

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 145/1997

Date of Decision: 20.6.97

Navin Singh

Petitioner/s

Shri M. S. Ramamurthy

Advocate for the
Petitioner/s

V/s.

State of Maharashtra &
Union of India.

Respondent/s

Shri V. S. Masurkar

Advocate for the
Respondent/s

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 ?

abp.


(B. S. HEGDE)
MEMBER (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GULESTAN BLDG. NO. 6, PRESCOT RD, 4TH FLOOR,
MUMBAI - 400 001.

ORIGINAL APPLICATION NO: 145/97.

DATED THIS 21 DAY OF JUNE, 1997.

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

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

Navin Singh IFS,
Deputy Conservator of Forests,
Osmanpura-Aurangabad. ... Applicant.
By Advocate Shri M.S.Ramamurthy.

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. ... Respondents.

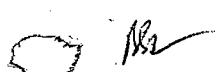
By Advocate Shri V.S.Masurkar

X ORDER X

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

Applicant in this application challenges the Impugned Order dated 14/12/92 vide which the respondents had initiated disciplinary proceedings against him under Rule-8 of the All India Services (Discipline and Appeal) Rules, 1969 and prays for quashing and setting aside of the pending enquiry.

2. The applicant is a member of the Indian Forest Service of 1983 batch borne on Maharashtra Cadre. He further states though the respondents had taken a decision as back as 1991 to start disciplinary proceedings against the applicant for six charges, and thereafter placed the applicant under suspension from service. Suspension order was revoked by the respondents pursuant to the order of Tribunal dated 3/8/1992 in OA No. 779/92. He further states that though the suspension order was received on 12/5/92, charge sheet was issued on 14/12/92



and thus not issued within 45 days of the suspension order as per the requirement under Rule 3(1) of All India Service (D & A) 1969. Therefore, the charge-sheet issued by respondents is not valid and cannot be sustained. Further, the belated and piece-meal issue of charge sheets keeps the member of the service under a cloud all the time which would affect his career as a whole. Though the chargesheet was issued as back as in 1992, the first oral hearing took place after one year in 1993 when the applicant gave notice to respondents to furnish certain documents. Though the Enquiry Officer had directed the Presenting Officer to furnish the said document, he could not make available most of the vouchers which were listed in the Charge-sheet. Further, the Presenting Officer stated that he has not been able to procure the said documents., the said documents may not be available, etc. Thereby, the applicant submitted that in the absence of documents, he cannot name the defence witnesses since their names and addresses are mentioned in the said vouchers only. Therefore, the enquiry in the case of impugned ~~charge~~ sheet cannot be permitted to go on, because of delay and for want of material documents. Though the applicant had filed OA No. 202/95 before this Tribunal challenging all the five charge-sheets, including impugned charge-sheet in one OA. As per the directions of the Tribunal in its order dated 21/6/96 the applicant was given liberty to challenge the charge-sheets individually by filing fresh OA if he so desires. Impugned Charge-sheet related to 1989-90 incident. In OA No. 202/95 three charge memos have been considered and the Tribunal after considering the rival contentions and submissions of the parties had observed, that respondents had not taken any steps for concluding the enquiry. In their reply, they have not been able to deny that the enquiry has been completed but no decision has been taken by the competent authority. The respondents have not brought out any reasons why the punishment/decision has not been taken pursuant to the

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findings of the enquiry officer. However, the respondents had been directed to pass appropriate orders in so far as three enquiries which are completed within a period of four months from the date of receipt of this order.

3. Counsel for applicant submits, despite the directions of the Tribunal, the respondents have not passed any order on the three charge-memos where enquiry has been completed so far. It is for the applicant to consider what further steps to take, if the respondents have not adhered to the Tribunals directions.

4. It is true, that pursuant to the direction of the Tribunal, the applicant was forced to file this application and he states that the Disciplinary Authority had a biased mind and had already made up his mind to punish the applicant before the start of the disciplinary proceedings. Therefore, respondents should not be allowed to proceed with the enquiry any further in so far as those three charge-memos are concerned. Though the enquiry was completed, they did not care to take any decision so far, that itself would indicate the attitude of the respondents towards the applicant. Various grounds have been raised in these OAs, and that the respondents were not able to furnish the critical documents which are listed as Annexure-3 of the charge-sheet, which only can provide the names and addresses of defence witnesses. Therefore, the respondents should not be allowed to proceed further with enquiry. Secondly, the impugned charge-sheet pertains to 8 years old matter though the decision was taken in 1991, the delay of not holding the enquiry has not been explained by the respondents. Thirdly, the impugned charge-sheet has not been issued within 45 days of the suspension order, etc.

5. The respondents in their reply denied the various contentions of the applicant and urged the prayers made by the applicant is vague and the applicant is facing number of

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disciplinary proceedings and the prayer made by the applicant deserves to be dismissed. Further, it is submitted that the disciplinary proceedings is in process and the truth in the charges levelled against the applicant is yet to be finally decided. The contention of the applicant is that the charge-sheet was not issued within 45 days of suspension is incorrect and further that the applicant is not under suspension and therefore, there is no cause of action at this premature stage. Further, it is submitted that the applicant is challenging the charge-sheet dated 14/12/92 by filing OA in 1996. As per section 21 of the application, the AT Act, the aggrieved person has to file application within a period of one year from the date of cause of action. The present application therefore suffers from the delay and latches and hence the OA deserves to be dismissed.

6. Further, the counsel for respondents submitted in view of the repeated pronouncements of the Apex Court, regarding Disciplinary proceedings, stating that the Tribunal/Court would not be justified to interfere in the matter at that stage, it would be a matter on production of evidence for consideration at the enquiry by the enquiry officer, the scope of judicial review of charges based on true evidence. The Tribunal to go into more particularly to the stage prior to the conclusion of the Disciplinary enquiry. Therefore, the applicant is perforce to file this application since his earlier OAs are pending decision. Various charges have been challenged in one OA and was not entertained that does not give him a licence to challenge the charge-memo dated 14/12/92 after a lapse of five years. It is true, that the applicant was suspended on 12/5/92 and chargesheet was issued in this case on 13/5/92. Therefore, it is incorrect to state that the charge-memo was issued to him after a lapse of 45 days.

7. It is noticed that the respondents vide their letter dated 5/7/94 stated that the Presenting Officer was not able to procure the documents so far and these documents may not be available inspite of best efforts. Though the

applicant submitted it would not be possible for him to put up his defence in the absence of these witnesses and in presenting the case without these documents. If the names are to be ~~called~~ out from the documents, then it would be difficult for the applicant to furnish the names of the defence witnesses. On that pretext, the respondents cannot delay the disciplinary proceedings inordinately. Whatever documents are in their possession, they should be able to complete the proceedings within a reasonable time. Any further delay in completion of the proceedings will cause considerable prejudice to the interest of the applicant.

8. The Learned Counsel for applicant relies upon the decision of State of Punjab v/s. Chaman Lal Goyal, 1995 1 CLR 429 where the Apex Court has held that

"There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after a lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delay in initiation of proceedings is bound to give room for allegations of bias, malafides and misuse of power. If the delay is too long and is unexplained, the Court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the Court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances."

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9. In the instant case though there was no delay in issuing charge-memo, there is a considerable delay in completing the disciplinary proceedings partly due to negligence on the part of respondents. If the respondents are not able to procure the documents listed in the Articles of charge, then there is no point in prolonging the proceedings indefinitely and they should conclude the proceedings at an early date.

10. Since the applicant has filed this OA after a lapse of five years, though the charge-memo was issued as back as 1992. Considering the facts and circumstances of the case, we do not feel that we are justified to interfere at this stage to set aside, stay or quash the Impugned order. It is a settled principle of law Justice must not only be done but must be ~~seen~~ to be done.

11. Therefore, we direct the respondents/Enquiring Authority/Disciplinary Authority to complete the enquiry proceedings against the applicant on or before 30th September, 97 on the available documents. Further since the respondents have not yet taken any decision on the findings of the enquiry officer of the earlier OA.202/95 for which no plausible explanation has been offered by respondents. With these directions, the OA is disposed of with no orders as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A)

B.S.Hegde

(B.S.HEGDE)
MEMBER (J)

abp.