

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

OA 332/2001

DATE OF ORDER : 22-11-02

Kripa Shankar Goyal son of Shri Banwari Lal Goyal aged about 47 years, resident of 9/401, Malviya Nagar, Jaipur (At present working as Sr. Goods Clerk (Separate Cadre) in the office of Divisional Commercial Superintendent, Western Railway, Jaipur.

....Applicant.

VERSUS

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. The Divisional Railway Manager, Western Railway, Power House Road, Jaipur.
3. The Sr. Divisional Commercial Manager, Western Railway, Power House Road, aipur.

....Respondents.

Mr. Y.K. Sharma, Counsel for the applicant.

None present for the respondents.

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Hon'ble Mr. G.C. Srivastava, Member (Administrative)

Hon'ble Mr. M.L. Chauhan, Member (Judicial)

ORDER

PER HON'BLE MR. M.L. CHAUHAN, MEMBER (JUDICIAL)

The applicant was initially appointed as a Commercial Clerk in Jaipur Division on account of his father being a loyal Railway employee. The appointment was made w.e.f. April 21, 1975 after General Manager, Western Railway had accorded sanction. While working as Assistant Goods Clerk during the year 1978, a departmental inquiry for contravention of Rule 3(iii) of the Railway Services (Conduct) Rules, 1966 was commenced against the applicant. The charge against the applicant was that he unauthorisedly prepared BPTS from sl.

108

No. 2586 to 2591 for a total amount of Rs. 3570.05 without collecting the amount from the passengers and in collusion with S/Shri Bhagwati Prasad Sharma, BC; M.C. Bhagwan, BC and Dau Dayal Agarwal, BC obtained the amounts of the said BPTs from them on the basis of refund slips prepared by himself and thereby contravened Rule 3 of the Railway Services (Conduct) Rules, 1966.

2. The departmental inquiry culminated in the dismissal of the applicant vide order dated August 18, 1980. The applicant preferred an appeal to the DRM, Jaipur, which was also rejected vide order dated 01.01.1981. The applicant filed Writ Petition against these two impugned orders in the High court of Rajasthan, Jaipur which was transferred to this Tribunal in view of the provision contained in Section 29(1) of the Administrative Tribunal's Act, 1985 and registered as TA No. 476/86.

3. Vide order dated 11.8.1987, this Tribunal quashed both the impugned orders by holding that the dismissal order has been passed by an authority who is far subordinate to General Manager, Western Railway and also that the applicant was not afforded opportunity to cross examine the witnesses Nos. 12, 14 to 21 and he had also not been supplied with copies of the documents. However, this Tribunal further observed that this order will not preclude the competent authority from initiating fresh inquiry in accordance with law in case they so feel.

4. It is further the case of the applicant that inspite of the order passed by the Tribunal in TA No. 476/86, the applicant was not reinstated. The respondents filed a Review Petition NO. 161/87, which was also dismissed by this Tribunal on 2.3.1988. The matter was further carried out by the respondents by filing Special Leave Appeal before the Apex Court which was registered as 895/89. However, during the pendency of the appeal before the Apex Court, the applicant was reinstated in service vide order dated 13/16.9.88 subject to decision of the SLP and that too when the applicant filed a Contempt Petition before this Tribunal

161

for not complying the order dated 11.8.1987 passed in TA 476/86. The SLP filed against the order of this Tribunal was also dismissed vide order dated 31.7.89. Thereafter respondents Railway served a Memo dated 23.5.90 to the applicant whereby informing him that a Denovo inquiry proceedings has been initiated against him and that he should file reply within ten days. The applicant has placed a copy of this Memo on record as Annexure A/10. The applicant submitted reply to this Memo vide its letter dated 9.6.90 (Annexure A/11). Thereafter nothing was heard from the respondents. The applicant was even promoted to the post of Goods Clerk on ad-hoc basis vide order dated 29.7.98 and he was also allowed to appear in the written examination conducted for the aforesaid post, the result of which was declared on 14.12.2000. The applicant was declared successful in the aforesaid examination. All of a sudden, the Railway administration vide order dated 24.4.2001 (Annexure A/1) informed the applicant that Railway Administration has appointed Inquiry Officer in respect of the charge sheet served upon him in the year 1979 vide Memo dated 15.5.1979 (Annexure A/2). Aggrieved by this action of the respondents, the applicant has filed the present application whereby praying for the following reliefs:-

- i) The respondents be directed to quash and set aside the order dated 24.4.2001 (Annexure A/1) with all consequential benefits.
- ii) respondents also be directed not to proceed in the inquiry proceedings with regard to the charge sheet served in the year 1979 vide memo dated 15.5.1979 (Annexure A/2) and also pleased to quash the above mentioned charge sheet on the grounds of delay and laches.
- iii) Any other appropriate order or direction which the Hon'ble Tribunal thinks just and proper in the facts and circumstances of the case even the same has not been specifically prayed for but which is necessary to ensure ends of justice may kindly also be passed in favour of the appellant.
- iv) Cost of the application be awarded in favour of the humble applicant.

5. The grounds of challenge made by the applicant in the present application are as follows :-

- i) the impugned order dated 24.4.2001 (Annexure A/1) is violative of Article 14 & 16 of the Constitution of India and highly arbitrary and unjustified.
- ii) the initiation of the disciplinary proceedings after a gap of 23 years and 13 years after passing the judgement/order passed by the learned Central Administrative Tribunal is highly illegal and unjustified particularly when there is no explanation for the delay caused in conducting the disciplinary proceedings.
- iii) delay in initiation of disciplinary proceedings prejudiced the applicant particularly when he cannot be blamed for delay and there is no proper explanation for delay in conducting the disciplinary proceedings.
- iv) Out of 20 witness, three witnesses are working with the respondent department and even these three witnesses were called for enquiry only for admission and denial of the documents.
- v) After passing of the order/judgement by this Tribunal, the respondent department was pleased to promote the applicant on the post of Sr. Goods Clerk and his name has not been placed in the list of the personnel against whom enquiry proceedings are pending.

6. The respondents have contested the case by filing the reply. In the reply affidavit, the only stand taken by the department is that fresh charge sheet was issued to the applicant vide order dated 23.5.90 for initiating the Denovo inquiry, when SLP filed by the respondents was ultimately rejected on 29.8.88 and it cannot be said that there was inordinate delay in holding the fresh inquiry against the applicant. The respondents has not made any whisper in the reply as to why the inquiry officer was not appointed immediately thereafter and why it took eleven years to appoint the inquiry officer and proceed with the matter on the basis of the charge sheet issued in the year 1979. The

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respondents has only made vague assertion in the reply that there was no inordinate delay in initiation of disciplinary proceedings against the applicant and no prejudice has been caused to the applicant. The respondents has also not controverted the specific plea taken by the applicant that he cannot be blamed for delay and there is no proper explanation for conducting the disciplinary proceedings. The applicant has taken this averment in Para 5(d) of his application. The respondents have made the following averment in reply to this para :-

"that the contents of Para No. 5(d) of the original application denied. It is denied that any prejudice has been caused to the applicant by mere reason of delayed initiation of disciplinary enquiry."

7. The applicant has also filed rejoinder whereby reiterating the stand taken in his OA.

8. We have heard the learned counsel for the applicant and also gone through the documents placed on record. None has appeared on behalf of the respondents. From various orders passed by this Tribunal in these proceedings, it is apparent that none has appeared on behalf of the respondents on 26.9.2001, 22.11.2001, 02.05.2002, 24.7.2002, 21.10.2002, 13.11.2002 and even on 18.11.2002 when the matter was heard and judgement reserved.

9. The sole question which requires ~~for~~ <sup>by</sup> our consideration is whether the delay vitiates the disciplinary proceedings especially when the applicant is not to be blamed for the delay and there is no explanation worth to talk of proper explanation on the part of the respondents for the delay in conducting this disciplinary proceedings.

10. Law on the point has already been settled by the Apex

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Court in number of decisions which need not be quoted. It has been held by the Apex Court that it is not possible to lay down any predetermined 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 the 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 the 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 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 the 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 the 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 should be allowed to take their 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. Reference in this regard may be made to the decisions of the Apex Court in the case of

State of MP vs. Bani Singh & another 1990 SC 1308, JT 1995

(2) SC 18 State of Punjab & Others vs. Chaman Lal Goyal and 1998 (4) SCC 154 State of A.P. vs. N. Radhakishan.

10

11. Now let us proceed to examine the matter in the light of ratio as laid down by the Apex Court. It is not disputed that the applicant was initially issued charge sheet during the year 1979 for his unauthorisedly preparing BPTs for a total amount of Rs. 3705.05 without collecting the amount from them in collusion with other persons and collected the amount of the said BPTs from those persons on the basis of refund slips prepared by him. It is also not disputed that departmental inquiry was held on the basis of aforesaid charge which culminated into the dismissal of the applicant and order of dismissal of the applicant was also upheld by the Appellate Authority. The said orders were challenged in TA No. 476/86 and ultimately this Tribunal vide order dated 11.8.1987 quashed these orders and ordered that the applicant shall be entitled to all consequential benefits less the earning he might have received by any gainful employment during the period subsequent to his dismissal and prior to his reinstatement. It was further observed by this Tribunal that this order will not preclude the competent authority from initiating a fresh inquiry in accordance with law, in case they feel so advised. Against this order, Review Application was filed, which was also dismissed vide order dated 2.3.1988 and the matter was further carried out to the Apex Court by way of SLP No. 895/89, which was also dismissed vide order dated 31.7.89. Thereafter the Railway Administration issued Memo dated 23.5.90 (Annexure A/10) on the same charge and the applicant was asked to file reply within ten days. Vide his letter dated 9.6.90 (Annexure A/11), the applicant replied the same. Thereafter, the Railway Administration did not proceed with the matter and kept on sleeping. Not only this, the applicant was also promoted to the higher post of Goods Clerk vide order dated 29.7.98 on ad-hoc basis and subsequently he was allowed to appear in the written examination for the aforesaid post which he qualified when the Railway Administration decided to fill that post on regular basis. It is also not disputed that the name of the applicant did not figured in the list of pending DAR cases which was sent to the Western Railway,

162

Churchgate, Mumbai by the Jaipur Bench vide letter dated 20.11.91 (Annexure A/12). From the facts, as stated above, it is quite evident that the Railway Administration was not serious in pursuing the charges against the applicant. The applicant has specifically pleaded that delay caused in the initiation of disciplinary proceedings has prejudiced the applicant and he has undergone mental agony and also that he cannot be blamed for the delay. There is no proper explanation for the delay in conducting the disciplinary proceedings given by the respondents. The respondents have not chosen to controvert this specific plea taken by the applicant as is apparent from the portion of the reply as quoted above. It is no doubt true that normally disciplinary proceedings should be allowed to take its course as per relevant rule but it is equally true that delay causes prejudice to the charged officer. Ultimately the court has to balance these two diverse considerations. In the instant case, as already stated above, the charge against the delinquent official is regarding preparing BPTs for total amount of Rs. 3570.05 without collecting the amount from the passengers is no doubt a serious charge but the delinquent employee has also a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony when there is no fault on his part in delaying the proceedings. The delay in this case is unexplained which has definitely caused prejudice to the delinquent employee. From the facts, it can also be seen that the competent authority was not at all serious in pursuing the charge against the applicant. This is clear from the facts that incident relates to as far back of the year 1978-79. The Railway Administration did not take steps in concluding the disciplinary proceedings even after issuance of Memo dated 23.5.90 (Annexure A/10) and took about eleven years even for appointing an Inquiry officer. It has also been stated by the applicant that no useful purpose will be served by initiating inquiry at this stage as out of 23 witnesses stated in the departmental inquiry, only three witnesses are working with the respondent department and even these three witnesses were called for the admission and denial of the charge.

12. Under the circumstances, we are of the view that the delay in the instant case has caused prejudice to the applicant and he cannot be blamed for the delay caused. Further the respondents have not given any explanation for the delay caused what to talk of proper explanation in conducting the disciplinary proceedings and as to why it took eleven years for them to appoint an Inquiry officer, when the Memo were issued subsequently on 23.5.90 and reply to the said Memo was given by the applicant on 9.6.90 (Annexure A/11).

13. In view of the peculiar facts and circumstances of this case and for the reasons as stated above, impugned orders dated 24.4.2001 (Annexure A/1) and 15.5.1979 (Annexure A/2) are hereby quashed and set aside. No order as to costs.

  
(M.L. CHAUHAN)

MEMBER (J)

  
(G.C. SRIVASTAVA)

MEMBER (A)

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