

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 331/99

Date of Decision: 8.10.1999

Mr. Anand Swarup Goyal.

Applicant.

Mr. A. I. Bhatkar.

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Mr. R. K. Shetty.

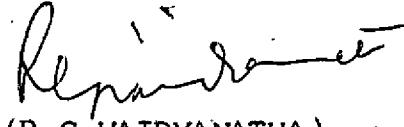
Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G. Vaidyanatha, Vice-Chairman,

Hon'ble Shri. D.S. Bawaja, Member(A).

- (1) To be referred to the Reporter or not? u
- (2) Whether it needs to be circulated to u other Benches of the Tribunal?
- (3) Library ? u


(R.G. VAIDYANATHA)

VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.331/99.

Friday, this the 8th day of October, 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Bawej, Member(A).

Dr.Anand Swarup Goyal,
Working as Executive Engineer
(Civil) in the office of the
Chief Engineer (Navy),
Colaba,
Mumbai - 400 005.
(By Advocate Mr.A.I.Bhatkar)

...Applicant.

Vs.

1. Union of India,
Through the Secretary Ministry
of Defence, DHQ PO,
New Delhi - 110 011.

2. The Engineer-in-Chief,
Army Headquarters, DHQ PO,
New Delhi - 110 011.

3. The Chief Engineer (Navy)
26, Assaye Building,
Colaba,
Mumbai - 400 005.

(By Advocate Mr.R.K.Shetty.)

...Respondents.

: ORDER (ORAL) :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed by the applicant challenging
the charge sheet dt. 27.10.1997 (since amended in August, 1999).
The respondents have filed reply opposing the application. We
have heard both the learned counsels regarding admission.

for

...2,

2. The applicant was Assistant Engineer during 1981 to 1984. Due to alleged irregularities during that period a charge sheet was issued against the applicant dt. 22.10.1997 where the alleged year of mis-conduct is shown as 1980-81 and subsequently the department has issued an amendment, which is at page 31 of the paper book which shows that the period of alleged mis-conduct should be read as 1981-84.

The applicant's main challenge to the charge sheet is on the ground of undue and inordinate delay in issuing the charge sheet after so many years. He has also attacked the charge sheet saying that the allegations are ^{false} take and that after the amendment of the charge sheet, straightaway Enquiry Officer has been appointed.

3. The respondents in their reply have given some explanation as to how and why the delay has occurred. They have stated that no prejudice has been caused to the applicant due to delay in issuing the chargesheet and that he is also promoted and hence there is no reason to interfere with the Disciplinary Enquiry.

4. The learned counsel for the applicant, no doubt is right in contending that normally charge sheet should be issued expeditiously and if there is undue delay the Court or Tribunal should quash the charge sheet. He also invited our attention to the two decisions of the Apex Court.

In the case of State of M.P. Vs. Bani Singh and Another reported in ((1991) 16 ATC 514), the Tribunal had quashed the charge sheet on the ground of delay of 12 years in initiating disciplinary proceedings and the order came to be confirmed by the Supreme Court. The Supreme Court has also observed that if



there is unreasonable and undue delay a charge sheet can be quashed. In para 4 of which the learned counsel for the applicant placed reliance, the Supreme Court has clearly stated that if there is no satisfactory explanation for the inordinate delay in issuing the charge sheet, then it will be unfair to permit the Disciplinary Enquiry to be proceeded with.

Then, reliance was placed on a decision of the Supreme Court in the case of State of Andhra Pradesh Vs. N.Radhakrishna reported in (1998 SCC (L&S) 1044), where the question was about non completing the Disciplinary Enquiry after a long lapse of time. The Supreme Court itself has mentioned in para 19 that there cannot be any general rule about closure of a disciplinary enquiry on the ground of delay of few years. The Supreme Court has explained that it is purely a question of fact to be decided on the facts and circumstances of each case and no general rule can be made as to when and how the charge sheet can be quashed. Therefore, ultimately, it is a question of fact which has to be considered having regard to the facts and circumstances of each case. In the present case, there is no doubt that for an instance of 1981-84 a charge sheet has been issued in 1997. Then, respondents have given some explanation as to how and why the delay had occurred. In particular, we may refer to para 79 of the paper book, where it is stated by the respondents that the earlier contract came to be cancelled in 1984. During 1990 when finalising the accounts in respect of that particular contract work which was executed during 1980-81 by M/s.Jolly Brothers, it was noticed that certain items of Government Stores to be issued under Schedule 'B' were found over issued or under issued, as per store statement/USR statement attached with the final bill.

Therefore, according to the respondents, the particular mis-conduct as against the applicant came to light only during 1990. Then, it is further stated that a preliminary enquiry was ordered by the Chief Engineer and during that preliminary enquiry some evidence was collected which pointed out mis-conduct on the part of the applicant and this was some time in 1994-95. Then on that basis the present charge sheet is issued in 1997.

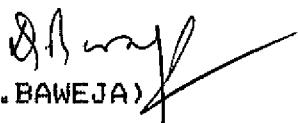
Having regard to the facts and circumstances of the case and in view of some explanation given by the respondents to explain the delay, it is not a fit case where the charge sheet can be quashed only on the ground of delay. We hasten to add that we are not condoning the delay in issuance of the charge sheet, but in the circumstances of the case, this is not a fit case to quash the charge sheet on account of delay. As pointed out by the respondents counsel, no prejudice is caused to the applicant and he has already been promoted. Since some delay has occurred and the incidence is of 1981-84, we feel that a direction can be given to expedite the disciplinary enquiry.

5. As far as the amendment of the charge sheet and appointing the Enquiry Officer is concerned, though we do not *prima facie* find any illegality as such, we feel that the department should have given an opportunity to file an additional written statement after the charge sheet came to be amended. We give liberty to the applicant to file an additional written statement to the charge sheet before the enquiry is commenced.

As far as the argument regarding falsity of the charge is concerned and some arguments on merits, we are not inclined to go into that question at this stage since the enquiry has to be started and it may prejudice the enquiry. Therefore,

we advisedly do not want to express any opinion on the merits of the case.

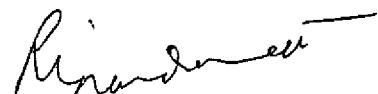
6. In the result, the application is disposed of at the admission stage, but with a direction to the respondents to expedite the disciplinary enquiry against the applicant and preferably complete it by passing a final order within a period of nine months from the date of receipt of a copy of this order. All questions on merits are left open. No costs.



D.S. Baweja

(D.S.BAWEJA)

MEMBER(A)



R.G. Vaidyanatha

(R.G.VAIDYANATHA)

VICE-CHAIRMAN.

B.