

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. NO.181/2003

WITH

OA 182/2003, OA 183/2003, OA 256/2003 & OA 411/2003

New Delhi, this the 12<sup>th</sup> day of May, 2003

HON'BLE MRS. LAKSHMI SWAMINATHAN, VICE CHAIRMAN (J)  
HON'BLE MR. V.K. MAJOTRA, MEMBER (A)

OA 181/2003 :

Shri Avinash Sharma,  
S/o Shri B.S. Sharma,  
Junior Engineer,  
R/o C-3, Ground Floor,  
Jyoti Nagar, Loni Road,  
Delhi

(By Advocate : Shri B.S. Mainee)

.... Applicant

Versus

Govt. of NCT of Delhi : Through

1. The Chief Secretary,  
Govt. of NCT of Delhi,  
5, Sham Nath Marg, Delhi 54
2. The Secretary,  
Irrigation and Flood Control Department,  
Govt. of NCT of Delhi,  
5/9 Underhill Road, Delhi
3. The Chief Engineer (I&F)  
Govt. of NCT of Delhi  
4th Floor, I.S.B.T.  
Kashmeri Gate, Delhi

(By Advocate : Shri Ajesh Luthra)

.... Respondents

OA 182/2003 :

Shri Sarbachan Singh,  
S/o Shri Ilam Singh,  
Junior Engineer (Civil)  
R/o 2/148, Sector II,  
Rajinder Nagar, Sahibabad,  
Distt. Ghaziabad (U.P.)

(By Advocate : Shri B.S. Mainee)

.... Applicant

Versus

Govt. of NCT of Delhi : Through

1. The Chief Secretary,  
Govt. of NCT of Delhi,  
5, Sham Nath Marg, Delhi 54

2. The Secretary,  
Irrigation and Flood Control Department,  
Govt. of NCT of Delhi,  
5/9 Underhill Road, Delhi

3. The Chief Engineer (I&F)  
Govt. of NCT of Delhi  
4th Floor, I.S.B.T.  
Kashmeri Gate, Delhi

(By Advocate : Shri Ajesh Luthra) .... Respondents

OA 183/2003 :

Shri K.S. Anand,  
S/o Late Shri Kartar Singh,  
Assistant Engineer (Civil) C.D.C.  
R/o 21-A, S.G. Pocket,  
Dilshad Garden, Delhi

(By Advocate : Shri B.S. Mainee) .... Applicant

Versus

Govt. of NCT of Delhi : Through

1. The Chief Secretary,  
Govt. of NCT of Delhi,  
5, Sham Nath Marg, Delhi 54

2. The Secretary,  
Irrigation and Flood Control Department,  
Govt. of NCT of Delhi,  
5/9 Underhill Road, Delhi

3. The Chief Engineer (I&F)  
Govt. of NCT of Delhi  
4th Floor, I.S.B.T.  
Kashmeri Gate, Delhi

(By Advocate : Shri Ajesh Luthra) .... Respondents

OA 411/2003 :

Shri Ram Krishan,  
S/o Late Shri Tarif Singh,  
Assistant Engineer (Civil), C.D.C.  
Office of the Executive Engineer,  
Civil Division No. VIII  
Irrigation & Flood Control Deptt.  
Sector 15, Rohini, Delhi  
R/o E-30, Jiwan Park,  
Delhi - 110 059

(By Advocate : Shri B.S. Mainee) .... Applicant

Versus

Govt. of NCT of Delhi : Through

1. The Chief Secretary,  
Govt. of NCT of Delhi,  
5, Sham Nath Marg, Delhi 54

(N)

2. The Secretary,  
Irrigation and Flood Control Department,  
Govt. of NCT of Delhi,  
5/9 Underhill Road, Delhi

3. The Chief Engineer (I&F)  
Govt. of NCT of Delhi  
4th Floor, I.S.B.T.  
Kashmeri Gate, Delhi

(By Advocate : Shri Ajesh Luthra) .... Respondents

OA 256/2003 :

Shri V.K. Sarma,  
S/o Shri K.L. Sarma,  
Flat No. 150 Pocket - 13,  
Block Ch/B, Janakpuri,  
New Delhi

(By Advocate : Shri K.P. Sunder Rao, learned counsel  
through proxy counsel Shri Vikas Mehta) .... Applicant

Versus

1. The Chief Secretary,  
Govt. of NCT of Delhi,  
Delhi Secretariat, IP Estate,  
New Delhi - 110 002

2. The Secretary,  
Irrigation and Flood Control Department,  
Govt. of NCT of Delhi,  
5/9 Underhill Road, Delhi

(By Advocate : Shri Ajesh Luthra) .... Respondents

O R D E R

BY V.K. MAJOTRA, MEMBER (A) :

Since these OAs involve identical facts and issues  
they have been taken up together for adjudication.

2. For the sake of facility, the facts have mainly  
been culled out from OA 181/2003.

3. The applicants in these OAs are aggrieved by the

Vh

(1)

impugned order dated 6.1.2003 (Annexure A-1) passed by Secretary (I&FC), Govt. of N.C.T. of Delhi. In terms of it, the disciplinary authority has issued a show cause notice providing reasons for disagreement with the findings of the Inquiry Officer in the disciplinary case against the applicants. Applicants in these cases were appointed as Junior Engineers between 1976 and 1980. Barring applicant in OA 256/2003 (Shri V.K. Sarma) others were issued a charge sheet on 13.1.1998. Later on, they were issued a fresh charge sheet on 26.4.2000. In the case of Shri V.K. Sarma the only charge sheet issued is dated 26.4.2000. The Inquiry Officer, after holding the inquiry, submitted the inquiry report to the disciplinary authority on 6.8.2001, which was forwarded to the applicants vide letter dated 2.4.2002 (Annexure A-5). The Inquiry Officer had concluded that the charge levelled against the applicants was not substantiated and thus was not proved. The applicants submitted their respective representations dated 16.4.2002 (Annexure A-6), submitting that they had not committed any mis-conduct and the Inquiry Officer had, therefore, found that the charge levelled against them was not substantiated. The Disciplinary Authority, however, issued a show cause notice to the applicants on 6.1.2003 giving reasons for disagreement directing them to submit their reply within 15 days (Annexure A-1). The Disciplinary Authority had observed that there was breach of rules and procedure by the charged officials for handing/taking over the charge of the Surya Nagar Store and L.M. Bund Store to their successors and handing/taking over of steel without

proper measurements indicated the motive on the part of the charged officers to withhold the facts and confuse the Supervisory Officer. Thus, the Disciplinary Authority tentatively stated that CO is responsible for negligence in not handing/taking over the records and stock of the store in the prescribed manner thereby causing loss to the exchequer. The Disciplinary Authority in this background held the view that IO had failed to draw his conclusion in the light of set procedure for maintenance of stock and handing/taking over charge. Excepting applicant Shri V.K. Sarma in OA 256/2003, applicants in other OAs have filed their respective OAs in this Tribunal without submitting their replies to the impugned show cause notice issued by the disciplinary authority enclosing the note giving reasons for disagreement with the findings of the Inquiry Officer in disciplinary cases against them. In the case of Shri V.K. Sarma, he has submitted his representation against the show cause notice.

4. Learned counsel of the applicants has raised the following contentions:-

(i) Whereas in accordance with the rules, the reasons for disagreement of the Disciplinary Authority with the findings of the Inquiry Officer have to be communicated to the Charged Officer along with the inquiry report, the Disciplinary Authority had not done so in these cases. The Disciplinary Authority had issued the impugned show cause notice after the applicants had

6

already made a representation on receipt of inquiry report. In this connection, learned counsel referred to rule 15 (2) of the CCS CCA Rules (hereinafter referred to as/ <sup>the</sup> Rules). He has supplemented his contention that the disagreement note must be supplied to the Charged Officer along with the inquiry report by clarification contained in DOP&T's OM dated 27.11.1995 under rule 15 ibid. It reads -

"3. A question has been raised in this connection whether the Disciplinary Authority, when he decides to disagree with the inquiry report should also communicate the reasons for such disagreement to the charged officer. The issue has been considered in consultation with the Ministry of Law and it has been decided that where the Inquiring Authority holds a charge as not proved and the Disciplinary Authority takes a contrary view, the reasons for such disagreement in brief must be communicated to the charged officer along with the report of inquiry so that the charged officer can make an effective representation. This procedure would require the Disciplinary Authority to first examine the report as per the laid down procedure and formulate its tentative views before forwarding the report of inquiry to the charged officer."

In this view of the matter, the learned counsel stated that non-enclosure of the disagreement note along with the inquiry report has vitiated the inquiry.

(ii) As per instructions contained in Department of Personnel OM dated 8.1.1971 under rule 15 ibid, it has been stated that in cases which do not require consultation with the Central Vigilance Commission or the Union Public Service Commission, the Disciplinary Authority should normally take a final decision on the inquiry report within a period of three months. In

W

cases where the Disciplinary Authority feels that it is not possible to adhere to this time-limit, a report may be submitted by him to the next higher authority indicating the additional period within which the case is likely to be disposed of and the reasons for the same. In cases requiring consultation with the CVC and UPSC also, every effort should be made to ensure that such cases are disposed of as quickly as possible. The learned counsel on the basis of these instructions stated that the Disciplinary Authority should not take more than 3 to 6 months of time in taking a final decision in disciplinary matter. In the present case, whereas the Inquiry Officer had submitted the inquiry report on 7.8.2001, the Disciplinary Authority issued the show cause notice after a long delay on 6.1.2003. Learned counsel stated that this delay has vitiated the inquiry. He also contended that the delay in the issue of show cause notice establishes the bias and malafide intention of the Disciplinary Authority against the charged officer. He has drawn support from 1981 (2) SLR 751 Ram Pada Nath vs. Union of India (Cal.). He has also relied on 1979 (3) SLR 593 S.P. Mehta vs. Commr. of Income Tax (J&K). In the former case in the given facts of the case, the Calcutta High Court had held that actual bias is not the only test, reasonable apprehension of bias against a member of Tribunal is sufficient to constitute bias. In the latter case, it was held by the Jammu & Kashmir High Court that in the show cause notice issued in that case

W

it was clear that the threat of punishing the petitioner was as real as apparent.

(iii) The only prosecution witness has stated that whereas the Stock Register is not required to be handed over as the same is the record of the Division the stores were handed over/taken over after due measurements.

(iv) Respondents have not adduced any evidence to establish negligence of the charged officer.

5. On the other hand, the learned counsel of the respondents has stoutly opposed the contentions of the learned counsel of the applicants. He raised the preliminary objection to the effect that whereas the Disciplinary Authority has not passed any final orders in the inquiry, the applicants have approached the Tribunal at an interlocutory stage which is impermissible in law. In this connection he relied on the following:-

1. 1995 Supp (1) SCC 180 - Union of India and Another Vs. Ashok Kacker
2. Order dated 17.5.1999 made in OA 431/1999 in Gyan Chand, ASI, vs. Govt. of NCT, Delhi & Another
3. Order dated 10.4.2002 in OA 2263/2001 in Ajay Kumar Gulati & Others vs. Govt. of NCT of Delhi and Others.

In these cases petitions were rejected being premature and non-maintainable, the final orders not having been passed.

KA

6. According to the learned counsel, non-supply of the reasons of disagreement by the Disciplinary Authority along with the inquiry report would not vitiate the proceedings. It can, at the most, be an irregularity which can be removed.

7. As regards delay, the learned counsel of the respondents stated that the applicants have not raised this ground in these OAs and that in any case delay in making the final orders in the inquiry would not vitiate the proceedings here.

8. The learned counsel of the respondents next stated that the Stock Registers have to be handed over to the successors and that the stores had not been handed/taken over after due measurements.

9. As regards bias and malafide intention on the part of the Disciplinary Authority, the learned counsel stated that applicants have not evinced any evidence to establish the bias and malafide intention of the Disciplinary Authority. Mere delay in conclusion of the enquiry is sufficient to establish bias and malafide intention of the respondent Disciplinary Authority.

10. In the end, the learned counsel on behalf of the respondents stated that the impugned show cause notice which has been issued to the applicants supplying reasons of disagreement on the part of the Disciplinary Authority with

(20)

the findings of the Inquiry Officer is with the intention to provide sufficient opportunity to the applicants to defend themselves. This is in consonance with the principles of natural justice.

11. We have considered the rival contentions raised here.

12. No doubt, there has been lot of delay in conclusion of the inquiry. The Disciplinary Authority, as a matter of fact, has also caused delay in considering the inquiry report and issuing the disagreement note with the findings of the Inquiry Officer. However, in the facts of the case, we do not find that the delay has vitiated the disciplinary proceedings.

13. The note of dissent was not enclosed with the inquiry report initially. The impugned show cause notice along with the note of disagreement with the findings of the inquiry report was issued to the charged officers after the inquiry report had already been supplied to the charged officers and they had submitted their representations. This procedural irregularity also, in our view, would not vitiate the proceedings. As a matter of fact, the irregularity has been set right by providing the note of dissent and an opportunity to defend themselves before the final orders are passed. Neither side has shown to us any rule on the point whether or not the Stock Registers are to be handed over/taken over by the successors. Basically, the onus of this is on the applicants. The learned counsel of the

W

21

applicants has stated that the Stock Registers are not required to be handed/taken over in a Division. No rules/instructions on the point have been placed before us to establish the point. We, therefore, do not accept this contention made on behalf of the applicants.

14. We have gone through the cases of Ram Pada Nath (supra) and S.P. Mehta (supra). The facts before us are distinguishable from those in those cases. We cannot draw an inference of bias and malafide intention on the part of the Disciplinary Authority from the show cause notice or the delay caused by him in issuing the show cause notice.

15. Having regard to the reasons recorded and discussion made above, we hold that the impugned orders are only interlocutory in nature. All applicants excepting Shri V.K. Sarma have not submitted their reply to the show cause notice and they have rushed to the Tribunal with certain apprehensions. Whereas, Shri V.K. Sarma has submitted his representation to the show cause notice, the others had full opportunity to reply to the show cause notice and raise all the points available to them including those raised here in these OAs before the Disciplinary Authority. By issuing the impugned show cause notice, the respondents have provided an opportunity of defence to the charged officers in consonance with the principles of natural justice although the show cause notice could have been issued without delay and even along with the inquiry report. In any case, the irregularities committed by the respondents have not

W

22

vitiated the disciplinary proceedings against the applicants here. In our considered view, the interests of justice would be served if directions are issued to the applicants excepting Shri V.K. Sarma in OA 256/2003 to submit their representations in response to the impugned show cause notice within a stipulated period and also directions to the Disciplinary Authority to pass final orders in the disciplinary proceedings again within a stipulated period. Accordingly, we direct applicants excepting Shri V.K. Sarma to submit their representations in response to the impugned show cause notice issued by the Disciplinary Authority within a period of 15 days from the receipt of a copy of this order. We also direct the Disciplinary Authority (respondent No.2) to pass final orders in all these disciplinary proceedings within a period of three months on receipt of replies from the applicants excepting Shri V.K. Sarma, who has already submitted his representation against the show cause notice.

16. The OAs are disposed of in the above terms. No costs.

(V.K. MAJOTRA)  
Member (A)

(MRS. LAKSHMI SWAMINATHAN)  
Vice Chairman (J)

/pkry/

*Bhawna*  
Court Officer  
Central Administrative Tribunal  
Principal Bench, New Delhi  
Feridkot House,  
Copernicus Marg,  
New Delhi-110001

13.5.2003

O.A. 181/2003  
with  
O.A. 256/2003  
O.A. 182/2003  
O.A. 183/2003  
O.A. 411/2003

Present : Shri B.S. Mainee, learned counsel for  
applicants in all the OAs except OA 256/2003

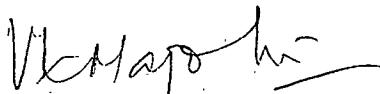
None for applicant in OA 256/2003

Shri Ajesh Luthra, learned counsel for  
respondents in all the OAs

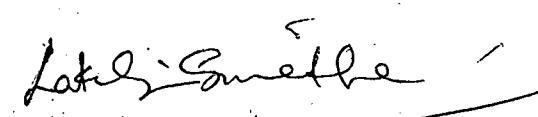
The order pronounced in the above OAs in the Court  
on 12.5.2003 is the order of 2.5.2003 (oral order), as  
already ordered on 2.5.2003, which were dismissed with the  
directions contained in the later order.

The expression "disposed of" occurring in Para 16  
of the later order be read as "dismissed".

Let a copy of this order be issued to both the  
learned counsel immediately.

  
(V.K. MAJOTRA)  
Member (A)

/pkr/

  
(MRS. LAKSHMI SWAMINATHAN)  
Vice Chairman (J)