

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER OF THE TRIBUNAL

Date of order : 8.4.2014

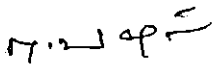
O.A. No. 492/2010


Mr. P.P. Mathur, counsel for applicant.

Mr. Tej Prakash Sharma, counsel for respondents.

Heard learned counsel for the parties.

Order is reserved.


(M. Nagarajan)
Member (J)


(Anil Kumar)
Member (A)

ADM

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 492/2010

ORDER RESERVED ON 08.04.2014

DATE OF ORDER : 11 .04.2014

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE MR. M. NAGARAJAN, JUDICIAL MEMBER

Jai Gopal aged about 53 years son of Late Shri Nanku Das, resident of 14, Type-V, Quarters, Nirman Vihar Colony-2, Sector-2, Vidhyadhar Nagar, Jaipur. Presently working as Additional Director General, Press Information Bureau, Jaipur.

... Applicant

(By Advocate: Mr. P.P. Mathur)

Versus

1. Union of India through the Secretary, Ministry of Information and Broadcasting, 'A' Wing, Shastri Bhawan, New Delhi.
2. Director General, Directorate of Advertising and Visual Publicity, Ministry of Information and Broadcasting, Phase-IV, Sookhana Bhawan, CGO Complex, New Delhi - 110003.

... Respondents

(By Advocate: Mr. Tej Prakash Sharma)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

The applicant has filed this OA praying for the following reliefs:-

"It is, therefore, humbly prayed that this Hon'ble Tribunal may very graciously be pleased to direct the respondents to place all relevant record pertaining to the case and on the basis of the pleadings allow this Original Application, and grant the following relief:-

- a) Quash and set aside the memorandum of charge sheet dated 03.02.2007 (Annexure A/1) and punishment order dated 12.05.2000 (Annexure A/2).
- b) The respondents may be directed to grant all consequential benefits including restoration of increments and arrears thereof with interest.

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- c) Cost of and incidental to the Original Application may be awarded in favour of the applicant.
- d) Any other order or direction, which this Hon'ble Tribunal deem fit in the facts and circumstances of the case may also be allowed in favour of the applicant.

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant is a member of Indian Information Services. He held the charge of Campaign Officer in Audio Visual Cell in the office of respondent no.2 from 21.09.1996 to 04.05.1998. He further held the post of Joint Director in the Audio Visual Cell from 05.06.1998 to 05.06.2000.

3. That a charge sheet was issued to the applicant vide Office Memo dated 03.07.2007 (Annexure A/1) whereby false and baseless allegations of gross misconduct were made against the applicant. It was alleged that during the period 1998 and 1999, the applicant forwarded mechanically 23 forged bills of M/s Sparks and Shades, Chennai for a sum of Rs.15,66,700/- against which payment of Rs.13,05,500/- was wrongly released to the party. These bills were in connection with the telecast of Video Spots carrying social messages which were supposed to have been screened through CCTV system at Chennai, Madurai, Virudhunagar, Tuticorin, Trinelveli and Trichy Railway Stations under the Southern Railway. It was further alleged that the applicant failed to check/ensure the validity of the contract for the billing period between M/s Sparks and Shades and Southern Railways. It was further alleged that the applicant failed to check/ensure the

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genuineness of the screening certificate/survey reports submitted by the party alongwith the bills in question.

4. That evidently the incident for which the charge sheet was issued pertains to a period which was seven years old and thus for all practical purposes the charge sheet was issued after inordinate delay for no justified reason. In fact the applicant acted as a Whistle Blower and caused the recovery of Rs.15,66,700/- which was released to the M/s Sparks and Shades.

5. That the applicant, therefore, filed an OA No. 404/2007 before this Tribunal on 02.11.2007. The Tribunal vide order dated 07.12.2007 (Annexure A/4) directed the respondents/concerned competent authority to conclude the inquiry expeditiously, preferably within six months from the date of applicant's approaching them. The applicant was directed to file certified copy of the order along with complete copy of the OA with Annexures before the concerned competent authority within four weeks from the date of the order.

6. The applicant submitted the copy of the order dated 07.12.2007 to the respondents along with his representation dated 14.12.2007 but the respondents did not conclude the said inquiry within a period of six months, as directed by this Tribunal. The applicant submitted a representation dated 24.07.2008 and a reminder dated 03.09.2008 to the respondents praying therein to expeditiously conclude the inquiry as there was nothing to be done by the applicant after submitting of the defence brief. Thereafter,

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the applicant filed a Contempt Petition before the Tribunal. However, he withdraw the same with liberty to file fresh OA.

7. The applicant filed a fresh OA No. 455/2008 wherein he again challenged the charge sheet. The Hon'ble Tribunal vide order dated 18.12.2008 (Annexure A/6) again directed the respondents to pass appropriate order on the basis of inquiry report expeditiously and in any case not later than three months from the date of order.

8. That the respondents instead of concluding the departmental proceedings within the time limit of three months, provided in the order dated 18.12.2008, again moved an MA No. 76/2009 after the expiry of three months for seeking extension of time to comply with the order dated 18.12.2008 passed in OA No. 455/2008.

9. The Hon'ble Tribunal vide its order dated 27.04.2009 further allowed two months time to the respondents to comply with the order dated 18.12.2008 passed in OA No. 455/2008 (Annexure A/7).

10. That again the respondents failed to comply with the order dated 27.04.2009 and did not complete the inquiry proceedings within further period of two months from 27.04.2009.

11. That the applicant again aggrieved with the action of the respondents file a fresh OA No. 292/2009 before this Tribunal and praying for quashing of charge sheet and further the continuation of

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the inquiry on the ground that the inquiry proceedings could not be concluded within the time prescribed by the Tribunal.

12. During the pendency of OA, the respondents moved a MA No. 220/2009 in OA No. 455/2008 for further extension of time. The Hon'ble Tribunal dismissed the said MA vide their order dated 30.10.2009 (Annexure A/8). While dismissing the MA No. 220/2009, the Tribunal observed that the respondents are taking the Tribunal lightly and the Tribunal is distressed to observe that the respondents have not taken any action on the inquiry report even when the period of one year has lapsed.

13. That ignoring the mandate of the order dated 27.04.2009 (Annexure A/7) and order dated 30.10.2009 (Annexure A/8), the respondents chose to proceed further in the inquiry and ultimately the impugned order inflicting punishment was passed by the Disciplinary Authority on 12.05.2010.

14. Therefore, the learned counsel for the applicant argued that after 30.10.2009, any proceedings conducted by the respondents in the disciplinary inquiry is per-se illegal and against the order passed by this Tribunal dated 30.10.2009 in MA No. 220/2009 filed in OA No. 455/2008. Since the respondents had passed an order of penalty against the applicant, therefore, to challenge that order, the applicant withdrew OA No. 292/2009 and filed the present OA.

15. The learned counsel for the applicant vehemently argued that any order passed by the Disciplinary Authority after the rejection of

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the extension of time by this Tribunal vide its order dated 30.10.2009 in MA No. 220/2009 filed in OA No. 455/2008 is illegal and hence the penalty order dated 12.05.2010 (Annexure A/2) be quashed and set aside. In support of his averments, the learned counsel for the applicant referred to the order of the Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 381/2007 decided on 27.08.2007 in the case of **N.P. Singh vs. Union of India & Others** and of Central Administrative Tribunal, Chandigarh Bench in OA No. 545-HR/2010 decided on 02.05.2011 in the case of **J.K. Sahni vs. Union of India & Others**.

16. The learned counsel for the applicant also submitted that the charge sheet does not reveal any allegation of gross misconduct or gross negligence as is evident from the bare perusal of the statement of allegations contained therein. In support of his arguments he referred to the orders of Hon'ble Central Administrative Tribunal, Principal Bench in OA No. 2160/2006 decided on 31.07.2007 in the case of **N.K. Sikriwal vs. The Director General of Foreign Trade** and the order of the Hon'ble Central Administrative Tribunal, Principal Bench in OA No. 2146/2009 decided on 14.05.2010 in the case of **R.C. Sehgal vs. Union of India & Others**. Therefore, he argued that charge sheet dated 03.07.2007 (Annexure A/1) be quashed and set aside.

17. The learned counsel for the applicant further argued that even the Inquiry officer as stated that it was a system failure. He submitted that the applicant followed the practice while forwarding the bills which was invoked at that time. He alone cannot be

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blamed for this weakness in the system at that point of time. He further submitted that because of his efforts, the entire amount paid to M/s Sparks and Shades has been recovered from them. The proprietor of M/s Sparks and Shades, K. Padamnabhan, was found guilty and conviction was ordered by the competent criminal court.

18. He further submitted that the Inquiry Authority did not give any finding of gross misconduct or gross negligence on his part. The Inquiry Authority divided the charges into four sub categories and held ingredients 'a', 'b' & 'c' as proved and as regard ingredient 'd' held that "no mala fides have been proved and the alleged wrongful loss also recovered."

19. The learned counsel for the applicant submitted that the officers working under him had recorded the certificate to the effect that the job has been completed satisfactorily, therefore, there was no reason to doubt or suspect their discretion and hence the applicant had forwarded the same to the Accounts Section for payment. However, Inquiry Officer ignored his defence and while admitting at the same time that the procedure in vogue was highly inadequate. The Inquiry Officer failed to point out any commission of specific procedural defect on the part of the applicant before forwarding the bills to the Accounts Section. Thus the Inquiry Officer has not found any negligence or carelessness on the part of the applicant in following the procedure in vogue.

20. The learned counsel for the applicant also submitted that the applicant has been discriminated viz-a-viz other officers who were

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also charge sheeted for the same lapse. He drew our attention to office memorandum dated 31.03.2008 (Annexure A/16) issued to Shri V. Ratnam, News Editor, All India Radio, Pondicherry for the same lapse. He also drew our attention to the charge memo issued to Shri Suman Wadhawan, Campaign Officer, DAVP, New Delhi dated 31.03.2008 (Annexure A/17) again for the same incidence. He argued that against both these officers, no penalty has been imposed on them. The Inquiry officer in these cases has concluded that it was a system failure and, hence, individual officers cannot be held responsible. Therefore, he submitted that the charge sheet and the penalty order be quashed and set aside.

21. On the other hand, the respondents have filed their reply. In the reply, it has been stated that the applicant was issued a charge sheet for major penalty vide office memorandum dated 03.07.2007 and after following the due procedure, the applicant awarded the penalty of reduction of pay by two stages in the time scale of pay for a period of two years with further direction that the charged officer will earn increment of pay during the period of such reduction and reduction will not have the effect of postponing the future increment of his pay. The learned counsel for the respondents submitted that the applicant being the senior officer of the department cannot escape from his responsibilities for the huge loss to the exchequer in the garb of procedures then in vogue of which he was a part.

22. The bills of the firm in question were passed without even checking of the validity of the contract. The firm to whom the

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payments were made had no contract with the Railways at that point of time.

23. With regard to the delay in concluding the inquiry proceedings, it has been stated that it was purely procedural and not intentional. The learned counsel for the respondents further submitted that this Tribunal vide its order dated 30.10.2009 dismissed the MA No. 220/2009 filed in OA No. 455/2008. Further the Tribunal vide its order dated 19.10.2010 in OA No. 292/2009 with MA 255/2010 has taken the order of penalty dated 12.05.2010 on record and disposed of the OA No. 292/2009. The Tribunal has nowhere stated that the procedure conducted by the respondents is illegal, as stated by the applicant. In the case of the applicant, the advice of the CVC and the UPSC were to be taken which consume sometime. Therefore, it took some more time to finalize the inquiry proceedings against the applicant.

24. The learned counsel for the respondents submitted that there is no infirmity/illegality in the charge memo issued to the applicant. Similarly the order of penalty dated 12.05.2010 has been issued after following all the rules & regulation after obtaining the advice of the CVC and UPSC. There has been no denial of natural justice to the applicant.

25. The learned counsel for the respondents further submitted that the so called procedures said to be in vogue were highly inadequate and in fact when disbursement of public fund is concerned it is incumbent on the officers concerned to be absolutely

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extra careful while in the instant case the applicant was not. It was also not seen whether the contract between the party and the Southern Railways existed at the time of passing of bills. The applicant being the Campaign Officer and Joint Director should have taken more initiative to examine and process the bills in a very careful way.

26. The learned counsel for the respondents further submitted that in the case Shri V. Ratnam, News Editor, All India Radio, Pondicherry and Shri Suman Wadhawan, Campaign Officer, DAVP, New Delhi, charge sheet was issued separately and their inquiry was also conducted separately. Therefore, the plea of the applicant that he has been discriminated cannot be accepted. Hence the OA has no merit and it should be dismissed. In support of his averments, the learned counsel for the respondents referred to the following cases laws:-

- (1) Union of India & Others vs. Manab Kumar Gupta, 2011(11) SCC 535
- (2) Union of India vs. Govind Manish (Civil Appeal No. 1442/2011 (Arising out of SLP No. 11378/2010 decided on 07.02.2011
- (3) J.C. Hea vs. BSNL & Another OA No. 196/2009 decided on 01.03.2011 by CAT, Jodhpur Bench, Jodhpur

27. The learned counsel for the applicant has filed the rejoinder and the learned counsel for the respondents have filed reply to the rejoinder.

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28. Heard the learned counsel for the learned counsel for the parties and the documents on record and the case law referred by the learned counsel for the parties.

29. The learned counsel for the applicant argued that the charge against the applicant in the charge memo does not amount any misconduct and in support of his arguments, he referred to the orders of the Hon'ble Central Administrative Tribunal, Principal Bench in OA No. 2160/2006 decided on 31.07.2007 in the case of **N.K. Sikriwal vs. The Director General of Foreign Trade** and the order of the Hon'ble Central Administrative Tribunal, Principal Bench in OA No. 2146/2009 decided on 14.05.2010 in the case of **R.C. Sehgal vs. Union of India & Others**. In the case of Shri N.K. Sikriwal (Supra) in Para No. 14, the Hon'ble Tribunal has held that:

"14. Insofar as misconduct is concerned, as held by the Apex Court in Union of India v. J. Ahmed, (1979) 2 SCC 286 that every negligence is not misconduct unless it is culpable, though misconduct is not to be defined precisely, but depends upon the facts and circumstances of each case....."

The Tribunal has further held that mere negligence would not perse cause misconduct.

30. In the case of R.C. Sehgal (supra), the Tribunal has held that the word misconduct is not capable of precise definition but at the same time the word misconduct on reflection receives a connotation from the context, delinquency in purpose and its effect on discipline and the nature of duty and in that OA, the Tribunal came to the

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conclusion that the applicant had not committed grave misconduct or grave negligence.

31. We have carefully perused the order of the Tribunal in above cases and we are of the view that the ratio decided by the Central Administrative Tribunal, Principal Bench in the above two cases are not applicable under the facts & circumstances of the present case. The charge sheet has been issued to the applicant by the competent authority for very specific allegation. It has been stated in the charge sheet that Shri Jai Gopal (Applicant) has caused a loss of Rs.13,05,500/- to the Directorate of Advertising Publicity and Visual Publicity and thereby a corresponding wrongful gain to M/s Sparks and Shades. Therefore, on careful perusal of Article of Charges against the applicant, it cannot be said that it would not amount to misconduct. There is no charge against the competent authority that he has issued the charge memo dated 03.07.2007 (Annexure A/1) due to some malice or some bias. Therefore, we hold that the charge memo dated 03.07.2007 does not suffer from any illegality/ infirmity. Therefore, it cannot be quashed and set aside.

32. We have carefully perused the judgments of the Hon'ble Supreme Court and the order of the Jodhpur Bench of the Central Administrative Tribunal, as referred to by the learned counsel for the respondents in Para No. 26 of this order and we are of the opinion that under the facts & circumstances of the present case the ratio decided in these cases is not applicable in the present OA

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because we are neither appreciating the evidence nor quashing the charge sheet given to the applicant.

33. The learned counsel for the applicant has vehemently argued that this Tribunal vide its order dated 30.10.2009 passed in MA NO. 220/2009 (OA NO. 455/2008) has dismissed the application of the respondents for extension of time. Therefore, the penalty order passed by the respondents dated 12.05.2010 (Annexure A/2) is without jurisdiction and, however, it should be quashed and set aside. In support of his averments, he referred to the order of the Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 381/2007 decided on 27.08.2007 in the case of **N.P. Singh vs. Union of India & Others** and of Central Administrative Tribunal, Chandigarh Bench in OA No. 545-HR/2010 decided on 02.05.2011 in the case of **J.K. Sahni vs. Union of India & Others**. The Principal Bench of the Tribunal while deciding the OA No. 381/2007 (Supra) has also considered the decision of the Tribunal in **Pranab Kumar Dutta vs. Union of India & Others, 2001 (1) ATJ 404** and in **H.S. Shekhawat vs. Union of India & Others, 2004 (1) ATJ 458**. In the case of N.P. Singh (OA No. 381/2007) (Supra), the order was passed on 05.09.2005 i.e. beyond the period of extension of time limit given by the Tribunal which was upto 20.02.2004. The Hon'ble Tribunal held that in such situation the completion of inquiry and consequent orders are certainly without any jurisdiction and competence of that authority and, therefore, held that inquiry is abated and punishment imposed is also rendered illegal and the OA was allowed. In the case of J.K. Sahni (Supra), CAT, Chandigarh also relied on the judgment of the Apex

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Court in the case of **State of Andhra Pradesh vs. N. Radhakishan**, 1998(2) SLR 786. The Apex Court in this case held that the unexplained delay has caused prejudice to the respondent whose promotion was due and such inquiry is vitiated. In the case before the Tribunal, the time limit given to the respondents was four months to conclude the disciplinary proceedings from the date of receipt of a copy of that order by the competent authority. The respondents could not complete the departmental inquiry due to frequent changes/transfer of the Inquiry Officers within the time prescribed. However, the OA was allowed. On the other hand, the learned counsel for the respondents in the present OA argued that respondents made all efforts to complete the departmental proceedings expeditiously but due to procedure to be followed like consultation with the CVC and the UPSC, the departmental proceedings could not be completed within the prescribed time frame and mere delay in finalization of the disciplinary proceedings would not vitiate the entire disciplinary proceedings.

34. From the perusal of the record, it is not disputed that the respondents were directed to conclude the inquiry within six months from the date of applicant's approaching them vide order dated 07.12.2007 in OA No. 404/2007 (Annexure A/4). The applicant made a representation to the respondents on 14.12.2007 but the respondents did not complete the inquiry within six months.

35. Thereafter this Tribunal vide order dated 18.12.2008 in OA NO. 455/2008 (Annexure A/6) further gave three months time to pass appropriate order on the findings of the Inquiry Officer.

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36. Subsequently this Tribunal on MA filed by the respondents further allowed two months time to comply with the directions given by this Tribunal vide order dated 27.04.2009 in OA NO. 455/2008 (Annexure A/7). The respondents after six months filed another MA No. 220/2009 in OA No. 455/2008 for the further extension of time. However, this Tribunal observed that the respondents are taking the direction of this Tribunal lightly. This Tribunal also observed that the respondents have not taken any action on the inquiry report even period of one year has lapsed. Thus the Tribunal held that the respondents have not made out any case for the extension of time. Accordingly the MA for extension of time was dismissed. Now the respondents have passed the penalty order dated 12.05.2010 (Annexure A/2). On the contrary, the learned counsel for the respondents argued that looking to the grave misconduct on the part of the applicant, the OA may not be decided on this technical issue of delay and latches. From the perusal of the case law referred to by the learned counsel for the applicant, it is clear that under the facts & circumstances of the present case, the ratio decided by the Central Administrative Tribunal, Principal Bench in New Delhi in OA No. 381/2007 decided on 27.08.2007 in the case of **N.P. Singh vs. Union of India & Others** and of Central Administrative Tribunal, Chandigarh Bench in OA No. 545-HR/2010 decided on 02.05.2011 in the case of **J.K. Sahni vs. Union of India & Others** is squarely applicable. Further this Tribunal in the case of **N.L. Khandelwal vs. Union of India & Others (OA No. 658/2011 decided on 09.01.2014)** also held that the penalty order passed beyond the time prescribed by the

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Hon'ble High Court is nullity and, therefore, the penalty order was quashed & set aside. Para Nos. 30 to 33 of the order dated 09.01.2014 passed in OA No. are quoted below:-

30. I have carefully perused the case law referred to by the learned counsel for the applicant on the point that when a direction is given to complete the departmental proceedings within fixed time frame and if that time frame is not honoured by Disciplinary Authority then disciplinary proceedings would abate. This Bench of the Tribunal in the case of **H.S. Shekhawat vs. The Union of India & Others**, ATJ 2004 (1) 458, has held that the entire action taken after the prescribed time limit shall have to be treated as nullity and this order of the Tribunal was upheld by the Hon'ble Rajasthan High Court, Jaipur Bench in DB Civil Writ Petition No. 2737/2004 (**Union of India & Others vs. H.S. Shekhawat & Another**) decided on 19.10.2010.

31. While passing the order in the case of **H.S. Shekhawat vs. The Union of India & Others**, ATJ 2004 (1) 458, this Tribunal has also considered the order of this Tribunal passed in OA No. 443/2001 (S.K. Sharma vs. Union of India & Others) and Praban Kumar Dutta vs. Union of India & Others, 2001 (1) ATJ 404. This Tribunal also considered the order passed by the co-ordinate Bench of this Tribunal at Lucknow in the case of **K.B. Bhardwaj vs. Union of India & Others**, 2002 (2) ATJ 477. The Lucknow Bench of the Tribunal in the case of K.B. Bhardwaj (supra) has placed reliance on the decision of the Apex Court in the case of **M.L. Sachdeva vs. Union of India**, 1991 (1) SCC 606 and the decision of the Apex Court in the case of State of Bihar vs. Subhash Singh, 1997 (4) SCC 430 in which the Apex Court came to the conclusion that where directions could not be complied with within the period allowed by the court an application for extension of time for with the directions was necessary.

32. The OA filed by H.S. Shekhawat (supra) was allowed and penalty order beyond the time was quashed. The ratio as laid down in these cases is squarely applicable in the facts & circumstances of the present OA.

33. As stated earlier in the present OA, the Disciplinary Authority had failed to complete the disciplinary proceedings within a period of six months as directed by the Hon'ble High Court. The Disciplinary Authority has also not sought any extension of time from the Hon'ble High Court. Thus I am of the considered view that the penalty order passed beyond the time prescribed by the Hon'ble High Court is a nullity and, therefore, it is quashed and set aside and the respondents are directed that any recovery made from the applicant be refunded to him within a period of three months from the date of receipt of a copy of this order.

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In view of this settled position of law, the order of penalty passed by the respondents vide order dated 12.05.2010 (Annexure A/2) does not survive as it is passed by the respondents beyond the period allowed by this Tribunal.

37. However, ^{it} if even for the sake of arguments, we ignore this ^{Anil Kumar} point and agree to the contention of the learned counsel for the respondents that the present OA may not be decided on account of delay alone even then the applicant is entitled for relief in the present OA on the ground of discrimination.

38. The learned counsel for the applicant also vehemently argued that the applicant has been discriminated viz-a-viz Shri V. Ratnam, News Editor, All India Radio, Pondicherry and Shri Suman Wadhawan, Campaign Officer, DAVP, New Delhi, who were also charge sheeted for the same offence. In support of his arguments, he placed reliance on the charge sheet dated 31.03.2006 (Annexure A/16), which was issued to Shri V. Ratnam, News Editor, All India Radio, Pondicherry and to Shri Suman Wadhawan, Campaign Officer, DAVP, New Delhi (Annexure A/17). According to the learned counsel for the applicant charges against both these officers are the same as are that of the applicant but no punishment order was awarded to these officers whereas the applicant has been awarded punishment. The learned counsel for the respondents did not dispute this fact that these officers were also subjected to disciplinary proceedings on same charges and that no action was taken against them after the departmental inquiry.

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39. We have carefully perused the articles of charges against Shri V. Ratnam, News Editor, All India Radio, Pondicherry and Shri Suman Wadhawan, Campaign Officer, DAVP, New Delhi. From the perusal of articles of charges, it is clear that charge memo was issued to them for the same incident of wrong payment to M/s Sparks and Shades without checking the genuineness of the telecast of the video spots of DAVP, New Delhi. In fact the applicant had forwarded the bills produced by M/s Sparks and Shades on the basis of certificate of satisfactory completion of work issued by these two officers. The learned counsel for the applicant has also placed a copy of the inquiry report on record in the case of these officers at Annexure A/18. In the case of Shri V. Ratnam, News Editor, All India Radio, Pondicherry, the Inquiry Officer has concluded that the charged officer has not flouted any established procedure or Government instructions and as such, charge could not be proved against Shri V. Ratnam, News Editor, All India Radio, Pondicherry. At best, it could be deduced that it was a system failure instead of the failure of the individual officer. Certain precautions, however, can be taken in the future to prevent all such cases from happening. The Inquiry Officer also held that it appears logical that the bills were certified for payment by Shri V. Ratnam, News Editor, All India Radio, Pondicherry after obtaining screening survey from the Agency. The inquiry report in the case of Shri Suman Wadhawan, Campaign Officer, DAVP, New Delhi is also on record. It has been stated in the report that charged officer, Shri Suman Wadhawan, Campaign Officer, DAVP, New Delhi, deserves appreciation instead action against him because DAVP recovered the entire amount at his initiative. Charge against the applicant is

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the same that he had not ensured/checked the genuineness of the screening certificate/ certificate report submitted by M/s Sparks and Shades alongwith 23 number of forged bills and this caused wrongful loss of Rs.13,05,500/- to the DAVP and thereby corresponding wrongful gain to M/s Sparks and Shades. Moreover the Inquiry Officer in the present OA has held^{that} no malafides have been proved against the applicant and the alleged wrongful loss also recovered. The learned counsel for the applicant argued that since these two officers, Shri V. Ratnam, News Editor, All India Radio, Pondicherry and Shri Suman Wadhawan, Campaign Officer, DAVP, New Delhi, have been let off by the respondents then the applicant cannot be punished otherwise it will amount to discrimination.

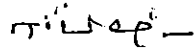
40. The learned counsel for the respondents submitted that it is not the case where all the delinquent officers were subject to common inquiry. He prayed that the separate charge sheets were issued to the applicant, Shri V. Ratnam, News Editor, All India Radio, Pondicherry and Shri Suman Wadhawan, Campaign Officer, DAVP, New Delhi. Separate inquiry was conducted. Therefore, it cannot be said that it is a case of discrimination.

41. However, on perusal of documents on record, we are not inclined to agree with the contention of the learned counsel for the respondents that the present case is not one of discrimination. A bare perusal of the charge sheet issued to Shri V. Ratnam, News Editor, All India Radio, Pondicherry and Shri Suman Wadhawan, Campaign Officer, DAVP, New Delhi would reveal that the charges

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are the same which are leveled against the applicant. In fact the applicant was supervisory authority of these two officers. He forwarded the bills for payment on the basis of the certificate issued by these two officers. If these two officers are not guilty of submitting wrong bills then the applicant can also not be held guilty in forwarding the said bills for payment. It is not disputed by the learned counsel for the respondents that Shri V. Ratnam, News Editor, All India Radio, Pondicherry and Shri Suman Wadhawan, Campaign Officer, DAVP, New Delhi have not been punished in this case. Therefore, we hold that by imposing penalty on the applicant, he has been discriminated with the two other officers of the respondent department. Hence the applicant has made out a case for interference by this Tribunal. We quash the penalty order dated 12.05.2010 (Annexure A/2). The applicant would be entitled to all consequential benefits as per rules.

42. With these directions, the OA is disposed of with no order as to costs.


(M. NAGARAJAN)
MEMBER (J)


(ANIL KUMAR)
MEMBER (A)

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