

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:

HYDERABAD

O.A.No.130 of 1999.

DATE OF ORDER: 10.4.00

Between:

Majeed Ahmad.

...Applicant

and

1. The Superintending Engineer(C),  
Telecom Civil Circle,  
Beside City Central Library,  
Chikkadpally, Hyderabad-500 020.

2. The Chief Engineer(C),  
Telecom Civil Circle,  
opp.Osmania Medical College,  
Koti, Hyderabad-500 095.

3. The Telecom District Manager,  
Medak Telecom District,  
Sangareddy-502 050.

4. The Chief General Manager,  
Telecommunications, AP, Hyderabad-500 001.

5. The Director-General, Telecom,  
(representing Union of India),  
New Delhi-110 001.

....Respondents

COUNSEL FOR THE APPLICANT :: Mr.C.Suryanarayana

COUNSEL FOR THE RESPONDENTS :: Mr.B.Narsimha Sharma

CORAM:

THE HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN.)

THE HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

: ORDER :

(PER HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER (J))

Heard Mr.C.Suryanarayana, learned Counsel for the  
Applicant and Mr.B.Narsimha Sharma, learned Standing Counsel  
for the Respondents.

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2. The applicant herein was working as Junior Engineer (Minor Civil Works) in the office of the Director of Postal Services, Northern Region, Andhra Pradesh, Hyderabad, during the period from August, 1981 to 26th May, 1986. It is alleged that the applicant had committed serious irregularities during the said period in respect of work of levelling open land by using gravel soil at the Staff Quarters site at Adilabad in Andhra Pradesh. The Postmaster General, A.P. Circle, vide his letter dated 9-1-1985 approved the work proposed by the Superintendent of Post Offices, Adilabad, duly approving the quotation of a private contractor viz., M/s Jaya Narayana Reddy for 1300 Cum. Quantity of gravel at Rs.36.50 per cum. amounting to Rs.47,450/- and the Director of Postal Services, A.P., Northern Region, Hyderabad, was requested to depute the applicant for assisting the Superintendent of Post Offices, Adilabad, vide his letter dated 4-2-1985 authorised the contractor to undertake the work under the direct supervision of the applicant. Thus the applicant was entrusted with the work and entire responsibility of satisfactory execution of the work rested on him. The applicant had recorded the measurement of work commenced on 18-2-1985 and was completed on 13-6-1985. As per the recorded work, the quantum of work was 1356.53 cum. and as per extract total value of work done as per the measurement book was Rs.49,513/- and the bill was passed on 21-6-1985 by the Assistant Engineer for Rs.49,513/-.

3. However, it came to the light that the said work was not properly done. Hence, a detailed enquiry was conducted by the Vigilance Officer of the office of the PMG, Hyderabad. The

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Vigilance Officer submitted his report on 29-2-1986. The applicant had made a statement before the Vigilance Officer.

4. The report of the Vigilance Officer led to the issue of the Charge Sheet by the Superintending Engineer, Telecom Civil Circle, Hyderabad in Proceedings No.EA/SEHD/Vig-7, dated 5-11-1990. That Charge Memo is at Annexure.A-1.

5. On receipt of the Charge Memo, the applicant submitted a letter dated 20-11-1990 (Annexure.A-4) requesting for copies of documents in support of the charges. But the respondent No.1 rejected his request and stated that the applicant would get full opportunity to inspect the listed documents during the course of enquiry. The applicant pointed out the Vigilance Commission's instructions to the effect that the documents cited to sustain the charges must be supplied to the delinquent employee along with the Charge Sheet and hence, requested the Respondent No.1 to furnish the documents to enable him to submit his statement of defence as per letter dated 9-1-1991 (Annexure.A6).

6. In the meanwhile, the applicant obtained the declaration from Sri Shaik Shamshuddin, SS(SCO) office of the Assistant Engineer, Telex, Kothapet, Guntur, to assist the applicant in the Disciplinary Proceedings and submitted a copy to the Respondent No.1.

7. After lapse of four months, the Respondent No.1 supplied the copies of documents as per Annexure.A-8, dated 22-4-1991. On receipt of the same, the applicant submitted his statement of defence denying the charges levelled against him.

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8. The Respondent No.5 issued Order No.6-8/87-CSE, dated 9-5-1991, (Annexure.A-10 to the OA) conveying the decision that Junior Engineers (Civil/Electrical) of P&T Civil Wing shall be initially appointed in the scale of pay of Rs.1400-2300. But on completion of 5 years, they would be placed in the scale of pay of Rs.1640-2900/- without the benefit of FR 22(I)(a)(i) for fixing his his pay as the grade shall not be treated as a promotional grade but a non-functional one.

9. Subsequently in the letter dated 24-6-1991, (Annexure.A-11 to the OA), it was clarified that it was necessary for a Junior Engineer to pass the simple Accounts Test to become eligible to place in the scale of pay of Rs.1640-2900/- on completion of five(5) years and also stated that the DPC procedure would be applied for placing the Junior Engineers in the said scale of pay. The applicant submits that he passed the said Accounts Test before 1986 itself and had passed the qualifying examination for promotion and absorption as Assistant Engineer.

10. The 1st respondent pursuant to the above said letter, issued Order dated 14-8-1991 (Annexure.A-12 to the OA) placing 31 Junior Engineers (Civil) working in his jurisdiction in the scale of pay of Rs.1640-2900/- with effect from 1-1-1986 as they had completed five years of service, but the applicant was not considered. He submits that his juniors were placed in the said scale of pay. His grievance is that, as on that he was not served with the charges nor was he undergoing punishment. Hence, exclusion of his case for placement in the said scale of pay was not correct. He submits that he should have been placed



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between Serial Nos.20 and 21 below his immediate senior and above his immediate junior ~~as~~ per the directions of the Hon'ble Tribunal reported in the case of K.Ch.VENKATA REDDY v. UNION OF INDIA & OTHERS (1987(3) ATC 174).

11. The 5th respondent issued the letter No.6-6/91-CSE, dated 9-9-1991, (Annexure.A-13) clarifying that all the Junior Engineers with 5 years of service be given the scale of Rs.1640-2900/- subject to they being assessed fit for the higher grade by a Committee constituting SE(C/E) as Chairman and EE(C/E) as Member. It was also clarified that non-passing of the said Accounts Test is not a bar for placing the Junior Engineers in the said scale of pay, but any increment would be allowed only after passing the Accounts Test.

12. The first respondent issued Order No. Vig.7/Civil/HD/8 dated 22-1-1992, (Annexure.A-14) appointing Sri K.Chandrasekharan, AD(Vigilence) as the Presenting Officer in the disciplinary case initiated against him. By Order dated 22-1-1992, (Annexure.A-15), the first respondent appointed Sri S.Janardhana Rao, AE(L&B), Hyderabad Telecom District, as the Inquiring Authority. The applicant submits that these orders were issued after a lapse of nearly One year and three months after issuing the Charge Memo.

13. The first enquiry notice was issued on 10-6-1992. The first round of enquiry was held on 10-6-1992.

14. The second round of enquiry was held on 18-6-1992. The enquiry was adjourned to 14-7-1992. The applicant at that time submitted a letter dated 30-6-1992 reserving his right to

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fequisition the additional documents and naming additional witnesses after inspection of the documents in Annexure A-22.

15. The third round of enquiry ~~was~~ scheduled to be held on 14-7-1992 was adjourned to 11-8-1992. Further it was adjourned to 25-8-1992.

16. The third round of enquiry was actually held on 25-8-1992. It is submitted that thereafter enquiry has not been conducted.

17. The applicant submitted the representation dated 11-2-1993, (Annexure.A-27) to the first respondent and submitted the representations dated 31-3-1993 and 14-9-1994 (Annexures.A-29 and A-30) to the first respondent. The first respondent has not taken any action on these representations.

18. However, the first respondent issued Order dated 30-10-1995 (Annexure.A-31) allowing the higher scale of pay of as Rs.2000-3500/-/applicable to the A.Es to 24 Junior Engineers (Civil) on their completing 15 years of service. The applicant's name was shown at Serial No.17. Yet the applicant was not given the benefit of higher scale even though he was qualified for the said promotion as Assistant Engineer.

19. The applicant therefore submitted a representation for permission to draw the upgraded JE's scale (1640-2900/-) from 1-1-1986 and the AE's scale (Rs.2000-3500/-) from the date on which he completed the 15 years of service i.e., with effect from 11-10-1994, vide his representation dated 13-11-1995. No action has been taken on that representation.



20. Subsequently, the applicant submitted representation dated 14-6-1996 to the first respondent stating that the disciplinary proceedings initiated against him are pending for nearly six years and inspite of his request, the Enquiry Officer had not taken any steps to conclude the enquiry expeditiously. He also submitted that the incident had taken place eight years ago and he was not only not given the benefit of higher scale of Rs.1640-2900/- but also denied the benefit of promotion as Assistant Engineer though he was qualified for the said higher scale of pay on promotion.

21. The applicant thereafter submitted representation dated 23-6-1998 (Annexure.A-34) urging that the directions be given to grant the benefit of higher scales from 1-1-1986 and 11-10-1994 respectively.

22. Hence, the applicant has filed this OA for the following reliefs:-

'To declare,

a) that the disciplinary proceedings against the applicant are vitiated by the abnormal delay and rendered void and inoperative;

b) that the applicant is entitled to the higher scale of Rs.1640-2900 w.e.f. 1-1-86 with all consequential benefits (together with interest on delayed payment) because he passed the prescribed Accounts Test even before 1986;

c) that the applicant is not only entitled to the scale of Rs.2000-3500 on completion of 15 years' service w.e.f. 11-10-94 together with all consequential benefits (with interest on delayed payment)



but also for regular promotion as Assistant Engineer (Civil) inasmuch as he qualified in the departmental examination for promotion as AE (C) and the said disciplinary proceedings, which stand vitiated due to prolonged delay, cannot be an impediment for his regular promotion; and

d) that the applicant having been subjected to suppression and mental torture and harassment for over <sup>14</sup> long years is entitled to exemplary costs.'

23. The respondents have filed their reply. They admit that the enquiry proceedings were conducted by the Enquiry Officer. They submit that further hearings could not be held for want of additional documents as requested by the applicant. They submit that the Enquiry Officer could not conclude the enquiry for want of additional documents, which were asked by the applicant. The further documents asked by the applicant had no relevancy <sup>to</sup> for the charges under enquiry. Since the applicant was insisting that unless the additional documents required by him were supplied, the enquiry cannot be proceeded. As the applicant was not cooperating and insisting for the additional documents, the further enquiry could not be conducted. They submit that the delay in conclusion of the enquiry is attributable to the applicant. All the relevant documents pertaining to the charges were already/given or permitted to be inspected by the applicant. The department is also appointing another Enquiry Officer for early completion of the enquiry.

24. The applicant has adopted the delay tactics in completion of the enquiry. The Enquiry Officer appointed earlier retired from service with effect from 31-3-1996.

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25. They submit that the applicant is not entitled to the higher scale of pay and promotion to the post of Assistant Engineer as the major penalty proceedings are pending against him.

26. Thus they submit that the delay in concluding the enquiry is attributable to the applicant.

27. At the time of hearing, the learned Counsel for the <sup>was</sup> Applicant submitted that there ~~was~~ inordinate delay in initiating the disciplinary proceedings and also in conducting the enquiry. It is his case that the incident had taken place somewhere in the year 1985 and the charge sheet was issued in the year 1990. Thus he submits that there was a delay of 5 years from the ~~occurrence of the event~~ <sup>to the</sup> to the issuing of the Charge Memo. No doubt, even if it had taken place in the year 1985, the respondent-authorities could not detect the irregularities committed by the applicant. It was only after the Vigilance Officer conducted the preliminary enquiry that irregularities committed by the applicant came to light. Therefore, the delay in issuing the charge memo on 13-11-1990 cannot be considered as a delay. The department authorities were not aware of the irregularities committed by the applicant at the time of execution of the work. The Vigilance Officer submitted his report only on 29-2-1986.

28. From 29-2-1986 till 13-11-1990, the authorities might have considered him whether a prima-facie case exists against the applicant to initiate disciplinary proceedings. Therefore



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the issuance of the charge memo on 13-11-1990 cannot be considered as an inordinate delay. Hence, this contention of the applicant is rejected.

29. Earlier the Respondent No.1 had appointed S.Janardhana Rao, Asst.Engineer (L&B), Hyderabad Telecom District as Enquiry Officer. This Enquiry Officer had conducted only three sittings, i.e., on 10-6-1992, 18-6-1992 and 25-8-1992. The said Officer retired from service on 31-3-1996. It is not known why the Enquiry Officer had not conducted further sittings on and after 25-8-1992.

30. It appears the applicant had submitted a requisition for additional documents. The respondents submit that the applicant has requested for additional documents and insisted upon production of the ~~delivery of the~~ additional documents to conclude the enquiry. Further they submit that the requisition of the applicant for additional documents has no relevancy to the charge memo. If that was so, the Enquiry Officer should have considered the request of the applicant and pass<sup>ed</sup> a necessary order. On the otherhand the Enquiry Officer has summoned the additional documents as requested by the applicant, and he was awaiting the production of the additional documents by the Disciplinary Authority. When that is so, it cannot be said that the applicant was responsible for the delay. The Enquiry Authority had the full discretion to consider the request of the applicant for summoning the additional documents. When that was considered and took a decision to summon additional documents, it cannot be said that the request of the applicant for summoning additional documents was not justified. Such<sup>a</sup> decision has not been taken by the Enquiry Authority.

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31. The Disciplinary Authority should have informed the Enquiry Officer as to availability or non-availability of the additional documents summoned by the applicant. The Disciplinary Authority, it appears, has not taken any decision on the production of the said additional documents before the enquiry.

32. The learned Counsel for the applicant in support of his contention that there is an inordinate delay in concluding the disciplinary proceedings, has relied upon the following decisions:-

- i) G.RAMACHANDRAN v. SENIOR SUPERINTENDENT OF POST OFFICES MADURAI CITY DIVISION? MADURAI & ANOTHER  
(reported in (1987)3 ATC 629)
- ii) KARTAR SINGH v. UNION OF INDIA & OTHERS  
(reported in (1987)4 ATC 545)
- iii) M.NAGALINGA REDDY v. GOVT. OF A.P. & OTHERS  
(reported in (1988)6 ATC 246)
- iv) SHRI RAMESH MORESHWAR SHRINGAPURE v. CHIEF VIGILANCE OFFICER,CENTRAL BOARD OF EXCISE & CUSTOMS,NEW DELHI & ANOTHER.  
(reported in 1988)7 ATC 59)
- v) DINAKARAN v. THE SENIOR DIVISIONAL PERSONNEL OFFICER, DIVISIONAL OFFICE,SOUTHERN RAILWAY & ANOTHER  
(reported in 1989)9 ATC 883)
- vi) E.VEDAVYAS v. GOVT. OF A.P. & ANOTHER  
(reported in(1989)11 ATC 257)
- vii) DASHARATHI PACHADHYAYEE v. UNION OF INDIA & OTHERS  
(reported in (1989)11 ATC 730)
- viii) T.RAJI REDDY v. UNION OF INDIA & OTHERS  
(reported in(1991)17 ATC 838)
- ix) PANCHU GOPAL BANNERJEE v. UNION OF INDIA & OTHERS  
(reported in (1992)20 ATC 595)
- x) D.D.GAWADE v. UNION OF INDIA & OTHERS  
(reported in (1994)26 ATC 164)

- xii) BHAGAT SINGH v. UNION OF INDIA & OTHERS  
(reported in (1994) 28 ATC 306)
- xiii) S.M.DUBE v. UNION OF INDIA & OTHERS  
(reported in (1995) 31 ATC 227)
- xiii) RAM DASS v. UNION OF INDIA & OTHERS  
(reported in (1996) 33 ATC 121).

33. In all these cited cases, the Hon'ble Tribunals considered the delay in conducting disciplinary proceedings.

34. We feel it is not necessary to refer to all these cases in detail in view of the latest decision of the Hon'ble Supreme Court in the case of THE STATE OF ANDHRA PRADESH v. N.RADHAKRISHNAN (reported in AIR 1998, SC P.1833). In that case also the Hon'ble Supreme Court considered the delay in initiating and conducting the disciplinary proceedings. In para.19, the Hon'ble Supreme Court has observed as under:-

"19. It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the Court has to take into consideration all relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously

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and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the Court is to balance these two diverse considerations."

35. We feel that the first Enquiry Officer had failed to conduct the enquiry after 25-8-1992. When a requisition is made by a delinquent employee for summoning additional documents or a witness, it is the duty of the enquiry authority to consider whether the request can be accepted or not. In this case the Enquiry Officer himself has taken a decision to summon the additional documents requested by the applicant. When that is so, it goes without saying that the enquiry authority had taken a decision that these additional documents summoned by the



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applicant were necessary for the defence of the applicant. Then it is for the Disciplinary Authority to summon these documents or offer proper reasons for not providing the additional documents summoned by the applicant. As it stands today, the respondent-authorities are expected to produce the additional documents summoned by the applicant before the Enquiry Officer. They have to take a decision whether these documents can be produced or not.

36. As it is the first Enquiry Officer has already retired from service, the respondents in their reply submit that they are in the process of appointing another Enquiry Officer. Considering all these factors, we feel it proper to provide them an opportunity to conclude the disciplinary proceedings as expeditiously as possible.

37. As there has been a delay in conducting the disciplinary proceedings, the respondent-authorities could have considered the case of the applicant for promotion atleast on adhoc basis in view of the OM No.22011/4/91-1Estt(A), dated 14-9-1992, (Annexure.A-26, page 55 to the OA).

38. Hence, we issue the following directions:-

- i) The enquiry shall be concluded on or before 31-7-2000;
- ii) The Disciplinary Authority shall pass the final order on the charge memo dated 13-11-1990 on or before 31-8-2000;
- iii) On failure to adhere to the above time limit by the Enquiry Officer or Disciplinary Authority, the charge memo shall stand quashed;



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iv) During the pendency of the enquiry, the respondent-authorities may consider the case of the applicant for placing him in the higher scale of Rs.1640-2900/- or for promoting him to the post of Assistant Engineer on completion of his 15 years of service atleast on adhoc basis and they must take a decision within a month from the date of receipt of a copy of this Order.

v) The applicant shall cooperate with the Enquiry Officer to conclude the same within the time limit stipulated above.

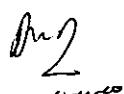
39. With the above directions, the OA is disposed of. No order as to costs.

  
B.S.JAI PARAMESHWAR )  
MEMBER (JUDL.)  
104, 105

  
( R.RANGARAJAN )  
MEMBER (ADMN.)

DATED: 10<sup>th</sup> April 2000

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DSN

  
Dr. S. Rangarajan

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH,  
HYDERABAD.

~~1ST AND 2ND COURT~~

TYPED BY  
COMPARED BY

CHECKED BY  
APPROVED BY

COPY TO

1. HONORABLE MR. JUSTICE D.H. NASIR  
VICE-CHAIRMAN

2. HONORABLE MR. R. RANGARAJAN  
MEMBER (ADMIN.)

3. HONORABLE MR. (JUDL)

4. HONORABLE MR. B.S. JAI PARESHWAR  
MEMBER (JUDL)

5. SPARE

6. ADVOCATE

7. STANDING COUNSEL

DATE OF ORDER 10/4/2001

~~MA/RA/CE NO.~~

~~IN~~

~~C.A. NO. 130/99.~~

~~ADMITTED AND INTERIM DIRECTIONS  
ISSUED~~

~~ALLOWED~~

~~C.P. CLOSED~~

~~R.A. CLOSED~~

*(10 copies)*

~~DISPOSED OF WITH DIRECTIONS~~

~~DISMISSED~~

~~DISMISSED AS WITHDRAWN~~

~~ORDER REJECTED~~

~~NO ORDER AS TO COSTS~~

Central Administrative Tribunal  
Hyderabad Bench  
17 APR 2000  
Despatch No. 1000  
Date of filing/RECEIPT SECTION