

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 154/91

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DATE OF DECISION 9.6.1993

Shri M.N.Kabbur

Petitioner

Shri S.P.Saxena

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Shri P.M.Pradhan


Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble ~~Shri~~ Ms. Usha Savara, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? yes
2. To be referred to the Reporter or not ? —
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 ?


(M.S.DESHPANDE)
VICE CHAIRMAN

NS/

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Shri M.N.Kabbur

V/S.

... Respondents

Appearance

Shri P.M.Pradhan
Advocate
for the Respondents

Dated: 9.6.1993

2. The applicant is a civilian employee presently working as Telecom District Engineer at Latur having joined the Department on 22.10.1957. He was posted in the office of the Chief General Manager, Telecom, Maharashtra Circle, Bombay from March '83 to November '83. The base for the inquiry was that on 27.1.1983 tenders were floated for transportation of stores material from Calcutta to Bombay by road and the tender of M/s. SAAR Freights Corporation, Bombay being the lowest, was accepted by the Department, on the basis of approval/sanction accorded by the competent authority, namely, the General Manager on 9.3.1983. By the Memorandum dated 7.9.1990 the applicant was informed of the inquiry instructed to be instituted and the Articles of Charge was that while the applicant functioning as

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

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OA.NO. 154/91

Shri M.N.Kabbur

... Applicant

V/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Ms. Usha Savara

Appearance

Shri S.P.Saxena
Advocate
for the applicant

Shri P.M.Pradhan
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 9.6.1993

(PER: M.S.Deshpande, Vice Chairman)

The applicant of this OA. seeks a declaration that the inquiry ordered against him is illegal and bad in law and quashing of the Memorandum dated 7.9.1990 issued by Respondent No. 1 ordering disciplinary inquiry against him.

2. The applicant is a civilian employee presently working as Telecom District Engineer at Latur having joined the Department on 22.10.1957. He was posted in the office of the Chief General Manager, Telecom, Maharashtra Circle, Bombay from March '83 to November '83. The base for the inquiry was that on 27.1.1983 tenders were floated for transportation of stores material from Calcutta to Bombay by road and the tender of M/s. SAAR Freights Corporation, Bombay being the lowest, was accepted by the Department, on the basis of approval/sanction accorded by the competent authority, namely, the General Manager on 9.3.1983. By the Memorandum dated 7.9.1990 the applicant was informed of the inquiry instructed to be instituted and the Articles of Charge was that while the applicant functioning as

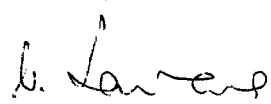
Assistant General Manager (P) in the Office of the Chief General Manager, Telecom at Bombay during the period from 31.3.1983 to 31.10.1983 irregularly and without proper sanction authority approved nine sets of bills submitted by M/s. SAAR Freight Corporation for payment, thereby violating provisions of the Rules, and committed grave mis-conduct. Evidence in lack of integrity and devotion to duty.

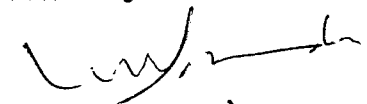
3. Submission on behalf of the respondents in the written statement is that timely action was taken. It is stated that after having received certain complaints, the Central Bureau of Investigation had investigated and had registered a criminal case of conspiracy having been hatched out during the period from 31.3.1983 to 28.2.1984 against six persons including the applicant. The records were handed over to the CBI. CBI completed the investigation and forwarded the report to the Department on 30.8.1986. The same was processed and was forwarded to the Central Vigilance Commission for necessary advice. After examining that report, the Central Vigilance Commission referred the matter to the Department on 3.8.1987. Further investigations were for clarifying some points. The entire case having been examined, a decision was taken on 25.6.1990 to initiate disciplinary proceedings against the applicant.

4. Shri Saxena, learned counsel for the applicant urged that no timely action has been taken against the applicant and the applicant was being held responsible for lapses which have occurred even before he has taken charge at Bombay. It is not necessary to enter into the merits of the controversy and Shri Saxena very fairly stated that he would urge only the ground of undue delay as the applicant is due to retire by the end of this month. We have already indicated the submissions of the respondents which appear in Para 7 of the



reply and we find that time was spent in matter for getting it thoroughly investigated by the CBI and then it was referred to CVC before departmental action could be taken. We are therefore not satisfied that in the present case there was inordinate delay, though some years were spent in deciding whether to initiate the disciplinary proceedings. The decisions on which Shri Saxena relied are P.L.KHANDELWAL vs. UOI & ORS. 1989(9) ATC 509, P.K.PANDA vs. UOI & ORS. 1992(19) ATC 792, M. NAGALINGA REDDY vs. GOVT. OF ANDHRA PRADESH & ORS. 1988(6) ATC 246, STATE OF MADHYA PRADESH vs. BANI SINGH & ANR. 1991(16) ATC 514, BEJOY GOPAL MUKERJEE vs. UOI & ORS. 1989(9) ATC 369 and E.VEDAYAS vs. GOVT. OF ANDHRA PRADESH & ANR. 1989(11) ATC 257 wherein in respect of inordinate delay it was held that in the absence of material to justify the delay the impugned show cause notice was unsustainable. The number of years spent before taking action cannot be decisive in respect of inordinate delay. In the present case, we find that the department had taken action soon after the lapses were detected. Merely because the name of the applicant did not figure in the charge-sheet submitted by the CBI, there was no justification for initiating disciplinary proceedings against the applicant. However, considering that the applicant would be retiring at the end of the month and that he had to spend a long time in facing the inquiry, we think that it would be appropriate to direct that the inquiry be completed within a period of two months. We also direct that applicant's provisional pension be fixed and pensionary benefits paid to him and if the authorities so choose such part of the gratuity may be withheld pending the completion of the inquiry against the applicant. With these directions, we would allow the inquiry to be proceeded with and completed with within a period of two months.


(MS.USHA SAVARA)
MEMBER (A)


(M.S.DESHPANDE)
VICE CHAIRMAN