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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

CIRCUIT BENCH,  
LUCKNOW

Original Application No.308/89(L)

Dr. V. Verma ...Applicant.

versus

Union of India & others ...Respondents.

HON. MR. JUSTICE K. Nath, V.C.  
HON. MR. K. Obayya, Adm. Member.

(K. OBAYYA, A.M.)

This application under section 19 of the Administrative Tribunals Act, 1985, has been filed challenging the departmental enquiry proceedings initiated on the basis of a charge sheet issued to the applicant on 1.8.1984 (Annexure 3) and to direct the respondents to promote the applicant to the post of Chief Medical Officer with effect from 14.3.1988.

2. The applicant, Dr. V. Verma is working as a Senior Medical Officer in the Central Government Health Scheme (C.G.H.S. for short) at Lucknow. He joined the service in the year 1967 as a Junior Medical Officer and was promoted as a Senior Medical Officer with effect from 1.1.1978. As per the Seniority List of Medical Officers notified by the Department on 1.2.1988, he stood at serial No. 340. While he was working as Medical Officer in-charge at Jaipur, during the year 1980-81, there was an enquiry by C.B.I. which led to the registration of an

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F.I.R. against the applicant for alleged wrong drawal of conveyance allowance. The F.I.R. listed 58 such wrong claims amounting to Rs 5497.00. Detailed investigations, however, established that there were only 21 false claims and the amount covered Rs 288.75. A Memo dated 12.4.1983, accompanied by a statement of imputations of mis-conduct was served on the applicant under rule 16 of C.C.S.(C.C.A.) Rules, 1965. The applicant submitted reply on 22.7.1983 denying the charges. The disciplinary authority, however, decided to proceed <sup>further</sup> with the enquiry. Therefore, the charge-sheet dated 1.8.1984 was served on the applicant for minor penalty. The charge was for claims of false conveyance allowances amounting to Rs 288.75 for visits not actually made by the applicant which showed lack of integrity and thus contravening the provisions of rule 3 of C.C.S. (Conduct) Rules, 1964. To this the applicant, in his reply dated 14.8.84 indicated that <sup>as the</sup> charge sheet contained the same statement of imputations issued to him earlier on 12.4.1983, his reply to that statement may be taken as reply to the charge-sheet. Thereafter, the enquiry was held on different dates between 20.5.85 to 27.6.1988 and concluded on 31.8.1988. The Enquiry Officer held that the charges were established in respect of 9 visits involving Rs 123.75. Copy of the enquiry report was given to the applicant to which he made his written submissions. No decision, however, has been taken on the enquiry report by the disciplinary authority.

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3. The contention of the applicant is that he has put in more than 22 years of service without any blemish in his record but he was overlooked for promotion while many of his juniors were promoted to the post of Chief Medical Officer on 14.3.88 and 8.7.88, on the the ground that there is departmental enquiry against the applicant. He alleges that this enquiry was unduly delayed for no fault of his, own with a malafide intention by the authorities to deny him of his due promotion. His representations to the concerned authorities evoked no final response.

4. The respondents, in their counter affidavit, denied the allegations regarding malafides. According to them, C.B.I. enquiry was based on certain information received by them. They admit that the case of the applicant was not considered for promotion due to pendency of disciplinary proceedings. The delay in the finalisation of enquiry proceedings was due to changes of enquiry officer and Presiding Officer, and on account of administrative reasons, according to them, officers against whom disciplinary proceedings are pending, are barred from promotion to higher post during the pendency of such proceedings.

5. In the rejoinder filed by the applicant, he denied that there was any delay on the part of the applicant to proceed with the enquiry. The applicant also contended that in terms of Government Department of Personnel and Training Office No. 22011/20/86-Establishment (A) dated 12.

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was entitled to be promoted on adhoc basis due to long pendency of the enquiry (Annexure S.A.-1).

6. We heard the learned counsel for the parties and have also gone through the record carefully. The main thrust of the arguments of the learned counsel for the applicant was on the delay in proceeding with the enquiry, in spite of persistent efforts of the applicant to get enquiry completed early. He also pointed out that denial of promotion to the applicant was against rules, in as much as D.P.C., which met, should have considered his candidature and findings placed in a sealed cover according to rules. He also relied on the decision of this Tribunal in Ramesh Moreshwar Surengapure vs. Chief Vigilance Officer, Central Board of Excise and Customs, New Delhi and another (1988) 7, A.T.C. 59, Calcutta Bench). In this case the applicant who was an Inspector in Central Excise, was charge-sheeted for clearing certain imported packages of dry fruit which were in excess of permissible weight. The enquiry dragged <sup>on</sup> for six years and thereafter the disciplinary authority took 8 more years to impose penalty of reduction in pay scale by one stage for one year. The punishment was upheld in appeal. Relying on the decision of Orissa High Court in Manas Ranjan Das vs. State of Orissa (1973 (2) SLR 533) in which the disciplinary proceedings were quashed due to reasons of inordinate delay and also the decision of the Supreme Court in Ramchander vs. Union of India (A.T.R. 1986(2) S.C. 252), <sup>in the above cited case</sup> the Tribunal/quashed the punishment as also the disciplinary proceedings by observing " We cannot overlook that the applicant has already suffered mental agony and obliquy for about 2 decades during which the disciplinary proceedings were conceived and proceeded with"

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In MP. SINGH VS. GOVERNMENT OF INDIA & OTHERS 1988 (7) ATC 605 the Circuit Bench (Shimla) of this Tribunal held that prolonging an enquiry for unduly long period was illegal and unjust, as this results in denial of opportunities for career advancement during pendency of enquiry. The issue involved in this case was delay in departmental enquiry leading to non consideration of the charged officer for promotion on the ground of pendency of enquiry. The Tribunal also observed:

"a government servant is entitled to know at the earliest possible time the outcome of disciplinary proceedings initiated against him instead of hanging over his head like Democles' Sword for many years.

A similar view was taken in BUPATI KUMAR SARDAR VS. UNION OF INDIA 1989(10) A.T.C. 209, Calcutta in which it was held that pendency of disciplinary enquiry based on minor penalty charge sheet could never stand in the way of giving the promotion. The learned counsel also cited the decision of Karnataka High Court in Sadashiv A. vs. State of Karnataka and another 1982 (3) SLR 364 in which it was held :

"withholding of promotion of a person who has been found fit by DP.C. during pendency of departmental enquiry, is unreasonable."

7. From the record it is noticed that in this case the enquiry was for the alleged misdeed relating to the year 1980-81. A memo was served on the applicant on 18.7.83, followed by a formal charge sheet on 1.8.84. The applicant submitted his reply on 16.8.84 and the enquiry dragged on till 31.8.88. Thereafter, another year was taken by the department to furnish copy of the enquiry report to the applicant, which was done on 30.10.89 for which written submissions were made by him promptly thereafter. No decision has been taken by the

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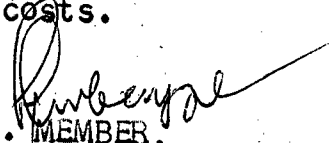
department on the enquiry report. The alleged amount involved in false claims, which has come down to Rs 123.75. The explanation of the respondents that the delay was due to the fact that there was change of enquiry officer, presenting officer and that also due to other procedural delays, cannot be a satisfactory explanation to account for nearly more than 7 years of pendency of the enquiry. It is also admitted that the case of the applicant was not considered for promotion due to pendency of the departmental enquiry. This is in clear violation of the rules and instructions on the subject. The rules and instructions lay down that in cases where the officer is facing departmental enquiry, the D.P.C. should consider such officers if falling within the zone of consideration, assess their suitability for promotion and keep its decision in a sealed cover, to be opened after the proceedings are concluded. A six monthly review of such cases is also provided. Admittedly, though promotions of juniors of the applicant were made, the applicant's name was not even considered. On this ground alone the application deserves to be allowed. The enquiry officer has also observed that the sum involved is petty and a senior Doctor of the standing of the applicant has already suffered for 7 long years, though we consider that the sum involved is not the criteria in such matters but the very act that is reprehensible nevertheless we feel that unduly long delay in enquiry for no fault of the applicant is not justified.

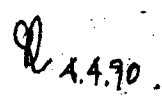
8. Taking into consideration the facts of the case of this Tribunal in similar cases, we are of the view that the delay in enquiry proceedings exhibit very casual and indifferent attitude. It is apparent that

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sense of seriousness or urgency is lacking. This has been allowed to drag on in a very routine manner. The applicant has been under clouds for 7 long years and subjected to mental agony, watching all his juniors overtaking him for no fault of his. We consider that it is a fit case to quash the disciplinary proceedings initiated by a charge dated 1.8.84 and accordingly we order that the disciplinary proceedings initiated on the basis of charge sheet dated 1.8.84 be quashed. We also direct that the respondents should consider the case of the applicant for promotion on merits and if found suitable, be promoted giving him seniority and other benefits as are due to him under the rules. The petition is disposed of as above with no order as to costs.

  
ADM. MEMBER.

 1.4.90.  
VICE CHAIRMAN.

Dated the ~~March~~ <sup>4<sup>th</sup> April</sup>, 1990.