of maximum 7 to 8 months for the issue of charge-sheet from the time of deciding whether complaint involves vigilance angle or not. Although, no specific plea is taken, but the implied explanation in the time is that both volume of work and/or the paucity for staff is responsible for overshooting the time as scheduled. We are unable to understand this logic. The department itself lays-down a time schedule for carrying out certain work. How is that it failed to take into account of number of transactions and the standard time required to be taken at each level. It is not for us to determine whether they taken 6 months or 6 years, but, once an organization lays down a time schedule only in a very exceptional circumstance can a condonation of lapse from the same be given by a judicial authority. Moreover, we are aware that a departmental enquiry (both on primarily or detailed) requires the co-operation of the charged officer, witness etc., but same is

not applicable to the CVC. The first stage advice is given generally after a scrutiny of papers submitted. This is only a desk function and no shelter can be taken on the ground of non-co-operation of charged officer, witnesses of both the side i.e. prosecution and defendant.

12. The respondents, as directed by the Hon'ble High Court have stated that the case of CS-I has been concluded as a penalty of "Censure" has been awarded vide order dated 19.07.2005 and in the case of CS-II a decision to institute major penalty has been taken on 29.01.2008. However, as these orders have not been challenged in this OA, we refrain ourselves from dealing with the same. The applicant has placed reliance on the order dated 19.09.2002 of **Hon'ble Delhi High Court in the case of Than Singh vs. Union of India and others passed in CWP No.3448/1998 reported in 2003 (3) ATJ**, which has gone into the question of delay in charge-sheet even after the conclusion of the disciplinary proceeding in the following terms:-

"The learned Tribunal, fortunately, did not address itself to the right question. It is now a well-settled principle of law that validity of a charge-sheet can be questioned on a limited ground. It is also well-settled that normally the court or the Tribunal does not interfere at the stage of show-cause. However, once the disciplinary proceedings are over, there does not exist any bar in the way of delinquent officer to raise all contentions including ones relating to invalidity of the charge-sheet. The grounds upon which the correctness or otherwise of the charge-sheet can be questioned are:

(i). If it does not disclose any misconduct.

- (ii). If it discloses bias or pre-judgment of the guilt of the charged employee.
- (iii). There is non-application of mind in issuing the charge-sheet.
- (iv). If it does not disclose any misconduct.
- (v). If it is vague.
- (vi). If it is based on stale allegations.
- (vii). If it is issued mala fide."

13. In this case the applicants have challenged the charge sheets on the basis of their being stale allegation.

In State of Madhya Pradesh vs. Bani Singh and Another reported in AIR 1990 SC-1308 the Hon'ble Supreme Court had observed as under:-

"4. The appeal against the order dated 16.12.1987 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 enquiry 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 enquiry is said to have taken place between the years 1975-1977. It is not the case of the department 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 enquiry 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."

(b). The **Hon'ble Supreme Court in State of Punjab & Others vs. Chaman Lal Goyal reported in (1995) 2 SCC-570** had observed as under:-

"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 of 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 fact-, of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted."

14. Therefore, in view of the above discussions, the OA deserves to be allowed and is accordingly allowed. The charge-sheets dated 11.02.2002 and 27.08.2002 stands quashed. No order as to costs.

J. Chandra
(Ms. Jayati Chandra)
Member (A)

Navneet Kumar
(Navneet Kumar)
Member (J)

Amit/

J. Chandra.