

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

May 15 See
in
15/11

O.A. No. 452/2000

199

RECORDED.

VerP 15/11

DATE OF DECISION 20-11-09

R.S. Mathuria Petitioner

Mr. K.P. Thawani Advocate for the Petitioner (s)

Versus

VOI and two others. Respondent

Mr. Neeraj Batra Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman.

The Hon'ble Mr. A.P. Nagrath, Administrative Member.

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 ?

Dr

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH; JAIPUR

Original Application No. 452/2000

R.S. Mathuria
S/o Roop Narain
r/o C.256, Mahesh Nagar
Jaipur 302 015 : Applicant.

rep. by Mr. K.L.Thawani : Counsel for the applicant.

-versus-

1. Union of India through the
Secretary to the Government
of India Department of
Telecommunications,
Ministry of Communications
New Delhi- 110 001
2. Director General,
Department of Telecommunications,
Sanchar Bhawan
Sansad Marg
New Delhi.
3. Chief General Manager,
Rajasthan Telecom Circle
Jaipur 302 008 : Respondents.

rep. by Mr. Neeraj Batra : Counsel for the respondents.

CORAM : The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman
The Hon'ble Mr. A.P. Nagrath, Administrative Member.

Date of the order: 10/11/01

For Mr. Justice G.L.Gupta.

ORDER

In this application under Sec. 19 of the
Administrative Tribunals Act, 1985, the applicant prays
for the following reliefs:

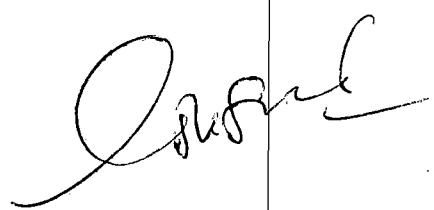
- i) that the respondents be directed by issuance
of an appropriate order or direction to
drop the disciplinary proceedings which
are illegal, capricious and
unconstitutional and violative of Articles
14 and 311 (2) of the Constitution of India
and principles of natural justice.



- ii) that the charge sheet impugned order Annex. A.1 be quashed being illegal and capricious and unconstitutional
- iii) any other relief which this Hon'ble Tribunal thinks just and proper in favour of the applicant including costs.

2. It is averred that the applicant was initially recruited as Signal Room Clerk on 11.8.66. By way of promotions he became Accounts Officer on 25.4.1991. He worked as Accounts Officer (Engg.) in the office of Telecom District Engineer, Sikar during the year 1992-93 and in that capacity he was a member of a Committee which consisted of two other members i.e. Shri Mohd. Rafiq, T.D.E., Sikar, and Mr. Nemi Chand, Dy. D.E.T., Sikar. When the vigilance team visited the Telephone Dist. Sikar, it found that some serious financial irregularities had been committed in the Office during the year 1992-93. A. preliminary enquiry was conducted in the year 1994. On the basis of the said enquiry Disciplinary proceedings were initiated against Mohd. Rafiq, Telecom Divisional Engineer, Sikar. In that enquiry, the applicant was cited as witness for the Department. The enquiry against Mohd Rafiq was concluded in April 2000 and a penalty of reduction of pension by 20% for 5 years was imposed on him.

Thereafter, the Chief General Manager, Telecom. Rajasthan Circle, vide memo dated 19.5.2000, issued charge sheet to the applicant containing 3 charges. In the first charge the allegation against the applicant is

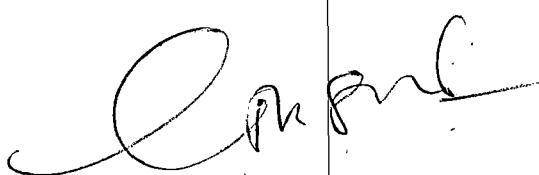


that he concurred with the proposal for the purchase of 3700.07 mts of G.I pipes 1½ inches I.S.I. Mark 'B' class from M/s Rajan Enterprises, Sikar, without any actual requirement, as 2533.20 mts of pipe out 3700.07 mts was already lying unutilised. It is alleged that the act of the applicant caused pecuniary loss of Rs.1,80,378.41 to the Department.

The second charge against the applicant is that while functioning as Accounts Officer, he irregularly suggested that the working of construction of over-head lines in Sikar Telecom. Dist. should be awarded to M/s Ojha Constructions, Co. Jaipur, though the rates of the firm were second lowest. It is also alleged that a short-tender notice for the said work was issued in the absence of any urgency without any assessment of B & W Stores. It is further alleged, that the applicant had advised to refund the earnest money deposit of Rs.50,000/- to M/s B.L. Saini of Khetri whereas the amount should have been forfeited as the said tenderer had been held to have failed to abide by the terms and conditions of the tender.

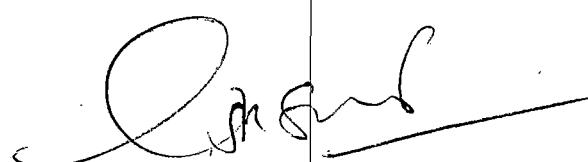
The 3rd charge against the applicant is that he had committed irregularities in hiring the buildings for the Telephone Exchanges at Fathepur, Laxman Garh and Sri Madhopur and showed undue favour to the landlords/ landlady of the buildings thus hired.

3. The contention of the applicant is that the charge sheet had been issued after a lapse of 8 years with an ulterior motive to debar the applicant from promotion.



It is stated that the then competent authority had applied its mind on the issue, but did not direct the issuance of the charge sheet along with Mohd . Rafiq which amounted to dropping the proceedings and hence the Successive Disciplinary Authority was not justified in issuing the charge sheet.

4. The respondents, in the reply, have averred that the matter was thoroughly investigated by the Vigilance Cell of the Chief General Manager, Telecom Officer and as per the procedure, the case was sent to Vigilance Wing of the TCHQ, New Delhi along with documents for consideration and final decision vide Chief General Manager's letter dated 7.12.93. It has been stated that the Central Vigilance Commission, was of the opinion that the decision to award the tender for supply of G.I. pipes at higher rates and hiring of the building was taken jointly by Shri Rafique Ahemed, the applicant and Shri Nemi Chand, the then Dy. TDE and therefore action was required to be taken against the applicant also and in view of the advice of the Vigilance Commission, a charge sheet was issued to the applicant. It is stated that earlier, the documents were not available because the case was pending against Shri Rafiq ue Ahemed and after the original documents have been received on the finalisation of the disciplinary proceedings against Shri Rafique Ahemed, the charge sheet has been issued to the applicant.



5. We have heard the learned counsel for the parties and perused the documents placed on record.

6. The learned counsel for the applicant contended that the charge sheet had been issued 8 years after the alleged mis-conduct and the same should be quashed on this ground alone. He cited the case of State of Madhya Pradesh vs. Bani Singh and another (AIR 1990 SC 1308) in support of his contention. Pointing out that the applicant was cited as witness for the Department in the disciplinary enquiry conducted against Shri Rafique Ahemed, and the then Disciplinary Authority had dropped the idea of initiating Disciplinary proceedings against the applicant, Mr. Thawani argued that the successive Disciplinary Authority could not be justified in issuing the charge sheet. His further contention was that a copy of the report of the Central Vigilance Commission was not supplied to him along with the charge sheet and therefore the charge sheet is liable to be quashed. In this connection, Mr. Thawani brought to our notice the Circular letter No. 99/VGL/66, dated 28.9.2000, issued by the Government of India, Central Vigilance Commission, New Delhi and relied on the decision of State Bank of India and others vs. D.C. Aggarwal and another (1993 23 ATC 403)

7. On the other hand, the learned counsel for the respondents, pointing out that the mis-conduct alleged against the applicant is of serious nature, contended that on the grounds of delay or the non-supply of copy of the report of the Central Vigilance Commission



the Disciplinary proceedings initiated against the applicant should not be quashed. His further contention was that the inquiry proceedings initiated against the applicant is at the final stage and at any time orders may be passed in the same.

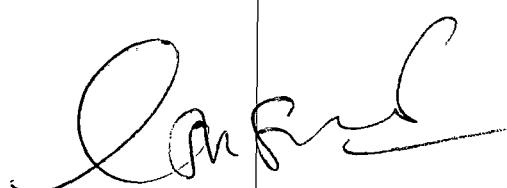
8. We have given the matter our thoughtful consideration. A reading of the charges levelled against the applicant makes it clear that the mis-conduct alleged is of grave nature. It is alleged that the applicant became party to the purchase of G.I. pipes, inspite of ^{goods} the fact that a major part of the requirement was still lying in stock. Not only that, it is alleged that the pipes were purchased at the exorbitant rate causing a loss of Rs.1,80, 378.41 to the Department of Telecommunications. The further allegations against the applicant is that the tender of the lowest rate was not accepted, instead the tender of the ^{second} lowest rate was accepted. It is also alleged that short-tender was floated though there was no urgency in the matter. It is further alleged that the applicant had committed irregularity when he advised the refund of the earnest money deposit of Rs.50,000/- to the tenderer, though the amount could have been forfeited. It is also alleged that the applicant had committed irregularities in the hiring of buildings for the Telephone Exchanges at Fatehpur, Laxman Garh and Sri Madhopur.



9. Keeping in view the mis-conduct alleged, which is of grave nature this Court cannot be justified in quashing the disciplinary proceedings on the ground of delay in issuing the charge sheet.

10. In the case of Bani Singh (supra), the Tribunal had quashed the charge sheet on the ground that the Disciplinary proceedings had been started after 12 years. That order was upheld by the Supreme Court. However, the report does not indicate as to whether the mis-conduct alleged against the said Bani Singh was of serious nature. It may be pointed out that the case of Bani Singh (supra) was noticed by the Hon'ble Supreme Court in the case of State of Punjab and others vs. Chaman Lal Goyal (1995 SCC L & S 541). In that case, their Lordships discussed the case of Bani Singh (supra) and observed that probably, the charges levelled against Bani Singh were not of grave nature.

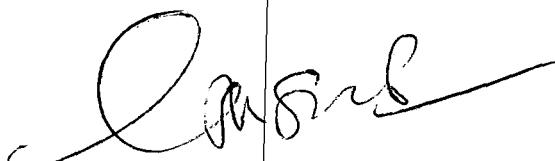
11. In the case of Chaman Lal Goyal (supra) it has been clearly observed that where the delay was caused in the initiation of disciplinary proceedings, the Court has to indulge in balancing process. In other words, the Court has to take into consideration the factors which are in favour of the delinquent and also the factors which are against him, while deciding the matter as to whether the delay in initiation of disciplinary proceedings was fatal.



A reading of the judgement in the case of Chaman Lal Goyal (supra) further indicates that where major portion of inquiry is over it may not be advisable to quash the disciplinary proceedings on the ground of delay.

12. In the instant case, as already stated the alleged mis-conduct is of serious nature and this is circumstance against the applicant. The respondents' case is that the original documents required to initiate disciplinary proceedings were not available with the department since they had been sent to Central Vigilance Commission/Department of Telecommunications and were with the Enquiry Officer who held the enquiry against Shri Rafique Ahemed. There is no cause to disbelieve this explanation of delay. This circumstance is also relevant that co-delinquent has already been found guilty of the charges and he has been punished. The further circumstance against the quashing of the disciplinary proceedings is that the enquiry is completed and the matter is pending with the Disciplinary Authority for orders.

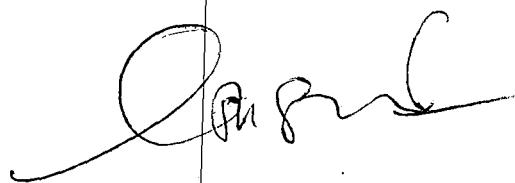
13. The circumstance favourable to the applicant is that the competent authority while issuing charge sheet to Rafique Ahemed, did not think it necessary to issue charge sheet to the applicant. The second circumstance in favour of the applicant is that he has not been supplied with a copy of the report of the Central Vigilance Commission.



14. The circumstances in favour of the applicant are not such which warrants the quashing of the disciplinary proceedings. It may be that the then Chief General Manager, did not issue charge sheet to the applicant while issuing the charge sheet to Rafique Ahemed, but that did not debar the successive Chief General Manager of Telecommunications to issue charge sheet to the applicant if there is material on record. It may be pointed out that no allegations of malafide have been made against the present Disciplinary Authority. Therefore, the charge sheet is not liable to be quashed on the ground that the predecessor of the Disciplinary Authority had not thought it necessary to issue charge sheet to the applicant along with Rafique Ahemed.

15. On the ground that a copy of Central Vigilance Commission report was not supplied to the applicant, the charge sheet cannot be quashed at this stage. If the applicant is found guilty of the charge and penalty is imposed, then the point of non-supply of a copy of the Central Vigilance Commission's report may be taken if prejudice was caused to the applicant.

In the case of D.C. Aggarwal, (supra), the facts were that, the Disciplinary Authority had not only not supplied the copy of the inquiry report to the delinquent therein but the Disciplinary Authority was also guilty of acting on the material which was irrelevant and could not be looked into. In that case,

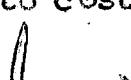


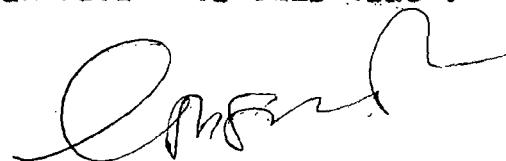
the recommendations of the Central Vigilance Commission were relied upon by the Disciplinary Authority while holding the delinquent guilty. In those circumstances, it was held that there was violation of principles of natural justice and the inquiry should be just and fair. In the instance case, the Disciplinary Authority has not decided the enquiry as yet. On the ground of non-supply of Central Vigilance Commission's report, the enquiry cannot be quashed.

16. In the O.A a vague averment is made that the charge sheet has been given to deprive the applicant of his promotion. It is not stated in the O.A. that his case for promotion is likely to be considered in the near future. Therefore, an order in the manner it was done by the Apex Court in the case of Chaman Lal Goval (supra) is not required to be passed.

17. We, however, think it just and proper to direct the respondents to get final order passed by the Disciplinary Authority.

18. Consequently, while dismissing the O.A we direct the respondents to get a final order of the Disciplinary Authority passed within a period of three months from the date of communication of this order. No order as to costs.


(A.P. Nagrath)
Administrative Member


(G.L. Gupta)
Vice Chairman

jsv.