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CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. O.A. 1359 of 2015

Date of order: 17.9.2015

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr. R. Bandyopadhyay, Administrative Member

SUDARSHAN ADHIKARI

VS.

UNION OF INDIA & ORS. (Eastern Railway)

For the Applicant : Mr. S. Maji, Counsel

For the Respondents : Mr. B.L. Gangopadhyay, Counsel

ORDER (Oral)

Per Ms. Bidisha Banerjee, Judicial Member:

This application has been filed assailing the charge-memo dated 22.3.2013, a report of the enquiry officer dated 15.5.2015 and further seeking revocation of suspension order on 18.7.2005.

2. The charge memo has been assailed on the ground that there was a delay in initiation of proceedings, initiated after a lapse of seven years. The indictments were that the applicant who was posted under Sr. DEE, Sealdah entered into Railway service fraudulently.

3. The enquiry officer found him guilty of the charges and the applicant duly represented against the enquiry report which is yet to be considered by the disciplinary authority for the purpose of exonerating or punishing the applicant.

4. In regard to the allegation of delay in initiation of proceedings we noted law laid down by Hon'ble Apex Court in the following:-

(i) State of Madhya Pradesh v. Bani Singh reported in (1990) Suppl. SCC 738.

(ii) State of Andhra Pradesh v. M. Radhakrishnan reported in (1998) 4 SCC

154.

(iii) P.V. Mahadevan v. M.D., Tamilnadu Housing Board reported in (2005) 5 SCC 636.

(iv) State of Punjab v. Chaman Lal Goel reported in (1995) 2 SCC 570.

(v) Secretary, Ministry of Defence v. Prabhas Chandra Mirdha reported in (2012) 11 SCC 565.

(vi) Govt. of Andhra Pradesh & ors. v. Appalaswamy reported in (2007) 3 Scale 1.

5. From the aforesaid decisions the principles that could be culled out in regard to delayed initiation or conclusion of proceedings, are as under:

(i) A chargesheet cannot generally be a subject matter of challenge as it does not adversely affect the rights of the delinquent, unless it is established that it has been issued by an authority not competent to initiate the disciplinary proceedings.

(ii) Neither the disciplinary proceedings nor the charge-sheet should be quashed at an initial stage as it would be a premature stage to deal with the issues.

(iii) A chargesheet can be issued after a considerable delay but the delay has to be satisfactorily explained.

(iv) A chargesheet or proceedings is not be quashed merely on the ground of delay in initiation of proceedings.

(v) The delay has to cause prejudice to the delinquent employee.

(vi) Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings.

6. As the charges are grave in nature, and no decision has been taken by the disciplinary authority as yet, on the report of enquiry officer, it

would be a premature stage to deal with the guilt. As such, liberty is granted to the applicant to challenge the order, if any, passed in the proceedings which would be prejudicial to his interest.

7. We further note that the respondents had issued the suspension order way back in 18.7.2005. If it was not reviewed from time to time in accordance with Rule 10(7) CCS (CCA) Rules, it would become invalid after expiry of 90 days from the date of issuance/effect in terms of the decision rendered by Hon'ble Apex Court in the following:-

- (i) Union of India & ors. v. Dipak Mali [(2010) 2 SCC 222]
- (ii) Medical Council of India v. K.K. Arora WP (C). 7682 / 2010.
- (iii) State of Rajasthan v. Ravi Chandra Srivastava WP(C). 4460/2007.

Hence, considering the law laid down in the aforesaid matters, the authorities shall pass orders in accordance with law within one month.

8. The O.A. is, accordingly, disposed of. No costs.

(R. Bandyopadhyay)
MEMBER(A)

(Bidisha Banerjee)
MEMBER(J)

SP