

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 1150/93

DATE OF DECISION: 24.12-99

Shri Umesh Chandra Vidyarthi Applicant.

Applicant in person Advocate for
Applicant.

Versus

Union of India and others Respondents.

Shri J.P. Deodhar Advocate for
Respondent(s)

CORAM

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

Hon'ble Shri S.L.Jain, Member (J)

- (1) To be referred to the Reporter or not? yes
- (2) Whether it needs to be circulated to No.
other Benches of the Tribunal?
- (3) Library. yes

S.L.Jain
(S.L.JAIN)
Member 'J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 1150/93

the 24th day of DECEMBER 1999.

CORAM: Hon'ble Shri D.S.Baweja, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

Umesh Chandra Vidyarthi
CH-1/53, Kandriya Vihar
Sector 11, Kharghar
Navi Mumbai.

...Applicant.

Applicant in person.

V/s

1. Union of India through
The Secretary,
Government of India
Department of Atomic Energy
Shakti Bhavan
C.S.M. Marg., Bombay.

2. The Secretary
Union Public Service Commission
Dholpur House
Shah Jehan Road
New Delhi.

...Respondents

By Advocate Shri J.P.Deodhar.

O R D E R

{Per Shri S.L.Jain, Member (J) }

This is an application under Section 19 of the Administrative Tribunals Act 1985 seeking to quash and set aside the order of penalty of Compulsory retirement of the applicant passed under No. 1/1/77 Vig./R/Vol.V/800 dated 26.6.1993 (Exhibit-A-1), he be reinstated in service with full back wages and all consequential benefits alongwith costs.

P. J. -

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2. The applicant was appointed originally on 13.12.1961 as Junior Scientific Assistant in the then Atomic Energy Establishment Trombay which is now known as BARC. He was selected for an Extensive training for one year and on account of his securing above 60% marks, he was appointed as Scientific Officer SC-II with effect from 1.8.1966, the said post was redesignated as Scientific Officer SC with effect from 1.1.1973, at which the applicant was working till the order of compulsory retirement with effect from 8.7.1993.

3. In the year 1977, a prosecution was launched before the criminal Court on the ground that he was engaged in trade or business during 1970-71 which was quashed by the Court of Sessions by an order dated 7.10.1980. During the pendency of the said prosecution, the applicant was placed under suspension with effect from 2.9.1978 which was revoked after a Writ Petition by the applicant before the High Court of Judicature at Bombay in 1983 on 15.9.1993 with retrospective effect from 7.10.1980 and later under the orders of the Tribunal, the said period was treated as on duty.

4. By a Memorandum bearing No. 1/1/77 Vig. dated 3.11.1982, the Secretary to Government of India, Department of Atomic Energy, issued a memorandum of charges containing four articles of charges was served on the applicant. A representation against the same was filed on 28.2.1983. After appointment of the Enquiry Officer and the presenting officer on 14.4.1983 and 5.10.1983 respectively, the enquiry proceeded which was concluded on 30.1.1990. The applicant received the copy of

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the enquiry report Exhibit A/10 on 19.4.1990 alongwith letter dated 23.3.1990, penalty was imposed on 26.6.1993, after consulting the UPSC whose advise dated 16.2.1993 was annexed, effective from 7.7.1993.

5. The applicant has challenged the said enquiry and the penalty order on the grounds that the Article of charge No.1 was in respect of the facts which were the subject matter of the applicant's criminal prosecution, for which the prosecution is quashed and that too after 11 years of the said incident, Article of charge No.2 was regarding non-submission of the utilisation of the advance sanctioned, the rule inforce at the relevant time does not require so hence the applicant cannot be asked to furnish the details of utilisation of the advance sanctioned, Article of charge No.3 was pursuing of LLB studies in Bombay University without permission, which was even not necessary in absence of any orders seeking permission and the applicant was under suspension during the said period, Article of Charge No.4 was non-submission of explanation asked for in respect of pursuing the LLB studies.

6. The further grounds for challenging the same are that the charge sheet Memorandum was issued by an authority not competent to issue it, as the same is issued by the Secretary where as the disciplinary authority is the President of India, vide Annexure A/3. The case was remitted having ordered denovo proceedings, a fresh charge sheet ought to have been issued which was not done, inspection of the documents sought for was not given, the statements of the listed witnesses were not furnished, the

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Enquiry Officer failed to pass orders on the request for defence documents, the request of the applicant to hold the enquiry at Bombay was unauthorisedly withheld by the Department, the Presenting Officer misled the applicant by informing him that the notices to the witnesses were not issued for 4.7.1989 giving an impression that the hearing is not likely to take place on that date. The Enquiry Officer proceeded with the exparte enquiry when orders for supply of defence documents and enquiry to be held at Bombay were to be passed. The documents which are not proved, ought not to have been exhibited. It was not within the jurisdiction of the Enquiry Officer to conclude during the proceedings that the case is based on documents and the witnesses are not required, ex-parte enquiry is to be held as per procedure. The Enquiry Officer ought to have fixed a date for the defence case. The Enquiry Officer and the Disciplinary Authority failed to consider the evidence on record, considered unproved documents. The finding is based on no evidence. The penalty order is passed after undue delay of three years from the date of submission of the representation and after 11 years after issue of memorandum of Charges. Hence this OA for the above stated reliefs.

7. The respondents have resisted the claim of the applicant and alleged that on receipt of a notice in the year 1975 to the effect that the applicant had borrowed a sum of Rs. Rs.2000/- from Smt.Nirmal Arora for the purpose of trade being run by him in the name of his mother, and failed to repay the amount, the notice sent by Shri D.R.Thanekar, advocate. The applicant

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was called upon to submit his explanation and the applicant submitted the explanation denying the said fact and alleged that the amount was advanced to him for "Mundan ceremony" of his sister's son and the same amount has already been paid alongwith interest. On being investigation by the departmental security section of establishment gave reasonable belief that the applicant is involved in private business. The case was referred to the CBI for further investigation. After completion of the investigation the applicant was prosecuted under Section 168 of IPC and the said prosecution was quashed on technical ground of limitation by the Session Court.

8. The respondents further alleged that an employee under suspension does not cease to be an employee and the relationship of employer and employee continues. Hence he was bound to explain and reply the memo's issued by the office. The employer is entitled to satisfy himself that the amount sanctioned to the applicant is being duly utilised. The applicant persued the LLB studies in spite of refusal by the departmental authorities. The applicant was a Chemistry graduate and engaged in research activities related to his discipline was pursuing studies in a totally different discipline i.e. Law, which cannot be considered to add to the efficiency in discharge of his normal duties and responsibilities. Hence permission for persuing LLB studies was refused. Shri S.B. Patole, Assistant Sub-Inspector, CBI attended few proceedings in place of the Presenting Officer under an authority which is as per the procedure laid down in this connection. The applicant remained

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absent from the proceedings for the reasons best known to him. It was for the applicant to inspect the documents after fixing an appointment with the Presenting Officer. The applicant visited the office of the Presenting Officer according to his own convenience. The list of defence documents left by him at the office of the Presenting officer was forwarded by the Presenting Officer to the Enquiry Officer indicates that the Presenting Officer at no stage acted against the interest of the applicant. The applicant was always trying to evade from attending the enquiry proceedings on some pretext or the other. It was for the applicant to inspect the documents submitted by the Presenting Officer which he deliberately avoided with the sole intention of making allegations at a later stage that the enquiry was illegal. The Enquiry Officer proceeded ex-parte for the reason that the applicant did not appear for the preliminary hearing held on 6.2.1984, regular hearing on 4.7.1989 and was also prolonging the process by entering into uncalled for correspondence. It is a corrects decision of the Enquiry Officer that the case was solely based on documents as alleged. The applicant all along the proceedings did not participate deliberately. Hence he is not entitled to contend it. The ex-parte proceedings held against him is not unwarranted by provisions of Law. The charge sheet is issued by Secretary to Government of India in the Department of Atomic Energy acted on behalf of President of India who is competent to issue the said charge sheet. Hence prayed for dismissal of the OA alongwith costs.

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9. The learned counsel for the respondents relied on the notification issued by the Ministry of Home Affairs, New Delhi dated 3.11.1958, SO 2297 Rule 2(1) which is in force since 19.6.1950 is as under:

Orders and other instruments made and executed in the name of the president shall be authenticated -

1. by the signature of a Secretary, Special Secretary, Additional Secretary, Joint Secretary, Deputy Secretary, Under Secretary or an Assistant Secretary to the Government of India

On perusal of the above provision, we are of the considered opinion that the Secretary is competent to sign on behalf of President of India. Hence we do not find any infirmity in issuing charge sheet by the Secretary. Hence the said ground fails.

10. The learned counsel for the respondents further relied on 1990(2) AISLJ 630 A.Philip V/s Director General of Ordnance Factories and Anr. for the proposition that if the charge sheet is signed by lower than the Disciplinary authority there is no irregularity. The position laid down is charge sheet can be signed by lower authority under the instructions of the Disciplinary Authority. In the present case the charge sheet is signed by the Competent Authority. Hence the said authority has no relevance for deciding the present case.

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11. The learned counsel for the applicant relied on (1989) 9 ATC 500 M.N.Qureshi V/s Union of India and others, 1990 (3) SLJ CAT 675 Ramesh K.Desai V/s Union of India and others decided by CAT Ahmedabad, 1989(9) ATC 509 P.L. Khandelwas V/s Union of India and others decided by CAT,Ahmedabad, (1991)16 ATC 514 State of Madhyapradesh V/s Bani Singh decided by the Apex Court of the land, (1992) 19 ATC 792 P.K.Panda V/s Union of India and others decided by CAT Cuttack for the proposition that issue of charge sheet after a long delay deserves to be quashed. We have carefully perused the authorities and we are of the considered opinion that it is not the delay which entitles any relief to the charged officer but it is the unexplained delay which entitles the relief to the charge officer. On perusal of the pleadings of the applicant, we find that in respect of Article of Charge No.1 the prosecution before the Criminal Court came to an end on 7.10.1980. The charge sheet in respect of the same was issued on 3.11.1982. Certainly there is a delay of about 2 years after quashing the prosecution by the Sessions Court. It is true that the charge relates to 1970-71, but the delay is explained that notice was received in the year 1975, explanation was called for, matter was investigated by the department and then the CBI has investigated the matter and the prosecution was launched. Hence till 7.10.1980 when the criminal prosecution was lodged and ultimately decided by the Sessions Court there appears to be no cause for delay in favour of the the applicant. If the Government servant is prosecuted and the prosecution ends in favour of the department then on conviction the action can be

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taken against the charge officer. Hence if the charge sheet is not issued till then the applicant is not entitled to have any grievance.

12. The delay of about two years after quashing of the prosecution by the Sessions Court is not a long delay, which can said to be a normal delay, particularly when the applicant is charged in respect of the facts reduced to writing such as partnership deed, opening of Bank Account in the name of the firm, operating the Bank account in the name of the firm, drawing of cheques for and on behalf of firm taking loan for the firm etc. Delay may be a good ground where the the charge officer on account of delay unable to make his defence. In the circumstances as stated above we do not find any ground to quash the charge sheet on account of delay and laches on behalf of the respondents, as it does not exist.

13. Annexure A-3 dated 7.5.1985 is as under:

With reference to his representation dated 5.3.1984, Shri Umesh Chandra Vidyarthi, Scientific Officer(SC), Chemical Engineering Division, Bhabha Atomic Research Centre, is hereby informed that his request for taking the help of a legal practitioner to work as his defence assistant during the course of disciplinary proceedings against him has been agreed to by the disciplinary authority.

He is also informed that it has been decided to remit his case for de-novo inquiry and that orders regarding appointment of Inquiry Officer and Presenting Officer will be issued shortly.

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On perusal of the same it is noticed that case is remitted for de-novo enquiry.

13. The learned counsel for the applicant relied on (1989) 9 ATC 141 Romeo Charley V/s Director General, Council of Scientific and Industrial Research (CSIR), New Delhi and Anr. AIR 1971 SC 1447 K.R.Deb V/s The Collector of Central Excise, Shillong. 1989(2) CAT 88 Motiram Terjuma Gurbaxani V/s Chief Commissioner of Income Tax and Ors. 1989 (1) ATJ 469 Shri Jai Pal Singh V/s Delhi Administration and Ors. 1990 (2) ATJ 191 Shri Satpal V/s Delhi Administration through Lt. Governor of Delhi and Anr. for the proposition that de-novo enquiry cannot be ordered and only a further enquiry can be ordered. We have perused the said authorities and the distinction laid down in de-novo enquiry and the further enquiry is that in case of de-novo enquiry the proceedings are quashed and in case of further enquiry alleged proceedings remain on the file.

15. On perusal of the records submitted by the respondents, we find that on 2.5.1984 and 3.5.1984 statement of Shri S.B. Agarwal, H.N. Mehta, R.C. Karkera, M.B. Prabhu, S.R. Khankhoje, S.A. Srinivasan V.K.B. Bhatia were recorded and on 4.5.1984 the applicant was questioned regarding the evidence adduced by the Presenting Officer.

16. If we peruse the report of the enquiry officer, we find that the earlier statements as stated above in para 15 of this order are considered and on perusal of the order sheets we find that de-novo enquiry was conducted. It is suffice to state that the Enquiry Officer has neither followed the procedure meant for de-novo enquiry nor for further enquiry and has adopted the procedure unknown to law.

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17. On perusal of the enquiry file, we found that on 5.5.1984 the Inquiry Officer has submitted his report and found the applicant guilty of the charges levelled against him. Thus the enquiry was concluded.

18. The learned counsel for the applicant relied on 1990 (14) ATC 95 V.D.Joseph V/s Union of India and others decided by CAT Ernakulam, wherein it is held that denial of opportunity for cross examination is a ground which vitiates enquiry. We agree to the said proposition of law. On perusal of the enquiry proceedings which was completed on 5.5.1984. We find that the applicant has not cross examined the witness during the said enquiry.

19. The learned counsel for the applicant relied on 1991 (1) (CAT) SLJ 513 Santosh Kumar Banerjee V/s State of Orissa and Ors. which lays down the proposition that even ex-parte enquiry had to be conducted in accordance with statutory rules. We agree to the said proposition of law.

20. The learned counsel for the applicant relied on ATR 1988 (2) CAT 678 decided by Jabalpur Bench Bhimsen V/s Union of India and others, for the proposition that the Enquiry Officer had illegally held the proceedings ex-parte. It is suffice to state that as the matter is being remitted to the Enquiry Officer on the ground that de-novo enquiry cannot be ordered. Hence the Enquiry Officer has to proceed with the enquiry after affording an opportunity to the applicant for cross examination of witnesses. Hence the said question does not arise at this stage.

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24. In the result the OA is allowed. Order of compulsory retirement of the applicant under No.1/1/77 Vig./R/Vol V/800 dated 26.6.1993 (Exhibit A-1) is quashed and set aside. The enquiry is remitted to the Enquiry Officer to pass necessary orders in respect of inspection of documents, if order for inspection of documents is passed, a date for inspection of the same be also fixed, an order for enquiry being held at Bombay be considered, the applicant be afforded an opportunity to cross examine the witness already examined and then the enquiry has to proceed in accordance with law and complete within a period of nine months from the date of this order. The applicant shall be deemed under suspension during the period of further enquiry as ordered. No order as to costs.

S.L. Jain
(S.L.JAIN)
Member (J)

D.S. Baweja
(D.S.BAWEJA)
Member (A)

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