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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1222/2003

New Delhi this the 15th day of September, 2003

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri V.K.Majotra, Member (A)

Shri Kanwar Bhan
S/O late Hari Chand Pabreja
11-G, Railway Colony, Sharnli,
Distt.Muzaffar Nagar (UP)

..Applicant

(By Advocate Shri N.M.Popli)

VERSUS

1. Northern Railway
Baroda House, New Delhi
through its General Manager.
2. Divisional Railway Manager,
Northern Railway, DRM Office,
Chelmsford Road, New Delhi.
3. Divisional Personnel Officer,
Northern Railway, DRM Office,
Chelmsford Road, New Delhi.

..Respondents

(By Advocate Shri Shailendra Tiwary)

O R D E R (ORAL)

(Hon'ble Smt.Lakshmi Swaminathan,Vice Chairman (J)

This is the second round of litigation filed by the applicant as he had filed earlier ^{an} Original Application (OA 1894/89) which was disposed of by Tribunal's order dated 10.7.1990.

2. By the aforesaid order in OA 1894/89, the Tribunal had observed that the only issue left for disposal then was the treatment of the period of absence from 5.3.1985 till the date the applicant resumed his duty. As the Tribunal felt that it was not possible for it to decide whether the applicant was deliberately absented himself from 5.3.1985 or he had been prevented

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from performing his duty on the basis of the material before them, a direction was given to the respondents that they shall hold a proper inquiry in regard to the alleged unauthorized absence of the applicant, after giving him reasonable opportunity to participate in the inquiry.

3. After the aforesaid order of the Tribunal was passed it appears that after further delay, the respondents issued Memo. of chargesheet dated 28.12.1992 with regard to the period of his alleged unauthorized absence from duty. The main contention of Shri N.M. Popli, learned counsel is that the respondents have not cared to complete the pending Departmental enquiry initiated against the applicant in the year, 1992 even till date. He has stressed on the facts that as many as five Enquiry Officers have been changed from time to time and the fact that it was only when the applicant sent a legal notice to the respondents on which they finally issued the charge-sheet in 1992. Even though the Tribunal in the order dated 10.7.1990 in OA 1894/89, had permitted the respondents to hold an enquiry and give a reasonable opportunity to the applicant to participate in the same. He has submitted that the last date on which the Departmental enquiry proceedings were held was on 26.6.1997, when because of the non-appearance of the dealing clerk and non supply of additional documents, the enquiry did not proceed. He has submitted that on each one of the dates when the enquiry was fixed prior to this date in June 1997, the applicant was present and it was only on

the ground of non supply of additional documents the enquiry has not been completed within the time stipulated in the administrative instructions or even within a reasonable time which may be allowed for this purpose. In the circumstances, learned counsel has submitted that the applicant being ^{a p/v} lowly paid class-IV employee who has faced the Departmental proceedings for a number of years should not be made to suffer any further due to the inaction and delay caused by the respondents in conducting the Departmental proceedings in accordance with law and the relevant rules. He has relied on the judgements of the Hon'ble Supreme Court in State of A.P. Vs. Dr. K. Ramachandran (1998) SCC(L&S) 1001, State of Punjab and Others Vs. Chaman Lal Goyal (1995(2)SCC 570) and Abdul Rehman Antulay and Others Vs. R.S.Nayak and Another (1992(1)SCC 225). Learned counsel has, therefore, prayed that the chargesheet dated 28.12.1992 issued by the respondents may be quashed and set aside with all consequential benefits.

4. We have seen the reply filed by the respondents and heard Shri Shailendra Tiwary, learned counsel. He has drawn our attention to the averments made by the respondents in Paragraph 4.15 that the applicant did not co-operate with the enquiry officer and as such the proceedings are pending against him till date. He has also submitted that the applicant has been asked, again and again to submit his two passport size photographs and his date of birth certificate to complete his service record

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for which the respondents have sent several reminders, copies placed on record. According to the learned counsel for the respondents, defence helper of the applicant had required applicant's service records which were incomplete. It was for that reason that the respondents have repeatedly asked the applicant to submit his two passport size photographs and his date of birth certificate, in order to complete the service record.

5. However, to the repeated questions from the Bench, it is relevant to note that the learned counsel for the respondents was unable to show any documents from the Departmental enquiry to substantiate that the aforesaid documents asked by the respondents were relevant to the pending Departmental proceedings. He has submitted that the applicant has joined ^{with} the respondents as Khallasi on 4.3.1974 and the present Departmental proceedings, which is the subject matter of this OA and the previous OA (OA 1894/89) were regarding certain alleged unauthorized absence from duty w.e.f. 5.3.1985. The respondents have also not produced any letter from the defence helper/assistant of the applicant asking for the service records and other documents from the respondents nor they have shown in what manner these documents referred to in their reply affidavit are relevant to the pending Departmental proceedings. Indeed, when the respondents filed their counter reply on 3.7.2003, it was for them to substantiate their averments, by producing the relevant documents and to place them on record, which they have failed to do.

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6. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

7. A perusal of our previous order dated 10.7.1990 in OA 1894/89 filed by the applicant, ^{shows that B} the Tribunal was of the opinion that the only issue left for disposal was regarding the treatment of the period of absence of the applicant from 5.3.1985 to the date of his resuming duty. As sufficient materials were not produced before the Tribunal, ^{then B} as also in the present case, the Bench has come to the conclusion that it was not possible to decide whether the applicant had deliberately absented from duty w.e.f. 5.3.1985 or he had been prevented from performing his duty. For this purpose, the respondents were asked to hold a proper enquiry after giving him a reasonable opportunity to participate in the enquiry. In pursuance of this order, the impugned memo. of chargesheet dated 28.12.1992 has been issued to the applicant on 28.12.1992 on the alleged unauthorized absence from duty from 5.3.1985 onwards.

8. In the circumstances of the case, we are unable to agree with the contention of the learned counsel for the applicant that the nature of charges levelled against him are not serious, ^{However,} although we find merit in what he has submitted that the respondents nowhere acted ^{diligently B} in pursuing the Departmental proceedings initiated against the applicant, in accordance with law and the relevant rules.

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The reply filed by the respondents is not at all satisfactory for the reasons given above, namely, what is the relevance of the documents i.e. the two passport size photographs and his date of birth certificate to be given by the applicant with regard to the completion of the long pending Departmental proceedings against him. However, we note from the averments of the respondents that the applicant is not co-operating with the enquiry officer which has at the same time been denied by the applicant. We have also considered the judgements relied upon by the learned counsel for the applicant.

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9. The judgement of the Hon'ble Supreme Court in Dr.N.Radhakrishan's case (supra) is applicable to the facts in this case and we have considered the relevant facts and circumstances of the case. Taking into account the balance of interests of both the parties, the seriousness of the charge levelled against the applicant of alleged unauthorized absence from duty for more than 5 years and the fact that part of the enquiry has been completed on the memo.of chargesheet issued on 28.12.1992, we are of the view that the Departmental enquiry should not be quashed at this stage. To this extent, the prayer of the applicant fails and is rejected. However, as mentioned above the conduct of the respondents in pursuing the Departmental proceedings is also found not at all satisfactory, as nothing prevented them from concluding it in accordance with rules and relevant instructions instead of lingering on with it for years. In the

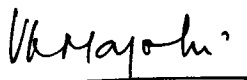
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circumstances, we consider it appropriate that the OA should be disposed of with the following directions:-

(i) The respondents shall complete the pending Departmental proceedings initiated against the applicant by the Memorandum of chargesheet dated 28.12.1992 as expeditiously as possible and in any case within a period of three months from the date of receipt of a copy of this order in accordance with law/rules and the relevant instructions;

(ii) In the circumstances of the case, the respondents are directed to pay cost of Rs. 5000/- (Rupees five thousand only) to the applicant which shall be paid within one month from the date of receipt of a copy of this order.


(V.K.Majotra)
Member (A)


(Smt.Lakshmi Swaminathan)
Vice Chairman (J)

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