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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

NEW BOMBAY BENCH

O.A. No. 153/88

198

Exxxx

DATE OF DECISION 18-4-1988

Mallapalli Hanmanthu Mahendra

Petitioner

Shri M.A.Mahalle

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. J.G.Rajadhyaksha, Member(A)

The Hon'ble Mr. M.B.Mujumdar, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

(3)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

O.A.153/88

Mallapalli Hanmanthu Mahendra,
201/B, Victor Apartments,
Bawdi Cross Lane, Marve Road,
Malad (W),
BOMBAY - 400 064.

.. Applicant.

vs.

1. Union of India,
through
The Secretary to Government,
Ministry of Industry,
(Department of Industrial
Development),
Udyog Bhavan,
NEW DELHI - 110 001.
2. Ms. Gayathri Ramachandran,
Director,
Government of India,
Ministry of Industry,
(Department of Industrial
Development),
Vigilence Section,
Udyog Bhavan,
NEW DELHI - 110 001.
3. Shri Rajendra Anand Rao Acharya,
Controller-General of Patents,
Designs and Trade Marks,
Controller-General's Head
Quarters Office, Old C.G.O. Building,
101, Maharshi Karve Road,
BOMBAY - 400 020.
4. Shri (M.S.O.) Sarker,
Deputy Controller of
Patents & Designs,
'Nizam Palace'
2nd M.S.O. Building,
5th, 6th & 7th Floor,
234/4 Acharya Jagdish Bose Road,
CALCUTTA - 700 020.
5. Dr. S.K. Pal,
Examiner of Patents and Designs,
'Nizam Palace'
2nd M.S.O. Building,
5th, 6th & 7th Floor,
234/4 Acharya Jagdish Bose Road,
CALCUTTA - 700 020.

.. Respondents

Courts: Hon'ble Member (A) J.G. Rajadhyaksha
Hon'ble Member (J) M.B. Mujumdar.

Appearances :

Shri M.A. Mahalle,
Advocate for the Applicant.

ORAL JUDGMENT

Date : 18-4-1988

{ PER: M.B. Mujumdar, Member(J) }

In this application, the applicant has challenged the memorandum dtd. 8-1-1987 with which a statement comprising seven charges was served on him.

2. The brief facts are these : The applicant was working as Sr. Examiner of Trade Marks, Bombay, which is a Group 'A' post. For some incident which had occurred between October, 1984 to February, 1985 he was suspended on 24-12-1986. A chargesheet comprising of seven charges was served on him on 8-1-1987. On 15-6-1987 one Shri Sarkar, Joint Controller of Patents was appointed as Inquiry Officer, Dr. S.K. Pal was appointed as Presenting Officer and the applicant appointed G.R. Gohel as his Defence Assistant. The enquiry was held on 10-9-1987 and 11-12-1987. On the later date the enquiry was adjourned to 19-4-1988. But the applicant is informed by a telegram that the enquiry proposed to be held on 19-4-1988 is deferred by few days and a fresh date would be communicated shortly. On 26-2-1988 the applicant has filed this application challenging the chargesheet dtd. 8-1-1987.

3. We may further point out that the applicant has filed O.A. No. 416/87 challenging the suspension order dtd. 24-2-1986. That application has been admitted and is pending in this Tribunal. The applicant has also filed another O.A. No. 3/88 for directing the respondents to allow him to cross the Efficiency Bar and to release his increments. That is also admitted and pending. Both these original applications are filed after the charge sheet was served on the applicant. However, he did not challenge the chargesheet in these applications and that is why he has filed the present application challenging the chargesheet.

4. We have heard Shri Mahalle, the learned advocate, for the applicant on the point of admission. He attacked the chargesheet on these grounds : (i) the chargesheet was not filed within one month of the incident, (ii) the authorities did not supply copies of documents on which they wanted to rely, along with the chargesheet, (iii) The Inquiry Officer and Presenting Officer were not appointed within one month from the issue of chargesheet, and (iv) the Inquiry Officer has not completed the enquiry

within the stipulated period of 6 months from the submission of the chargesheet. He has taken some other points also in the application but these are the main points.

5. After hearing Shri Mahalle we do not find any substance in any of the points urged by him. Regarding some of the points he has relied on the guidelines in the confidential circular dated 2-5-1985. But these are, after all, guidelines and we do not think that breach of such guidelines would give right to the Government servant to challenge the chargesheet itself or the enquiry which is being held on the basis of the chargesheet.

6. Regarding filing of the chargesheet within one month, Shri Mahalle has relied on instructions No. 3 in the confidential circular dtd. 2-5-1985. The circular is attached as Annexure A-5 to the application. The instruction only says that wherever the Central Vigilance Commission is not required to be consulted the chargesheet should be issued within 2 months of the receipt of the investigation report, and where there is no preliminary investigation report, a chargesheet should be issued within one month of taking a decision in the matter. Probably in this case the Central Vigilance Commission was not consulted. We do not know when the decision for holding the departmental enquiry was taken. Hence it is difficult to say that there is any breach of this instruction. Even assuming there is a breach it will not be fatal. Regarding the second point, viz. non supply of copies of documents Mr. Mahalle submitted that the copies should have been given to the applicant along with the chargesheet dtd. 8-1-1987. But he fairly admitted that the copies are given to the applicant on 10-9-1987. Hence the applicant will not be justified in requesting the Tribunal to quash the departmental enquiry on this ground.

7. It is true that the guideline No.8 in the above mentioned circular lays down that the departmental enquiry should be completed within a period of six months from the date of appointment of the Inquiry Officer. In this case, the Inquiry Officer was appointed on 15-6-1987 and according to this guideline the enquiry should have been completed on or before 15-12-1987. But again that is merely a guideline and we do not think that if the enquiry is not completed within that period the Government servant

can ask for quashing the chargesheet or further enquiry.

8. Lastly Shri Mahalle has relied on one of the judgments of this Tribunal in N.N. Nirbhavane vs. Union of India, 1988(1)CAT AISLJ, 453 and one judgment of the Supreme Court in Ranjit Thakur vs. Union of India AIR 1987/SC/2386. Nirbhavane's case was regarding FR 56(j) and we have held in that case that if the guidelines provided for compulsory retirement are not followed, the order of compulsory retirement cannot be said to have been passed in public interest. Clearly, that judgment will not help the applicant before us. In Ranjit Thakur's case the Supreme Court has held that the procedural safeguards in Section 130 of the Army Act for imposing punishment have to be followed. We are not having any mandatory provisions similar to that in Section 130 of the Army Act. We may also refer to a judgment of the Supreme Court in State of UP vs. Chandra Mohan Nigam 1977 SCC(L&S)535 in which it is held that all instructions are not mandatory and the nature of instructions has to be considered while holding whether it is mandatory or not. In our opinion the guidelines given in the confidential circular dtd. 2-5-1985 cannot be said to be mandatory in nature.

9. Lastly Section 20 of the Administrative Tribunals Act lays down that this Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant has availed of all the remedies available to him under the relevant service rules as to redressal of grievances. As already pointed out the departmental enquiry is being held against the applicant. The applicant has filed a reply to the charges and he has also appointed his defence assistant. Hence his coming to this Tribunal, in our opinion, is premature.

10. For all the above reasons, we reject this application, summarily, under Section 19(3) of the Administrative Tribunals Act, 1985. However, we hope that the respondents will try their best to complete the enquiry as expeditiously as possible and the applicant fully cooperates in completing the enquiry.

(M.B. MUJUMDAR)
MEMBER(J)

(A. G. RAJADHYAKSHA)
MEMBER(A)