

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1875 of 2003

New Delhi, this the 30th day of October, 2003

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)
HON'BLE MR. S. K. NAIK, MEMBER (A)

Pramod Behari
Group 'B' Gazetted Officer
S/o Shri Ram Behari Lall,
Section Officer,
Department of Chemicals & Petrochemicals,
Ministry of Chemicals and Fertilizers,
New Delhi.Applicant

(By Advocate: Shri Ashok Mathur)

Versus

Union of India
Through the Secretary,
Department of Fertilizers,
Ministry of Chemicals and Fertilizers,
Shastri Bhawan,
New Delhi.Respondents

(By Advocate: Shri H.K. Gangwani)

O R D E R (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicant has filed this OA assailing the Memorandum dated 16.1.2003 issued by the Government of India, Ministry of Chemicals and Fertilizers, Department of Fertilizers and also the OM dated 6.12.1989 issued by the respondents whereby it has been proposed to hold an enquiry after an inordinate unexplained delay of nearly one and a half decades in as much as charge-sheet with respect to the enquiry which is proposed has been issued way back in the year 1989.

2. Facts in brief, as alleged by the applicant in brief are that, the applicant was working as an Assistant in UPSC in the year 1974 and was promoted as Section Officer in the year 1982. In 1986 an enquiry was initiated by

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the CBI in connection with alleged tampering of answer sheets in UPSC and in connection with the same the applicant and some other officers were placed under suspension on 17.9.1986. Subsequently, a charge-sheet was issued in the year 1989 proposing to hold an enquiry against the applicant. However, no further proceedings has taken place. Applicant made several representations but to no effect. Ultimately he filed an OA challenging the order of suspension which was allowed and the applicant was directed to be reinstated.

3. The applicant was reinstated in the year 1993 but he was transferred to DGTD in the cadre of Department of Industrial Development where the applicant has already been given vigilance clearance in his application for short term/long term foreign training.

4. It is further stated that vide OM dated 20.8.1999 the Government of India had approved the grant of personal-insitu promotion, inter alia, to various Section Officers but the promotion of the applicant had been withheld. Pending vigilance clearance when the applicant made a representation against the same, the respondents did not decide the same.

5. Applicant again filed an OA and has also prayed for a direction to the respondents to grant in-situ promotion to the post of Under Secretary but the Tribunal decided the OA directing the respondents to pass a reasoned and speaking order on the representation of the applicant but respondents instead of complying with

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the order of the Tribunal on 16.2.2003 issued a memo whereby they proposed to hold an enquiry over the charge-sheet which was issued on 28.1.2003 wherein Shri Yogesh, CDI, Central Vigilance Commission has been appointed as Inquiring Authority to inquire into the charges framed against the applicant.

6. Applicant had also made a representation that the proposed initiation of enquiry against him after a lapse of more than 14 years is unwarranted as the applicant was not in a position to make his effective defence but applicant was informed that the said enquiry cannot be dropped so the applicant is challenging the holding of the enquiry on the ground of unexplained inordinate delay. Hence it is submitted that the impugned action is bad in law which is against the Recruitment Rules as such the enquiry cannot be proceeded and the same should be dropped.

7. It is further stated that the delinquent has a right to be heard and since the same has not been done so initiation of enquiry after a lapse of more than 14 years so the same has been violated in this case.

8. The respondents are contesting the OA. The respondents in their reply pleaded that the charges against the applicant are about his involvement in replacement/tampering of answer sheets in respect of one Shri R.P. Saroj, former Under Secretary in UPSC in the Civil Services (Main) Examination of 1985, with freshly written answer sheets by other means. Simultaneously the UPSC had also initiated a Departmental Proceedings for

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major penalty against S/Shri P.B. Mathur, Inder Math Uppal, Bharat Singh Negi and Des Raj Chugh and had placed them under suspension. However, the disciplinary proceedings against the applicant were started by the UPSC but since the applicant had requested that the disciplinary proceedings should be kept in abeyance against him, since based on the same fact a criminal case had been filed by the CBI which is pending in the court of law. Based on the order passed by the Tribunal in OA 2/1990, the UPSC revoked the suspension of the applicant on the basis of the order passed by the Tribunal and later based on the judgment of the Tribunal in some other matter wherein it was held that the disciplinary proceedings should not be held in abeyance because a parallel criminal case is pending in the court of law, the DOP&T vide their OM dated 14.2.2000 had revived the proceedings against Shri R.P. Saroj one of the co-accused in the case along with Shri Mathur. Consequently the proceedings were revived and merged with the disciplinary proceedings against Shri Saroj. Since in the case of the applicant the proceedings had been kept in abeyance at the request of the applicant himself so there cannot be any contumacious delay on the part of the respondents to hold enquiry against the applicant.

9. We have heard the learned counsel for the parties and gone through the record.

10. It is not disputed that the applicant was not issued charge-sheet in the year 1989 and thereafter suspension was also revoked but the only question which remains to be decided is whether because of the delay

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that the respondents can now restart the holding of enquiry or not. The learned counsel for the respondents had invited our attention to R-1 wherein the applicant had himself prayed for stay of the departmental proceedings till the criminal proceedings are finalised and it is only because the Principal Bench of the CAT had held that the parallel proceedings can be held so the department has taken a decision to hold the enquiry as such there is no contumacious delay on the part of the respondents.

11. Though the applicant has relied upon a judgment referred to in Delhi Law Times reported in 103 (2003) entitled as Delhi Development Authority and Others wherein it was held that delay in supplying listed documents is inexcusable and borders on being mala fide in law and the charge-sheet was quashed.

12. In our considered view the judgment relied upon by the applicant does not apply to the present facts of the case because in the said case further to the issue of the charge-sheet the delinquent officer was not supplied with all the listed documents for a period of 11 years whereas there is no such complaint in this case. On the contrary we find that here an application was given by the applicant in his own hand that since the criminal case over the same facts has been filed by the CBI so till the finalisation of the proceedings of the criminal case the departmental proceedings should be kept in abeyance so acting on that the respondents had kept in abeyance the departmental proceedings as such the applicant cannot take the advantage of delay because the

delay, if at all, was caused at the request made by the applicant himself. There is no fault of the department, nor there is any contumacious delay on the part of the department.

13. Thus OA has no merits and no interference is called for.

14. In view of the above, OA has no merits and the same is dismissed. No costs.

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S. K. NAIK

(S. K. NAIK)
MEMBER (A)

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KULDIP SINGH

(KULDIP SINGH)
MEMBER (J)

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