

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

DA, NOs. 21/2000 & 462/2000

Dated this the 4th day of June 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)
Hon'ble Smt. Shanta Shastri, Member (A)

B.M.Mittal,
Superintending Engineer,
Office of Chief Engineer,
Poona Zone,
Poona.

... Applicant

By Advocate Shri S.P.Saxena

V/S.

1. The Union of India through
The Secretary,
Ministry of Defence,
DHQ PO, New Delhi.
2. The Engineer-in-Chief,
Army Headquarters,
Kashmir House,
New Delhi.
3. The Chief Engineer,
MES,
Central Command,
Lucknow.
4. The Chief Engineer,
MES,
Lucknow Zone,
Lucknow.

... Respondents

By Advocate Shri R.K.Shetty

O R D E R

(Per: Shri S.L.Jain, Member (J))

These two OAs.(OA.NO.21/2000 & 462/2000) are filed by the applicant, B.M.Mittal, seeking the relief to quash and set aside the chargesheet dated 13.4.2000 and 1.12.1999 respectively.

2. Though the facts in the present two OAs. are different ones, but the question of law involved is one and the same hence we proceed to decide these two OAs. together.

3. The facts in OA.No.21/2000 are that the applicant is a civilian officer belonging to the MES Cadre, and presently holding the post of Superintending Engineer in the office of respondents. The applicant was promoted to the post of Executive Engineer in MES in the year 1982. While working as Executive Engineer, he was sent on deputation to the Ministry of Information and Broadcasting, Govt. of India in All India Radio and Doordarshan Civil Construction Wing. He joined the above said All India Radio and Doordarshan Civil Construction Wing as Executive Engineer in July, 1984, and continued on deputation in the said Ministry till 31.10.1991. As the work of T.V. Tower at Pitampura, New Delhi was not being completed by his counterpart, Shri A.K.Vohra, Incharge of another Division, the Chief Engineer shifted the applicant to the division held by Shri A.K.Vohra. The applicant claims that this shifting was not liked by the officers of All India Radio resulting some differences between AIR officers/Staff and deputationist officers, certain officers were transferred. Due to the

said reason, a chargesheet was issued to the applicant in the month of September, 1993. The applicant challenged the said chargesheet by filing OA. before CAT, Chandigarh (OA.NO.872/PB/1998). The OA. was decided with a direction to take a final decision on the report and on submission of applicant within a period of 45 days (Ex.A-2). The respondents also issued two more chargesheets one under Rule 14 and another under Rule 16 to the applicant in July 1997 and July 1998 respectively which were challenged by filing OA.873/PB/98 and OA.874/PB/98 before CAT, Chandigarh. The said OAs. were decided by common judgement on 5.5.1999 and quashed and set aside the chargesheets. There was a DPC in the year 1998 to prepare panel for promotion to the post of Additional Chief Engineer in MES. The applicant was in the zone of consideration. However, due to pending chargesheet dated September, 1993, applicant's case for promotion was placed in sealed cover. The period of punishment was over on 20.6.2000.

4. The grievance of the applicant is that chargesheet dated 1.12.1999 was served on him which is in respect of an act of 10-11 years ago. It is difficult to remember things of 10-11 ago. It is also alleged that the chargesheet dated 1.12.1999 is almost same or similar to one of the charge contained in chargesheet dated July, 1998 which was quashed and set aside by the Chandigarh Bench of CAT. The applicant submits that the Tribunals and Courts have been consistently holding that chargesheets be issued in reasonable time and if the same are delayed excessively, the chargesheets are quashed and set aside by Tribunals/Courts. The inquiry proceedings in respect of chargesheet dated 1.12.1999 have not yet commenced and the present challenge is made in time.

5. The respondents have resisted the claim of the applicant by stating the facts that the chargesheet is issued based on the advice of Central Vigilance Commission for which the applicant had committed misconduct/irregularities in construction of 150 M high RCC TV Tower at Shamshabad. No interference against the minor penalty proceedings initiated against the applicant is needed by this Tribunal. The respondents have replied to the pleadings of the applicant parawise and also submitted chronological facts of the case. By perusal of the same, the material facts which we notice are that the applicant was Executive Engineer in respect of ^{the said} ~~some~~ work for the period commencing from September, 1989 to January, 1990 and the work was completed by 2.1.1990. In May, 1991 ~~Part~~ of boundary wall constructed for the project of 150 mtr High RCC TV Tower and Transmitter Building at Shamshabad Road, Agra collapsed due to gate which was re-constructed immediately. On 12.6.1992, another portion of boundary wall collapsed. The matter was investigated and irregularities were noticed. Amongst others, it was also noticed that no test check was conducted by EE(C). On 25 July 1994 the fencing wall again collapsed. The investigation was again commenced and the report was submitted by the DG AIR on 13.5.1995. Thereafter, matter was further investigated and prima facie charges were established. On 1.12.1999 charge memo dated 1.12.1999 was issued to the applicant which was received by the applicant on 27.12.1999 to which the applicant submitted a representation on 28.12.1999. A further representation was submitted on 27.1.2000 in view of Memorandum dated 19.1.2000.

6. The allegation of the applicant that the charge now alleged is 1.12.1999 is all most similar to one of the charge of July, 1998 is baseless for the reason that the order passed in OA.No.973/PB/98 and OA.974/PB/98 the charge was not of Shamshabad order.

7. As stated above, on 12.6.1992 another portion of boundary wall was collapsed and on investigation, it was noticed that no test check was conducted by EE. On perusal of chargesheet dated 1.12.1999, we find that payment is being made without any test check. Thus, after a second collapse of the boundary wall, when investigation was made and the report came, this fact was noticed.

8. The facts of OA.No.462/2000 are that the applicant was posted as Commander Works Engineer in M.E.S. at Ranchi. The Office of Garrison Engineer, Danapur and Assistant Garrison Engineer, Gaya were under his administrative control. The applicant was posted at Ranchi from 23.4.1993 to 11.11.1994. The applicant claims that as per M.E.S. Rules/Regulations, the Garrison Engineer is authorised financial powers upto a certain limit for placing supply orders ^{to} ~~on~~ contractors. The Garrison Engineer has separate financial powers for job orders. If the financial implications are of greater value beyond the powers of Garrison Engineer, then such orders are to be finalised and placed ^{before} ~~by~~ the concerned appellate higher authority, namely, the Commander Works Engineer, or the Chief Engineer of the

Lucknow Zone. As the Garrison Engineer, Danapur, Major S.L.Sharma was not acting as per rules and regulations, on getting complaints against him, the applicant checked/verified the same from various sources and also by preliminary scrutiny of job orders etc., he came to the conclusion that the said Garrison Engineer Danapur is grossly misusing his financial powers contrary to the instructions issued by the Chief Engineer, Lucknow Zone vide letter dated 8.2.1992. Hence, the applicant sent a telegram dated 28.07.1993 to the G.E. Danapur along with copies of the same to the Controller of Defence Accounts, Eastern Command, Patna (B), Asstt. Accounts Officer, G.E. Danapur and to the higher authority of Chief Engineer, Lucknow Zone, Lucknow. Another telegram was also sent by the applicant (Ex.A-4) for acting in accordance with the instructions and regulations along with copies of the same to superior authorities. A letter dated 8.1.1994 (Ex. A-5) was sent to Garrison Engineer, Danapur along with copy to Chief Engineer, Lucknow giving further directions/instructions. A letter dated 30.9.1994 (Ex.A-6) was issued to the G.E.Danapur cancelling 13 supply orders placed on the contractors. Thereafter, a letter dated 4.11.1994 to the Engineer-in-Chief suggesting to hold an independent inquiry.

9. A staff Court of Inquiry was ordered. The applicant was called in the staff Court of Inquiry as a Govt. Witness and after the report, a chargesheet was issued to the applicant as per the recommendations and findings of the staff Court of Inquiry.

10. The grievance of the applicant is that the chargesheet is issued mala fide, it is vindictive with a view to debar the applicant from promotion. The applicant alleged that the charge is in respect of acts of 7 years ago.

11. The respondents have resisted the claim of the applicant explaining the delay in issuing the chargesheet. As stated above, a Court of Inquiry was convened which assembled on 12.6.1995 and on subsequent days. After examining 27 witnesses, carried out inspection of various documents, physical checks of certain works on ground and the irregularities, and the persons responsible for the same. Court of Inquiry proceedings duly completed in all respect along with directions/recommendations were sent to the Headquarter Central Command, Lucknow on 19.4.1996 which was forwarded on 11.5.1996 for further necessary action. The recommendations of Chief Engineer, Central Command, Lucknow "The officer has been found responsible for lack of administrative and Technical control. Disciplinary action will be taken by me as per CCS (Conduct) Rules" was forwarded to the Chief Engineer, Lucknow Zone, Lucknow on 18.6.1996 for sending draft chargesheet. Accordingly, Headquarter Chief Engineer, Lucknow Zone, Lucknow on 26.6.96 directed Commander Works Engineer Ranchi to forward draft chargesheet under Rule 14 of CCS (CCA) Rules, 1965 in respect of officers including the applicant. Draft Chargesheets were forwarded on 15.10.1996 for approval. Thereafter, on 2.12.1996 Statement of Case along with draft chargesheet, service particulars of the applicant were forwarded to Engineers Branch Headquarter Central Command, Lucknow which in turn return the same for recasting to Chief

Engineer, Lucknow Zone, Lucknow. Thereafter, draft chargesheet was sent on 11.3.1997. Progress on draft chargesheets was asked for on 25.11.1997 which was sent in June, 1997. Thereafter, recommendations were considered. The matter was followed ^{up} on 13.4.2000. The chargesheet was issued.

12. Perusal of the same makes it clear that the delay ^{while} is being explained by the respondents till June, 1997 which chargesheet is issued on 13.4.2000. Thus, hardly a period of less than 3 years has not been explained by the respondents.

13. In respect of OA.No.21/2000 as stated above, the period of more than 7 years has not been explained by the respondents.

14. The learned counsel for the applicant relied on the following cases :-

- (1) OA.No.331/99 Dr.Anand Swarup Goyal vs.Union of India & Ors. decided on 8.10.1999 by Mumbai Bench.
- (2) 1991 (16) ATC State of M.P. vs. Bani Singh & Anr.
- (3) 1989 (9) ATC 509 P.L.Khandelwal vs. Union of India & Ors. decided by CAT, Ahmedabad.
- (4) 1988 (6) ATC 246 M.Nagalinga Reddy vs. Govt. of Andhra Pradesh & Ors. decided by CAT, Hyderabad.
- (5) 1989 (9) ATC 500 M.N.Qureshi vs. Union of India & Ors. decided by CAT Ahmedabad.
- (6) 1992 (19) ATC 792 P.K.Panda vs. Union of India & Ors. decided by CAT, Cuttack.
- (7) 1989 (9) ATC 369 Bejoy Gopal Mukerjee vs.UOI & Ors. decided by CAT, Calcutta.
- (8) 1989 (11) ATC 257 E.Vedavyas vs.Govt. of Andhra Pradesh & Anr. decided by CAT Hyderabad.
- (9) OA.NO.756/93 R.C.Parate vs. Union of India & Ors. decided by CAT, Mumbai Bench,
- (10) 1993 (1) A.I.SLJ 510 Arun Kumar Basu vs.UOI & Anr. decided by CAT, New Delhi.

15. On perusal of the said authorities, we are of the considered opinion that delay in issue of chargesheet which is unexplained is fatal to the respondents.

16. The learned counsel for the applicant also relied on 1993 (2) SLR 647 *Mrinal Kanti Chakraborty vs. State of West Bengal & Ors.* decided by Calcutta High Court in which it is laid down that after promotion the matter cannot be enquired into. In this respect, 1993 (1) A.I.S.LJ 510 decided by CAT, New Delhi is also relied by the applicant's counsel. On perusal of the authority referred in the later judgement AIR 1967 M.P.284, we are of the considered opinion that the ^{were} ~~facts~~ known to the respondents, after knowing the said facts if the official is promoted, a chargesheet in respect of those facts cannot be issued. In the present case, the applicant is not promoted. Hence, these two authorities ^{have} ~~have~~ no bearing and are not relevant for deciding the case.

17. The learned counsel for the applicant also relied on 1998 SCC (L&S) 1044 which lays down the proposition regarding non-completion of disciplinary proceedings for years together and the proposition laid down is "question raised to be decided on facts and circumstances of each case." As in the present case, the enquiry has not yet started, hence the said order has no bearing in the case.

18. Appointment of enquiry officer, the delay in this respect is also ^{not relevant} ~~when~~ the enquiry is ^{not} ~~commenced~~. We agree with the contention raised by the learned counsel for the applicant that if delay is unexplained, the chargesheet deserves to be quashed. It is true that mere negligence or carelessness in performing duty ^{is} ~~not~~ a misconduct unless

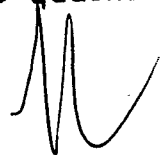
a decree of celebrity is verified. As stated above, in OA.No.21/2000 the construction of boundry wall was the subject matter when the applicant is charged for payment of the bills without any test check. It can be a case of negligence but where the duty is cast, it cannot be said that the applicant by over looking ^{his} duty can take shelter ~~and that such a throw.~~

19. In OA.No.21/2000 as stated above, the delay since 1992 is not explained. Further, since 1995 to 1999 there is no ~~iota~~ of explanation for non-issuing of chargesheet for more than 7 years. This is a case of unexplained delay.

20. In OA.No.462/2000, on perusal of the article of charge, we are of the considered opinion that the supply order mentioned in the article of charge exceeds the number for which the applicant has reported by the telegram, placing the orders, making the payments of 3 job order. In the circumstances, when delay is explained, we do not find any reason to interfere with the chargesheet dated 13.4.2000.

21. At this stage, it ^{would} suffice to mention that truth or falsehood cannot be examined by the Tribunal. Any observation by the Tribunal regarding the fact which has not been gone into, the authorities are at liberty to agitate and get it decided through the disciplinary proceedings.

22. In the result, OA.NO.462/2000 deserves to be dismissed and is dismissed accordingly while OA.NO.21/2000 deserves to be allowed and is allowed. Chargesheet dated 1.12.1999 is quashed. No order as to costs.



(SMT.SHANTA SHASTRY)
MEMBER (A)

(S.L.JAIN)
MEMBER (J)

mrj.