

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

OA No.656/02

Jabalpur, this the 6th day of August, 2004.

C O R A M

Hon'ble Mr.Sarweshwar Jha, Administrative Member
Hon'ble Mr.Madan Mohan, Judicial Member

A.K.Shaida
S/o Late Shri M.H.Shaida
Chargeman II
(since compulsorily retired)
R/o Type 426/4, Khamaria
Jabalpur

...Applicant

(By advocate Shri S.Paul)

Versus

1. Union of India through
its Secretary
Ministry of Defence
New Delhi.
2. Chairman, Ordnance Factory
Board, 10-A Shahdi Khurdiram
Bose Marg, Kolkata.
3. Senior General Manager
Ordnance Factory, Khamaria
Jabalpur.

...Respondents

(By advocate Shri S.A.Dharmadhikari)

O R D E R

By Madan Mohan, Judicial Member

By filing this OA, the applicant seeks the following
reliefs:

- (i) Call for the entire records pertaining to departmental enquiry proceedings from the possession of the respondents for its kind perusal;
- (ii) Issue a writ in the nature of certiorari setting aside/quashing the entire enquiry including charges and the impugned order dated 16.11.2001 (Annexure A8);
- (iii) Issue a writ in the nature of mandamus commanding the respondents to reinstate the applicant with full backwages and other consequential benefits.
- (iv) Issue a writ in the nature of mandamus directing the respondents to provide all the ancillary benefits to the applicants, if the impugned order and disciplinary proceedings are never initiated against him
- (v) Set aside the order dated 12.12.03 communicated vide covering letter dated 30.12.03 (Annexure A9).

2. The brief facts of the case are that the applicant who was working as Chargeman II under the direct control of respondent No.3 was served with a charge sheet dated 22.5.99 under Rule 14 of the CCA Rules (Annexure A1). He filed reply to the charge sheet and denied the charges in toto (Annexure A2). The charges levelled against the applicant were false. In the year 1992, the matter was well within the knowledge of the enquiry officer as well as other authorities concerned. But inspite of the knowledge, the applicant was not intimated about the alleged shortcomings of supply of material immediately and the proceedings of enquiry were delayed for more than seven years. The charge sheet was issued on 22.5.99. While the allegations mentioned in the charge pertain to the period between 21.4.87 and 5.5.87, ~~an employee~~ cannot be expected to remember the factual incident after several years. The applicant was promoted on 27.12.1995 as chargeman Grade II. Since the alleged incident, which became subject matter of the chargesheet (Annexure A1) was well within the knowledge of the department and yet the department had chosen to promote the applicant, the misconduct, if any, deemed to have been condoned/waived against the applicant. He was promoted as chargeman Grade II w.e.f.27.12.95 under probation for two years. On successful completion of probation, he was confirmed w.e.f. 26.12.97 by Factory order Part II dated 19.8.98. Accordingly, no action could have been taken against the applicant after his promotion and confirmation as chargeman grade II. The departmental enquiry was not conducted in accordance with CCA Rules but the enquiry officer submitted his report and the applicant preferred a representation against it. The respondents without application of mind and without considering the representation of the applicant inflicted major punishment of compulsory retirement with further recovery of Rs.72436 vide order dated 16.11.2001 (Annexure A6). The applicant

preferred an appeal against this order, which was rejected by order dated 12.12.03. This order was also non speaking order. Hence this OA is filed.

3. Heard the learned counsel for both parties.

It is argued on behalf of the applicant that the alleged charges against the applicant relate to the period between 21.4.87 and 5.5.87 while the charge sheet was issued on 22.5.99 i.e. after about 12 years. While, according to the respondents' version, they came to know about the incident in the year 1992 but even then they did nothing for a period of 7 years, upto '99 when the charge sheet was issued against the applicant.

No satisfactory explanation was given by the respondents for the inordinate delay of 12 years in issuing the charge memo. Our attention is drawn towards 1991 (16)

ATC 514 SC State of Madhya Pradesh vs. Bani Singh decided on 5th April 1990 in which the Hon'ble Supreme Court has held that it would be unfair to permit departmental enquiry to proceed at a later stage. Our attention is also drawn towards 2004 (1) ELJ 79 Sadashiv Shivram Garud and others Vs. Food Corporation of India and others decided on 25th April 2003 on the same issue. The counsel further argued that the applicant was promoted on 27.12.95 as charge man Gr.II while the fact of the alleged incident was well within the knowledge of the respondents and yet the department had chosen to promote the applicant, misconduct, if any, deemed to have been condoned/waived against the applicant and on successful completion of probation period of 2 years, the applicant was confirmed w.e.f. 26.12.97 by Factory Order Part II dated 19.8.98 (Annexure A3). Hence no action could have been taken against the applicant after his promotion and confirmation as charge man Gr.II. Learned counsel for the applicant has drawn



our attention towards 1968 SLR p.88 Lal Audhraj Singh Vs. State of Madhya Pradesh, decided on 6.5.1967. It is held by the Hon'ble High Court that:

"Constitution of India, Articles 310 and 311- Condonation of misconduct - whether lapse of time condones negligence - A govt. servant punished 9 years after serving a charge sheet during which he also earned a promotion - Held by not taking any action for 9 years, the authority had condoned the negligence- Further held, a master cannot impose any punishment for misconduct which he has condoned."

and also drawn our attention towards 2004 (2) ~~SLJ~~ 265 High Court of Delhi R.L.Rathore Vs. Delhi Power Supply Co.Ltd. decided on 3.9.2003 in which the Delhi High Court held that "Petitioner had been promoted during proceedings without any condition which shows effect of proceedings was ignored", and also argued that the respondents have awarded multiple punishments by one order which is not legally permissible.

4. In reply, the learned counsel for the respondents argued that the respondents came to know about the allegation first in the year 1992. The respondents had to verify and enquire in this matter from various departments numbering about 4 to 5 and so many other departmental formalities had to be complied with by the respondents. There was no delay in issuing the charge sheet by the respondents. It is fact that the applicant was promoted to chargeman Gr.II w.e.f.27.12.95 and successfully completed his probation period on 26.12.97. In this context, it is argued that during that period, the applicant was not under cloud and was promoted to chargeman Gr.II and also successfully completed his probation period. He was charge sheeted under Rule 14 of the CCS (CCA) Rules 1965 vide memo dated 22.5.99 even after completion of one man board of enquiry



wherein the applicant was found responsible for not collecting the entire material and further argued that multiple punishments are not awarded against the applicant by the impugned orders dated 16.11.2001 passed by the disciplinary authority and by the appellate authority dated 12.12.03. The applicant is punished by the penalty of compulsory retirement from service and further ordered that the loss incurred to the department amounting to Rs.72436/- will be recovered from the gratuity and leave encashment payable to the applicant. Hence this order cannot be said to be multiple punishment order. The respondents have not committed any irregularity or illegality in conducting departmental enquiry and in passing the impugned orders.

5. After hearing the learned counsel for both parties and careful perusal of the records, we find that the allegations against the applicant relate to the period between 21.4.87 and 5.5.87 when he was ^{detained} ~~detained~~ to collect 17 items of spare parts for motor transport section from the suppliers and he collected the items in less quantity by 5 Nos instead of 17 items and he made full payment for the whole lot while he collected 12 items. It is very strange and surprising that about the overpayment made during the aforementioned period, the respondents could know for the first time in 1992 while so many ~~respondents~~ employees worked in the department of the respondents and if the applicant had committed such type of act, there were so many employees in the department to detect and find out the financial irregularity amounting to Rs.72436/- about the payment made by the applicant for the 5 items which he had not ^{been} collected. This type of action of the applicant



could not have been undetected for years together and further it is argued on behalf of the respondents that they came to know about the incident for the first time in the year 1992 and they had to enquire and verify about this matter from various departments and when they confirmed the allegation against the applicant, then they issued the said charge sheet on 22.5.99. This period of 7 years in making enquiries and verification from various departments by the respondents seems to be not satisfactorily explained by them. Such type of financial irregularity could have been detected on priority basis and within no time.

6. So far as the promotion of the applicant is concerned, he was promoted on 27.12.95 as chargeman Gr.II and after probation period of 2 years he was confirmed w.e.f. 26.12.97 vide order dated 19.8.98 (A-3). The subject matter of the charge sheet was well within the knowledge of the respondents as according to the respondents, they came to know about the said allegation against the applicant only in the year 1992 while the applicant was promoted thereafter in the year 1995 and subsequently on completion of the probation period of 2 years, he was confirmed on 26.12.97. It shows that the respondents have ignored the allegations levelled against the applicant as they promoted the applicant in the year 1995. We have gone through the ruling 1968 SLR p.88 Hon'ble Madhya Pradesh High Court in Lal Audhraj Singh Vs. State of Madhya Pradesh, decided on 6.5.1967, in which it is held by the Hon'ble High Court that:

"Constitution of India, Articles 310 and 311-
Condonation of misconduct - whether lapse of time condones negligence - A govt. servant punished 9 years after serving a charge sheet during which he also earned a promotion - Held by not taking any action for 9 years, the authority had condoned the negligence-
Further held, a master cannot impose any punishment for misconduct which he has condoned."

and also perused the ruling of 2004 (2) SLJ p.265 Hon'ble Delhi High Court in R.L.Rathore Vs. Delhi Power Supply Co. Ltd., decided on 3.9.2003 in which it is held by the



Hon'ble Delhi High Court that "Petitioner had been promoted during proceedings without any condition which shows effect of proceedings was ignored". It supports the arguments advanced on behalf of the applicant in respect of the knowledge of the alleged allegations against the applicant in the year 1992. The respondents promoted the applicant in the year 1995 and confirmed after completion of probation period of 2 years in 1997 and we have also gone through the ruling cited by the applicant 1991 (16) ATC SC and 2004 (1) LLJ MP 79 (DB) regarding delay in submission of the charge sheet and initiation of departmental enquiry. The Division Bench of the Hon'ble High Court of Madhya Pradesh in the aforesaid ruling has held that initiation of departmental enquiry 14 years after the alleged misconduct caused great delay and had to be quashed. The Hon'ble Supreme Court has also supported this view. So far as the arguments on behalf of the applicant that the impugned orders contain multiple punishments, it seems to be not legally tenable as the impugned punishment is awarded for compulsory retirement and the order of recovery of the alleged amount is a consequential order with regard to the impugned punishment order.

7. After considering all the facts and circumstances of the case, we are of the opinion that the respondents have not given any satisfactory explanation for the inordinate delay in issuing the charge memo and the initiation of the impugned enquiry was also grossly belated and not in consonance with fair play and the respondents have also promoted the applicant in the year 1995 and confirmed him in the year 1997 i.e. after the said allegation of 1987



while this fact was well within the knowledge of the respondents, according to their own version, in 1992. Hence this OA is liable to be allowed.

8. The OA is allowed and the impugned orders dated 16.11.2001 (Annexure A6) and the appellate order dated 12.12.03 (Annexure A9) are quashed and set aside. The respondents are directed to reinstate the applicant within a period of three months from the date of receipt of the copy of this order. Respondents are also directed to refund the amount of Rs.72436/- to the applicant. However, it is made clear that the applicant will not be entitled for interest on the aforesaid amount and for back wages.

9. The OA is disposed of as above.


(Madan Mohan)
Judicial Member


(Sarweshwar Jha)
Administrative Member

aa.

पृष्ठांकन सं. ओ/न्या..... जबलपुर, दि.....
प्राधिकारिय आवेदनः—

- (1) सचिव, उच्च न्यायालय बाबू एसोसिएशन, जबलपुर
- (2) आवेदक श्री/श्रीमती/कु..... के काउंसल
- (3) पत्रपत्री श्री/श्रीमती/कु..... के लाइसेन्स
- (4) वर्तमान, केंद्रप्रभु, जबलपुर न्यायपीठ

सूचना एवं अन्वयक कार्यवाही हेतु

S. Paul
SA Dharmawhik

16-8-04

उप रजिस्ट्रार

1986
16-8-04
on