

**CENTRAL ADMINISTRATIVE TRIBUNAL
AMHEDABAD BENCH**

O.A. No. 101/2017 With MA Nos.151 & 328/2017
Ahmedabad, the 19th day of July, 2019

CORAM :

Hon'ble Ms. Naini Jayaseelan, Member (Administrative)
Hon'ble Sh. M.C.Verma, Member (Judicial)

Shri Shaileshkumar S/o Shri Dhirajlal Mehta, aged 53 years, working as LDC in the office of the respondents, residing at 203, Harsh Platinum-Part-1, Vibhusha Road, Ghuma, Ahmedabad – 380 058. **... Applicant**

[By Advocate : Shri M S Trivedi]

Versus

- 1 The Regional Director, O/o. R.D. Employees State Insurance Corporation, Ministry of Labour & Employment, Government of India, Ashram Road, Ahmedabad – 380 009.
- 2 The Deputy Director, O/o. Deputy Director, Employees State Insurance Corporation, Ministry of Labour & Employment, Government of India, Ashram Road, Ahmedabad – 380 009.

... Respondents

[By Advocate : Shri Joy Mathew]

O R D E R (ORAL)
[PER : M C Verma, Judicial Member]

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1. Being aggrieved by the act of respondents of non completion of departmental proceedings initiated in year 2005, of appointment of new inquiry officer On 14/9/15 and denial of due admissible benefit to the applicant on ground of pendency of departmental

proceedings, instant OA has been preferred by applicant Shri Shaileshkumar, for the following reliefs:

“(A) That the Hon’ble Tribunal be pleased to allow this petition.

(B) That the Hon’ble Tribunal further be pleased to hold/declare that the impugned action / order No. 37/C/11/15/146.03 Vig. Dated 14.9.2015 , issued by the respondents and action on the part of the respondents not completing / finalizing the departmental proceedings initiated against the applicant in the year 2005 i.e., vide memo No. 37/C/11/15/146/03 Vig. Dated 23.6.2005 issued to the applicant after lapse of period of 11 years and dated 14.9.2015 issued by the respondent No. 1 and denial of due / admissible benefit to the applicant like further promotion to the post of UDC and benefits of financial upgradation to the applicant, is ex-facie, illegal, arbitrary and unjust.

(C) That, the Hon’ble Tribunal further be pleased to hold/declare that the proceedings initiated against the applicant vide memo dated 23.6.2005 are deemed to be dropped / closed and the respondents may be directed to give / extend his due legal claim without further delay and which are illegal and arbitrary withheld by the respondents with interest and with exemplary costs.

(D) Such other and further relief/s as may be deemed just and proper in view of the facts and circumstances of the case may be granted.”

2. Brief facts of applicant’s case, as has been set out in the OA are that while working as LDC under the respondents, he was placed under suspension on 19.12.2003. That against him and against one Peon, Shri Dipakbhai H. Baraiya, a complaint, before the ACB was instituted by one Shri S.U. Vadodariya. That a trap was arranged by ACB and ACB filed Criminal Case, No. 1/2004 against him and against Shri Dipakbhai H. Baraiya, Peon, before the Fast Track Court Surendranagar. That said Criminal Case was for the offence under Prevention of Corruption Act, 1988. That respondents issued a Memo of Charges, dated 23.06.2005

(Annex.A/2) to the applicant stating that on 9.12.2003, he, while working as LDC at B.O., Surendranagar had taken a bribe of Rs. 200/-, from Shri S.U. Vadodariya for releasing Rs. 26,277/-. That he since has been acquitted in year 2008 in aforesaid criminal case by judgment passed by the Court of Special Judge, Surendranagar. Applicant pleading himself as aggrieved by the inaction on the part of respondents in not finalising the departmental proceedings has preferred this O.A.

3. Respondents filed their reply stating that the departmental inquiry is yet to be finalised and even he might have been acquitted by the Special Judge, Surendranagar in the Criminal case and due to pendency of criminal case,, respondents could not finalise the inquiry, but, why the applicant waited for nine years to file the present O.A. when the criminal case was disposed of in year 2008. Respondents categorically have pleaded that the delay conclusion of departmental inquiry is not at all deliberate or intentional but was due to administrative exigencies, however, the fact remains that, at present only one or two witnesses remains to be examined. Vide pleading made Respondent-department also sought some reasonable time to conclude the inquiry.
4. The case, on request of counsel for parties to lis was taken up today for final hearing. Mr. M.S.Trivedi, Advocate, appearing for applicant urged that the case of present applicant and applicant of OA No. 750/16 based not only similar but identical facts and claiming exactly similar controversy he added that O.A. No. 750/2016 has been disposed of by this Tribunal on 18.07.2019 directing the respondents' authorities to complete expeditiously,

the whole exercise qua departmental proceeding and in any case within four months. However, he urged that Memorandum of Charge was issued in year 2005, we are in the year 2019 now, that respondents have not made any progress in the departmental inquiry so it will be in interest of justice to grant liberty to the respondents to adopt holistic approach and if they found fit, to drop the proceedings against the applicant or in alternative to expeditiously complete the the whole exercise qua departmental proceeding in stipulated time.

5. Learned counsel Shri Joy Mathew do admits that controversy in instant OA and in O.A. No. 750/2016 are exactly the same and that he is having no objection if similar order is passed but is having reservation about modification, as has been suggested by counsel for applicant.
6. Considered the submissions made by counsel of parties and have gone through the record. It transpires that one and same complaint was made to ACB against applicant of OA in hand and applicant of OA No. 750/16, they were trapped together by ACB, common charge sheet was preferred by ACB against them and both have been acquitted by the same judgment. The memorandum of charge against this applicant and applicant of O.A. No. 750/2016 is also similar. Not only this, it is the same set of counsel who is representing the applicant and respondent of this OA has represented the applicant and respondent in O.A.No. 750/2016. After detailed hearing an elaborate final order has been passed in O.A. No. 750/2016, operative portion of which is in Para 11, which for sake of brevity is reproduced herein below:-

“ 11. Having taken note of entirety we, in facts and circumstances of the case in hand, are not inclined to quash the departmental proceeding, however, we wants to dispose of the OA with direction to the respondents. The respondent’s authorities are directed to complete expeditiously, the whole exercise qua departmental proceeding and in any case within four months after receipt of copy of this order. By final decision we meant conclusion of departmental inquiry and final decision of Disciplinary Authority. It is hoped that every cooperation shall be rendered by the applicant for conclusion of the inquiry and if the applicant does not cooperate, department may proceed in his absence as per rules to complete the inquiry and if needed, may conduct the inquiry on day to day basis. After final decision on departmental proceeding necessary order qua Promotion case of the applicant shall be passed as expeditiously as possible.”

7. Having taken note of entirety we, in totality of facts of the case in hand, are not inclined to pass direction different in nature from the direction as has been passed in OA No. 750/16. The respondent’s authorities are directed to follow the same direction as has been given OA No. 750/16, in respect of this OA also. Needless to say that Para 11 of order passed in OA No. 750/16, having the direction has been reproduced *ibid*.
8. O.A. stands disposed of with above directions. Pending M.A. No. 151/2017 also stand disposed of .No order as to cost.

(M C Verma)
Member(J)

(Naini Jayaseelan)
Member(A)

mehta..