

**Shri R.V. Bansal S/O Shri Mishri Vs. Delhi Development Authority,**

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**Court :** Central Administrative Tribunal CAT Delhi

**Decided On :** Feb-29-2008

**Judge :** M R Vice, C A Chitra

**Appellant :** Shri R.V. Bansal S/O Shri Mishri

**Respondent :** Delhi Development Authority,

**Judgement :**

1. Writ Petition 5598/1993 had been filed by the applicant before the Delhi High Court, inter alia, pointing out that the charge sheet issued to him and the proposed inquiry were illegal. He had agitated various grounds in support of his contentions. On 14.12.1993, the High Court had directed that the inquiry proceedings may go on, but final orders are not to be passed. The order was extended from time to time and from records it is seen that on 6.4.1995 there was a further order after hearing the counsel for the parties that the inquiry proceedings are not to be proceeded with. The matter is remaining now at this stage.

2. The applicant was an Assistant Engineer working with the respondent DDA and at the bar, it has been submitted that he has already gone on retirement after attaining the age of superannuation. In view of the Notification, the files had been transferred to this Tribunal by the order of the High Court dated 9.10.2007.

3. The applicant had put forward three main objections as against the proposed disciplinary proceedings. The first was that the authority, who had instituted the proceedings was not competent. The second contention was that the proceedings

were highly belated and on the settled law, it would not have been possible for an employer to proceed against an employee belatedly. He was entitled to the benefit of the protection of such legal position, as these proceedings were likely to result in harassment and it would not have been possible to arrange proper defence. The third submission was in respect of the merits, when he submitted that the allegations prima facie were illogical and did not come within the purview of actionable misconduct.

4. In view of the subsequent legislation, the petitioner may not be justified in agitating a contention that the disciplinary authority was incompetent to proceed with the matter but after hearing the parties, we are convinced that there is substance in the second submission, and we have to interfere in the matter, in view of the above circumstance.

5. The applicant had been originally appointed in the MCD in 1967 and in due course, had been taken over by the Delhi Development Authority.

He had been promoted as an Assistant Engineer and in 1982, was put as in-Charge of certain specific works, relating to construction of MIG Houses, in the Development Division. He had been thereafter transferred from the above post and had been thereafter working in the other projects. A Memorandum of Charge had been issued to him on 20.07.1989 wherein it had been alleged that while working as an Assistant Engineer during the period March, 1982 to December, 1982 when he was in-Charge of the work, there was improper and defective supervision and the DDA had to shell out funds in favour of the Contractor, against such defective work. Therefore, there was possibility to assume that he was negligent in his duty and had thereby acted in a manner wholly unbecoming of a Government servant. It is not disputed that the applicant had submitted an explanation promptly, but we find that further proceedings had continued only in the year 1992. An inquiry officer had been appointed to look into the charges. It was during the above period that writ petition had been filed, and the proceedings have been kept in abeyance ever thereafter.

6. The applicant submits that there was no short fall in the quality of the work, as attributable to him, and he had not been participated in any fact-finding enquiry, so

far.

7. It is further submitted that in respect of the work of 1982, memo had been issued after seven years. He had explained his stand. Further proceedings were thought of only in 1992. The delay was per se evident, and it would have been difficult to put forward any effective defence.

Taking notice of the observations of the Supreme Court in State of M.P.v. Bani Singh , according to him, it should have been held that these proceedings interfered with his primary rights, and required to be quashed.

8. It is contended that there was no reason, at any time pointed out for the delayed start of inquiry, although as early as in 1983, the work had been duly inspected by the competent authority. The defaults, if any, reported by the quality control Department ought to have been promptly attended to. Further, it is submitted that even after the memorandum of charges, when explanation was submitted, there were no prompt steps for initiating inquiry proceedings.

9. Although such contentions have been raised principally about the delay in Paragraph 16 of the writ petition, the reply affidavit is evasive as far as these aspects are concerned. There is no explanation as to why there was delay at every stage. As observed by the Supreme Court in State of Andhra Pradesh v. N. Radhakrishnan , delay by itself might not be a reason for dropping the charges as against a Government servant, who is at fault. However, the decision highlighted that the parameters which are to be applied, depends upon the facts of each case. If there was sufficient explanation given by the Governmental authorities for not initiating action within a reasonable period, the Court could have upheld their stand that it was a case where inquiry proceedings were not to be interdicted. Similarly, if the delay in inquiry was directly attributable to the conduct of the person concerned, he could not have pleaded that proceedings are barred or could not have been continued, since a person was not to earn out of his omissions.

10. We had examined the matter with reference to these aspects. As pointed out earlier, there is no explanation forthcoming for the delay.

If the proceedings were delayed till 1993, there is also no reason to assume that nothing practically could have been brought about by giving a green signal for continuing the proceedings after 15 years, and especially when the person concerned, had retired from service. The proceedings will take the character of a persecution than that of enforcement of discipline and the enforcing authority themselves are likely to take only a half hearted approach, going by human nature. In the above circumstances, we are not to go into any other details as we are satisfied that by permitting the respondents to continue the proceedings, there is no likelihood of any worthwhile results. The nature of the allegations itself is lack of supervision, which normally can be established only by making available foolproof evidence. Even the charge sheet indicates that junior engineer was in-Charge of the work and the applicant was having only a supervisory role.

11. The application is allowed. The memorandum of charges issued to the applicant is set aside. We restrain the respondents from continuing any further disciplinary action as against the applicant. He will be deemed as a person who has normally retired. Consequently, he will be entitled to the benefits, which might accrue to him as per his service conditions. We make no order as to costs.

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