

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

Original Application No.318/2013

Date of C.A.V. : 08.08.2018

Date of Order : 06.02.2019

Between :

A.Kishan, I.F.S., S/o A.Venkataiah,
Aged about 53 years,
Occ : Comsorator of Forests,
O/o The Principal Chief Conservator of Forests,
Department of Forests,
Aranya Bhavan, Saifabad, Hyderabad, A.P. ... Applicant.

And

1. The Union of India,
Rep. by its Secretary,
Ministry of Environment and Forests,
Paryavaran Bhavan, CGO Complex,
Lodhi Road, New Delhi.

2. The Government of Andhra Pradesh,
Rep. by the Chief Secretary,
Secretariat, Hyderabad.

3. The Principal Chief Conservator of Forests,
Dept. of Forests, Aranya Bhavan,
Saifabad, Hyderabad.

4. Sri Lingaraj Panigrahi, IAS,
Member Commissioner of Inquiries,
Secretariat, Hyderabad. ... Respondents.

Counsel for the Applicant ... Mr.K.Sudhakar Reddy, Advocate

Counsel for the Respondents ... Mrs.K.Rajitha, Sr.CGSC

Mr.P.Ravinder Reddy,
S.C.for State of Telangana

CORAM:

Hon'ble Mr.Justice R.Kantha Rao ... **Member (JUDL.)**
Hon'ble Mrs.Naini Jayaseelan ... **Member (Admn.)**

ORDER

{ As per Hon'ble Mr.Justice R.Kantha Rao, Member (JUDL.) }

The applicant worked as Conservator of Forest in the Department of Forest and retired from service in 2015, filed the present OA to set aside the enquiry report submitted by the 4th respondent vide memo dated 15.06.2012 stating that it is in clear violation of law and also in violation of the provisions of the Vigilance Manual. A charge memo dated 18.06.2005 was issued to the applicant in respect of certain irregularities committed during the period from 24.01.2003 to 04.08.2004 levelling the following charges :

Article-I

That the MOS exhibited gross neglect of duty in committing grave financial irregularities by issuing cheques in favour of Forest Range Officers and getting them encashed through Technical Maistries by attesting the signature of the Technical Maistries on back side of the cheques.

Article-II :

That the MOS exhibited gross neglect of duty in Misappropriating Government funds without carrying out the works and without receiving receipt of materials purchased to a tune of Rs.13,94,430/-.

Article-III :

That the MOS exhibited gross negligence of duty in committing procedural irregularities by not calling for Tenders and not entering into any agreements for purchase of Ornamental plants and execution of works by Contractors, thus violated the financial code.

Article-IV :

That the MOS exhibited gross neglect of duty in issuing self-cheques against the financial code and in drawal of amounts.

2. The applicant filed written statement of defence and requested to drop the charges. The same was not accepted and Dr.Prasantha Mahapatra, Inquiry Officer was appointed 5 years after issuing the charge memo i.e. by proceedings dated 03.11.2007 to inquire into the charges framed against the applicant. The said officer did not finalize the inquiry and a second inquiry officer i.e. Sri D.R.Garg was appointed on 11.04.2011. He also did not proceed with the inquiry and finally the 4th respondent i.e. Sri Lingaraj Panigrahi, Commissioner of Inquiries was appointed as Inquiry Officer by proceedings dated 30.09.2011. The applicant made certain allegations of bias and submitted a representation to the Disciplinary Authority to change the Inquiry Officer, but the same was not acceded to. On that the applicant filed OA.427/2011 before this Tribunal to set aside the disciplinary proceedings initiated against him by proceedings dated 18.06.2005 on the ground of delay and latches. He sought an interim relief to stop the inquiry, but no interim relief was granted. The case was heard on merits and finally the OA was dismissed. The applicant alleged in the OA that no documents relied on by the department were supplied to him and the inquiry was held in his absence and therefore the inquiry is vitiated. On the other hand it is the contention of the respondents that as the Tribunal in OA.427/2011 did not grant stay and inquiry was proceeded with ex parte and was concluded. In this context it required to be noticed that when the applicant does not cooperate with the inquiry, the inquiry can be held ex parte and a report can be drawn up by the Inquiry Officer.

3. The Inquiry Officer after completing the inquiry submitted report to

the Government in his letter dated 16.05.2012. A copy of the inquiry report was served to the applicant and he was asked to submit his representation. According to the respondents, the applicant acknowledged the notice along with the report on 22.11.2012 but has not submitted any representation. According to the respondents as per Sub-rule 2 of Rule 7 of AIS (D&A) Rules, 1969 the Government of India is the authority competent to impose penalty of dismissal from service and therefore in pursuance of the said rules, the proposals along with all the connected records have been sent to Government of India, Ministry of Environment of Forests, New Delhi vide letter dated 21.11.2013 for its consideration on imposition of the proposed penalty on the applicant who was under suspension. Contending as such the respondents sought to dismiss the OA.

4. We have heard Mr.K.Sudhakar Reddy, learned counsel for the applicant and Mrs.K.Rajitha, learned Senior Central Government Standing Counsel for Respondent No.1 and Mr.K.Ravinder Reddy, learned Standing Counsel for the State of Telangana.

5. The main contention on behalf of the applicant by the learned counsel appearing for him is that the inquiry report is vitiated by delay and latches and since no final order has been passed so far, it is unsustainable and it has to be set aside as prayed for in the OA. On the other hand it is the contention of the respondents that since the proceedings for imposing penalty has been forwarded to the appropriate Government, there are no grounds to allow the OA.

Admittedly the charges relates to the irregularities of the period from 24.01.2003 to 04.08.2004. The charge memo was issued on 18.06.2005. For reasons best known to the department an Inquiry Officer for the first time was appointed 5 years after issuing the charge memo i.e. by proceedings dated 03.01.2011. Since there was no stay of inquiry was granted by this Tribunal in OA.427/2011 the department might be right in proceeding with the inquiry and concluding the same. But while the present OA is pending since there is no interim order preventing the appropriate Government to pass final orders on the inquiry report. As such there is no legal impediment for the appropriate Government to pass final order. Though the applicant retired in 2015 even as on today no final order has been passed.

6. Therefore, the sole question requires consideration is as to whether under the circumstances stated above, the inquiry report is liable to be set aside.

7. The law is well settled that the inquiry has to be commenced within a reasonable time and also it has to be completed within a reasonable time, at the most within a period of one year. The grounds urged by the respondents that the applicant has taken 3 ½ years time to submit his defence statement and he did not cooperate with the inquiry, in our view are of no consequence. In any event in the instant case the department concluded inquiry ex parte ultimately. In the instant case there is inordinate delay in initiating and conducting inquiry against the applicant. The inquiry officer was appointed for the first time on 03.01.2011

to inquire into the allegations pertaining to the period 2003-2004. The inquiry report was submitted by the Inquiry Officer vide letter dated 16.05.2012, but so far no final order has been passed. Therefore, in our view this is a case where the inquiry is vitiated on account of delay and latches and at this length of time if the appropriate Government is allowed to pass final order against the applicant it will cause prejudice to him.

8. Therefore, we are inclined to set aside the inquiry report. Consequently the inquiry report submitted by the Inquiry Officer vide letter dated 16.05.2012 is set aside. The appropriate Government is directed not to pass any final order pursuant to the inquiry report.

9. Accordingly the OA is allowed. There shall be no order as to costs.

(NAINI JAYASEELAN)
MEMBER (ADMN.)

(JUSTICE R.KANTHA RAO)
MEMBER (JUDL.)

sd