

(126)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH

AT HYDERABAD

ORIGINAL APPLICATION No.592/91

DATE OF JUDGEMENT: 12th NOVEMBER, 1992

BETWEEN

S.S.BUDAN, IAS

.. Applicant

and

1.Chief Secretary,
Gen.Administration
Govt. of AP
Secretariat Bldgs.,
HYDERABAD-22.

2.Secretary,
Deptt. of Personnel and Training
Central Secretariat
New Delhi

.. Respondents

Counsel for the Applicant

::Mr GVL Narasimha Rao

Counsel for the Respondents

::Mr Jagan Mohan Reddy, Addl.
CGSC

Mr D.Panduranga Reddy,
SC for AP

CORAM:

HON'BLE SHRI R. BALASUBRAMANIAN, MEMBER (ADMN)

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL)

T. S. Rao

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JUDGEMENT OF THE DIVISION BENCH DELIVERED BY
HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER(JUDL.)

This is an application filed under Section 19 of the Administrative Tribunals Act, ~~to~~ (1) ^{to} quash the disciplinary proceedings that are initiated as against the applicant and are pending with the disciplinary authority treating the said disciplinary proceedings as invalid and inoperative (2) to direct the 1st respondent to consider the case of the applicant for promotion to selection grade with effect from 1.1.87 (3) to promote the applicant to super-time scale with effect from 25.10.89, the date of promotion of juniors to the applicant and to pass such other orders as may deem fit and proper in the circumstances of the case.

2. The facts so far necessary to decide this OA in brief, may be stated as follows:

3. The applicant was formerly working in the State Civil Service. On 26.9.79, the applicant was appointed to Indian Administrative Service from State Civil Service. On 31.12.1983, certain charges were framed as against the applicant with regard to omissions and commissions during the period 1981-82. On 12.6.1985, one Sri V. Sunderesan was appointed as Enquiry Officer. On 7.3.87, 15 juniors to the applicant were appointed in Selection Grade with effect from 1.1.1987. On 1.7.88, another 11 of the juniors to the applicant were promoted to Selection Grade. On 21.3.89, a second enquiry officer one Sri V.P. Rama Rao, IAS, the then Chief Secretary was appointed as Enquiry Officer. On 1.7.89, another 7 junior officers to the applicant were promoted to Selection Grade.

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On 29.9.89, the Enquiry Officer submitted his report to the disciplinary authority exonerating the applicant with regard to certain charges and holding that certain of the charges were proved as against the applicant. It is said that some more juniors to the applicant were promoted on 16.10.89 and other 10 juniors were promoted to the super-time scale in the same month of October, 1989 as well as in the months of January and April, 1990. In the year 1991 also, certain other juniors to the applicant were promoted to the super-time scale and also to selection grade. As the Disciplinary Authority did not pass orders with regard to the disciplinary enquiry pending as against the applicant, the applicant had filed this OA on 10.6.91 for the reliefs as already indicated above.

Counter is filed by the respondents opposing this OA.

During the pendency of this OA, the applicant had been promoted to Selection Grade of IAS on 4.7.92 w.e.f. 1.7.92. The applicant is due to retire w.e.f. 30.6.93. On 17.9.92, the disciplinary authority had passed an order imposing the punishment of censure on the applicant for the charges that were proved against him.

~~In this OA, 3 grounds are mainly urged for quashing the disciplinary proceedings as against the applicant.~~ The first and foremost point that is urged on behalf of the applicant is that enquiry as against the applicant was initiated as early as in the year 1983 and that the same was not completed by 10.6.91, and ~~so~~, in view of this inordinate delay in completing the enquiry as against the applicant, the disciplinary proceedings are liable to be quashed. It is not possible in the very nature of things and present day circumstances to draw a time limit beyond ~~xxx~~ which a disciplinary proceeding will not be allowed to go. In many cases, the Govt. servant may himself be responsible ~~for the~~

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for the delay in conclusion of the disciplinary proceedings. In such cases, the govt. servant can not be allowed to take advantage of his own wrong. In some cases, delays may occur for which, neither the Department, nor the govt. servant can be blamed but the system itself. Such delays too, cannot be treated as unjustifiable - broadly speaking. Each case must be left to be decided on ~~xxxxxx~~ its own facts and circumstances. It is neither advisable nor feasible to draw or prescribe ~~an~~^{an} out-time limit for conclusion of all departmental proceedings. It cannot also be said that the only consequence flowing from the delay in the conclusion of disciplinary proceeding is the quashing of the said disciplinary proceedings. The grievance of the applicant is that due to delay in completion of the disciplinary proceedings, (as indicated in the facts giving rise to this OA) that, many of his juniors were promoted at different times to the Selection Grade as well as super-time scale and in this way that gross injustice had been done to him. ^{according to the Applicant -} So the disciplinary proceedings are liable to be quashed. In this context, we may straightaway refer to a decision of the Supreme Court reported in 1982(2)SCC 53 - Dr Bhupinder Singh Vs Union of India and others - wherein it is laid down as follows:

"The short question that arises before us for consideration is as to the validity of the disciplinary proceedings against a senior police officer which have been instituted as far back as 1975 by the State of Assam. The petitioner is a member of the Indian Police Service and his grievance is that by keeping the disciplinary proceedings pending his claim to promotion is being passed over and many who are junior to him are securing promotions while he is in a static state. We think there is substance in the grievance of the petitioner. We are not inclined to consider the merits of the matter. Ofcourse, the disciplinary authority will go into tenability of the charges, but it cannot keep the proceedings ~~xxx~~ indefinitely pending causing injustice to the petitioner. We, therefore, direct the State of Assam to dispose of the disciplinary proceedings finally within six months from today. In case, the State does not so dispose of the disciplinary enquiry, it will consider the claim of the petitioner for future promotions.

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as if there were no disciplinary enquiry pending against him. Not that he will be exonerated from the charges but promotions legitimately due to him will not be withheld on the score that disciplinary proceedings are pending....."

The observations of the above judgement applies ~~mutatis~~is-mutandis to the facts of this case also. So, on the ground of mere delay, it is quite evident that the disciplinary proceedings cannot be quashed or set aside. Besides, the applicant herein is promoted w.e.f. 1.7.92 in the selection grade of IAS and final orders have also been passed by the disciplinary authority imposing the punishment of censure on the applicant. No doubt, it is only during the pendency of the OA that the applicant had been promoted to the selection grade of IAS and the disciplinary authority has passed the said orders of censure on the applicant. But as already pointed out, merely delay cannot be ground to quash the disciplinary proceeding as already indicated above. Hence, the contention of the learned counsel for the applicant that the disciplinary proceedings are liable to be quashed on the grounds of delay can not at all be accepted. The learned counsel for the applicant relied on certain observations made by this Bench in the OA 786/88 in respect of ~~Dr. E. Vedvyas IAS~~ where in it was held as follows:

"It is clear that the enquiry is being prolonged that it is being conducted in a lethargic manner and the delay and adjournments can be attributed mainly to Govt. the explanation for the delay is neither satisfactory nor convincing. On this ground also, the enquiry is liable to be quashed."

The learned counsel for the applicant further ~~xxx~~ relied on a decision reported in AIR 1967 MP 231 - Gridroniya Vs State of MP where in it was held that an enquiry should not be allowed to drag on and be conducted in a leisurely manner. He also relied on a decision reported in AIR 1971 Madras 173 wherein it was held that the Departmental proceedings must be concluded as expeditiously as possible and a lapse of seven years without an acceptable explanation is inordinate

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and could lead to a conclusion that the entire proceedings are to be quashed.

But, in view of the Supreme court decision, if any favourable observations are there in favour of the applicant in the said decisions referred to above, the said observations cease to have any significance. So, the said decisions are absolutely of no help to the applicant in coming to the conclusion that on the ground of mere delay that the disciplinary proceedings are liable to be quashed.

As already pointed out, the applicant had been promoted to selection grade IAS on 4.7.92. It is the contention of the applicant's counsel that in view of the promotion of the applicant it has got to be inferred that ~~the~~ lapses if any of the applicant for which the disciplinary proceedings had been initiated should be deemed to have been condoned and hence, the disciplinary proceedings did not survive and so the OA is liable to be allowed. In support of his contention,

the learned counsel for the applicant relies on the decision of Calcutta High Court - reported in 1976(2) SLR 897 - The collector of customs Vs. Rebeti Mohan Chatterjee Para 13 and 17 of the said judgement which the counsel for the applicant relies are reproduced below:

Para 13.: It is an admitted fact that after the disposal of the Rule Nisi by the learned trial judge and during the pendency of this appeal, the respondent has been promoted to a higher post by the Customs Authorities. It is also an undisputed fact that the promotion was on the recommendation of ~~the~~ a Committee known as the Departmental Promotion Committee. This Committee as is well known goes into the question of the merits and suitability of each candidate for promotion before making its recommendations. This Committee ~~has~~ as we have stated recommended the promotion of the respondent which was acted upon by the authorities and the recommendation was implemented during the pendency of the appeal."

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Para 17: ".....
 After all, the allegations against the respondent was of graft and corruption since he was being charged with having acquired assets disproportionate to his known sources of income. If the customs authorities were really serious in pressing the charge, it is in our view, unthinkable how during the pendency of this appeal, they could have promoted the respondent. This action of promotion, should, in our view be held, to amount to a condonation of any allegation against the respondent....."

After observing as above, the Calcutta High Court dismissed the said writ petition filed by the Collector of customs and confirmed the order of the learned trial judge quashing the notice that has been issued to the respondent in the said writ petition, to show cause for taking action against the respondent therein. In this connection, we may refer to a recent decision of the Supreme Court reported in 1991(2) SLR 59 New Bank of India Vs NP Sehgal and another wherein, it is laid down as follows:

".....

.....it must follow that the charge-sheet submitted against respondent No.1 and the disciplinary proceedings pursuant to the said charge-sheet cannot be said to be bad in law and cannot be interfered with on the ground of condonation....."

The facts reported in the above Supreme Court decision would go to show as against the respondent therein certain disciplinary proceedings were contemplated. Pending issuance of chargesheet as against the respondent therein, he was promoted. One of the contentions raised in the Supreme Court was due to the said promotion all the alleged acts of mis-conduct of the respondent therein should be deemed to have been condoned and, so no disciplinary proceeding could be initiated. The Supreme court over ruled the said contention and held as above. The observations therein apply to the facts of this case also on all fours. Because the applicant was promoted when this OA was pending, it does not automatically follow that the alleged

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mis-conduct had been condoned by the respondents. As a matter of fact, in the Supreme Court decision (1982)2 SCC 54 cited supra, the Supreme Court had specifically directed that after giving promotion to the applicant therein that the disciplinary proceeding should be continued. So, in view of the observations in the said judgement of the Supreme Court, it is not open to the learned counsel for the applicant to rely on the observations of the Calcutta High Court and contend that the respondents should be deemed to have condoned the alleged mis-deeds of the applicant as the applicant is promoted to Selection Grade IAS and so, the OA is liable to be allowed.

Even though the applicant has been promoted during the pendency of the OA, we are not prepared to hold ^{that} in view of the said promotion that the alleged misdeeds of the applicant stand condoned and hence, the contention of the learned counsel for the applicant cannot be accepted.

Section 19(4) of the Administrative Tribunals Act reads as follows:

"Where an application has been admitted by a Tribunal under Sub-section(3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules-

Admittedly, during the pendency of the OA, the disciplinary authority had inflicted on the applicant, the punishment of censure as per its orders dated 17.9.92. Relying on Sec.19(4) of Administrative Tribunals Act, it is the contention of the learned counsel for the applicant, as the OA was pending before this Tribunal all the proceedings that were pending before the disciplinary authority should be deemed to have been abated and so, the punishment of censure imposed on the applicant is not valid in law. It is an event that had taken place subsequent to the filing of this OA and during the pendency of this OA.

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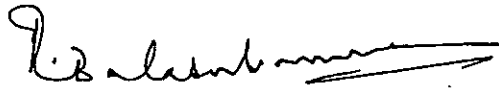
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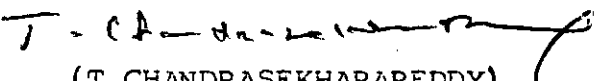
1. The Chief Secretary, Gen. Administration
Govt. of A.P. Secretariat Buildings, Hyderabad-22.
2. The Secretary, Dept. of Personnel and Training,
Central Secretariat, New Delhi.
3. One copy to Mr. G. V. L. Narasimha Rao, Advocate, CAT. Hyd.
4. One copy to Mr. M. Jaganmohan Reddy, Addl. CGSC.
5. One copy to Mr. D. Panduranga Reddy, Spl. Counsel for A.P. Govt. CAT. Hyd.
6. One copy to Mr. T. Chandra Sekhara Reddy, Addl. Secy. to Govt. (Ind. Control).
7. One copy to Deputy Registrar (J) CAT. Hyd. Bench.
8. One copy spare.
9. Copy to All Reporters as per standard list of CAT. Hyd.

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No order has been passed by this Tribunal staying the proceedings pending before the disciplinary authority as against the applicant. So, in view of this position, we do not intend to express any opinion about the validity and legality of the punishment of censure that had been imposed on the applicant by the respondents. We make it clear that it is open to the applicant to challenge the validity and legality of the said punishment of censure imposed against him in accordance with rules and regulations if he is aggrieved by the said punishment. As we have held that the disciplinary proceedings are not liable to be quashed, it is not open for us to give direction to the respondents with regard to the promotion of the applicant retrospectively to the Selection Grade of IAS w.e.f. 1987 and super-time scale w.e.f. 1989.

It is faintly argued that the applicant made certain requests for copy of documents on 2.2.84 and the same was refused on 18.2.84 and so, the applicant is prejudiced in his defence. This question of prejudice could be gone into by the Competent Authority for the alleged non-supply of documents to the applicant and when the applicant chooses to question the punishment of censure imposed on him before the competent authority. We also make it clear that the applicant would be at his liberty to raise all such pleas that are open to him in accordance with law, if he chooses to question the punishment of censure imposed on him before the competent authority. We see no merits in this OA and the OA is liable to be dismissed and is accordingly dismissed leaving the parties to bear their own costs.


(R. BALASUBRAMANIAN)
Member (Admn)


(T. CHANDRASEKHARAREDDY)
Member (Judl.)

Dated: 12th Day of November, 1992