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CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 172/97

Date of Decision: 1/2/99

Shri Jawahar Singh Petitioner/s

Shri G.S. Walia Advocate for the
Petitioner/s.

v/s.

Union of India & Anr. Respondent/s

Shri V.S. Masurkar Advocate for the
Respondent/s

CORAM:

Hon'ble Shri Justice R.G. Vaidyanatha, Vice Chairman.

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

(1) To be referred to the Reporter or not? *W*

(2) Whether it needs to be circulated to
other Benches of the Tribunal? *W*

abp.

R. G. Vaidyanatha
(R.G. VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GULESTAN BLDG.NO.6, 4TH FLR, PRESCOT RD, FORT,
MUMBAI - 400 001.

ORIGINAL APPLICATION NO.172/97.

DATED THE 1ST DAY OF FEBRUARY, 1999.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman.

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

Shri Jawahar Singh, I.P.S.,
Superintendent of Police
(Railways),
Old Secretariat Building,
Civil Lines, Nagpur.

... Applicant.

By Advocate Shri G.S.Wadia

V/s.

State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai - 400 032.

Union of India,
Through Secretary,
Ministry of Home Department,
Parliament Street,
New Delhi.

... Respondents.

By Advocate Shri V.S.Masurkar

I O R D E R

I Per Shri R.G.Vaidyanatha, V.C. I

This is an application filed by applicant for quashing charge sheet dated 17/11/95 and for other consequential reliefs. Respondents have filed reply opposing the application.

We have heard the learned counsels appearing on both sides.

2. Applicant is of IPS cadre and was working as Superintendent of Police at Nagpur at the time the present application was filed. He has been issued a charge sheet dated 17/11/95. He has approached this Tribunal for quashing the charge sheet as the charge sheet is vague and it does not make a case of misconduct., and there is ^{further} ~~Further~~ ^{though} allegation that the Charge sheet was issued in 1995, ~~xxxxxx~~

no further progress in conducting enquiry was made and therefore on the grounds of delay, the charge sheet should be quashed. Another grievance is made that the charge-sheet is bad as ~~it~~ does not contain names of witnesses to be examined during enquiry.

3. Respondents have filed reply justifying the stand taken for issuing the chargesheet and ^{explained} regarding delay in conducting enquiry and other grievance made in the application.

The learned counsel for applicant pressed into service the above points in support of his argument that the charge sheet should be quashed. The learned counsel appearing on behalf of respondents submitted that the allegations against the applicant do make out a case of misconduct and there is no undue delay on the part of respondents in starting the enquiry and that there is no merit in the application.

4. As far as the question of delay is questioned, we notice that the charge sheet is dated 17/11/95 and applicant went on making representations during 96 seeking particulars and clarifications. But the respondents have replied that no such reply will be given and that he should file a reply to charge sheet. The applicant submitted a written statement only in the first week of January, 97. Unless the written statement is filed, the disciplinary Authority will not be in a position to decide whether to proceed with the enquiry by appointing enquiry officer or not. Disciplinary Authority can start exparte enquiry, but it will not be ^{in the interest} ~~in the interest~~ of the applicant ~~in~~ the Department and therefore, we find that the written statement of the applicant was filed very late., hence, it cannot be said that it amounts to delay in holding the enquiry. Then after the written statement was filed in January, 97, the present application is filed ^{two} weeks later ~~in~~ the end of January, 97., and since the matter is pending in this Tribunal.

no enquiry has been conducted. It is quite likely when the matter is sub-judice and the matter is pending in this Tribunal, the Disciplinary Authority may not want to go ahead with the enquiry, during the pendency of the OA in the Tribunal and hence allegations about delay has no merit. The delay is due to the written statement being submitted as late as first week of January, 97., and then pendency of this litigation.

But, however, since the charge sheet is of 1995, now 3½ years have lapsed, we cannot allow the matter to drag on forever and we appreciate the anxiety of the applicant that the enquiry should be expedited, since the pendency of the enquiry affects his service benefits.

5. As far as the argument that no mis-conduct is made out and the allegations in the charge sheet are vague, we only say that some of the allegations may be of vague nature, like lack of supervision, lack of co-ordination between applicant and other officers. We cannot say that there is no mis-conduct on the part of the applicant, like removing the cassette from the house of the accused without preparing panchnama and there was a lot of comotion in public in the statement of press, etc. It cannot be said that no case is made out against the applicant. We only say that if the allegations made in the charge-sheet are true and are proved at the time of Enquiry, then it makes out misconduct. We hasten to add that we are expressing prima facie view for the limited purpose of finding out if any misconduct is made out. Whether the allegations are true or not, is a matter which will have to be proved during the enquiry and therefore the charge sheet cannot be thrown out at the threshold. Some of the decisions cited by the learned counsel for Applicant need not be referred to, since it is question of fact depending on facts and circumstances of each case, whether a mis-conduct is made out or not. We do not want any observation regarding merits since it may prejudice either prosecution or defence in the

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conducting of the enquiry.

6. We find there is sufficient force in the grievance of the applicant that his defence is prejudiced when the list of witnesses is not given in the charge-sheet. No doubt there is provision that additional witnesses can be given at a later stage but normally the charge sheet should contain list of witnesses. When we pointed out this defect in the charge sheet, the counsel for respondents explained that administration will submit the list of witnesses in case they decided to examine any witnesses. In view of the above, we feel that a direction should be given to administration to furnish a list of witnesses to the applicant in case they want to examine any witnesses. If the administration does not want to examine the witnesses, then there is no need to furnish the list of witnesses to applicant.


7. In the result, the OA is disposed of at the admission stage with a direction to respondents to expedite conducting of the Disciplinary Enquiry on the basis of the charge sheet dated 17/11/95 and the Disciplinary Authority should pass final orders as expeditiously as possible and preferably within a period of 9 months from the date of receipt of copy of this order.

We also direct the Disciplinary Authority that before fixing the next date of preliminary enquiry a list of witnesses should be furnished to applicant in case the administration wants to examine any witnesses.

All contentions on merits are left open. Prayers (ii) and (iii) are left open with liberty to applicant to claim those reliefs before appropriate forum according to law. Since we are disposing of the OA itself, MP-123/98 does not survive.


(D.S. BAWEJA)
MEMBER (A)

abp.


(R.G. VAIDYANATHA)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

C.P.No.9/2000 in
O.A.No.172/1997

Dated:18th Sept,2000.

Learned Counsels on both sides present.

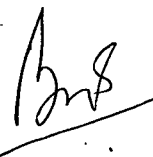
2. After providing liberty to Shri Walia, Learned Counsel for providing clarifications and after hearing Shri V.S.Masurkar and Shri R.R.Shetty for Shri R.K.Shetty, we find the position to be as follows:-

The order in the OA is by way of a direction to Respondents to expedite the conducting of departmental inquiry on the basis of charge sheet dated 17/1/95. Disciplinary Authority is required by the directions to pass final orders expeditiously and preferably within a period of 9 months. This order is dated 1/2/1999.

3. We find from the reply statement that the order is passed by the State Government of Maharashtra(R-1) on 26/6/2000 (at page 17 of paperback). The English copy of the said Marathi order is provided today. We find that the Respondents have complied with the order, although there is delay of some months beyond the "preferable time limit" indicated in the orders. Even otherwise, this delay cannot be viewed as being intentional and hence we cannot find that any contempt has been committed.

4. We note here the argument made by Shri Walia that the Government, while ordering the dropping of the departmental proceedings has imposed what he views as a punishment on Shri Jawahar Singh by adding in the same order dated 26/6/2000 that

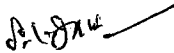
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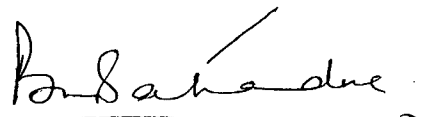


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Shri Singh, is given a written warning for improper handling of Video Cassettes. It is contented that this really amounts to a punishment and that there is no statutory provision for the penalty of warning. Further that such a warning will have adverse consequences in the career of the Applicant. It was prayed that liberty be granted to applicant to agitate this grievance before the Tribunal. If Applicant is aggrieved and if so advised, he is ^{hereby provided} ~~at~~ liberty to file an OA on this issue/aspect before the Tribunal, subject to laws of limitation.

5. With the above observations, the CP-9/2000 stands disposed of. The English Translation of order dated 26/6/2000 is taken on record.


(S.L.JAIN)
MEMBER(J)


(B.N.BAHADUR)
MEMBER(A)

abp.

ordc
to Ap. 4-18/9/00
on 23/9/00 sent despatched
to Respondent (s)
4/10/00