

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

O.A. NO.: 103 of 1996.

Hon'ble Member (J) may kindly seen the  
above order for approval/signature.

Agree.  
S. K. Nagri

Hon'ble Member (J)

os\* (Shri S.K.I. Nagri)

B. N. Bahadur

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(B.N. BAHADUR),  
MEMBER (A).

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**MUMBAI BENCH.**

**ORIGINAL APPLICATION NO...: 103 of 1996.**

Dated this Tuesday the 10th day of April, 2001.

Kona Krishnarav Nayudu, \_\_\_\_\_ Applicant.

Advocate for the  
applicant.

Shri M. R. Patil, for \_\_\_\_\_  
Ms. Swati Manchekar.

VERSUS

Union of India & Another, \_\_\_\_\_ Respondents.

Advocate for  
Respondents.

Shri V. S. Masurkar, \_\_\_\_\_

**CORAM** : Hon'ble Shri B. N. Bahadur, Member (A).  
Hon'ble Shri S.K.I. Naqvi, Member (J).

- (i) To be referred to the Reporter or not? Yes
- (ii) Whether it needs to be circulated to other Benches  
of the Tribunal?
- (iii) Library. Yes

B. N. Bahadur  
(B. N. BAHADUR).  
MEMBER (A)

OS\*

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 103 OF 1996.

Dated this Tuesday the 10th day of April 2001.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A)  
Hon'ble Shri S. K.I. Naqvi, Member (J).

Kona Krishnarav Nayudu,  
Joint Secretary (Retired) to  
Government of Maharashtra,  
Housing and Special Assistance  
Department, Mantralaya,  
Bombay - 400 032 residing at  
410, L. J. Road, Mohan Nagar,  
Nagpur - 440 001.

... Applicant.

(By Advocate Shri M. R. Patil  
for Ms. Swati Manchekar).

VERSUS

1. Union of India through  
The Secretary Personnel,  
Ministry of Personnel  
Administration, Pension and  
Public Grievances,  
Government of India,  
North Block, New Delhi 110 011.

2. State of Maharashtra,  
Through Chief Secretary,  
(General Administration  
Department), Mantralaya,  
Bombay.

... Respondents.

(By Advocate Shri V. S. Masurkar)

ORDER

PER : Shri B. N. Bahadur, Member (A).

The Applicant in this O.A. comes up to the Tribunal  
in grievance against the disciplinary proceedings that have been  
taken up against him and seeks the relief, in substance, for

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the quashing and setting aside of proceedings / communications in departmental enquiries, as annexed at Exhibits A-1 to A-4 Also, for a direction to Respondents to treat as closed, the enquiry initiated vide Memo dated 01.04.1989, holding it as abandoned/ dropped in 1989 itself. Incidental/consequential reliefs, as described in paras 8 (c) to 8 (g) of the O.A. are also sought.

2. The facts/events that are relevant to the course of enquiry and to an analysis of the claims and arguments on both sides have been carefully seen. In order to present a cogent picture, these events are culled out from the facts presented in the Application as also in the Written Statement of Reply of Respondents/documents on record. The chronolgy is presented below for an easy appreciation of the case :

E V E N T S		
S1.No.	Year	
1	2	3
1.	1982	Applicant enters I.A.S. on promotion.
2.	Nov.1984 to June 1986.	Administrator of the Municipal Corporation at Amravati.
3.	01.04.1989	Disciplinary enquiry for minor penalty started under Rule 10 of the All India Services (Discipline & Appeal) Rules, 1969.
4.	11.12.1989	Proposal sent to U.P.S.C. for minor penalty.
5.	No date mentioned.	U.P.S.C. returns proposal for re-examination and Marathi translations of documents.

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- 6. CENSURE Recommended by State Government.
- 7. 25.02.1994 U.P.S.C. advises that it is necessary to hold enquiry for major penalty.
- 8. 16.11.1994 Case referred to Respondent No. 1 (Government of India) which agreed with U.P.S.C.
- 9. 30.11.1994 Charge sheet served.  
(11.40 p.m.)
- 10. 30.11.1994/ Applicant Superannuates.  
01.12.1994.
- 11. 01.12.1994 Memo to say that proceedings initiated against applicant vide 30.11.1994 is in continuation of Order of 01.04.1989.
- 12. 15.12.1994 Representation by Applicant to State Government.
- 13. 19.12.1995 Enquiry Officer appointed.

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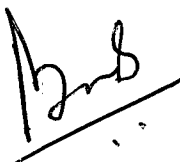
3. The case made out by the Applicant is that he was appointed to the Indian Administrative Service in 1982, on promotion from the State Civil Service. During the period between November, 1984 to June 1986 he was working as Administrator of the Municipal Corporation at Amravati, this period being relevant to the case. The Applicant further states that he superannuated and retired (on another post) on 30.11.1994. He avers further that at the stroke of midnight of that day, he was served with Government Memorandum dated 30.11.1994 (Exhibit A-1) to the effect that Government propose



to hold an enquiry against him under Rule 8 of the All India Services (Discipline & Appeal) Rules, 1969. Details regarding the charges are described by the Applicant.

4. It is further stated by the Applicant that an enquiry had been earlier started against him, vide orders dated 01.04.1989, under Rule 10 of the aforesaid Rules, i.e. for minor penalty proceedings. The charges there, and the charges made in the second enquiry memo are identical, avers the Applicant. Another event that is sought to be highlighted is the communication issued by the State Government vide Memo dated 01.12.1994, which states that the departmental proceedings ordered against the Applicant vide Memo dated 30.11.1994 are in continuation of the proceedings ordered through the order dated 01.04.1989. The Applicant further states that an Inquiry Officer was appointed in the second enquiry in December, 1995 and that he had made representations in the matter to the State Government. He further takes certain grounds which have been argued and expounded by his Learned Counsel during oral arguments.

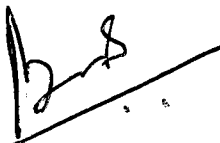
5. The Respondent No. 2 i.e. the State of Maharashtra, has filed a Written Statement in reply. Respondent No. 1, i.e. the Union of India, though noticed, has chosen not to file a reply or appear in the matter.



6. The Respondent No. 2, while resisting the claims of the Applicant, first take the point that the application is premature, because neither has any punishment been awarded to the Applicant nor has any cause of action arisen under Section 20 of the Administrative Tribunal's Act, 1985. Hence, they argue that the application deserves to be dismissed on this ground only. It is stated emphatically that the charge-sheet dated 30.11.1994 was in fact, served on the Applicant on 11.40p.m. on 30.11.1994 and that "it was necessary to serve the charge-sheet on that day because of limitation prescribed in clause B (ii) of proviso under Rule 6 of A.I.S. (DCRB), Rules, 1958."

7. The reply statement further denies the claim of the Applicant that the charge-sheet was served on him after retirement, maintaining that having been served at 11.40 p.m. it was served on 30.11.1994. It is further averred that the Memorandum dated 01.12.1994 is a corrigendum. The Respondents then give the details of the action taken in regard to the enquiry ordered (charge-sheet dated 01.04.1989). The details of the chronological development in the case have been chronicled in the statement in para (2) above. In other words, how the reference was made to U.P.S.C. for advise as per Rule 10 and how the U.P.S.C. returned the proposal stating that since the Applicant has reached the maximum of his pay scale,

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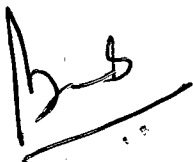


it would not be possible to impose the penalty of stoppage of increment and mentioning further that the State Government then recommended the penalty of Censure. The other chronological events, as already detailed above, are not being repeated.

8. We have seen all papers in the case and heard the Learned Counsel on both sides. Learned Counsel for the Applicant, Shri M.R. Patil, first took us over the facts and chronology of the case and made the point that the charges in the two Charge Sheets referred to, are same, and therefore, it is not as if a new cause of action had arisen on some other issues. The genesis here also comes through the same audit objections.

9. The Learned Counsel for Applicant strenuously made the point that it was not open for Respondents to start a second enquiry for major penalty, when an earlier enquiry for minor penalty had not yet been disposed of. While reiterating that the charge sheet was served after retirement of the Applicant, he argued that the Memorandum dated 01.12.1994 was merely being used as a device in order to establish that this was a mere continuation of the old enquiry. In this connection, the Learned Counsel drew our attention to para 8 of the Written Statement of Respondents to press the point that what was stated therein only showed that it was a mere device.

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10. Shri Patil further took us over the Rules of the A.I.S. (D.C.R.B.) Rules, 1958, extracts of which are available at para 57 onwards of the Paper Book and made the points contained in para 6, to say that a second enquiry was clearly ordered in violation of these rules, in as much as no approval from the Government of India had been obtained. Also, it was clearly illegal, since the cause of action was of an event which took place more than four years before the institution of the proceedings. It was also argued that this would not be a case for grave conduct, since it is clear and admitted that the State Government had itself proposed to the U.P.S.C. very minor penalties and this was an independent view of the State Government. A second enquiry could not be ordered when a first enquiry had not been concluded. Learned Counsel for the Applicant relied on the decision in the matter of K.C. Brahmachary V/s. Chief Secretary, Government of National Capital Territory of Delhi & Others reported in 1997 (36) ATC 419 where he contended that the charge sheet issued four days before retirement was quashed. Here, he argued, was the case of a charge-sheet issued allegedly just twenty minutes before mid-night.

11. Arguing the case on behalf of the Respondents, the Learned Counsel Shri V.S. Masurkar, stated that the views of

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the State Government in regard to adequacy of punishment by way of censure, etc. were all views in the interregnum, and arguments taken by the Applicant in this regard were irrelevant. He questioned the propriety of the Applicant in not facing the enquiry and stated that even now the enquiry could be directed to be completed in a time frame, and the Applicant should participate in it. It was also argued that any relief provided to the Applicant would have an improper effect on administration, since the charges were indeed serious.

12. It was also argued on behalf of Respondents that the Applicant's case suffered from the infirmity that he had come up prematurely to the Tribunal, i.e. before completion of the enquiry and that the defences being taken, could be taken before the Inquiry Officer. The Learned Counsel sought support from the case laws in the matter of Transport Commissioner, Madras V/s. A. Radha Krishna Moorthy reported in 1995 (29) ATC 113 and the case law in the matter of Union of India & Another V/s. Ashok Kacker reported at 1995 (29) ATC 145.

13. Responding briefly, the Learned Counsel for the Applicant made the point that approach to the Tribunal could not be called premature in the background of the fact that the event of alleged irregularity pertained to the years 1984-1986



and the fact that six years had elapsed even after the superannuation of the Applicant. The case law in respect of State of Madhya Pradesh V/s. Bani Singh & Another reported at 1991 (16) ATC 514 was also relied upon. He also stated that the applicant had advisedly stayed away from the (second) enquiry, since he considered it illegal.

14. In the first place, we are not convinced that the approach to the Tribunal could be said to be premature, considering the fact that the State Government had initiated the Departmental Enquiry (for minor penalty in the first instance) as early as in April, 1989, and the Applicant has come up to file this O.A. in January, 1996. The fact of the matter is, that the whole thing has been badly delayed, to put it mildly, and it is also true that despite efforts, the Respondent has not been able to convince us that there were any valid reasons for this extremely long and torturous delay. One of the grounds advanced is delay due to need for translation of long Marathi documents into English. Relevant as this may be, and assuming that time is necessary for this work, would it mean that this had needed long years for translation work. The fact of delay has to be taken into account with reference to the law laid down in this regard.

15. In this connection, we have seen the case law cited by the Learned Counsel for the Respondents in the case of Transport Commissioner, Madras V/s. A. Radha Krishna Moorthy reported at 1995 (29) ATC 113. It is clear from the



facts in the case as brought out in para 5, that whereas the enquiry had commenced in June, 1989, the Applicant therein had come up to the Tribunal in 1992. As is clear from para 5, other issues were involved but the present case is clearly distinguishable on facts. The second case, namely - that of Union of India & Another V/s. Ashok Kacker reported at 1995 (29) ATC 145 was also seen by us, and we find that in that case the Applicant therein had impugned the charge sheet before the Tribunal without replying to the charge-sheet at all, and <sup>the</sup> approach to the Hon'ble Tribunal was thus taken to be a premature act. This case is also distinguishable from the present case.

16. In the same context, we examine the aspect regarding the stand of "continuation" of departmental enquiry. An enquiry is ordered in April, 1989, and a proposal sent within eight months or so to the U.P.S.C. which returns the matter for re-examination and Marathi translation. (Here some events are not dated). The matter then lingers on and the State Government then waits until after the Applicant has handed over charge on 30.11.1994 (to proceed on superannuation) and then goes in for the midnight knock to deliver the other order, as already described. Even assuming that the order was actually served on him on the right side of midnight, is this delay justified in the background of a period of several years having elapsed, since the U.P.S.C. sent back



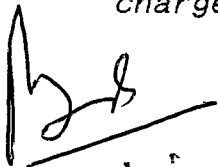
service till midnight, the fact of delay and the manner in which power is exercised in the facts and circumstances reproduced above, can certainly be held to be colourable in terms of Brahmachary's case, decided by a Bench of this Tribunal.

18. The All India Service Rules require the authorities to complete various stages of departmental enquiries within clearly specified time limits. In fact, in written executive directions the Respondent No. 1 has drawn attention to these and exhorted that enquiries should thus be completed within six months (letter dated 16.08.1978). While the Central Government has chosen not to appear despite notice and we are, therefore, not aware of their stand in the matter, the State Government's stand also exudes a kind of helplessness in the matter on the ground that an advice was given by Respondent No. 1 for an enquiry for higher punishment. Well and truly as the State Government may be bound by the advice of the Government of India, does it mean that it had to wait for some four or five years to convert the enquiry, as it were, from one relating to minor penalty to a regular departmental enquiry. Was four or five years necessary to serve a notice of a regular charge-sheet in the manner done and follow it up by a communication one day after the Applicant retired to tell him that this was an inquiry in continuation of the enquiry <sup>ordered</sup> ~~ordered~~ in 1989. Whether we consider this as an enquiry in continuation

or a fresh enquiry, the point of delay does not get washed away. What has happened is, that admittedly the Officer has stayed away from enquiry and now for an enquiry to go on, would be hit by the principles of the ratio in the case of State of Madhya Pradesh V/s. Bani Singh & Another 1991 (16) ATC 514.

19. The issue in regard to delays in Departmental Enquiry have been the subject of number of cases decided by the Tribunal also. For instance, in the matter of D.L.Gawade V/s. Union of India reported in 1994 (26) ATC 164, the hardships caused to an officer in respect of Departmental Enquiries conducted long years after the event, has been commented upon and the departmental enquiry was quashed in that case, inter-alia, on this reason. Similarly, the aspect of delay has also been considered in the matter of Bhagat Singh V/s. Union of India reported at 1994 28 ATC 306. The inordinate delay on the part of the Government agencies was adversely commented upon. In the matter of Kartar Singh V/s. Union of India & others reported at 1987 (4) ATC 545 a somewhat similar delay is evident. Para 7 of the judgement is reproduced below :

"7. It has been aptly argued by the Learned Counsel for the petitioner that by not indicating the reasons of the cancellation of the first charge-sheet, the petitioner has been grievously deprived of the opportunity of appealing or representing against the impugned order and that by adopting such a step in initiating disciplinary proceedings on the same charge, a whole lifetime may be lost."



20. In the background of the events in this case, it will not be fair to the Applicant to now ask him to continue and appear and defend himself before the enquiry ordered on 30.11.1994 or the earlier enquiry. It must be recalled here that no delay on his part is evident or even alleged till the time he superannuated. There is no alternative but to quash the enquiry and close the matter. Accordingly, the O.A. is allowed in terms of the following orders :

(i) The impugned Memos at exhibits A-1 to A-4 are quashed and set aside and the enquiries ordered vide Memos dated 01.04.1989 and 30.11.1994 are ordered as deemed to be closed.

(ii) The Applicant will be entitled to benefits of retirement, and other benefits as due to him, in accordance with rules.

(iii) There will be no order as to costs.

  
(S.K.I. NAQVI)  
MEMBER (J).

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(B.N. BAHADUR)  
MEMBER (A).

10/4/01.