OA 647/97

OA 649/97

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD,MUMBAI:1

Original Application No. 647/97, 648/97 and 649/97.

Pronounced the 3rd day of April 1998.

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

Hon'ble Shri P.P. Srivastava, Member (A)

P.K. Sreedharan
Accounts officer
Dept. of Atomic Energy
(D/8 Kapilavatsu,
Anushakti Nagar,
Mumbai. ... Applicant.

By Advocate Shri R.C. Kotiankar.

V/s.

Union of India
(Through : Secretary to
Govt. of India),Dept.
of Atomic Energy,
Anushakti Bhavan, CSM Marg
Mumbai.

Additional Secretary to
Govt. of India,
Dept. of Atomic Energy
Anushakti Bhavan, CSM Marg.
Mumbai.

Executive Director (P&F)
Nuclear Power Corporation
of India Ltd,
Vikram Sarabhai Bhavan
Anushakti Nagar, Mumbai.

Executive Director (F)
Nuclear Power Corporation
of India Ltd.,
Vikram Sarabhai Bhavan,
Anushakti Nagar,
Mumbai.

Director (C & MM)
Directorate of C & MM
Nuclear Power Corporation of
India Ltd.,
Vikram Sarabhai Bhavan,
Anushakti Nagar,
Mumbai. ... Respondents.

By Advocate Shri M.I. Sethna alongwith Shri Vadhavkar.

ORDER

(Per Shri Justice R.G.Vaidyanatha, Vice Chairman)

These are three O.As filed by the same applicant against same respondents for almost identical reliefs. The respondents have filed reply opposing the applications. Since the points involved is short, we have heard learned counsel who appeared on both sides regarding admission and merits.

2. The applicant is a Central Government servant and now working as Accounts Officer on deputation in Nuclear Power Corporation of India Ltd., Mumbai. He has been issued three charge-sheets, which he has challenged in these three O.As.

3. In O.A. 647/97 the charge-sheet dated 28.8.96 has been issued to the applicant in respect of transaction which took place in 1991.

In O.A. 648/97, the charge-sheet dated 1.10.96 has been issued to the applicant in respect of transaction pertaining to the year 1989-91.

In O.A. 649/97, the charge-sheet dated 3.8.93 has been issued against the applicant in respect of transaction pertaining to the period during 1989-91.

The applicant's case is that all these charge-sheets are bad in law, being issued after a long lapse of time and hence on the ground of delay the charge-sheets are liable to be quashed. He has also made some pleadings regarding merits of the charges in all these three charge-sheets. His further case is that he is due for promotion to higher post but the promotion is denied in view

of the pending disciplinary proceedings against the applicant.

The applicant has therefore filed these three O.As for quashing the three charge-sheets and for a direction to the respondents to consider the case of the applicant for promotion without reference to the departmental enquiry and grant him promotion, if he is found fit with all consequential benefits.

4. The respondents have filed reply justifying the charge-sheets issued against the applicant on merits. Further they have given the explanation about the delay in issuing the charge-sheets. As far as the promotion aspect is concerned, they say that in view of pending departmental enquiry against the applicant, findings of the D.P.C. are kept in sealed corver as per rules. The sealed cover will be opened after the termination of the departmental enquiry.

5. At the time of argument Shri R.C.Kotiankar, counsel for the applicant raised the following points in support of the applications.

(i) Since the applicant is a Government servant the borrowing authority namely the Nuclear Power Corporation has no right to institute disciplinary proceedings and issue the charge-sheets to the applicant.

(ii) All the three charge-sheets are liable to be quashed on the ground of delay.

(iii) Notwithstanding the departmental enquiry the applicant is entitled to be considered for promotion and necessary directions should be issued to the respondents.

On the other hand Shri M.I. Sethna, counsel for the respondents controverted all the above three points and submitted that the applicant has no case and the applications are liable to be dismissed. We will consider the above points one by one.

6. Point No.1

The learned counsel for the applicant contended that the applicant is a Government servant and he is on deputation to Nuclear Power Corporation, the disciplinary authority to institute the enquiry or to issue charge-sheet is Government of India and not the borrowing authority namely the Nuclear Power Corporation. On the other hand the learned counsel for the respondents contended that under Rule 20 of CCS(CCA) Rules 1965, the borrowing authority has every power and authority to issue charge-sheet . Now let us examine the rival contentions with reference to provisions in the 1965 rules.

Rule 20 provides about disciplinary action against officers of Central Government who are lent by one department to another department or to a State Government or to local or other authority.

Relevant provision under Rule 20(1) is as follows:

> "..... the borrowing authority shall have the powers of the appointing authority for the purpose of placing such Government servant under suspension and of the Disciplinary Authority for the purpose of conducting a disciplinary proceeding against him."

Therefore this rule clearly provides that borrowing authority has the power of appointing authority to exercise the power of suspension and to conduct the disciplinary enquiry. The learned counsel for the applicant submits that the borrowing authority may conduct the enquiry but it cannot institute the enquiry. In our view there is no merit in the submission. The intention of the legislature or the rule making authority can be gathered from the proviso to rule 20 (i) of the said rule. It states that the borrowing authority shall intimate or inform the lending authority about the order of suspension or about the commencement of the disciplinary proceedings, as the case may be. Therefore the rule clearly says that the borrowing authority can commence the enquiry but should inform the same to the lending authority. Therefore, in our view rule 20(i) and the provisio clearly shows that the borrowing authority has the power to place an official under suspension and to institute an enquiry and to conduct an enquiry.

It is further clear from sub-clause 2 which states that the borrowing authority can even impose minor penalty but ofcourse after consultation with the lending authority.

7. We may make a reference to Rule 13 which mentions the authority who can institute the disciplinary proceedings ; for which purpose sub-clause 2 is relevant which provides that the disciplinary authority who is competent to impose the minor penalty can institute the disciplinary proceedings against Government servant even in respect of major penalty. Therefore the requirement of the law is that the competent authority must have the power to impose

minor penalty and then he can institute disciplinary enquiry either for minor penalty or for major penalty.

We have already seen that under Rule 20, borrowing authority has the power to impose the minor penalty and therefore it can issue a charge-sheet even in respect of major penalty, in view of Rule 13(2).

Hence on first principles and plan reading of the rules we can safely hold that the borrowing authority has the right and authority and power to institute the disciplinary proceedings against a Central Government servant who is on deputation. But the only need is that the borrowing authority cannot impose major penalty in which case they will have to refer to the lending authority.

8. The learned counsel for the applicant relied on (1996)34 ATC 18 (K.D. Tripathi V/s. Union of India and others) where some observations are made which support the argument of the learned counsel for the applicant that the borrowing authority can conduct the enquiry but it cannot initiate the disciplinary enquiry.

As against this, the learned counsel for the respondents invited our attention to a decision of the Apex Court reported in 1996 SCC (L&S) 1071 in the case of Jai Jai Ram and Others V/s. U.P. State Road Transport Corporation, Lucknow and others, where on an identical question the Apex Court has held that the borrowing authority can take disciplinary action against the Government servant who is on

deputation. In view of the law declared by the Apex Court and in the light of the CCA(CCS) Rules referred to above we can safely hold that the borrowing authority namely Nuclear Power Corporation of India Ltd. has the authority to institute disciplinary enquiry against the applicant and conduct an enquiry and it can even impose minor penalty against the applicant in consultation with the lending authority but it has no power to impose major penalty. Point No.1 is answered accordingly.

9. Point No.2

It is argued that in one case the charge-sheet is filed after two years of the transaction and in other two cases charge-sheet filed 5 to 6 years after transaction and in view of this delay the charge-sheets should be quashed.

The learned counsel for the applicant invited our attention to some decisions on this point namely 1995(31)ATC 227 (S.M. Dube V/s. Union of India and others), (1997) 36 ATC 79 (Pralay Shankar Dhar V/s. Union of India and others) and (1996) 33 ATC 121 (Ram Dass V/s. Union of India and others) where the Division Bench is of this Tribunal at different places quashed the charge-sheets on the grounds of undue delay without any explanation for the delay.

In the very nature of things question whether there is undue delay and whether there is reasonable explanation for the delay are questions which depend upon the facts and circumstances of each case. There cannot be any general rule that the charge-sheets should be quashed if there is delay of so many years.

10. We may not consider the above cases in detail since a decision of the Apex Court on this point has been brought to our notice by the learned counsel for the respondents, which is reported in 1996 SCC (L&S) 196 in the case of Union of India and others V/s. Raj Kishore Parija. That was a case where the Tribunal had quashed the Charge-Sheet on the ground of delay and directed the suspended officer to be reinstated in service, but the Supreme Court did not interfere with the order of reinstatement of the officer. That was a case where the officer was under suspension from 1984 and the charge-sheet was issued in 1988, and the enquiry was still pending in 1993 when the Supreme Court passed the order. Therefore it was a case of four to five years delay in issuing the charge-sheet and the matter was again pending for another 5 years, when the matter came to be disposed of by the Supreme Court. The Supreme Court observed that the Tribunal had travelled beyonf its jurisdiction in quashing the charge-sheet, therefore, set aside the order of the Tribunal and directed the enquiry should be expedited and to be completed within six weeks.

In the present case also there are serious allegation against the applicant in involving lakhs of rupees in preparing the bills. It is also brought to our notice that the CBI had investigated the matter and criminal charge-sheet was filed against some officer in special case No. 45/94 which came to be dis-charged by order dated 14.8.97 by the Special Judge. The learned counsel for the respondents pointed out some relevant documents that had been filed in the criminal case and were required for departmental enquiry also. Having

regard to the gravity of the charges, the circumstances of the case and the investigation by the police and pendency of the criminal case, we are of the view that is not a fit case to quash the charge-sheets at the threshold on the ground of delay.

11. Some allegations are made in the pleadings and some submissions were made about the merits of the allegations in the charge-sheets against the applicant. We did not permit the learned counsel for the applicant to address us on merits of the charge-sheets since this is too premature a stage to quash the charge-sheets on the merits of the case. Though there are many decisions on the points, We refer only to the recent decisions of the Apex Court on this point.

In 1995 SCC (L&S) 374 (Union of India and Another V/s. Ashok Kacher), the Supreme Court observed that it is premature on the part of the Tribunal to entertain the application and quash the charge-sheet when the enquiry is pending. A similar view is expressed by the Apex Court in the case of Union of India V/s. Upendra Singh reported in JT 1994(1) SC 658 where it is observed that the Tribunal ought not to interfere at an interlocutory stage and the Tribunal has no jurisdiction to go into the correctness or truth of the charges. In 1997(1) SC SLJ 259, in the case of Dy. Inspector General of Police V/s. K.S.Swaminathan, the Supreme Court has observed that even if the allegations in the charge-sheet are vague, it is not for the Tribunal or Court to interfere at that stage and to go into the question whether the charges are correct.

In view of the above discussion we hold that this is not a fit case for quashing the charge-sheets on the ground of delay or on merits of the case. Point No.2 is answered accordingly.

12. Point No.3

The learned counsel for the applicant pressed for applicant's prayer for promotion and submitted that some of the juniors have been promoted. The respondents have explained that some department enquiry is pending since 1993. As per the Government order they have adopted sealed cover procedure and the DPC findings of the applicant are kept in sealed cover and the cover would be opened after the disciplinary proceedings are terminated in favour of the applicant. The learned counsel for the applicant is right in his submission that even if sealed cover procedure is adopted, it is for the administration to review the case once in six months and again once in two years, in the circumstances mentioned in the Government order. There is no material before us to show whether the administration in this case has followed review procedure in the case of the applicant or not.

At this stage the counsel for the applicant submitted that applicant's promotion for the year 1991 and 1992 should be considered, since no enquiry was pending at that stage. The applicant has not placed any material to show that any DPC was held in 1991-1992. The learned counsel for the respondents was also not able to give so far the clear position whether the DPC was actually held in 1991 or 1998. But he made an alternative

submission that the applicant in the O.A. filed in 1997 cannot make grievance that he was not promoted in 1991 or 1992 after a lapse of 5 or 6 years and the application is hopelessly barred by limitation.

If the applicant has not been promoted in 1991-1992 he should have approached this Tribunal within one year as provided under Section 21 of the Administrative Tribunals Act and now after a lapse of 5 or 6 years he cannot now make a grievance about his non promotion in 1991 - 1992.

13. As per sealed cover procedure, the respondents are duty bound to review the case of the applicant periodically and then decide whether inspite of the departmental enquiry the applicant is entitled to be promoted or not as per the guidelines given in Government order pertaining to sealed cover procedure. To that extent we may have to issue direction to the respondents. Point No.3 is answered accordingly.

14. In the result all the three O.As are disposed of at the admission stage as follows:-

(i) Prayer in all 3 O.As for quashing the charge-sheets is rejected.

(ii) As far as the promotion is concerned, we direct the respondents to review the case of the applicant for promotion periodically as per the Government order pertaining to sealed cover procedure. Further if in the review the applicant is held entitled

adhoc promotion as per guidelines, then the applicant can be given adhoc promotion without prejudice to the departmental enquiry. However if on review of the case and having regard to the gravity of the charges and circumstances of the case the applicant is not entitled to promotion then the same should be recorded by the Competent authority.

(iii) Since the charge-sheets pertain to the transaction of 1989-91 and one charge-sheet is pending since 5 years from now and other two for more than two to three years and the applicant's promotion is delayed due to pendency of departmental enquiry, we direct the respondents to expedite the completion of the departmental enquiry and to pass final orders in the three cases as early as possible and preferably within a period of six months from the date of receipt of this order. We also direct the applicant to co-operate with the administration in the departmental enquiry.

(iv) In the circumstances of the case there will be no order as to costs in all these cases.

(P.P. Srivastava)
Member (A)

(R.G. Vaidyanatha)
Vice Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

CP NO.7/2002 AND
MP NO.39/2002 IN
OA NO.649/1997

25/1/2002

Applicant present in person.

By this CP, the applicant has prayed for initiating proceedings against respondents for wilful disobedience of the order passed by this Tribunal on 3/4/98. As per the operative portion of order, the departmental enquiry was to be completed and final order was to be passed as early as possible, preferably within a period of 6 months from the date of receipt of order. In para-III of CP, it has been stated that "respondents have neither considered the Applicant's case for promotion nor reviewed for adhoc promotion due to him since 1991, within the stipulated time of 6 months from the date of receipt of orders dated 3/4/98." No specific date is given as to on what date the order was received. If the order was received some time in the year 1998, which reasonably we believe from the tenor of the CP, then the CP is highly belated and ~~likely~~ liable to be dismissed due to bar of limitation.

The applicant appearing in person contended that the delay be condoned for which he has filed MP-39/2002 praying for condonation of delay. According to him, the delay is of 3 years and 1.1/2 months. The law does not permit condonation of delay in moving a CP. The MP for condonation of delay is rejected.

The CP is dismissed as barred by limitation.

(SMT.SHANTA SHASTRY)
MEMBER(A)

(BIRENDRA DIKSHIT)
VICE CHAIRMAN