IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 133/97

Date of Decision: 19.9.97.

V.Ranga Rao. — Applicant.

Shri S.P.Saxena — Advocate for Applicant.

Versus

Union of India & Ors. — Respondent(s)

Shri R.K.Shetty. — Advocate for Respondent(s)

CORAM:

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

Hon'ble Shri. P.P.Srivastava, 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).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 133/1997.

19th, this the 8th day of September 1997.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri P.P.Srivastava, Member(A).

V.Ranga Rao,
Assistant Engineer B/R,
MES - 188587,
Office of Garrison Engineer,
N.D.A., Khadakwasla,
Pune - 411 024. ... Applicant.

(By Advocate Shri S.P.Saxena)

V/s.

1. The Union of India
through The Secretary,
Ministry of Defence,
Sena Bhavan, DHQ PO,
New Delhi - 110 011.

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

3. The Chief Engineer,
HQ Southern Command,
Pune - 411 001.

4. Garrison Engineer (MES),
NDA, Khadakwasla,
Pune - 411 024. ... Respondents.

(By Advocate Shri R.K.Shetty)

O R D E R

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

In this O.A. the applicant is challenging the Charge Memo issued by the Respondents dt. 10.9.1996. The charge against him is that while working as Superintendent B/R Gr-I during the period 6.12.1984 to 5.12.1986 was supervising execution of CA No CE (P) Bombay - 25

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of 1984-85 viz. Construction of Training facilities at INS Shivaji in Lonavala. During that period he has failed to ensure proper execution of the work resulting heavy leakage, in RCC roof mainly due to bad workmanship which is attributable to lack of supervision. Therefore, he did not maintain absolute integrity and devotion to duty and violated the Rule 3(1)(i)(ii) of CCS (Conduct) Rules, 1964,

2. The undisputed facts are that the contract for the above project work was concluded by Chief Engineer(P) Bombay for a sum of Rs.86,72,872.91. The Contractor who executed the work is M/s.Gandhi Construction Company under the supervision of Garrison Engineer, Lonavala. On the basis of complaint preferred by the users, the Technical Board of Officers convened in the year 1988 and the defects pointed out by the Board had been printed in the Statement of imputation which includes that the defect list attached to completion certificate dt. 6.12.1986 does not include any defect on leakage/seapage. Seapage was noticed in the year 1989 and on being informed the Contractors took necessary action to rectify the same, but found that rectification was not effective and he was asked to further do the rectification work. The contention of the learned counsel for the respondents is that if the applicant was vigilant in supervising the works, the late seapage could have been avoided. Therefore, it was treated as dereliction of duty on the part of the applicant. The respondents have cited Executive

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Engineer, Assistant Engineer as witnesses. It is not mentioned whether they are part of the same scheme of execution work. The applicant had made a representation on 17.10.1996 against the charge memo to the Competent Authority and sought for certain documents mentioned in the charge memo, Annexure III & IV and the statement of witnesses which was not furnished

3. The contention of the applicant is that the contract is between the Contractor and C.E. Bombay Zone and not with the undersigned who has been only assisting the Engineer in-charge. During defect liability period seepage/dampness was noticed by the applicant and was pointed out to Executive Engineer for further action, thereby the rectification work has been carried out by the Contractor. The quality of workmanship was not certified by any of the inspecting authority for not adopting the China Mosaic treatment in Bombay Zone. The work has been carried out as per the quality mentioned which has been approved by the Garrison Engineer and workmanship was accepted by all authorites therefore, he cannot be held responsible for any of such lapses. He joined the department in 1984 at Lonavala after Graduation and his role is only to assist, not only for the Project, but also to assist C.Es., C.W.E. Contract. Further,the specification is approved and adopted in that area which was been later contracted by C.E. Southern Command for

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lrskshrd/seepage without analysing the leakages. The respondents have given no reply.

4. The respondents in their reply submitted that a show cause notice was issued to applicant on 21.10.1991 the same was withdrawn on 21.3.1993. However, further it is stated that in view of various decisions of the Supreme Court and Tribunals they intend to initiate the inquiry and the applicant may even be exonerated. Again a fresh show cause notice was issued on 15.9.1993, but no action was taken till 1996. On a perusal of the documents we find that it has not been shown any negligence on the part of the applicant nor any reason assigned by the respondents in reopening the proposed enquiry excepting stating that they are perforced to initiate inquiry in view of the decisions of the Courts, Further, it is submitted, that on the analysis of the various case laws, it is urged that charge sheet issued by them cannot be interfered with by the Tribunal. The applicant is free to approach the Hon'ble Tribunal in case he is penalised by the department. At the same time, the respondents have stated that the applicant may be exonerated, both appears to be contradictory in terms of decisions of Courts in other cases do not give cause of action.

5. It is true, that he is one of the supervising persons in the execution of works, but nowhere it is stated by the respondents whether other officers who were party to the work having issued show cause notice or any action taken against them. On a perusal

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of the pleadings, we find the only reason advanced to re-open the proposed inquiry is that irrespective of the case at the time of issuing the charge sheet, Courts cannot interfere with the merits of the charge till it is concluded by the Competent Authority. Having issued the Charge Memo in the year 1991 and withdrawn in 1993 without any reasons, again issuing a fresh show cause notice in 1993 but not taken action till 1996, there is a lurking suspicion in the mind of the applicant for reopening the proposed inquiry against the applicant. In fact, the applicant was a new recruit in the job when he was at Lonavala in 1984 to 1986 and in 1986 he was transferred to some other place and he was further promoted to the post of A.E. in the year 1993, thereafter, another show cause notice was issued on 15.10.1993 and till 1996 no action has been taken by the respondents. This show cause notice/charge memo appears to be in furtherance of the earlier show cause notice. As stated earlier, the applicant is not the only person who inspected the work in question, the work in question has to be approved and certified by C.A., C.E. and other higher officials. Even assuming, that there is a defect in the workmanship, it is always open to the respondents to direct the Contractor to carry out the defective work in accordance with the terms of the contract, which they did in this case twice and at that point of time the applicant was not at Lonavala.

6. The learned counsel for the respondents in support of this contention draws our attention to the decision of this Tribunal in B.Sathiamurthy V/s. Union of India & Ors.

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(O.A. No.709/95 decided on 5.1.1996, CAT, Mumbai Bench). However, on a perusal of the said Judgment, we are of the view, that the said decision is distinguishable from the present one. In that case the deficiency in stores was made out by the Competent Authority and against that a charge sheet was issued to the applicant. The loss was quantified by the C.A., whereas, in the present case neither any loss is mentioned nor attributable against the applicant alone. Nowhere, it is stated, that other officials along with the applicant have been charged with the allegation of mis-appropriation of fund or non-supervision of the work in accordance with the terms of the Contract. If at all any such negligence on the part of the applicant, that by itself, does not amount to mis-conduct. The charge levelled against the applicant is that he did not maintain absolute integrity and devotion to duty. The Apex Court has held in Union of India V/s. J.Ahmed (AIR 1979 SC 1022) that "misconduct means, misconduct arising from ill motive, acts of negligence, errors of judgment, or innocent mistakes do not constitute such misconduct." In the case before the Supreme Court the concerned officer was charged with misconduct on the ground of lack of efficiency and failure to attain high standard of administrative ability. The Apex Court held that these allegations would not themselves constitute misconduct. According to the Supreme Court, negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the situation may be negligence in discharge of duty that would not

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constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high.

6. In the light of the above, in the case before us, what is alleged in the charge sheet is that the applicant had not maintained absolute integrity and devotion to duty as a supervisory officer. It is curious to note that it is nowhere mentioned as to what was the resultant damage caused to the department because of such negligence and carelessness, so from the averment in the charge sheet the degree of culpability discussed by the Supreme Court cannot be assessed. In the absence of that, we are constrained to hold that the allegations made on the applicant do not constitute mis-conduct so as to initiate disciplinary enquiry against the government servant . Adjudging the case from that point, we also hold that the charge sheet and the Disciplinary Enquiry cannot be allowed to stand.

7. It is true that normally, the Tribunal has no jurisdiction to go into the truth of the allegations/charges particularly at a stage prior to the conclusion of the disciplinary enquiry.

8. The counsel for the applicant has urged that the delay on the part of the respondents in initiating disciplinary enquiry itself vitiates the proposed enquiry. In our view, that by itself does not wipe out allegations against the applicant, but in the instant case, as stated earlier the respondents

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themselves did not take any action in initiating the departmental inquiry against any government employee. It is true, that the delay by itself does not vitiate the enquiry proceedings, but the respondents are not able to establish any cogent reasons for lapse or loss occurred to the department in view of the in-action on the part of the applicant insofar as the particular contract is concerned. In the result, we do not see any justification in allowing the inquiry to be completed. Accordingly, we hold that the charge sheet is not sustainable and the enquiry proceedings are hereby quashed and set aside. The O.A. is allowed. No order as to costs.

(B.S.HEGDE)
MEMBER(J)

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ORDER
(Per: P.P.Srivastava, Member(A))

9. I have read the judgement written by the Ld. Member (J) but I am unable to agree fully with the judgement. The Ld. Member (J) has dealt with the two issues involved in this O.A. One issue is concerning the delay in issue of the Charge-Sheet and another issue is concerning the merit of the charges.

10. So far as the delay part is concerned, the Ld. Member (J) has mentioned in para 8 that the delay on the part of the respondents in initiating disciplinary enquiry itself does not vitiate the proposed enquiry. Having mentioned this, the Ld. Member (J) has then mentioned that the respondents are not able to establish any cogent reasons or lapse or loss occured to the department in view of the in-action on the part of the applicant in sofar as the particular contract is concerned. Thus, the Ld. Member (J) has held that the delay itself does not vitiate the disciplinary proceedings. I am inclined to agree with this aspect of the judgement. In this connection, the Hon'ble Supreme Court's observations in the State of Punjab & Others V/s. Chaman Lal Goyal [AIR SLJ 1995 (2) 126] are relevant wherein it is held that mere delay is no ground to quash proceeding. In para 9 of the judgement, the Hon'ble Supreme Court has observed that - "how long a delay is too long always depends upon the facts of the given case." The Hon'ble Supreme Court has further

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observed that"if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be inter-dicted. Wherever such a plea is raised, the court has to weigh the facts appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the Court has to indulge in a process of balancing." Since the Ld. Member (J) has opined that the delay on the part of the respondents in initiating disciplinary enquiry does not wipe out allegations against the applicant,I am not required to deal with this aspect in detail, as I agree with his findings.

11. So far as the merit of the case is concerned, the Ld. Member (J) has held that the respondents are not able to establish any cogent reasons or lapse or loss occurred to the department in view of the in-action on the part of the applicant insofar as the particular contract is concerned. With due respect, I am unable to agree with this part of the judgement. In this case, the charge sheet has been issued but no enquiry has been conducted. The Tribunal had passed a status-quo order on 04.04.1997 and, therefore, no further action has been taken by the respondents on furtherance of the disciplinary proceedings after the filing of the charge-sheet. In my opinion, it is not open to the Tribunal to decide the

issue of the merit of the charge-sheet at this stage, unless it is shown that charge-sheet is without any evidence or it is a case of no evidence. In this charge-sheet, the applicant has been charged with 'lack of supervision'. The charge-sheet mentions the details of misconduct in the statement of imputation. On the face of it, therefore, I am of the opinion that it cannot be said that the Charge-Sheet is without any substance or this is a case of no evidence. I also am unable to agree with the observations of the Ld. Member (J) in as much as that there should be monetary loss for establishing misconduct.

12. It has been held by the Hon'ble Supreme Court time and again that the merit of the charges should be left to be determined by the Disciplinary Authority and the Tribunal should interfere only on the question if the disciplinary proceedings have been carried out according to the law. In the present case, we do not have the advantage of the findings of the Enquiry Officer or the orders of the Disciplinary Authority or the Appellate Authority and in my opinion, this stage is pre-mature for the Tribunal to interfere. Therefore, I am of the view that the disciplinary enquiry should be permitted to be continued and to be completed. However, I direct that the disciplinary proceedings should be completed within a period of six months from the date of receipt of the order.

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13. The O.A. is disposed of in terms of the above orders.

(P.P. SRIVASTAVA)
MEMBER (A).

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