

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-1723/2014

Reserved on : 29.03.2016.

Pronounced on : 04.04.2016.

Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Mr. Shekhar Agarwal, Member (A)

Sh. Bhagat Ram,
Asstt. Engineer,
S/o Sh. Jagat Ram,
R/o House No. 215, Block C-7,
Safdarjung Development Area,
New Delhi-16.

..... Applicant

(through Sh. P.S. Ranga, Advocate)

Versus

Vice-Chairman,
Delhi Development Authority,
'B' Block, Vikas Sadan, INA,
New Delhi-23.

..... Respondent

(through Ms. Rinchen O. Bhutia, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The applicant was working as Junior Engineer with Delhi Development Authority when he was served with a charge sheet on 22.01.1997. He submitted his reply on 29.05.1997. The Disciplinary Authority (DA) vide his order dated 31.12.2001 imposed penalty of stoppage of next increment for two years with non-cumulative effect. He submitted his appeal against the aforesaid order on 14.02.2002 but this was rejected by the Appellate Authority (AA) on 01.09.2004. The penalty imposed was also implemented w.e.f. 01.02.2002 to 31.01.2004. He submitted a revision petition on 29.03.2010. This was rejected on 30.10.2013. He submitted a request to Vice-Chairman, DDA for personal hearing. This was also

rejected on 30.01.2014. Hence, the applicant has filed this O.A. before us seeking the following relief:-

“(a) Set aside the Charge Sheet issued vide No. F.27(891)87/Vig./AVO-5/869/1057 dated 22.01.1997 and Orders of DDA dated 31.12.2001, 01.09.2004 & 30.10.2013 and intimation dated 30.01.2014.

(b) Allow the O.A. of the applicant with arrears of payment with all other consequential benefits and with interest and costs.

(c) Any further relief the Hon'ble Tribunal may consider appropriate and justified.”

2. The contention of the applicant is that along with the charge sheet he was not provided with copies of complaint and preliminary enquiry report. Thus, principles of natural justice were violated. The charge sheet itself was issued on 22.01.1997 for a lapse committed more than 10 years back. Hon'ble Supreme Court in the case of **P.V. Mahadevan V. M.D. Tamil Nadu Housing Board**, 2005(4) CTC 403 has held that when no explanation is forthcoming with regard to delay in issuance of charge sheet, the unexplained delay itself causes serious prejudice to the employee.

2.1 Further, submission of the applicant is that the applicant was not provided with enquiry report. Relying on the judgment of Hon'ble Himachal Pradesh High Court in the case of **Giteshwar Singh Vs. State of Himachal Pradesh and Ors.**, the applicant has stated that penalty imposed without affording an opportunity to show cause deserves to be quashed.

2.2 He has also contended that the penalty imposed was for stoppage of next increment for two years with non-cumulative effect. This was implemented w.e.f. 01.02.2002 to 31.01.2004. The respondents did not grant any increment to the applicant during this period. In order to make stoppage of increment with non-cumulative effect, the respondents should have restored the increment

after completion of a period of one year. However, they did not grant any increment to the applicant during this entire period. Thus, effectively, they have implemented the punishment as if it was stoppage of increments with cumulative effect. This could not have been done without holding an enquiry as laid down in Regulation-25 as this had become a major punishment. In this regard, he has relied on the judgment of Hon'ble Punjab & Haryana High Court in the case of **Punjab State Electricity Board Vs. Raj Kumar Goel**, 2014(1)SCT 58 in which Hon'ble Supreme Court judgment in the case of **Kulwant Singh Gill Vs. State of Punjab**, 1991(2)SCT 30 was cited.

2.3 The applicant has also stated that intimating the reserve price of the job was not part of his duties and as such, he was punished for a wrong, which did not fall within his area of work jurisdiction. Moreover, in the preliminary enquiry report, the shop in question was found to be locked by DDA. His further submission is that the AA rejected his appeal after a delay of 2 ½ years. The Vice-Chairman also rejected his petition as being time barred though the applicant had remained under suspension for most of the relevant period. Finally, the applicant has submitted that an appeal submitted to the Vice-Chairman for condonation of delay in filing revision petition was disallowed on the ground that there was no provision in DDA (Conduct, Disciplinary and Appeal) Regulations, 1999 to condone such delay. This position was incorrect as Regulation-35 of the aforesaid Regulations provides as under:-

“Save as otherwise expressly provided in these rules, the authority competent under these rules to make any order may, for good and sufficient reasons or if sufficient cause is shown, extend the time specified in these rules for anything required to be done under these rules or condone any delay.”

3. In their reply, the respondents have taken a preliminary objection that this O.A. was not maintainable as it had been filed after an unexplained delay of 10

years. No application for condonation of delay has been filed explaining the reason for such delay. Thus, on this very ground, this O.A. deserved to be dismissed. Further, they have submitted that only minor penalty proceedings were initiated against the applicant and awarding such penalties was an administrative process in which holding an enquiry was not compulsory. Most of the submissions made by the applicant pertained to award of major penalty, which was not the case in this O.A. Lastly, they have submitted that this O.A. is devoid of merit as well and, therefore, should be dismissed.

4. We have heard both sides and have perused the material placed on record. We find that the penalty in this case was imposed by the order dated 31.12.2001. An appeal dated 14.02.2002 filed against the penalty order was rejected on 01.09.2004. The applicant took no action from 01.09.2004 to 29.03.2010 on which date he filed a revision petition before the Vice-Chairman. In our opinion, since the appeal of the applicant was rejected on 01.09.2004, he should have approached this Tribunal within one year of the same. He neither did so nor did he avail the remedy of filing of revision for the next almost 5 ½ years. Thus, there has been considerable delay in filing this O.A. and there is merit in the contention of the respondents that it is barred by limitation. A belated revision petition made on 29.03.2010 or a belated appeal made for personal hearing on 14.11.2013 and orders passed thereon cannot extend the limitation period of the applicant.

4.1 Even on merits, we do not find any substance in the applicant's submission. His first contention is that the charge sheet was issued to him without a list of witness or documents. On going through the material placed on record, we find that this charge sheet was issued under Regulation-17 of DDA (Salaries, Allowances & Conditions of Service) Regulations, 1961. These Regulations were

subsequently replaced by Conduct, Disciplinary and Appeal Regulations, 1999 and the corresponding Regulation was Regulation-27, which deals with procedure for imposing minor penalties. On going through with Regulation (page-111 of the paper-book), we find that the requirement was of only informing the employee in writing of the proposal to take action against him and of the imputation of the misconduct or misbehaviour on which action was proposed. Thereafter, the employee was to be given reasonable opportunity of making such representation as he may wish to against the proposal. Holding of enquiry was not necessary in every case. The punishment order was to be passed after taking into consideration the representation, if any, submitted by the employee. In the instant case, we find that this procedure has been duly followed.

4.2 The applicant relying on Apex Court's judgment in the case of **P.V. Mahadevan** (supra) has alleged that the charge sheet was issued to him after a long delay of 10 years and should be quashed on that ground alone. However, we find that the applicant himself has delayed in approaching this Tribunal. Moreover, the punishment itself has been implemented during the period 01.02.2002 to 31.01.2004. The applicant accepted the imposition of this penalty without demur and did not approach this Tribunal till 23.04.2014 when he filed this O.A. At this belated stage, we see no reason to interfere in this case. Further, it was held by Hon'ble Supreme Court in the case of **Government of A.P. Vs. V. Appala Swamy**, (2007) 14 SCC 49 that if there was any delay in serving of the charge sheet, the applicant should raise this ground before the DA and proceedings should not be quashed on this ground alone.

4.3 Further, the judgment of Hon'ble Himachal Pradesh High Court in the case of **Giteshwar Singh** (supra) relied upon by the applicant would also not be of

any help to him since that judgment pertained to cases of major penalty charge sheets in which a regular enquiry was required to be held whereas in the instant case the applicant was proceeded against only for minor penalty in which there was no such requirement.

4.4 Next, the applicant has contended that the manner in which the penalty has been imposed upon him, it has become a major penalty as increment stoppage has been done in his case with cumulative effect. Be that as it may, this cannot be a ground for quashing the penalty order. If the respondents have gone wrong in implementation of the penalty imposed, the applicant can make a representation to them against the same or he can avail of legal remedies available to him under law.

4.5 Lastly, the applicant has submitted that his revision petition was rejected by the competent authority on the ground that there was no provision for condonation of delay in filing a revision petition whereas Regulation-35 provided for such condonation for good and sufficient reasons. The applicant pleaded that on this ground itself the OA deserves to be allowed. However, we are not convinced by the aforesaid argument. As mentioned above, the penalty order had been passed on 31.12.2001 and the appeal against the same was rejected on 01.09.2004. The applicant not only accepted the penalty imposed during this period but also did not file any revision petition nor approached this Tribunal till 29.03.2010. Thus, there was a delay of about 5 ½ years. As per Regulation-32(g) revision could have been filed within six months of the date of the order. Since the delay in the aforesaid case was of about 5 ½ years, we do not find any infirmity in the order of the authorities refusing to entertain his revision petition. Regulation-35 could have been invoked if there was good and sufficient reason

for doing so. In the instant case, no explanation for delay has been given by the applicant.

5. In view of the above, we are of the opinion that none of the grounds taken by the applicant has any merit. We, therefore, dismiss this O.A. No costs.

(Shekhar Agarwal)
Member (A)

(M.S. Sullar)
Member (J)

/Vinita/