

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW DELHI~~
Hyderabad

O.A. No.

74/89.

198

T.A. No.

DATE OF DECISION _____

Petitioner_____
Advocate for the Petitioner(s)

Versus

Respondent_____
Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr.

B.N. Jayaraman, Jc.

The Hon'ble Mr.

J.V. Murthy, Jc.

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

bvi
(B.N.J.)

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(B.N.J.)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH
AT HYDERABAD

O.A.No. 74 of 1989

Date order 15.1.1990

Between

G.R.Murthy

Applicant.

Versus

Union of India, rep.by
The Secretary, Ministry of Steels
and Mines, Department of Mines,
Sastribhavan
New Delhi-110001 and others

Respondents.

Counsel for the Applicant: Shri T.Jayant

Counsel for the Respondents: Shri N.Bhasker Rao, Addl C.A.-8

CORAM:

HON'BLE SHRI B.N.JAYASIMHA: VICE CHAIRMAN

HON'BLE SHRI J.N.MURTHY : MEMBER (JUDL)

(Judgment of Bench delivered by Shri B.N.Jayasimha H.V.C.)

The applicant is a retired Driller in the Geological Survey of India. He has filed this application questioning the issue of a Charge Memo under Rule 14 of the CCS(C.C.A.) Rules.

2. The applicant states that he joined the Indian Bureau of Mines on 2-12-1955 as a Drilling Assistant. He was promoted as Senior Drilling Assistant on 4-4-1961. Thereafter he was promoted as ^aDriller Group 'B' on 19-8-1961. He came under the Geological Survey of India when Indian Bureau of Mines was merged with Geological Survey of India. He retired on 30-9-1988.

3. Two days before his retirement i.e., on 28-9-1988 he received a charge memo dated 21-9-1988 issued by the Director General Geological Survey of India, Respondent 2, through the Deputy Director General, Geological Survey of India Hyderabad, Respondent 4. It contained 20 Articles of

bno

charges concerning matters relating to 1981. No preliminary enquiry was held at any time in the past. He submitted a representation dated 28-9-1988 to Respondent 2 requesting him to drop the charges stating that all the charges were false. He also stated that the charges have been issued ~~two~~ days prior to the date of his retirement only for the purpose of harassing him. He did not receive any reply. He submitted another representation on 1-11-1988. Respondent 2 by two separate orders dated 28-11-1988 appointed an Enquiry Officer and a presenting Officer to proceed with enquiry into the said charge memo and they were served on him on 22-12-1988. The applicant was also directed to attend the preliminary enquiry to be held in New Delhi on 6-1-1989. The applicant submitted another representation dated 24-12-1988 once again requesting him to drop the proceeding, urging the following grounds:

- ✓ (a) the charge memo related to matters of about 8 years back, issued just two days before the date of his retirement and hence not maintainable;
- ✓ (b) the charge memo is not in conformity with Rule 14(2) of CCS(CCA) Rules, as no preliminary investigations were conducted;
- ✓ (c) Rule 9(2)(b) of the CCS(Pension) Rules stipulates that charge memo should confine only to events of which occurred within 4 years from the date of retirement. The spirit of the rule applies in his case although technically, it was issued to him while he was still in service;
- (d) the charge memo containing 20 Articles of charges is unjustified, mala fide, and violative of principles of natural justice as held by Calcutta High Court in "Rama Padnath Vs. Union of India (1981 (2) SLJ 187) and in Ranjeet Kumar

D.NO. 1001/90/XII-A Sec.X

SUPREME COURT OF INDIA

Dated: 11th May, 1990

From:

The Assistant Registrar,
Supreme Court of India,
New Delhi.

To

The Registrar,
High Court of Judicature,
Andhra Pradesh
At Hyderabad.

The Registrar, *central*
~~Andhra Pradesh Administrative~~
Tribunal,
Hyderabad.

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 4956 of 1990
(Petition under Article 136 of the Constitution of India for
Special Leave to Appeal to the Supreme Court from the Judgment
and Order dated the 15.1.1990 of the High Court
of Judicature, Andhra Pradesh at Hyderabad/Andhra Pradesh Central
Administrative Tribunal at Hyderabad *in Original*
applied no. 74 of 1989

... Petitioner

Versus

... Respondents

Sir,

I am to inform you that the Petition above-mentioned
for Special Leave to Appeal to this Court was filed on
behalf of the Petitioner above-named from the Judgment and
Order above noted and that the same was dismissed ^{on merits} by this
Court on the 29th day of March, 1990

Yours faithfully,

Jm
ASSISTANT REGISTRAR

GD*/Sec. XII-A

charges concerning matters relating to 1981. No preliminary enquiry was held at any time in the past. He submitted a representation dated 28-9-1988 to Respondent 2 requesting him to drop the charges stating that all the charges were false. He also stated that the charges have been issued ~~the~~ days prior to the date of his retirement only for the purpose of harassing him. He did not receive any reply. He submitted another representation on 1-11-1988. Respondent 2 by two separate orders dated 28-11-1988 appointed an Enquiry Officer and a presenting Officer to proceed with enquiry into the said charge memo and they were served on him on 22-12-1988. The applicant was also directed to attend the preliminary enquiry to be held in New Delhi on 6-1-1989. The applicant submitted another representation dated 24-12-1988 once again requesting him to drop the proceeding, urging the following grounds:

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- (d) the charge memo containing 20 Articles of charges is unjustified, malafide, and violative of principles of natural justice as held by Calcutta High Court in "Rama Padnath Vs. Union of India (1981 (2) SLJ 187) and in Ranjeet Kumar

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AT HYDERABAD

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Applicant.

Versus

Union of India, rep.by
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and Mines, Department of Mines,
Sastribhavan
New Delhi-110001 and others

Respondents.



Counsel for the Applicant: Shri T.Jayant

Counsel for the Respondents: Shri N.Bhasker Rao, Addl C.A. Sec.

CORAM:

HON'BLE SHRI B.N.JAYASIMHA: VICE CHAIRMAN

HON'BLE SHRI J.N.MURTHY : MEMBER (JUDL)

(Judgment of Bench delivered by Shri B.N.Jayasimha H.V.C.)

The applicant is a retired Driller in the Geological Survey of India. He has filed this application questioning the issue of a Charge Memo under Rule 14 of the CCS(C.C.A.) Rules.

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3. Two days before his retirement i.e., on 28-9-1988 he received a charge memo dated 21-9-1988 issued by the Director General Geological Survey of India, Respondent 2, through the Deputy Director General, Geological Survey of India Hyderabad, Respondent 4. It contained 20 Articles of

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Babu Roy Vs. Adminstrat.D.N. Kuch Behar Municipality (1984 (2) SLJ 416). The Respondent 2 did not pass any order. The Enquiry Officer (Respondent 3) issued a telegram dated 28-12-1988 directing him to attend the Inquiry on 6-1-89 failing which the case would be decided ex-parte. The enquiry officer did not agree to keep Inquiry in abeyance till the disposal of his representation by the Disciplinary Authority. He therefore requested Resondent 3 by a telegram dated 30-12-88 to keep the inquiry in abeyance.

4. The applicant thereafter received Daily order Sheets dated 8-12-1988 and 6-1-1989 stating that the preliminary enquiry fixed on 20-12-1988 was posponed to 6-1-1989 at the request of Shri H.N.Meena OSD (Vig) Culcutta and that next date has been fixed on 10-12-1989. The applicant was cautioned that if he does not appear for enquiry, the matter would be decided ex-parte. The applicant received a letter dated 13-1-1989 issued by Respondent 2 stating that his request for dropping of charges has been rejected. He was directed to appear before the Enquiry Officer. The applicant therefore, filed this application contending that the Respondent 2 did not consider the points raised regarding the illegality of the charge memo.

5. Respondents in their counter state that on a complaint dated 19-3-1983 received from Shri R.R.Dubay, Driver, Geological Survey of India, in regard to certain irregularities alleged against the applicant, a fact finding inquiry was conducted through Shri A.B.Saha, Director, Central Region. After inquiry Shri Saha Submitted a report based on which the Dy. Director General, Central Region recommended initiation of Disciplinary action. These reports were critically examined in the light of the explanation given by the applicant in his letter dated 13-11-1986 and

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it was noticed that the applicant had committed many more irregularities/malpractices in planned manner for his personal gains during his posting at camp Bhiwapur. Hence, a thorough enquiry was ordered and the applicant was informed of the proposed enquiry. After serious efforts, the relevent records were obtained and the applicant was called to depose before the preliminary enquiry in the light of the facts revealed by the records. He attended the preliminary enquiry at Nagpur and Calcutta during January and April 1987. At the enquiry held on 6-4-1987, he refused to be examined and wanted a written statement on the points on which his clarification is required by the Enquiry Officer. His request was agreed to. He submitted his explanation on 23-4-1987.

5. The report of the Officer on Special Duty (Vig) showed several instances of grave malpractices and irregularities in order to defraud the Government were found and a prima-facie case was established. The Director General accepted the enquiry report and referred the matter to the Ministry of Steel and Mines on 9-8-1988, who advised on 8-9-1988 that disciplinary action be initiated against the applicant. Accordingly the charge memo was issued.

7. Respondents further state that the contention of the applicant that he has an unblemished record is not correct. A penalty of recovery of Rs. 5968/- being loss caused to Government was imposed on him by an order dated 14-11-1985. Respondent therefore, contend that there is no merit in the contention of the applicant.

8. We have heard Shri T. Jayant learned Counsel for the applicant and Shri N. Bhasker Rao learned standing counsel for the Department. Shri Jayant urges the following points:

- (1) No preliminary enquiry was held before the Disciplinary Authority issued the charge memo, as required under Rule 14(2).
- (2) All the irregularities alleged relate to the period 1981. Delay in issuing charge memo amounts to denial of Natural Justice.
- (3) The spirit under Rule 9(2)(a) of the Pension Rules are applicable in this case. Issuing a charge memo just two days before the date of retirement in malafide and not valid.

9. Before we considered these points it would be useful to notice here the following chronology of the events:

19-3-1983	Complaint from Shri R.R. Dubay Driver.
13-2-1984	Fact finding committee appointed.
9-4-1984	Fact finding committee (Shri A.R. Saha) submits report.
23-10-1986	Applicant asked to explain misconduct.
13-11-1986	Applicant furnishes his explanation on the report of fact finding committee.
10-2-1987	A further enquiry by Shri Meena ordered as many other irregularities came to the notice.
29-12-1986	Applicant informed of this enquiry.
15-1-1987 16-1-1987	Applicant appeared and explanation taken.
4-3-1987	Applicant asked to go before the Enquiry Officer. Did not attend stating that on 2-3-1987 he was involved in an accident.
6-4-1987	Applicant asked to appear again in Calcutta. He refused to be examined further.
10-4-1987	Called again to explain.
23-4-1987	Applicant gave a reply.
25-6-1988	Shri Meena submitted report finding the applicant prima-facie responsible for the irregularities.
21-9-1989	Charge memo issued to.
28-9-1988	Charge memo served on the applicant.

Point No.1

Shri Jyant contends that before issue of a charge memo under Rule 14, the Disciplinary Authority must form a bonofide opinion that there exists a prima-facie case. He could do so only when a preliminary enquiry is held and the applicant has been given an opportunity to explain his case. He contends that this has not been done. Shri Bhasker Rao, points out that as evident from the chronology of the events indicated in the reply affidavit, the applicant was given opporitunity to explain his conduct with reference to the facts as revealed by records. The Applicant did in fact gave his reply. The facts disclose that there were fact finding enquiries, the applicant was given an opportunity to explain and it is only after a thorough investigation that it was decided to initiate disciplinary proceedings. The contention of Shri Jayant, that there was no preliminary enquiry is, therefore, without any basis. Having regard to these submissions, we see no merit in this contention and it is rejected accordingly.

Point No.2

Shri Jayant contends that there was enormous delay in proceeding with the case. The events relate to the year 1981 and the charge memo was issued only in 1988. Shri Bhasker Rao, explains that the matter called for a thorough investigation and a number of records had to be examined. He also states that in the course of investigation of the complaint made in 1983, other irregularities also came to be noticed. Where there are reasons to explain the delay, delay by itself would not vitiate the proceedings.

In support of his contention that delay by itself amounts to denial of natural justice, Shri Jayant relies on

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Mohanbhai Dungebhai y.B.Zala and another u
Parmer Vs. Government of Gjarath (1980 SLJ 477), Bani Singh Vs. Union of India (ATR 1988(1) CAT 592 Jabalpur), and P.L.Khendelwel Vs. Union of India (ATR 1989 (1) CAT 403 Ahmedabad).

In M.Dungarbhai Parmar Vs. Y.B.Zala and another, the applicant was a police constable. He was dismissed from service and the question posed:

" Can an employee satisfactorily explain whether he had a good and sufficient cause for reporting late on a particular day one and a half years ago and show cause for the lapse ? Would or would not the delay of one and half years to initiate disciplinary proceedings by itself constitute denial of reasonable opportunity to defend and thus violate principles of natural justice ?"

In the facts of the case, it was held that it was not possible for any one after a lapse of 1½ years to explain under what circumstances he was late or unable to attend the parade or had remained absent at the time of the taking of roll call. Under these circumstances, the very delay in initiating proceedings must be held to constitute a denial of reasonable opportunity to defend himself for one cannot reasonably expect an employee to have a computer like memory to maintain a day to day diary in which every small matter is meticulously recalled in anticipation of further eventualities of which he cannot draw a provision. This would amount to violation of principles of natural justice.

In Bani Singh's case, it was held that unexplained delay in issuing a charge sheet for 12 years of the cause of action vitiates the departmental proceedings. The Bench noted that the State Government had totally failed to explain and give any cogent or satisfactory reasons for this extra-ordinary and inordinate delay in the initiation

of the Departmental enquiry.

In Khandelwal's case, the bench noted that the references to internal communication to explain the delay does not inspire confidence. The circumstances and manner in which the respondent-authority have dealt with the matter, it cannot be said that this is an expeditious manner of conducting enquiry. It was therefore held that inordinate delay in commencing the enquiry in the instant case has resulted in oppression of the petitioner. Shri Bhasker Rao contends that there is no rule or law that lays down that delay by itself would vitiate the disciplinary proceedings. In all these cases, the court found that there was unexplained delay. In this case, it cannot be said that there is unexplained delay.

We have considered these rival contentions. Each case has to be considered on its own and the cases referred to above do not lay down that delay itself vitiates disciplinary proceedings. Where there is a reasonable explanation for the delay and the matter is under inquiry where explanation of the employee concerned are being taken before the initiation of the proceedings, it cannot be said that the delay would vitiate the proceedings. On a consideration of the facts, we cannot infer that there was inordinate and wanton delay. The applicant was given several opportunities to explain his conduct and only after satisfying that the explanation was not satisfactory, the Department initiated the disciplinary proceedings. We, therefore, find no merit in this contention also and reject the same.

Point No.3:

Shri Jayant contends that by issuing a charge

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memo just two days prior to the date of retirement, the respondents have technically served the charge sheet on the applicant while he was still in service. Viewed from the spirit behind Rule 9(2) of the Central Civil Services (Pension) Rules, this action of the Respondent is mala-fide. All the articles of charges relate to period more than 4 years earlier to the date of retirement of the applicant and the Respondents could not have initiated any action on these charges after the applicant had retired from service. He relies on AkVG Pandian Vs. G.O.I. (1986(4) SLJ(CAT) 1021). In that case, the main question that arose was whether a disciplinary proceedings initiated against a Civil Servant be continued after his retirement from service, in a case where there is no charge of pecuniary loss caused to Govt. on account of misconduct or negligence. Although, the bench observed that the charge sheet was issued only two days prior to the date of retirement, they did not give any opinion where issue of a charge memo just before retirement is vitiated. Pandian's case is therefore not relevant for the case before us; No rule or law had been cited to say that the disciplinary authority cannot issue a charge memo to an employee just before his retirement on irregularities or misconduct which occurred more than 4 years to the date of retirement. It is true that under rule 9(2) of the Central Civil Services (Pensions) Rules, no charge memo could be issued in such a case after an employee has been allowed to retire from service. There is however no such prohibition for issue of a charge memo in the case of an employee who is in service. We do not therefore, see any merit in this contention and reject the same.

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In the result, the application fails and
it is dismissed accordingly. No order as to costs.

B.N. Jayasimha
(B.N. JAYASIMHA)
VICE CHAIRMAN

J.N. Murthy
(J.N. MURTHY)
MEMBER (J)

DT. 15th JANUARY, 1990

SQH*

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S. Venkatarao
DEPUTY REGISTRAR (J)
16/1/90

To:

1. The Secretary, (Union of India), Ministry of Steels and Mines, Department of Mines, Sastri Bhavan, New Delhi-1.
2. The Director General, Geological survey of India 27, Jawaharlal Nehru Road, Calcutta-16.
3. Sri R. Venkataraman, Commissioner for departmental Inquiries, Central Vigilance commission (Inquiry officer) Jamnagar House Butments, Akbar Road, New Delhi-110 001.
4. & The Deputy Director General, Geological survey of India, southern Regional office, Hyderabad-500 001.
5. One copy to Mr. T. Jayant, Advocate, 17-35 B, Srinagar colony, Gaddiannaram, dilsukhnagar, P&T colony P.O., Hyderabad-500 660.
6. One copy to Mr. N. Bhaskara Rao, Addl. CGSC, CAT, Hyderabad.

Reported six registered P.S.

kj. No 143, 144, 145, 146, 147, contd..

Local 200/90