

28/12/94

9

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 756/93

Transfer Application No:

DATE OF DECISION: 21.12.1994

R.C.Parate

Petitioner

Shri S.P.Saxena.

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Shri R.K.Shetty.


Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B.S.Hegde, Member(J),

The Hon'ble Shri M.R.Kolhatkar, Member(A).

1. To be referred to the Reporter or not ? ✓
2. Whether it needs to be circulated to other Benches of the Tribunal ?


(B.S.HEGDE)
MEMBER(J).

(10)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

Original Application No.756/93.

R.C.Parate. ... Applicant.

V/s.

Union of India & Ors. ... Respondents.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri M.R.Kolhatkar, Member(A).

Appearances:-

Applicant by Shri S.P.Saxena.
Respondents by Shri R.K.Shetty.

JUDGMENT :-

(Per Shri B.S.Hegde, Member(J)) Dt. 21.12.1994.

The applicant in this Original Application has challenged the impugned order dt. 25.5.1993 issued by the Respondent No.1 under Rule 16 of the CCS(CCA) Rules, 1965 initiating disciplinary action against the applicant on account of the deficiency that had alleged to have taken place in the construction of a building during 1983-84 while he was working as a Garrison Engineer of the Department after a lapse of 10 years.

2. The brief facts are that the applicant joined the Respondents as Assistant Executive Engineer w.e.f. 3.2.1964 through competitive examination held by the UPSC. He was later promoted to the post of Executive Engineer in 1977 and was thereafter further promoted to the post of Superintending Engineer in 1986. He was also promoted to the post of Superintending Engineer (SG) in 1986 and subsequently he was further promoted to his present post of Additional Chief Engineer w.e.f. 18.5.1992. He states that he was posted at Jabalpur from 3.5.1982 to 11.5.1985 when he was functioning as Garrison Engineer (West) Jabalpur. During the above period a contract for construction of storage accommodation of JAK RRC

Jabalpur was concluded by Commander Works Engineer with M/s.S.K.Mukerjee. The execution of the subject work was entrusted to the applicant as per the provisions of the Contract Agreement and he has been assisted by the Assistant Garrison Engineer and Superintendent Bridges/Roads Gr.I etc. At the same time there were about 30 works in progress under various contracts in 1985 when the applicant was posted out of Jabalpur on transfer and the work in respect of the above C.A. No.CWE/JBI/13 of 83-84 was commenced on 9.4.1984 and completed on ^{record} 11.6.1987. He also submits, that his service/right from 1964 to till to day were excellent. Subsequent to this he has been promoted thrice as Executive Engineer, Superintending Engineer and Additional Chief Engineer. Therefore, he contends that the proposed disciplinary inquiry against him after a lapse of 10 years is bad in law and the same requires to be set aside. He has also prayed for an interim relief seeking a direction to the Respondents not to proceed with the proposed disciplinary inquiry till the disposal of the application.

3. The imputation of charge against the applicant reads as follows:

"MES-418001 Shri RC Parate, EE(Now SE) was functioning as Garrison Engineer (West) Jabalpur from 03 May 82 to 11 May 85. A contract for construction of Storage accn of JAK RRC Jabalpur was concluded by CWE Jabalpur under CA No.CWE/JBI/13 of 83-84 with Contractor M/s.SK Mukherjee.

2. The said MES-418001 Shr RC Parate EE being GE(W) Jabalpur during the above said period was responsible for execution of the subject work strictly as per the provisions of the CA. It was incumbant upon him to ensure that sub-standard material was not accepted and incorporated in the work by carrying out proper tests and maintaining

proper record thereof. He exhibited lack of devotion to duty by his acts as indicated below:-

- (a) Not ensuring maintenance of record of approval of bricks and tarfelt.
- (b) Adopting inferior quality of tarfelt and omission of construction joints.
- (c) Not exercising adequate supervision of work when brick, plaster and RCC work of roof slab were in progress.

3. By his above acts, the said Shri RC Parate, EE (Now SE) exhibited gross negligence and lack of devotion to duty, thereby violating Rule 3(1)(ii) & (iii) of CCS(Conduct) Rules, 1964."

4. The Respondents in their reply negated the contentions of the applicant, but insofar as the facts are concerned there is no dispute. They further contend that the disciplinary proceedings is still in progress and the applicant has not yet been penalised so far and hence the application filed by the applicant is premature and the same deserves to be dismissed. Since the applicant has been in-charge of the said work and on account of lack of devotion to the dutyⁱⁿ the matter of works executed under the aforesaid contract. A disciplinary inquiry was initiated against him. Besides, the applicant there were other persons involved in the alleged sub-standard work executed by the Contractor. They further contend that the applicant cannot absolve^{himself} from the responsibility and the plea of delay in disciplinary action. It is also reiterated that necessary inquiry to establish the responsibility of bad workmanship in the work "Construction of New Storage Accommodation in JAK RRC Jabalpur" was ordered on 23.8.1989 and after due satisfaction by the disciplinary authorities the charges have been framed against the applicant and memorandum of charges under Rule 16 of CCS Rules 1965 besides others. Therefore, the delay is unavoidable as the disciplinary authority had

had to seek concurrence of various authorities before arriving at a final decision of the case. Insofar as the delay is concerned, the Respondents have given a chronological events at Ex. 'F' ^{admittedly} whereby ~~there~~ there is some delay ~~in there~~ in issuing charge sheet against the applicant.

5. We have heard the learned counsel for the parties and perused the pleadings. The Tribunal after hearing the parties had issued an interim order dt. 28.1.1994 directing the Respondents not to proceed with the inquiry till further orders which is continued till today.

6. The applicant's counsel Shri S.P.Saxena raised two issues for our consideration. Firstly, the un-explained delay in initiating the disciplinary proceedings, that too for a minor penalty to be imposed. Secondly, subsequent to the completion of the work, the applicant has been promoted thrice whereby any acts of omissions and commissions is said to have been wiped out as ~~alleged~~ alleged to have taken place during 1984-85, thereby warranting an initiation of disciplinary proceedings for minor penalty is not only unjustified but contrary to the rules. In support of his submissions that the Respondents have not explained the reasons for delay in initiating the proceedings, reliance was placed on a catena of decisions. He has relied on State of M.P. V/s. Bani Singh & Anr. (1990(2) SLR 798) wherein the Supreme Court has held that initiation of departmental inquiry after 12 years is not warranted and the same was quashed. The irregularities which were the subject matter of the inquiry is said to have been taken place between the years 1975-1977. It is not the case of the department that they

14

were not aware of the said irregularities if any, and came to know it only in 1987. According to them even in irregularities and the investigations were going on since then. If that is so it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental inquiry to be proceeded with at this stage. In any case, there are not grounds to interfere with the Tribunal's orders and accordingly we dismiss the appeal. Further he has relied on/ in ^{Calcutta High Court decision} Mrinal Kanti Chakraborty V/s. State of West Bengal and Ors. (1993(2) SLR 647) wherein the Court has held as under :

"No departmental proceeding could be allowed to be continued on the basis of a chargesheet which was absolutely vague, indefinite and wanting in material particulars. Further in the instant case the allegations, if any, relate to a period which is about 14 years prior to the retirement and that the same should be held to be stale.

It is also well settled principle that after the promotions are given no departmental proceeding could be initiated on the basis of omission or commission or materials which relate to periods prior to the granting of such promotions inasmuch as promotion once given on consideration of the entire records amounts to giving a clean chit and after promotion is granted disciplinary authority is estopped from issuing any chargesheet in respect of the allegations pertaining to the period prior to promotion."

He has further relied on a decision of the CAT, Principal Bench in Arun Kumar Basu V/s. UOI & Anr. (A.I.S.L.J. IV - 1993(1) 510), wherein it has been held as under:

"The alleged lapses or misconduct of the applicant were known to the respondents as early as in 1982. Despite this, he was given more than one promotion. In Audhraj Singh V/s. State of M.P., AIR 1967 MP-284, it has been held that "if the lapse or misconduct is one which is known to the authority before the ...6.

person is promoted and not one which comes to light subsequent to the promotion, and if the authority concerned knowing of this lapse or misconduct promotes the civil servant without any reservation, then it must be taken that the lapse or misconduct has been condoned."

In the light of the above, the learned counsel for the applicant contends that un-explained delay in initiating disciplinary proceedings would be denial of reasonable opportunity and further inordinate un-explained delay in initiating the proceedings vitiates inquiry itself. In Tarlochan Singh V/s. Union of India & Ors. (ATR 1986(2) CAT 405 Delhi) it was held that unconscionable delay of more than 5 years in disposal of disciplinary proceedings as not justified. Admittedly, in the instant case, the respondents initiated the charge sheet and initiated the disciplinary inquiry after a lapse of 10 years and the applicant has been promoted thrice subsequent to the minor lapse that has occurred during 1984-85. Therefore, it has been viewed by various Courts that the delay in initiating the disciplinary proceedings vitiates the disciplinary proceedings. Since he was not directly involved in the execution of work and as he has been assisted by other Engineers or Staff at the most it can be treated that he might be ^{vicariously} responsible for the alleged bad works executed by the Contractor.

7. The Respondents have also taken a plea that promotions are not made after issue of charge sheet. The question for consideration is whether after awarding the aforesaid work whether the applicant has been promoted thrice to higher positions. The respondents have not disputed the same except intimating various dates without disclosing the contents of references made to the respective authorities. The Respondents have not given any convincing answer for the delay in initiating the inquiry. In this connection, the learned counsel for the applicant relies upon the decision rendered by the Ahmedabad Bench in

M.N.Qureshi V/s. UOI & Ors. (1989) 9 ATC 500), where the Tribunal has held that the delay in issue of charge sheet vitiates the departmental inquiry. There also the Respondents tried to justify the delay on the ground that various authorities including the Central Vigilance Commission had to be consulted. Therefore, the Tribunal observed simply indicating the dates without disclosing the contents of the references made to those authorities is not justified. The facts of this case is similar to the facts referred to above. Therefore, both on account of the delay, as well as, on the issue of promotion any further inquiry is not warranted, and thus the same requires to be quashed. The applicant has also taken a stand that CCS(CCA) Rules are not applicable to his case as he is a Civilian Government Servant in the Defence services paid out of the Defence Estimates. The said contention is not tenable in view of Rule 3 of the CCS(CCA) Rules, 1965.

8. On a perusal of the documents, we find that the deficiencies that is alleged to have taken place in the year 1984-85 in which the applicant was one of the persons found to be involved along with others like S/Shri Prasad, C.K.Bhargava and R.D.Gupta who have been imposed a penalty of censure, stoppage of annual increment etc. Admittedly, it is not a joint inquiry and as stated earlier, if at all, the applicant is held responsible, he will be indirectly responsible for the omissions and commissions, and action cannot be taken after a lapse of 10 years.

9. In response to the contentions made by the applicant, the learned counsel for the Respondents Shri Shetty contended that no promotion has been given to the applicant after issue of the charge sheet. In fact, that is not the contention of the applicant. The contention of the applicant is subsequent to the event that took place in 1984-85. He has been promoted thrice. Though the work was, completed in 1987 the competent authority ought to have been aware of the alleged deficiencies that had taken place in the construction work. If that be so, they would not have given the promotions to the applicant. The learned counsel for the Respondents did not cite any authority in support of his contention that the delay is more than 10 years. in this case would not result in ^{violation} principles of natural justice.

10. We have given our careful consideration to the matter. As admitted by the Respondents that a delay of 10 years is taken place for issue of charge sheet in this case. It is not the case of the Respondents that the delay was on account of any Act on the part of the applicant as stated earlier. No satisfactory explanation for this long delay has been offered except the general statement that the matter remained under correspondence with the various authorities. We are in respectable agreement with the views expressed by the Supreme Court in State of M.P. V/s. Bani Singh and other decisions cited by the counsel for the applicant above and are of the view, that inordinate delay in this case is unreasonable and grossly unfair to the applicant.

The fact that no specific time limit has been fixed under the rules for initiating disciplinary proceedings does not mean that domicile sword should be kept hanging over the head of an Officer for an unreasonable time. A long delay in initiation of the disciplinary proceedings would also make an officer/ incompetent to defend himself properly as he cannot be expected to remember everything after such a long period. It would therefore, amount to effectively denying reasonable opportunity of defence.

11. In this view of the matter, the Disciplinary Proceedings have to be quashed and we allow the application and quash the charge sheet issued by the Respondents vide letter dt. 16.7.1993 and there will be no order as to costs.

M.R. Kolhatkar
(M.R. KOLHATKAR)
MEMBER (A)

B.S. Hegde
(B.S. HEGDE)
MEMBER (J).