

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No.249/2003

Jabalpur : this the 1st day, of Augst, 2003.

Hon'ble Mr. J.K. Kaushik, Judicial Member

Hon'ble Mr. Anand Kumar Bhatt, Administrative Member

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M. S. Gill
S/o Late Shri Karam Singh,
Aged about 47 years,
Inspector (Audit Branch),
Central Excise Headquarters,
Raipur (Chhattisgarh).
..... Applicant.

(By Advocate : Mr. Manoj Sharma)

Versus

1. Union of India
Ministry of Finance,
Department of Revenue,
Central Board of Excise and Customs,
Through Secretary,
NEW DELHI - 110 001.
2. The Commissioner,
Central Excise,
Raipur Commissionerate,
Tikrapara,
Raipur (Chhattisgarh).
3. The Additional Commissioner (P&V),
O/o the Commissioner,
Central Excise,
Raipur Commissionerate,
4. The Chief Commissioner,
(As Cadre Controller Authority),
Central Excise,
Opposite Maida Mill,
Hoshangabad Road,
Bhopal (MP).

(By Advocate : Mr. Om Namdeo).

..... Respondents



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ORDER

BY J.K. KAUSHIK :

The applicant, Shri M.S. Gill, has filed this O.A. under section 19 of the Administrative Tribunals Act, 1985, and has prayed for the following reliefs :-

- "i) Call for the entire material record pertaining to the pendency of the Departmental enquiry as initiated by issuance of the impugned charge memo dated 31.3.2003 (Annexure A.3),
- ii) direct the respondents for completion of the impugned departmental enquiry in a time bound manner preferably within 45 days hereof failing which the departmental enquiry abates or in the alternative quash the impugned memorandum initiating departmental enquiry,
- iii) grant any other relief/s that this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case to the applicant, and
- iv) award the cost of the instant lis to the applicant."

2. The material facts leading to filing of this case are that applicant was issued with a Memo dated 4.7.2000 calling explanation from him with regard to a case against M/s Swastic Wire, Dhanpuri, Raipur. He submitted reply to this memo on 13.7.2000 supplemented on 23.7.2000. Thereafter, Chargesheet under Rule 14 of CCS (CCA) Rules, has been issued to him vide Memo dated 21.3.2001 (Annex.A/3). He has submitted reply to it. Thereafter, an inquiry was ordered and the same was held. Applicant submitted his defence brief on 30.1.2002 but nothing has been heard in the matter after 31.2.2002.

3. The further case of the applicant is that DPC has been convened for the next promotional post of Superintendent on 4/5.7.2000. In pursuance thereof, certain promotions have been made in March 2001 whereby, applicant has been superseded and



his next junior has been promoted. However, in this regard in response to representation of applicant, the stand of the department is that applicant could not make bench-mark and he has challenged the same by way of an independent O.A. The second DRC was held on 30.3.2001, third DPC was held on 23.9.2002 and a Review DPC was held on 26.1.2002 and further DPC was held on 10.4.2003 and he has been consistently superseded by his juniors on account of the pendency of departmental proceedings. He is not aware as to whether, sealed cover procedure has been followed in this case. The applicant has made number of representations requesting early conclusion and consequently release of his due promotion. He has been informed that he cannot be considered for promotion till he is not cleared from vigilance angle. The OA has been filed on number of grounds mentioned therein which we shall deal in later part of this order.

4. The respondents have contested the matter and have filed a detailed reply to the OA wherein a preliminary objection has been taken that the inquiring authority has submitted its report on 5.2.2002 and the Director General (Vigilance) advice was sought as to whether case of Shri M.S. Gill, Inspector can be decided independently without getting the first stage CVC advice in respect of Shri M.K. Nair, Superintendent, who is also involved in the case. Till such advice is obtained, no action can be initiated against him. Further correspondence have been made in the matter and the disciplinary case cannot be decided in view of the Instructions contained in Circular 1/98. Thus, the O.A. is premature and devoid of merit.

5. As regards the merits, it has been stated that ~~the~~ first stage CVC advice has been sought and the same is expected soon. Thus, final order in respect of ~~memo~~ is yet to be passed

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and applicant once being served upon with the Memorandum of charges under Rule 14 of the CCS (CCA) Rules, 1965, the question of consideration for promotion and consequently grant of promotion thereby does not arise till the disposal of inquiry proceedings. His case has not been considered for promotion as he has not ^{been} cleared from vigilance angle. In respect of the applicant, findings of DPC have been kept in a sealed cover first time by the DPC held in 29.3.2001 and the last DDC was held on 24.12.2002. Therefore, asking for directions to respondents to complete inquiry/~~fix~~ in the time bound manner - or quashing the chargesheet on the count of delay, is unwarranted. The O.A. is premature~~s~~ and devoid of any merit and the same deserves to be dismissed.

5. We have heard the learned counsel for the parties and have carefully perused the pleadings and the records of this case.

7. The learned counsel for applicant has reiterated the facts and grounds raised in O.A. He has submitted that applicant has been issued Chargesheet on 21.3.2001 whereas, the DPC was held in July 2000 and promotion orders have also been issued in respect of his juniors in March 2001. However, he has submitted that stand of the department in not releasing his promotion is, that applicant could not make the bench-mark and the same is under challenge separately. In this way, we refrain from making any comment on that. He has also submitted that further DPCs have been held and his claim has been consistently ignored. Even it is not clear as to whether the sealed cover procedure is being adopted or not. The other contention of the learned counsel for applicant is that in the disciplinary proceedings it ^{is} said that the inquiry officer has submitted its report on 5.2.2002 itself, but by now about



one and a half years have passed and he has not even been supplied with copy of inquiry report. The respondents are sleeping over the matter and are not finalising the same on one pretext or the other and there being no cogent reason. The significance of early disposal of the disciplinary proceedings can hardly be overemphasized and in catena of judgements it has been held that the departmental proceedings also should be speedily concluded as is required in criminal proceedings terms as speedy trial, otherwise, it leads to infringement of the fundamental rights enshrined in Article 21 of Constitution. Thus, a reasonable time may be fixed ~~for~~ to conclude the disciplinary proceedings against the applicant.

8. On the contrary, learned counsel for respondents has submitted that as indicated in reply, the matter is under consideration with the Vigilance department and certain important decision is required to be carried-out and respondents may be given about one year's time to conclude the inquiry. As regards the release of the promotion, it was not released because of the grading below bench mark and subsequently, his case has been duly considered. But, since by the time chargesheet had already been issued, his case has been kept under sealed cover and the same should be dealt with in accordance with rules. In this view of the matter, the O.A. is premature and the same deserves to be dismissed.

9. The arguments were also led in respect of quashing of the chargesheet on the ground of delay in finalising the same. But there was no serious stress on the same and rightly so because the matter is at final stage and passing of final order is required only. Thus, there is hardly any justification for considering the prayer no. 1 i.e. regarding quashing of the very chargesheet.



10. We have considered the rival contentions raised on behalf of both the parties.

11. We find that there is hardly any quarrel as regards the material facts are concerned. It is also seen that specific assertion has been made that applicant's case is being considered as per the procedure in vogue and since the disciplinary proceedings are pending against him his case is being placed in a sealed cover. As far as the first DPC is concerned since he did not obtain bench mark and also he has taken up the matter separately, there is no need of dealing with the same. Now, the main issue remains regarding conclusion of departmental proceedings and as to whether a time-bound programme should be fixed or the matter should be left at the discretion of the authorities. By now, the issue regarding speedy disposal of disciplinary proceedings, has been settled even up to the level of Hon'ble the Supreme Court especially in State of Raj. V. B. K. Meena, AIR 97 SC 13 reported in wherein, it has been held that it is in the interest of administration as well as in the interest of employee that disciplinary proceedings should be concluded as expeditiously as possible. But, in the present case, we find that there is an unusual delay and the machinery is required to be triggered so as to put the same into motion and that seems to be feasible only when a time-bound programme is fixed and certain pressure is exerted on the authorities. In this view of the matter, we dispose of this O.A. with the following order :-

"In the premises, we direct the respondents to conclude the disciplinary proceedings being held in pursuance with the Chargesheet dated 21.3.2001 (Annex.A/3) and



pass a final order within a period of six months from the date of receipt of a certified copy of this order failing which, the said disciplinary proceedings shall stand dropped. However, in the facts and circumstances of the case, the parties are left to bear their own costs."

Anand Kumar Bhatt

(Anand Kumar Bhatt)
Administrative Member

J.K.Kaushik

(J.K.Kaushik)
Judicial Member

पूर्णकाल सं ओ/व्या.....जललपुर, दि.....
प्रतिलिपि दर्शी दिलाः—

(1) सचिव, उच्च विधायक एवं विधायक, जललपुर
(2) अधिकारी एवं विधायक, जललपुर
(3) अधिकारी एवं विधायक, जललपुर
(4) अधिकारी, विधायक, जललपुर अधिकारी
सूचना एवं आवश्यक कार्यकाली देने

*M. Sharma, Ad
Om Narendra, Ad
Date 21/8/83
उप रजिस्ट्रार*

jrm

*Issued
11-8-83
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