

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 143/97

Transfer Application No.

Date of Decision 26.6.97

Navin Singh

Petitioner/s

Shri M.S.Ramamurthy

Advocate for
the Petitioners

Versus

State of Maharashtra & Anr.

Respondent/s

Shri V.S.Masurkar

Advocate for
the Respondents

CORAM :

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

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 ?

M.R.KOLHATKAR
(M.R.KOLHATKAR)

MEMBER (A)

B.S.HEGDE
(B.S.HEGDE)

MEMBER (J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

DA NO. 143/97

20th this the Tuesday day of June 1997

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

Navin Singh IFS
C/o Dr. Shiv Murat Singh
Deputy Conservator of Forests,
Osmanpura, Aurangabad.

By Advocate Shri M.S.Ramamurthy ... Applicant

V/S.

1. State of Maharashtra through Principal Secretary (Forests), Revenue & Forest Deptt. Mantralaya, Mumbai.
2. Union of India through Secretary, Deptt. of Environment & Forests, CGO Complex, Lodhi Road, New Delhi.

By Advocate Shri V.S.Masurkar ... Respondents
C.G.S.C.

ORDER

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

In this OA, the applicant is challenging the impugned order dated 18.2.1995 indicating that departmental enquiry initiated against the applicant in accordance with Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969. The applicant is a member of 1983 batch of Indian Forest Service borne on Maharashtra Cadre. The counsel for the applicant contends that the respondents have taken a decision as back as on 25.7.1991 to start disciplinary action against the applicant for six charges.

On considering all the six charges, the respondents decided to place the applicant under suspension from the service. Accordingly, he was suspended from service w.e.f. 12.5.1992. Suspension was revoked pursuant to the order of the Tribunal dated 3.8.1992 in OA.NO. 779/92. Therefore, the charge memo issued by the respondents is not in accordance with Rule 3(1) of All India Service (D & A) Rules, 1969 which requires that the charge sheet must be issued within 45 days of suspension. Therefore, the belated and piece-meal issue of charge sheet keeps the member of the service under a cloud all the time affecting his rights of promotions and affecting his career as a whole. Though the respondents have taken a decision to initiate disciplinary proceedings against 5 charge-sheets as back as in 1991, this charge-sheet was issued only on 18.2.1995 only after the applicant had filed OA.NO. 202/95. The impugned charge-sheet is in respect of some alleged irregularities committed by the applicant in the year 1989. Thus the delay of more than 6 years itself invalidates the disciplinary proceedings. It will certainly cause delay to the applicant's case. Therefore, he prays for quashing of the charge-sheet and granting stay not to allow the respondents to proceed with the enquiry. He further states that preliminary hearing is not yet started, the delay is never explained by the respondents.

2. The applicant has challenged all the five charge sheets including the present one in OA.NO. 202/95. Pursuant to the order of the Tribunal dated 21.6.1996 he is supposed to file a separate OA. for

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challenging this charge sheet and other one. In so far as three enquiries are completed by the enquiry officer but no decision has been taken by the competent authority, for which the respondents have not brought out any reasons why the decision has not been taken against the applicant so far on the basis of the findings of the enquiry officer till now. Therefore, not taking a decision by the respondents adversely affected the promotion of the applicant and going on deputation out of India. The attitude of the respondents is clear that they are biased against the applicant and already made up their mind to punish the applicant by finding him guilty before even start of disciplinary proceedings etc. Therefore, the impugned chargesheet is not maintainable.

3. In this connection, the learned counsel for the applicant Shri Ramamurthy draws our attention to a decision of Supreme Court in State of M.P. vs. Bani Singh, AIR 1990 SC 1308, wherein the Apex Court observed that :

"The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-1977. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April, 1977 there was doubt about the involvement of the officer in the said 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 enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

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Therefore, he contends that the ratio laid down in Bani Singh's case squarely applies to the applicant's case. In this case also the incident is of 1989 and respondents had taken action in 1995. The charge memo was issued after a lapse of more than 6 years. It would hamper the disciplinary proceedings regarding the contention respondents did not issue the charge sheet, the same does not hold good because the suspension order revoked by the competent authority. Therefore, Rule 3(1) of AIS (D&A) Rules, 1969 would not apply to the facts of this case.

4. The applicant has filed OA.NO. 486/93 and OA.NO. 202/95 which have been admitted by the Tribunal. OA.NO. 202/95 has already been disposed of wherein the liberty is given to the applicant to file fresh OA. for two charges, if he so desires, thereby, he filed this OA.

5. The respondents in their reply opposed the contentions of the applicant and contend that the prayers made in the OA. are vague and irregularities committed during that period will have to be investigated and to find out the truth. Further, it is submitted that the investigation is nearing completion. The truth is to be find out. The applicant is not under suspension and therefore no prejudice will be caused to the applicant. Thereby, they submitted that quashing the disciplinary proceedings does not call for in view of the judgement of the Supreme Court in the case of Transport Commissioner vs. A. Radha Krishna Moorty reported in (1995) 1 SCC 322, wherein the Apex Court has held that :-

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"Correctness of the charges held, not subject to judicial review prior to conclusion of the departmental enquiry. Even after the conclusion of the departmental enquiry, the scope of judicial review is restricted to charges based on no evidence. The truth and correctness of the charges were not a matter for the Tribunal to go into, more particularly at a stage prior to the conclusion of the disciplinary enquiry. Even when the matter comes to the Tribunal after the imposition of punishment, it has no jurisdiction to go into truth of the allegations/charges except in a case where they are based on no evidence, i.e. where they are perverse. The jurisdiction of the Administrative Tribunal is akin to that of the High Court under Article 226 of the Constitution. It has power of judicial review. It only examines the procedural correctness of the decision making process."

Therefore, the application filed by the applicant is premature and the same is liable to be dismissed. It is noticed in Para 14 of the reply that the applicant was suspended on 12.5.1992 and the chargesheet was issued to him on 13.5.1992, therefore, the chargesheet was issued to him within the stipulated period and in so far as other cases are concerned where the applicant was chargesheeted, he was not suspended after the revocation of suspension order. It is not denied that the period in which the applicant was working as DCF Sironcha Forest Division during the period from 6.2.1989 to 11.6.1990 almost all the six charges relates to that period. It is not understood why the respondents have not taken the steps to issue a charge memo though the incident relates to 1989. Further, we are surprised to know that despite the direction of the Tribunal to complete the enquiry and take a decision, the respondents did not take any decision on the findings of the enquiry officer which shows the tendency of the department to prolong the agony indefinitely which according to us not expected of the department to act in that manner. The contention

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of the respondents that they can initiate enquiry against the member of the service any time is unfortunate. That is not what is intended under the rules. Under the rules, enquiry is supposed to complete within six months from the service of charge sheet. This fact has been considered by the respondents in earlier OA. Therefore, they cannot take the stand that it is open to them to initiate departmental proceedings ~~any~~ time against the serving member without any reference to the events and the cause of action.

6. In this connection, learned counsel for the applicant cited two more decisions, one is Ram Dass vs. Union of India & Ors. (1996) 33 ATC 121 of Chandigarh Bench and another one Rajendra Chaubey vs. Union of India & Ors. (1995) 31 ATC 237 of Allahabad Bench. Both the cases considering the delay. The Tribunal has quashed the charge memo stating that it is not against Article 231 of the constitution but against the principles of natural justice. Accordingly, charge memo was quashed. In this case, the delay is of 4 years only. It is stated that the disciplinary proceedings are nearing completion. Normally, the Tribunal ~~quash~~ ^{is reluctant to} the delayed charge memo. Admittedly, in this case there is a delay in issuing the charge memo against the applicant because the respondents have not taken any decision against the completed enquiry so far, that amounts to vindictiveness on the part of the respondents in prolonging the agony in not coming to the conclusion.

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7. Considering the facts and circumstances of the case and on the statement made at the bar that the disciplinary proceedings are on the verge of completion, we are not inclined to quash the disciplinary proceedings at this stage. However, we direct the respondents to complete the enquiry within a period of four months from the date of receipt of this order and take appropriate decision without ^{any} further loss of time. The OA. is disposed of with the above directions.

M.R.Kolhatkar
(M.R.KOLHATKAR)

MEMBER (A)

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

mrj.