

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHIO.A. No. 511 1987
T.A. No.DATE OF DECISION 14-9-1989.G.R.Rajamanuri

Petitioner

Mr.T.Jayant

Advocate for the Petitioner(s)

Versus

Union of India & others

Respondent

Mr.Channabasappa Desai,
SC for CSIR

Advocate for the Respondent(s)

CORAM

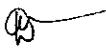
The Hon'ble Mr. D.Surya Rao, Member (J1)

The Hon'ble Mr. D.K.Chakravorty, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

Yes

MGIPRRND-12 CAT/86-3-12-86-15,000


(DSR)
(DKC)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

O.A.NO: 511/87

DATE OF ORDER: 14-9-89

G.R.Rajamanuri

...Applicant

versus

Union of India represented by
The Secretary, Ministry of Science and Technology,
New Delhi - 110001.
and two others

...Respondents

FOR THE APPLICANT :-Mr.T.Jayant, Advocate

FOR THE RESPONDENTS:- Mr. Chennabasappa Desai, SC for CSIR

Coram:

THE HONOURABLE MR.D.SURYA RAO : MEMBER (JUDICIAL)
AND
THE HONOURABLE MR.D.K.CHAKRAVORTY: MEMBER (ADMN)

(JUDGMENT OF THE BENCH DELIVERED BY SRI D.SURYA RAO: M (J)

Contd..

O.A. 511 of 1987

(JUDGMENT OF THE TRIBUNAL PREPARED BY HON'BLE SRI D.SURYA RAO,
MEMBER(J)).

The applicant herein is an Assistant in the Regional Research Laboratory, Hyderabad. He filed this Application questioning order No. 29/27/79-Vig. dated 15-6-1981 passed by the 2nd Respondent herein. The applicant states that he was initially appointed as U.D.C. in the National Aeronautical Laboratory, Bangalore. In 1964 he was appointed as Assistant under the direct recruitment quota and posted to Regional Research Laboratory, Bhubaneswar. In August 1970 he was transferred to N.G.R.I., Hyderabad. As juniors to the applicant were promoted to the Special Grade posts in the year 1978, the applicant submitted a representation on 23-6-78 to the Chief (Admn.), CSIR, New Delhi, the 2nd Respondent herein requesting that justice be done to him. The applicant came to know that his promotion was withheld on the ground of contemplated disciplinary action as clarified in letter dated 13-12-76. On 15-6-81, the applicant received a charge-memo under Rule 14 of the CCS (CCA) Rules, 1965. The enquiry was prolonged indefinitely and was completed on 29-3-84. The applicant understands that the Enquiry Officer has submitted his report to the Disciplinary Authority in February 1985. Till the date of filing of the present application,

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no orders have been passed by the Disciplinary Authority. The applicant submitted a detailed representation on 10-4-1985 to exonerate him by closing the disciplinary proceedings and consider him for promotion which was followed by another ~~but to no avail~~ representation dated 25-8-86. The applicant, therefore, prayed for a direction from this Tribunal to declare the impugned proceedings ~~acted ~~xx~~xx~~ initiated by the charge memo dated 15-6-1981 as illegal, null and void and consequently to consider his case for promotion to the post of Assistant Special Grade with retrospective effect from 1-4-1978. ~~On beh~~

2. On behalf of the Respondents 2 and 3, a counter/~~has~~ written statement has been filed on 24-2-1989 enclosing therewith an order dated 9-9-87

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wherein, it has been ordered as follows:-

"WHEREAS disciplinary proceedings in terms of Rule 14 of the CCS(CCA) Rules, 1965 as made applicable to the CSIR employees were initiated against Shri G.R. Rajamanuri, Assistant working at that time in NGRI, Hyderabad on the charges based on the allegations set out in CSIR Memorandum of even number dated 15th June, 1981.

AND WHEREAS Shri Rajamanuri having denied the charges, Shri P.S. Venkateshwaran was appointed vide Order of even number dated 13th July, 1981, as an Inquiry Officer to inquire into the charges. The said Inquiry Officer, Shri Venkateshwaran has completed the inquiry and submitted his report.

AND WHEREAS the Director General, Scientific and Industrial Research having carefully gone through the records of the inquiry, finds that the inquiry against Shri Rajamanuri has not been held in accordance with the prescribed procedure. The DGSIR has therefore ordered as under:-

"I have carefully gone through the record of inquiry, evidence adduced before it and the report of inquiry in the disciplinary proceedings against Shri Rajamanuri, Assistant. I find that the Inquiry Officer has not given clear verdict whether the charges (except charge No. 4) framed against Shri Rajamanuri were established or not. In accordance with the established procedure the Inquiry Officer is required to give (a) assessment of evidence in respect of each article of charge, and (b) specific findings on each article of charge and reasons thereof. This has not been done by him. Further the Inquiry Officer has gone into extraneous matters of amount of stamp paper used for execution of bond and payment of advance etc. which were not the points for inquiry.

In addition, the Inquiry Officer is required to generally question the charged official on the circumstances appearing against him in the evidence as per sub-rule 18 Rule 14 of CCS(CCA) Rules, 1965. However, in this case a questionnaire was given to the charged official who took 15 days to give a reply. There was no point in giving him time to answer questions which should have been spontaneous. This also, therefore, is an infirmity in the conduct of disciplinary proceedings.

In view of the above infirmities in the conduct of disciplinary proceedings against Shri Rajamanuri, I am convinced that a fresh inquiry is called for in the interest of natural justice and fair play. I, therefore, order accordingly."

The reasons for delay in holding the enquiry and for

passing the orders on the enquiry officer's report are given

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in the counter which read as under:

In reply to para 6(v), it is essential to re-produce the events in the chronological order, right from the initiation of the charges against the applicant till the completion of the enquiry, receipt of the report of the Inquiring Authority by the Disciplinary Authority, and the order passed by the Disciplinary Authority, ordering denovo enquiry into the charges since certain procedural infirmities were observed by the Disciplinary Authority. ~~with~~ ⁱⁿ regard to the conducting of the enquiry. A careful reading of the events will help the Hon'ble Tribunal in appreciating the facts that there was no undue delay and it ^{is} due to the complex nature of the disciplinary case involving voluminous documents, number of witnesses presented during the course of the enquiry and thereafter such delay which had taken place was only due to the administrative procedures involved.

Events in the chronological order

<u>Sl.No.</u>	<u>Date</u>	<u>Event</u>
(a)	September, 1978	NGRI addressed a letter to CSIR intimating about discrepancies that were observed in the deputation abroad cases which were dealt by Shri GR Rajamanuri in NGRI and suggesting for appropriate action in the matter.
(b)	Some time in 1979	CSIR directed NGRI to appoint a fact finding committee with a view to obtain its report with which the disciplinary authority would decide whether or not a prima-facie case existed.
(c)	September, 1980	NGRI sent all the relevant documents in original, draft charge sheet, report of the fact finding committee, to CSIR Hqrs.
(d)	June, 1981	The Disciplinary authority served a charge sheet on the individual.
(e)	July, 1981	Inquiring Authority was appointed by the Disciplinary Authority as the charges were not accepted by the delinquent official and he requested to be heard in person.
(f)	July, 1982	The Presenting Officer originally appointed was replaced by another officer to present the case on behalf of the Disciplinary Authority before the Inquiring Authority.
(g)	April, 1982	Preliminary hearing was conducted by the Inquiring Authority on 19.4.1982.
(h)	22.4.1982	Regular hearing started.
(i)	April, 1983 to June, 1983	After a gap of about 1 year due to the replacement of the Presenting Officer by the Disciplinary authority and also on the reasons of his long leave (Presenting Officer) and subsequently on the reasons of the prolonged leave of the delinquent officer, however, the regular enquiry was conducted on day-to-day basis during this period.

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✓ (j) August, 1983

Since the hearing of the witnesses was not complete, the further sittings to conduct the regular hearing took place during the month of August, 1983.

(k) January, 1984
(l) January, 1984

Final and last hearing was held on 17.1.84. The Inquiring Authority served a questionnaire to the charged officer which was answered and submitted on 3.2.1984.

(m) February, 1984

Presenting Officer submitted his written brief to the Inquiring Authority on 10.2. 10.2.1984.

(n) March, 1984

Charged officer, in his turn, submitted his written brief to the Inquiring Authority on 30.3.1984.

(p) April, 1984 onwards till the submission of the report.

The Inquiring Authority, as per the report submitted, explained the delay in submission of the report till April, 1985 (which was actually received in CSIR as per the inward No. on 10.6.1985), due to his family problems such as bereavement in his family which resulted in his going on leave and thereafter un-settling effect due to his transfer from CCEC Hyderabad which ultimately settled after his transfer to CEC CECRI, Karaikudi and thereafter it was possible only by about February, 1985 he could concentrate in finalising the report.

(q) June, 1985 till 9th Sept., 87

The Disciplinary Authority is the Director General of CSIR who has also to hold the concurrent charge of the Secretary to Dept. of Science & Technology, Govt. of India. As the nature of the case itself is complicated involving perusal of voluminous records and the evidences recorded by the Inquiring Authority during the course of enquiry (numbering about 359 pages documents and witnesses 25) and also as a sequel to the enquiry, examination of the other files relating thereto, the Disciplinary Authority, naturally due to his busy schedule, could not decide about the case which required application of his mind with full concentration before passing the order on the Inquiry Report. It is pertinent to mention here that during this period of about 2 years & 3 months, since submission of the Inquiry Report, there was also a change of the CSIR administration due to which the previous incumbent Wiz., Dr. S. Varadarajan, EGSIR relinquished the charge and the present incumbent Dr. AP Mitra took over sometime in the later part of 1986. After he has settled down and understood the affairs of CSIR, it was finally possible for him to go through the disciplinary case file of the applicant and he had passed orders after making-up his mind in September, 1987. As can be seen from the order dated 9.9.1987 (which is a speaking order) ordering denovo inquiry in view of the procedural infirmities observed in the enquiry conducted by the Inquiring Authority it clearly shows the fair mindedness of the disciplinary authority.

In view of the position as explained ^{it is stated, that} supra, the delay occurred in finalising the disciplinary case since the initiation of the charge sheet from 15-6-1981 till September 1987, was not intentional and it was only due to the circumstances beyond the control of the Disciplinary Authority.

It is contended in the counter that de-novo enquiry has been ordered in view of the procedural infirmities observed in conducting the enquiry. It is, therefore, stated that the contentions raised by the applicant are not sustainable and the application has to be dismissed.

3. Heard Shri T.Jayanth, the learned counsel for the applicant and Shri Channabasappa Desai, the learned standing counsel for CSIR, on behalf of the respondents.

Two points have been raised for consideration. The first is that ^{whether} there is inordinate delay in passing the order by the disciplinary authority which render the remand proceedings dated 9-9-87 illegal and the second question is whether it is open to the 2nd respondent to order a de-novo enquiry for the reasons given in the order dated 9-9-87.

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4. We will take up the first question namely delay in completing the enquiry proceedings.

There is no specific timelimit laid down ^{in the rule} for passing the final orders after receipt of the enquiry officer's report. The question was, however, considered by the Govt. of India and issued ^{issued} instructions vide in CS (Dept. of Personnel) OM No. 39/43/70/Ests (A) dated 8-1-81. These instructions prescribe that normally it should be possible for the Disciplinary Authority to take a final decision within a period of three months at the most. In the instance case, admittedly ~~since~~ the report was received in April 1985 and it was taken two years three months for the disciplinary authority to pass the orders thereon.

The reasons given are that for about a period of one year, the previous Director has not passed the orders.

Thereafter, the present Director took time to settle in the office and has finally passed the orders in

September 1987 directing a fresh enquiry. The reasons

~~can at best be described as administrative incompetence given no doubt ~~sneak of~~ ~~incompetence in the set up~~~~

but can that be a ground for quashing the entire proceedings. No doubt, it has been held in several

decisions that delay in completing an enquiry and

allowing the disciplinary proceedings to hang like a

^{should be avoided}
~~dragon~~ sword over an employee ~~irregular~~. However,

^{has}
~~two~~ specific decisions ~~have~~ been cited wherein

merely on the ground of delay in completing the enquiry, the charge has been quashed. ~~No doubt~~ this Tribunal has held in 1988(6)ATC 246 that the delay in initiating the enquiry could vitiate the disciplinary proceedings, in that the employee is likely to forget the facts giving rise to the ~~framing~~ ^{framing} extent of the charge and could not adequately defend himself. This decision has been based upon a decision rendered by ~~Shri~~ ^{Justice} Thakkar (of the Gujarat High Court as he then was) in 1980 (1) SLR 324 wherein it was held that if charges are framed after long delay, the delinquent employee would not be able to remember the facts and satisfactorily defend himself. In the instant case, however, the enquiry was over and no plea can be raised that delay in taking a decision by the disciplinary authority causes prejudice or renders the applicant incapable of defending himself. The only other decision relied upon is AIR 1971 Madras 170, a decision rendered by Justice Ismail of the Madras High Court (as he then was). In this decision, no enquiry was held at all and only a charge sheet was issued. After the applicant submitted his explanation, no further action was taken for several years. Thereafter, the enquiry was sought to be resurrected. That decision

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also would not apply to the facts of this case for the reason that the enquiry has been completed and all that is to be done is to pass a final order. On the other hand, when this Tribunal had in T.A. 12 of 1987 set aside show-cause notice passed by the revisional authority after a long delay in seeking to enhance the punishment, the Supreme Court in C.A. No. 792 of 1988 set aside the order of the Tribunal and directed that the revisional proceedings may go on. From this order of the Supreme Court, an inference can be drawn that long delay in completion of the enquiry proceedings would not necessarily mean that the proceedings should be quashed. We would, therefore, hold that the delay of over two years in the disciplinary authority taking action on the enquiry officer's report would not render the entire proceedings illegal. We hold this point against the applicant.

5. We will not take up the next question raised namely whether it was open to the disciplinary authority to direct a fresh enquiry as communicated in the order dated 9-9-87. It is seen that the disciplinary authority has found that the Enquiry Officer has not given a clear verdict against each A

charge. He also stated that the Enquiry Officer has not assessed the evidence. The disciplinary authority has found that the enquiry officer has given the applicant 15 days time to answer a questionnaire for the purpose of compliance of sub-rule 18 of Rule 14 and ~~that is one of the grounds for necessitating a fresh enquiry~~. In our view, giving such a time would not vitiate the enquiry officer's report and directing a fresh enquiry on this ground is wholly unwarranted. In so far as objection of the disciplinary authority that specific findings are not given on each charge, there is no doubt truth and substance in this contention. It is, however, not correct to state that the enquiry officer has not assessed the evidence. A perusal of the enquiry report discloses that he ~~the evidence~~ has assessed ~~them~~ ^{the evidence} and found various lacunae in regard to seizure of certain documents and the evidence of several prosecution witnesses. It cannot, therefore, be said that he has not assessed the evidence. In these circumstances, the question is whether it was open to the disciplinary authority to direct a fresh enquiry. In the instant case, the entire evidence for the prosecution and the defence has been completed and both the prosecution's case and the defence written brief have obviously been filed as required under sub-rule 19 of Rule 14. The Enquiry Officer's report has discussed the evidence accordingly but ~~has~~ ^{by the disciplinary authority} stated ~~supra~~ he has not given specific findings in

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regard to some of the charges. Under Rule 15(1) of the C.C.S. (C.C. & A.) Rules, the disciplinary authority may remand the case to the enquiry officer for further enquiry and report but this does not mean that the disciplinary authority can direct a fresh enquiry merely because the assessment of the evidence by the enquiry officer does not suit or satisfy the disciplinary authority. This is clear from the Supreme Court's decision reported in AIR 1971 SC 1447 wherein at para 13 it was held as follows:

"It seems to us that Rule 15 on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under rule 9."

and on the facts of the present case
Following the above said decision, we hold that it is not open to the disciplinary authority to direct a fresh enquiry.

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6. The further question is as to what is the further direction to be issued in the matter. Rule 15(2) of the CCS (CCA) Rules permits the disciplinary authority to disagree with the findings of the enquiry officer on any article of charge and to record his reasons for such disagreement. Though no specific findings have been given by the enquiry officer the general trend of the report is that for various lacunae pointed out there has been a foisting of the case upon the applicant, in that the charges are vague, an illegal search was conducted of his table and that the applicant alone was not responsible for the loss of the bonds which formed the subject matter of the charges. It is open to the disciplinary authority to disagree with this part of the report if the evidence warranted, and thereafter to record his reasons and impose such penalty as it may think fit, Under Rule 15(3) or 15(4) of the Rules. We will, therefore, hold that while it is illegal on the part of the disciplinary authority to direct a fresh enquiry, it is open to him after considering the evidence and the report, to come to his own findings in regard to each of the charges framed ^{and} if on the basis of such findings by the disciplinary authority ~~it~~ is of the opinion that ^a the penalty should be imposed upon the applicant, it may do so.

(Signature)

⑤ One copy to Mr. Chenna Vasappa Devar, sc for CSIR,
CAT, Hyderabad.

⑥ One copy to Mr. D. K. Chakravorty, Member (A),
CAT, Hyderabad.

(P.T.B)

Dr.
D/o SC
Recd on 21/9
At. 11.30

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We are constrained to adopt this procedure to obviate further harassment to the applicant who has been subjected to these disciplinary proceedings since ^{from 1978 than 1980} 1978 and he is being denied promotion on that ground.

We direct that final orders in the disciplinary proceedings be passed by the disciplinary authority within three months from the date of receipt of this order.

With these directions, the O.A. is disposed of. ~~and~~ In the circumstances of the case there will be no order as to costs.

D. Surya Rao

(D. SURYA RAO)
MEMBER (J)

D. K. Chakravorty

(D. K. CHAKRAVORTY)
MEMBER (A)

Dated: 14/9 September, 1989.

mhb/

DEPUTY REGISTRAR (T)

To

- ① The Secretary, Ministry of Science & Technology, (Union of India) New Delhi - 110001.
- ② The Director General, Council of Scientific and Industrial Research (CSIR), Ramanuj, N. Delhi - 110011.
- ③ The Director, Regional Research Laboratory (R.R. Labs), Osmania University Campus, Hyderabad.
- ④ One copy to Mr. T. Jayant, Adweela ~~111 G II, Block~~, ~~Stringer Colony, Gaddiannaram, Hyderabad, Andhra Pradesh, 500016~~, Flat 402, off Water Park, Hyderabad - 500060, A.P.

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