

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 169/1998

24th
Date of Decision: JULY , 1998.

Navin Singh,

Petitioner/s

Shri M. S. Ramamurthy,

Advocate for the
Petitioner/s

V/s.

Union Of India & Another,

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 ? ✓
(2) Whether it needs to be circulated to other Benches of the Tribunal ? ~

Reported
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 169 OF 1998.

Dated the 24th day of July, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

Navin Singh,
S/o. Dr. Shiv Murat Singh,
Deputy Conservator Of Forests,
Osmanpura,
Aurangabad.

... Applicant

(By Advocate Shri M.S. Ramamurthy)

VERSUS

1. State of Maharashtra,
Through the Principal,
Secretary (Forests),
Revenue & Forests Deptt.,
Mantralaya,
Mumbai - 400 021.

2. Union Of India
through the Secretary,
Ministry of Environment &
Forests,
Government of India,
Parivarayan Bhavan,
C.G.O. Complex, Lodi Road,
New Delhi - 110 003.

... Respondents.

(By Advocate Shri V.S. Masurkar)

: ORDER :

(PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN)

This is an application filed under Section 19 of the Administrative Act, 1985. Respondents have filed reply. Since the point involved is short, by consent of both the Counsels, we have heard the application on merits.

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Shri M.S. Ramamurthy, Sr. Advocate, argued on behalf of the applicant. Shri V. S. Masurkar appeared on behalf of the respondents.

2. The applicant is working as Deputy Conservator of Forests in the State of Maharashtra and now posted at Osmanpura, Aurangabad. His grievance is that, the respondents have issued five charge sheets against him in respect of alleged irregularity or alleged misconduct. The applicant filed an O.A. for quashing those charge-sheets in O.A. No. 202/95. By an order dated 21.06.1996, this Tribunal disposed of the O.A. with a direction to the respondents to pass final orders in three cases within a period of four months from the date of receipt of the order. That period came to be extended till 03/1997. The respondents have not obtained further extension of time after March, 1997. It is, therefore, alleged that the charge-sheets are pending enquiry for the last 5 to 6 years and no final orders are passed inspite of the time granted by the Tribunal in the said earlier case. It is, therefore, alleged that the respondents have no right to proceed with the enquiry after the time given by this Tribunal in the previous O.A. is expired. It is alleged that the respondents are delaying the proceedings deliberately and with a malafide intention. The delay in the disposal of the charge-sheets is coming in the way of the applicant's getting promotion. The applicant's

next promotion is due in another two to three months. If the charge-sheets are kept pending, it will seriously prejudice the rights of the applicant to get promotion. On these allegations, the applicant has approached this Tribunal for a declaration that the charge-sheets shall be treated as dropped or abandoned, since no final orders are passed in pursuance of the time given by this Tribunal in O.A. No. 202/95, that the respondents should be directed not to issue any further charge-sheet in pursuance of the sanction order dated 25.07.1991 and for a declaration that the applicant is entitled to be considered for promotion without taking into account the pending charge-sheets.

3. Respondents have filed reply stating the stages at which the five charges are pending. The allegation of deliberately delaying the charge-sheet is denied. The proceedings of the previous O.A. are admitted. They have also given some reasons as to why the delay has occurred.

4. The Learned Counsel for the applicant contended that in respect of three charge-sheets, there is unexplained delay and further, the respondents have not complied with the time limit given by the Tribunal in the previous case and therefore, he submitted that an order should be passed for dropping the disciplinary enquiry in respect of these three charge sheets. He also argued that the pendency of the charge-sheet comes

in the way of the applicant getting his next promotion and on this ground also, the charge-sheets should be quashed. The Learned Counsel for the applicant did not press the reliefs in prayer clause (b), (c) and (d) in para 8 of the application. On the other hand, the Learned Counsel for the respondents contended that there is no merit in the application and that the application is bad for misjoinder of causes of action and further, it was submitted that the respondents could not pass final orders due to administrative difficulties and not due to any deliberate act on the part of the respondents.

5. In the light of the arguments addressed before us, the two points which fall for consideration are -

- (i) Whether the applicant has made out a case for a declaration that the three charge-sheets mentioned in prayer clause 8(a) should be treated as abandoned or dropped ?
- (ii) Whether the applicant is entitled to be considered for promotion notwithstanding the pendency of the charge-sheet and without adopting sealed cover procedure ?
- (iii) What order ?

6. POINT NO. 1 :

We are concerned with three charge-sheets CR-48, CR-130 and CR-137. As on today, in the first case, enquiry has been completed and the State Government

has taken a tentative decision to impose a minor penalty of censure and has sought the advise of the Union Public Service Commission and reply is awaited. In the second case, enquiry has been completed and the disciplinary authority has taken a tentative decision to impose penalty of with-holding of increment and the matter is referred to U.P.S.C. for advise and reply is awaited. As far as the last case is concerned, the enquiry was completed and the Inquiry Officer submitted his report, but the Disciplinary Authority, while passing the final order found that the enquiry has not been conducted as per rules and has therefore ordered fresh enquiry and appointed a fresh Inquiry Officer.

It is, therefore, seen that in one case - namely, the last case, final order has been passed by the Disciplinary Authority within the time given by this Tribunal. It may be that the final order does not dispose of the case but the matter is remanded to the Inquiry Officer for holding a fresh enquiry according to rules. Hence, nothing can be faulted so far as the third case is concerned.

As far as the first two cases are concerned, the enquiries have been completed and a tentative decision is taken regarding penalty and the matter is now awaiting the reply of the U.P.S.C.

The question is, whether in these circumstances this Tribunal should now exercise its discretion in declaring that all the three enquiries must be deemed to have been abandoned or dropped.

7. We fully appreciate the anxiety of the applicant that the enquiry should be expedited and he must know ~~where he stands~~ as far as the next promotion and other benefits are concerned. But we have also to bear in mind the principle that there should be purity in administration. In the larger interest of ~~per~~ purity in administration, we cannot by a stroke of pen, quash the charge-sheets or the enquiries when great irregularities or misconduct are alleged against the applicant. The applicant ~~may~~ be honest and may be exonerated or may not be exonerated. We are not concerned with that question for the time being.

8. It may be that the respondents have not passed final orders in the first two cases within the time granted by the Tribunal. The Learned Counsel for the applicant contended that the respondents have no right to proceed with the enquiry unless the time is extended by the Tribunal. We are not prepared to accept his extreme submission. It is true that the respondents are bound to obey the directions given by the Tribunal/Court regarding completing the enquiry within the prescribed time limit. If they do not comply with that order within the particular time, they may be

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running the risk of facing action for contempt. But that does not mean that the respondents have no jurisdiction to proceed with the enquiry after the time granted by the Tribunal/Court expires. Proceeding with the enquiry is a different thing and facing contempt action for not passing the order within time, is a different matter. We are not persuaded to accept the extreme position taken by the Learned Counsel for the applicant that once the time given by the Court/Tribunal expires, the authorities have no right to proceed with the enquiry.

9. We have come across many cases where the High Court remands cases to the subordinate civil Court or Criminal Court with a direction to dispose of the matter within six months or one year or some other order. Similarly, many times the Supreme Court has remitted the cases to the High Court or to the Trial Court for disposing of the case within a particular time limit. It cannot be said that after the expiry of the time given by the High Court/Supreme Court, the Subordinate Court has no jurisdiction to proceed with the case. It cannot be said that any orders passed by the subordinate court after the expiry of the period is illegal, is a nullity or without jurisdiction. It may be that the Presiding Officer of the Court may face action for contempt or may be proceeded on administrative side for disobeying the orders of the superior court. Therefore, our finding is that, though the time given by the Court/Tribunal has expired, that does not take away the jurisdiction of the

administration, though they may be running the risk of facing action for contempt for not complying with the order of the Tribunal.

10. The Learned Counsel for the applicant placed strong reliance on 1991 (1) ATJ 62 [Panchu Gopal Banerjee V/s. Union Of India & Others]. In that case, in an earlier writ petition, the High Court had directed that the departmental enquiry should be completed and the final decision should be communicated to the applicant by a particular date. In view of such a positive direction given by the High Court, in the subsequent case filed by the applicant, it was held that in view of the mandatory direction given in the earlier order, proceeding with the enquiry after the deadline given by the Court was illegal and consequently the order came to be quashed. Therefore, the said judgement must be read ~~in the light of~~ ^{in the light of} the peculiar facts of that case. It is also noticed in the judgement that by the time the O.A. was pending before the Tribunal, the applicant had retired from service.

If the order giving time adds some conditions to the order to complete performance within a particular deadline, then it can be said that after that particular deadline, the authority has no right to proceed with the enquiry. For this, we may get some support from the observations of the Supreme Court in the case of State of Punjab & Others V/s. Chamanlal Goyal (1995) 29 ATC 546 []. Infact, this decision was cited by the

Learned Counsel for the applicant himself. In that case, the High Court had quashed the charge-sheet only on the ground of delay of about five years. The Supreme Court observed that though there was a delay of $5\frac{1}{2}$ years, it was not a fit case to quash the charge-sheet on the ground of delay only. The Supreme Court noticed the advantages and disadvantages in favour of the Government and the delinquent official, and on a comparative view, held that it was not a fit case to quash the charge-sheet. While allowing the appeal and setting aside the order of the High Court, the Supreme Court directed that the enquiry against the respondents shall be concluded within 8 months from today. After two sentences, the Supreme Court further observed that - "if the enquiry is not concluded and final orders are not passed within the aforesaid period, the enquiry shall be deemed to have been dropped." It is only in such cases where a mandatory direction is given, it can be said that the enquiry must be dropped on the expiry of the time given by the Court. If we accept the argument of the Learned Counsel for the applicant, that once the time is given and if the enquiry is not completed within that time, ^{it} must be automatically held that the enquiry is deemed to have been abandoned or dropped and if that is the natural corollary that flows from the time limit given by the Court or Tribunal, then there was no necessity for the Supreme Court to add this direction that if the enquiry is not completed within eight months, it must be deemed to have been dropped.

If the argument of the Learned Counsel for the applicant is accepted, then the mere simple observation given by the Supreme Court that enquiry should be completed within 8 months would have been sufficient. The fact that the Supreme Court went ahead and gave a further direction about enquiry being dropped, shows that normal intention of Courts or Tribunal is that the time limit given to complete the enquiry is only directive and not mandatory. If it is to be made a mandatory direction, then something more should be written in the order, as observed by the Supreme Court that after the expiry of eight months the enquiry should be deemed to have been dropped, etc.

11. Now let us see as to what is the disadvantage to the applicant. He is not under suspension. He is working as a Senior Officer in the Forest Department of Government of Maharashtra. He is having all his service benefits. His question of promotion is not yet come at all. Therefore, this is not a case where due to the delay in the enquiry the applicant's promotion has been held up and he is put to great inconvenience, hardship, etc. When the applicant is not under suspension and he has not reached the stage of next promotion, the delay in the enquiry has not caused any material prejudice to the applicant. As far as the respondents are concerned, atleast now as on today, in the one enquiry final order is passed but the case is remanded to the Inquiry Officer and in other two cases, enquiry is completed and tentative decision is taken and final orders are not passed due to want of reply from the U.P.S.C. The U.P.S.C. is a Constitutional Authority.

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It is not working under the Government of Maharashtra. The Government of Maharashtra has no control over U.P.S.C. to get the reply within a particular time limit. There are bound to be some administrative delays in matters like this.

Having given our anxious consideration to the question of delay and the directions given in the previous ~~order~~ ^{order} to complete the enquiry within a particular time limit, ~~having~~ ^{having} regard to the gravity and the allegation of misconduct and charges alleged against the applicant and taking into consideration the stages of the three cases as mentioned above, we are not inclined to hold that the three enquiries should be deemed to have been abandoned or dropped. In this connection, we may mention, in a case between the same parties, namely the present applicant and the respondents, we have taken identical view in our order dated 23.06.1998 in O.A. No. 145/97 by holding that even after the expiry of the time given by the Tribunal, the competent authority may proceed with the disciplinary enquiry unless there are mandatory directions to close the enquiry. Another Bench of this Tribunal to which one of us was a party (R. G. Vaidyanatha, Vice-Chairman) in order dated 05.05.1998 took similar view in the case of M. S. Pathak V/s. Union Of India & Others (O.A. No. 679/93).

12. Now remains the question as to what direction we should give. Even though the applicant

comes to Tribunal for quashing a charge-sheet on the ground of delay and the Court or Tribunal is not inclined to quash the charge-sheet only on the ground of delay, it may give certain direction for expediting the enquiry. The argument of the Learned Counsel for the applicant ^{is} that, while deciding this O.A., this Tribunal should not extend any further time since there was no application by the respondents for extension of time. Infact, in the written statement there is a prayer for extension of time. Even otherwise, when we are not inclined to quash the charge-sheet on the ground of delay, we could still fix a time limit for the disposal of the enquiry in the interest of the applicant. Infact, in Chamanlal Goyal's case mentioned above, ^{applicant} had approached the High Court for quashing the charge-sheet on the ground of delay. The High Court allowed the petition. But the Supreme Court, while setting aside the order of the High Court, fixed a suo-moto time limit of eight months for completing the enquiry.

Having regard to the facts and circumstances of the case and the stages at which the three cases are pending, we feel that a period of six months should be given to the respondents to pass final orders in all the three enquiry cases. Since this is the second round of litigation and the charge-sheets are only 5 to 6 years old, we would like to fix a deadline and incase final orders are not passed by the Disciplinary Authority in these three cases within six months from the date of receipt of this order, then we direct that

the enquiries shall be deemed to have been dropped or abandoned and respondents shall not proceed with the enquiry thereafter. However, we hasten to add that if the respondents are not able to pass final order in these three cases due to unavoidable reasons like non-co-operation of the applicant or non-receipt of reply from U.P.S.C. or some other justifiable causes, then they should not proceed further with the enquiry after the expiry of the time but they should approach this Tribunal for extension of time by giving proper and adequate reasons. If such ^{an} application is made, then it would be disposed of by hearing both sides according to law.

13. For the above reasons, our finding on Point No. 1 is in the negative, subject to a direction to expedite the three enquiries as mentioned above.

14. POINT NO. 2

It is stated in the O.A. that the applicant's turn for promotion will come in about two to three months. We do not know the exact position as to when the applicant's turn will come for next promotion. We have already seen that the charge-sheets are pending for nearly 5 to 6 years. The enquiries are not completed inspite of the time given by the Tribunal in the previous cases. Therefore, we feel that since the respondents have delayed in completing the departmental enquiry, the applicant's promotion, as and when his turn comes, should not be held up due to pendency of the departmental

enquiries. If by the time the applicant's turn comes and final orders are already passed in the departmental enquiries, then nothing need be said. However, if when the turn of the applicant comes for promotion, some charge-sheets are still pending, then the applicant's case should be considered for promotion on merits without reference to the pending departmental enquiries and without adopting the sealed cover procedure. These directions we are making in the peculiar facts and circumstances of this case. We may also mention here that in the case of Chamanlal Goyal mentioned above, the Supreme Court also considered the question of delay and prejudice to the delinquent employee on the question of promotion and the Supreme Court has observed that the delinquent employee should be considered for promotion notwithstanding pending departmental enquiry. If the departmental enquiry is still pending and if the applicant is considered for promotion and found suitable, then he may be given adhoc promotion and then the Government may take a decision about regularising the promotion after final orders are passed in the departmental enquiry.

15. Before parting with the case, we must place on record that we are not happy with the way the respondents have delayed the three enquiries with which we are now concerned. Though in one case the disciplinary authority has passed final order

and remanded the matter to the Inquiry Officer and a fresh Inquiry Officer is appointed, no progress is done for more than a year. When the Tribunal has given some time limit and directed the respondents to complete the enquiry, the respondents should have expedited the matter and if by chance, they could not complete the enquiry within time, they should have atleast approached this Tribunal with a fresh application for extension of time. Though we have stated that the time limit fixed is not mandatory, still the competent authority is liable for action in contempt if he does not obey the direction of the Tribunal. Every authority is bound to obey the directions given by the Courts/ Tribunal. They cannot take things lightly and do whatever they want at whatever time they like, without following the directions of the Court or Tribunal. We, therefore, impress on the respondents that in future they should see that directions given by the Tribunal, either regarding time limit or on other matters, should be followed scrupulously and if they find any difficulty to comply with the order, they should promptly report back to the Tribunal and seek a fresh time limit by giving adequate reasons.

Point No. 2 is answered accordingly.

16. POINT NO. 3

In the result, the O.A. is partly allowed as follows :-



(i) While rejecting the prayer 8(a), we direct the respondents to complete the enquiry and pass final orders in the three charge-Sheets (CR-48, CR-130 and CR-137) within a period of six months from the date of receipt of this order. We further direct, in case final orders are not passed by the Disciplinary Authority in these three cases within the time limit prescribed, the disciplinary enquiries shall be deemed to have been abandoned or dropped on the expiry of the said six months period, subject to the observations made in paras 12 and 13.

(ii) Prayers 8(b), (c) and (d) are not pressed.

(iii) The respondents are directed to consider the case of the applicant for next promotion as and when his turn comes without reference to any of the said three pending departmental enquiries in case they were pending at the time of consideration for promotion and must consider his case for promotion on merits without following the sealed cover procedure.

(iv) In the circumstances of the case, there will be no order as to costs.

(D. S. BAWEDA)
MEMBER (A).

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