

**Central Administrative Tribunal
Madras Bench**

OA 310/01893/2016

Dated Tuesday the 20th day of November Two Thousand Eighteen

P R E S E N T

**Hon'ble Shri. P. Madhavan, Member (J)
&
Hon'ble Shri. T. Jacob, Member (A)**

G. Sridhar
Plot No. 10, F-2/Kavins Castle
Thirumal Srinivasa Nagar, Kathirvedu
Chennai – 600 099.

.. Applicant

By Advocate **M/s. K. M. Ramesh**

Vs.

1. Union of India
Rep. by the General Manager
Integral Coach Factory
Chennai – 600 038.
2. Deputy Chief Mechanical Engineer/Planning
(Disciplinary Authority)
Integral Coach Factory
Chennai – 600 038.
3. Senior Mechanical Engineer/DSD
(Inquiry Officer)
Integral Coach
Chennai – 600 038.

.. Respondents

By Advocate **Mr. P. Srinivasan**

ORAL ORDER

Pronounced by Hon'ble Mr. P. Madhavan, Member(J)

Heard the counsel for the applicant. The applicant has filed this OA seeking the following reliefs:

“To call for the records relating to charge memorandum issued by the 2nd respondent bearing No. PB/S/DAR/696790/SF5/OUA dated 07.06.2005 and to quash the disciplinary proceedings initiated and pending against the applicant in furtherance to charge memorandum bearing No. PB/S/DAR/696790/SF5/OUA dated 07.06.2005 as there is inordinate delay causing prejudice and hardship to the applicant”

2. The brief facts of the case is that the applicant joined the ICF as Technician Grade III on 13.08.1990. According to the applicant, the respondents had issued a charge memo on 07.06.2005 initiating disciplinary action with an intention to victimize him. After issuing the charge memo, the applicant was transferred to Diesel Loco Works, Patiala, Punjab and the said order of transfer was modified and he was transferred to Tirupathi Workshop. He challenged the transfer order before the Central Government Industrial Tribunal (CGIT) and the CGIT had quashed the transfer order passed and the respondents had filed a WP challenging the said order and the Hon'ble High Court had dismissed the same and the respondents went up to Hon'ble Supreme Court and filed an SLP and it was also dismissed and the

award of the Tribunal had become final. The proceedings initiated on 07.06.2005 has not completed till date and according to the applicant more than 12 years is already over and continuing disciplinary proceedings is highly prejudicial and it is affecting his future prospects and he seeks to quash the said charge memo which is produced in this case as Annexure A1. He has also produced transfer order as Annexure A2 and second transfer order as Annexure A3. He was given a transfer to Loco Works Chennai and he is at present working in the said station. He had filed representations against the charge memo as Annexure A4. The Enquiry Officer was appointed on 22.09.2005 and a notice was issued for enquiry on 15.10.2005. He filed a representation seeking transfer of the disciplinary proceedings to ICF Chennai and enquiry was started on 26.08.2006. According to him altogether 9 witnesses were examined till date and the enquiry is being delayed unnecessarily with an intention to prejudice him and he seeks quashing of the charge memo.

3. Counsel for the respondents appeared and filed detailed reply denying allegations to be forwarded by the applicant in this case. According to the respondents the disciplinary proceedings is still continuing and 3 more witnesses have to be examined. It is indeed the delaying tactics used by the applicant that the enquiry could not be completed. He has raised objections regarding jurisdiction of the enquiry on 23.4.2008 and the enquiry was adjourned on the basis of the objection. His transfer was challenged before the CGIT and the said matter was pending disposal for a long time. On 17.05.2011 when the presenting officer was

appointed the applicant in his letter dated 25.05.2011 pointed out that the inordinate time delay is not acceptable and tenable. According to the respondents the applicant has manhandled a supervisory official by name S. Devaraj, Junior Engineer on 20.05.2005 and he was suspended. On 23.05.2005, according to the respondents, the applicant along with 60 others had entered the Shell Conference Room and gheraoed the officers and supervisors who were present for a technical presentation and demanded revocation of his suspension. It is in this context the charge memo was issued against him under the conduct rules. When the applicant was transferred to Tirupathi, the disciplinary proceedings was also transferred to Tirupathy and an enquiry officer was appointed. Then the applicant filed objection stating that he wanted to conduct enquiry at ICF Chennai itself. He also refused to cross examine PW 7 and on next 2 hearings applicant sought adjournment. Then the applicant was transferred to Chennai and another enquiry officer was appointed on 02.04.2008. Then he objected to the jurisdiction of the enquiry officer and appointment of presenting officer and he contended that he is not ready to accept the appointment of Enquiry Officer and Presenting Officer. Thereafter, the applicant had again filed a representation on 03.08.2013 for dropping the proceedings on the ground that the CGIT had considered all the facts into account and ordered to retransfer him to ICF and hence the D&AR proceedings has to be quashed. According to the respondents, they had completed examination of 10 witnesses and PW-11 was not cross examined by the applicant. So, according to the respondents it is only because of the non-cooperation of the applicant the

enquiry could not be completed and seeks to continue with the disciplinary proceedings.

4. The counsel for applicant invited attention to the Hon'ble Supreme Court decision in *P.V. Mahadevan Vs M.D. Tamil Nadu Housing Board* (Civil Appeal 4901/2005) held that the undue delay occurred in the completion of the disciplinary proceedings is highly untenable. He has also produced the decision of the Hon'ble Madras High Court in *Parameswaran Vs State of Tamil Nadu*, Rep. by its *Secretary to Government, Rural Development Department, Fort St. George, Chennai – 9 & Others* (Reported in 2006 (1) CTC 476 (Mad.) in support of his case. He also produced a copy of the Hon'ble Supreme Court decision in *State of Madhya Pradesh Vs. Bani Singh and Anr.* The respondents on the other hand relies on the decision of the Hon'ble Supreme Court in *P.V. Mahadevan Vs MD, T.N. Housing Board* (2005) 6 SCC 636 (Civil Appeal No. 4901 of 2005) for holding that it is only because of the non-cooperation of the applicant the delay had occurred and he is not entitled to get any benefit. They had also produced the decision of the Hon'ble Supreme Court in *A Sundaraganesan Vs The Principal Secretary/Transport Commissioner, Chepauk, Chennai – 600 005* reported in 2011 (2) CTC 420. They had also cited the decision of the *Secretary, Ministry of Defence and others Vs Prabhash Chandra Mirdha* reported in (2012) 11 SCC 565 holding that normally a charge memo cannot be quashed without sufficient reasons. The court has to look into the gravity of the charge and all other relevant factors for doing the same.

5. We have gone through the pleadings and Annexures produced in this case. We have also heard the concerned counsels. On going through the pleadings it can be seen that the applicant in this case is working as Technician Grade I in ICF and the main allegation against him is that he has conducted gheraoe along with 60 other people when a meeting was going on in the Shell Conference Hall and he was suspended for the violation of discipline and a charge memo was issued to him on 07.06.2005. The main contention forwarded by the counsel for the applicant is that more than 12 years had elapsed and enquiry initiated by the Disciplinary Authority has to be terminated as it is highly prejudicial to the applicant. On the other hand, the counsel for the respondents would contend that it is only because of the non-cooperation of the applicant the enquiry could not be completed. On going through the reply and pleadings of the applicant, it can be seen that the applicant was suspended for manhandling a Supervisory Official on 20.05.2005 and thereafter on 23.05.2005 at about 12.30 hours a mob containing 60 people under the leadership of the applicant had unauthorisedly entered the Shell Conference room and demanded revocation of the suspension of the applicant. After the suspension, he was transferred to patiala and thereafter the applicant's transfer was modified and he was posted to Tirupathy Workshop. Since he was working at Tirupathy, the disciplinary proceedings was also shifted to Tirupathy workshop and the respondents had appointed enquiry officer C.K. Ganesan on 22.9.2005. The applicant instead of attending preliminary enquiry had submitted a

representation on 25.10.2005 demanding to conduct the enquiry at ICF itself for reasons stated therein. The said inquiry officer had conducted enquiry from 24.11.2005 to 26.09.2006. The respondents had produced a tabular statement showing the enquiry dates and the various steps taken by the inquiry officer till 26.09.2006. On 26.09.2006, the applicant was transferred to Loco Works Perambur and the file was transferred to Loco Works for further processing. Thereafter, an enquiry officer was posted on 02.04.2008 and the applicant filed a representation stating that the charge sheet issued in his case was without jurisdiction and also that stating his case is pending before the Industrial Tribunal. In the meanwhile, the disciplinary authority had appointed a presenting officer and the applicant filed a representation objecting to the appointment of the presenting officer stating that he is not acceptable to him. After considering the said representation it was rejected and the applicant was directed to appear before the Enquiry Officer. Then the applicant filed a representation stating that there is no jurisdiction to enquire into the charges of misconduct and misbehaviour which has taken place in ICF. He had also submitted that he was transferred back to ICF as per the award passed by the CGAT. In the meanwhile, another enquiry officer had been appointed and a presenting officer was also appointed on 29.07.2013. The applicant again submitted a representation on 03.08.2013 to drop further proceedings on the ground that the CGIT had considered all the facts into account and ordered to re-transfer to ICF and hence the disciplinary proceedings has to be quashed etc. The Disciplinary Authority has rejected the said request. Then on

25.09.2013 the applicant filed another representation stating that the modal time limit of 180 days was not followed and requested for a explanation for delaying the enquiry. During the pendency of the enquiry, on 17.06.2005 the applicant had filed an application for getting a copy of the charge memo stating that he had lost the same and he sought an adjournment of the cross examination of PW7 on 25.08.15, 28.10.2015, 25.11.2015 and the enquiry was adjourned at the request of the applicant. From the above it can be seen that the applicant in this case was objecting to the completion of the enquiry by raising various objections. The main contention of the applicant is that there has taken place an in-ordinate delay in completing the disciplinary proceedings and there is no convincing explanation given by the employer for the delay. According to him, the applicant had suffered enough due to the disciplinary proceedings hence the charge memo has to be quashed mainly relying of the decision of the Hon'ble Supreme Court in *P.V. Mahadevan Vs M.D. TN Housing Board* cited supra for the above argument. But on going through the above decision it can be seen that the Hon'ble Supreme Court has observed in para 19 as under:

"19. 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 proceedings 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."

It is already a settled proposition that each case of disciplinary proceedings has to be considered in the light of the facts of the case and the court is expected to look into the reasons for the delay in completing the disciplinary proceedings. In this case it can be seen that the applicant himself was responsible for causing the delay and the respondents had given satisfactory explanation for the delay in completing the examination. Eventhough the applicant has raised objections at every level the respondents had completed examination of 11 witnesses till date and only two or three witnesses remain to be examined. The decision cited by the counsel for the applicant in support of his case, clearly states that quashing a disciplinary proceedings on ground of delay has to be done on the reference to the facts of each case. It is true that the disciplinary authority has to complete the inquiry within the stipulated time. In this case, the circumstances show that the objections raised by the delinquent officer had stayed or delayed the forward movement of the departmental enquiry. So we are of the view that the delay in completing the

inquiry was mainly due to the action of the applicant. The decisions produced by the applicant can be made use of only when the delay had been caused by the respondents and it had caused prejudice to him.

6. **In the light of the above discussion we are of the opinion that the OA is devoid of merits and it is liable to be dismissed.** No costs. The respondents will complete the inquiry, if not completed by now, at the earliest.

(T. Jacob)
Member (A)
AS

20.11.2018

(P. Madhavan)
Member(J)