

**Rajesh Babu Vs. Ministry of Information and Broadcasting Through Its Secretary, Shastri Bhawan and Others**

**Rajesh Babu Vs. Ministry of Information and Broadcasting Through Its Secretary, Shastri Bhawan and Others**

**SooperKanoon Citation :** [sooperkanoon.com/940132](http://sooperkanoon.com/940132)

**Court :** Central Administrative Tribunal CAT Delhi

**Decided On :** Mar-30-2012

**Judge :** S.C. Sharma, Acting Chairman & the Honourable Dr. Ramesh Chandra Panda, Member (a)

**Appeal No. :** Original Application No.2616 of 2011 Misc. Application No.1865/2011

**Appellant :** Rajesh Babu

**Respondent :** Ministry of Information and Broadcasting Through Its Secretary, Shastri Bhawan and Others

**Advocate for Pet/Ap. :** For the Applicant : Shri Apurb Lal with Ms. Alka, Advocates. For the Respondents : S. Mohd. Arif, Advocate.

**Judgement :**

Justice S.C. Sharma, Acting Chairman:

Instant Original Application has been instituted for the following reliefs:

“(i) Set aside the Memorandum dated 14.11.2007 in view of the submissions made herein above;

(ii) Pass such other or further order(s) as may deem fit and proper for ends of justice.”

2. Pleadings of the parties may be summarized as follows:

It has been alleged by the applicant in the OA that he was recruited in the year 1988 by UPSC to the Indian Broadcasting Engineering Service, and he belongs to the 1988 batch. After joining on 07.12.1990 in the Junior Time Scale (JTS), the applicant was promoted on 30.08.1997 to the Senior Time Scale (STS). During the year 2000-01, the applicant was posted at AIR, Agra as Station Engineer. A note was circulated with regard to the use of items for purposes of office use only, and if any objections were to be raised by the auditor, the responsibility was to be of the person signing the demand letter. A preliminary enquiry was conducted with regard to the financial irregularities committed by the applicant, and in the month of April, 2001, the preliminary enquiry was completed and submitted to the concerned authority. On the basis of the preliminary enquiry report, the applicant was transferred to Almora (Uttarakhand). The order of transfer was challenged by filing an OA before this Tribunal. However, the OA was dismissed. The applicant in the month of December, 2001 was relieved to join AIR, Alwar instead of Almora, and in January, 2002 he joined AIR, Alwar. On 24.02.2004, the applicant was granted the scale of NF-JAG. A charge memorandum was issued on 12.03.2004 from the office of the respondent No.2 with regard to financial irregularities in various purchases against the applicant. The irregularities were pertaining to the year 2000-01. The applicant was required to submit explanation with regard to the irregularities of that year after a lapse of three years. When the preliminary enquiry was conducted in the month of April, 2001, there was no justification for serving the chargesheet after three years. As a result of the preliminary enquiry, the applicant was transferred by way of punishment. Reply was submitted by the applicant to the chargesheet on 05.04.2004. Advice was sought from CVC by the respondents vide letter dated 05.06.2006 with regard to the complaint against the applicant and two other officials, and the CVC advised the respondents to initiate minor penalty proceedings and instructed to impose a penalty higher than censure. It is pleaded that CVC has no authority to advise the disciplinary authority with regard to the kind of punishment, in view of the judgment of the Hon'ble Apex

Court. The applicant wrote a letter on 06.12.2006 to the respondent No.2 as regards financial irregularities at AIR Alwar. The applicant vide letter dated 16.10.2007 addressed to the Chief Engineer (Projects), East Zone, AIR and Television, Kolkata, intimated about acceptance of office order dated 09.10.2007. That the applicant was shocked on 05.02.2008 to receive memorandum dated 14.11.2007 for minor penalty along with forwarding letter dated 29.11.2007. Detailed reply was submitted by the applicant to the said memorandum. It is pleaded that when the respondents had already taken action on the basis of the preliminary enquiry report by transferring the applicant from Agra to Alwar in the year 2001, there was no justification to initiate further proceedings against the applicant. No intimation was received by the applicant thereafter, and he was of the opinion that the minor penalty proceedings were closed. On 10.06.2011 the respondents granted higher pay scale comparable to the pay scale of IAS officers to the junior of the applicant, depriving the applicant on the ground of pendency of the minor penalty proceedings. There was delay of three years in issuing the memorandum, and further delay of three years in issuing the chargesheet. Hence, the OA.

3. It has been alleged by the respondents in their counter reply that the applicant participated in the enquiry proceedings and also submitted his written reply, and that the chargesheet was served on the applicant on 14.11.2007 and he has filed the OA for setting aside the same after three years, without any reasonable explanation, and the OA is liable to be dismissed on the ground of laches on the part of the applicant. The proceedings are stated to have already been completed and only advice from UPSC is sought and awaited for awarding the punishment. CVC forwarded a copy of the complaint dated 22.09.2000 made by ARTEE regarding various irregularities prevalent in AIR. The said complaint was forwarded to DG, AIR on 23.01.2001 for enquiry and report. DG, AIR vide communication dated 18.10.2002 forwarded the enquiry report. The enquiry report was examined in the Ministry and certain clarifications were sought from DG, AIR on 02.05.2003. Clarifications were submitted by DG, AIR vide letter dated 02.07.2004. The case was again examined in the Ministry and the comments of DG, AIR were called on certain points. Pending clarification from DG, AIR, CVC vide OM dated 28.11.2005 stated that in exercise of the powers conferred upon it under the CVC Act, the

Commission had decided to enquire into the complaint on its own, and complete records were called for. The clarification sought from DG, AIR was not received by 28.12.2005. The clarification was quite essential to arrive at a logical conclusion in the matter. The complaint and complete documents were forwarded to CVC on 27.12.2005. The comments of CVO could not be sent at that stage. CVC vide letter dated 20.03.2006 requested to send the comments of CVO immediately so that a decision could be taken in the matter. Records were submitted and forwarded to CVC vide letter dated 05.06.2006. CVC vide OM dated 29.06.2006 advised initiation of minor penalty proceedings with a view to impose a penalty higher than censure upon the applicant and two others, and the chargesheet was issued relating to the applicant for minor penalty vide memorandum dated 14.11.2007 with due approval of the disciplinary authority. Written statement was submitted by the applicant on 12.02.2008 and the same was examined in the light of comments of DG, AIR, and after examining the written statement the disciplinary authority rejected the submissions of the applicant and referred the matter to UPSC on 20.06.2011 for deciding the quantum of penalty to be imposed upon him. UPSC vide letter dated 08.07.2011 returned the case calling for certain clarifications/documents, and after completion of the requisite documents/clarifications, the case was again referred to UPSC on 23.08.2011 for its advice in the matter. Advice of UPSC is stated to be still awaited. Whatever has been alleged in the OA is stated to be not justified and the same is sought to be dismissed being devoid of merit.

4. In response to the counter affidavit filed on behalf of the respondents, the applicant has filed rejoinder affidavit, wherein also the applicant has reiterated the facts alleged in the OA.

5. We have heard Shri Apurb Lal along with Ms. Alka, advocate, for the applicant, and Shri S. Mohd. Arif for the respondents, and perused the entire facts of the case.

6. From perusal of the contents of the OA, it is evident that the charge memorandum has been challenged by the applicant mainly on the ground of delay. It is undisputed that the complaint was made by ARTEE with regard to the

irregularities committed in the year 2000-01 at AIR Agra, and the applicant was posted at AIR Agra at that time. The respondents after receipt of the complaint, conducted a preliminary enquiry regarding allegations made in the complaint, and as per the averments made in the OA, the preliminary enquiry was completed and submitted to the concerned authority in the month of April, 2001. Although it has been alleged by the applicant that in the month of June, 2001 on the basis of the preliminary enquiry report, the applicant was transferred from Agra to Almora, but the place of transfer was changed later on from Almora to Alwar. The applicant resumed duties in the month of January, 2002 at AIR, Alwar. The contention of the applicant mainly is that he has already been punished for the irregularities and lapses alleged to have been committed by him in the year 2000-01, and as he stands transferred now, he cannot be punished, as recommended by CVC for awarding minor penalty higher than censure. In this connection, it will be material to state that the applicant has got all India liability of transfer. Moreover, transfer is an incident of service, as has been held by the Hon'ble Supreme Court. It has not been alleged by the applicant in the OA or rejoinder that he has been transferred as a matter of punishment. No document has also been produced before us in order to draw the inference that the applicant has been transferred from Agra to Alwar as a matter of punishment due to the irregularities committed during the year 2000-01. It may be possible that the applicant was transferred from Agra to Alwar due to certain other reasons, but there is no document before us to infer this presumption, and neither has it been alleged by the applicant that he has been transferred as a matter of punishment. The applicant wants us to draw the inference that he has already been punished for the irregularities committed by him during his posting at Agra during the year 2000-01. Hence, this contention of the applicant cannot be accepted that he has already been punished for the irregularities committed by him as he has been transferred from Agra to Alwar.

7. The applicant has himself stated regarding the procedure adopted by the respondents in dealing with the complaint made against him for the irregularities committed by him, and the respondents also allege that several steps are taken in order to punish an officer for the irregularities committed by him, and they have adopted all the recourses in order to punish the applicant. It has been alleged by the applicant that after receipt of the complaint, preliminary enquiry was conducted

by the respondents, and the preliminary enquiry was concluded in April, 2001. After receipt of the preliminary enquiry report, response was required from the applicant, and the applicant submitted his reply to the memorandum on 05.04.2004. The applicant also alleges that after receipt of the reply of the applicant, the respondent No.1 wrote a letter to CVC on 05.06.2006 in order to seek advice from CVC with regard to the complaint against the applicant and two other officials, and vide OM dated 29.06.2006, CVC advised the respondents to initiate minor penalty proceedings and instructed to impose a penalty higher than censure. It is a different matter to be adjudicated as to whether the CVC has got any authority to advise the departments in the matter of the penalty to be imposed. It has been alleged by the applicant that CVC has no role to play in the matter of quantum of punishment in view of the judgment of the Hon'ble Supreme court, whereas the respondents allege that the advice of CVC is to be taken and the respondents have also cited judgment of the Hon'ble Supreme Court. Thereafter, other actions were initiated by the respondents and on 05.02.2008, when memorandum dated 14.11.2007 was served upon the applicant for minor penalty, and to that the applicant submitted his detailed reply on 12.02.2008. It has also been highlighted that there has been inordinate delay in issuing the chargesheet causing serious prejudice to the applicant. After submission of the reply, for the last three years no action has been taken in the matter, and hence there has been inordinate delay. The applicant also alleges that he has been deprived of promotion on account of pendency of the minor penalty proceedings.

8. On the other hand, the respondents have also narrated the facts which may be responsible for causing delay in taking a decision. As we have stated above, the applicant has himself alleged that after receipt of the complaint, a preliminary enquiry was conducted by the respondents and thereafter advice was sought from CVC, whereafter chargesheet for minor penalty proceedings was served upon the applicant. It is not necessary to state each and every detail of the courses adopted by the respondents, but it is a fact that the respondents were required to adopt certain steps in order to punish the applicant. CVC vide OM dated 29.06.2006 advised the respondents to initiate minor penalty proceedings against the applicant and to impose a penalty higher than censure. A draft chargesheet related to the applicant was forwarded on 14.11.2007, and written statement was

submitted by the applicant on 12.02.2008. It has further been alleged by the respondents that after examination by the disciplinary authority, the written statement of the applicant was rejected, and the matter was referred to UPSC on 20.06.2011 for deciding the quantum of punishment to be imposed upon him. Certain other clarifications were required by UPSC vide letter dated 08.07.2011, and the clarification/reply was submitted on 23.08.2011, and advice of UPSC is still awaited. Under these circumstances, it has been demonstrated by the respondents that without adopting the steps as stated above, it was not possible for the respondents to award penalty against the applicant, and that all these steps were essential, and opinion was to be obtained from CVC. Thereafter the matter was referred to UPSC for advice in order to award the punishment to the applicant. In the case of the applicant, advice of UPSC is required, and it cannot be scuttled. The fact is that at present the matter is pending with UPSC for advice.

9. Learned counsel for the applicant has cited judgment of the Hon'ble Supreme Court reported in (2005) 6 SCC 636 P. V. Mahadevan v MD, T.N. Housing Board, wherein it has been held that protraction should be avoided not only in the interest of the Government employee but in the public interest and also in the interest of inspiring confidence in the minds of Government employees. The respondents were required to conclude the enquiry at the earliest, but as the procedure is too lengthy and the matter is pending with UPSC, hence time has been consumed, but now we may provide that the respondents must conclude the matter at the earliest.

10. A letter issued by CVC dated 23.05.2000 has been produced and filed along with the rejoinder, and in that letter limitation has been provided for finalization of the enquiry. It has been argued by the learned counsel for the respondents that these are the guidelines, but the same do not have statutory force, hence no benefit can be given to the applicant on the basis of this letter of CVC. As still the matter is pending w