

(2004) 10 DEL CK 0042
In the Delhi High Court
Case No : Writ Petition (C) 6874 of 2002

Mishri Lal

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 26-10-2004

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21
Central Industrial Security Force Rules, 1969 — Rule 34

Citation : (2004) 115 DLT 160

Hon'ble Judges : Gita Mittal, J;Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : Y.D. Nagar and Manoj Nagar, for the Appellant; Barkha Babbar, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, J.—This writ petition is directed against the order dated 2nd December, 1982 passed by the Deputy Inspector General, Central Industrial Security Force whereby the petitioner was removed from his service and also against the order passed by the appellate authority on 16th April, 1983 rejecting the appeal filed by the petitioner.

2. A departmental proceedings was initiated against the petitioner under Rule 34 CISF Rules, 1969 on the charges which appear in the impugned order.

3. The petitioner has annexed with the writ petition only a statement of articles of charges and the entire charge-sheet is not part of the records of the case. An Enquiry Officer was appointed to conduct the inquiry instituted against the petitioner.

4. During the course of the inquiry proceedings the petitioner submitted a request for change of the Enquiry Officer, which prayer, however, was rejected by the disciplinary authority. The petitioner took part in the aforesaid inquiry proceedings and on conclusion of the said inquiry, the Enquiry Officer submitted

his report finding the petitioner guilty of the charges Nos.II, III, IV, V, VI and charge No. I as partly proved against the petitioner. The said report of the Enquiry Officer along with all other records of the disciplinary authority were placed before the disciplinary authority, who considered the same. It transpires from the order dated 2nd December, 1982 that the disciplinary authority considered the inquiry report and other relevant record and thereafter he came to the conclusion that articles of charge Nos.II, IV, V and VI could not be held as proved against the party charged. It was, however, held that charge No. I is proved to the extent that the petitioner assaulted W/C Man Singh in a room locked from inside and charge No. III as fully proved. A show cause notice was thereafter issued to the petitioner proposing to impose on him the penalty of removal from service. A copy of the Enquiry Officer's report was also furnished to the petitioner along with the show cause notice and he was asked to submit representation. In response to the aforesaid show cause notice the petitioner also submitted his representation. The disciplinary authority also heard the petitioner in person on the aforesaid reply submitted by him. Thereafter, the disciplinary authority considered all the facts mentioned by the petitioner in his representation and other records and thereafter passed an order directing that the petitioner be removed from service with effect from the date of the service of the said order.

5. Being aggrieved by the aforesaid order, the petitioner preferred an appeal before the appellate authority. The appellate authority also considered the appeal filed by the petitioner and by a detailed speaking order, the said appeal was rejected. Both the aforesaid orders are under challenge in this writ petition.

6. The impugned orders were passed respectively on 2nd December, 1982 and 16th April, 1983. It is stated by the petitioner in the petition that a revision petition was filed by the petitioner, which fact is, however, denied by the respondents. No date of filing of the revision petition before the respondents is also furnished by the petitioner in this writ petition. Since a specific stand has been taken by the respondents that no revision petition was received, we presume and hold that no such revision petition was received by the respondents and Therefore, there was no question of disposal of the revision petition by the respondents. It also transpires from the records that the petitioner filed a petition before the Central Administrative Tribunal.

It is admitted by the counsel for the petitioner that the said original petition was filed in the Central Administrative Tribunal in the month of February 1986. In any case there was a delay of about three years in filing the said original petition before the Central Administrative Tribunal. The order sheet of the Central Administrative Tribunal dated 8th February, 2001 is annexed with the petition, which we have perused. The said order clearly discloses that the said OA No. 862/1986 filed by the petitioner was dismissed for default and non-prosecution on 8th July, 1992. The Tribunal has held that the said OA is barred by limitation u/s 21 of the Administrative Tribunal Act. It was also recorded therein that the

said petition cannot be maintained by the Tribunal as CISF is outside the jurisdiction of the Tribunal. By the said order, the Tribunal refused to exercise jurisdiction of restoration of the OA but a liberty was granted to the petitioner to approach the appropriate forum for redressal of his grievance. The said order was passed on 8th February, 2001 and the present petition was filed in this Court on 25th October, 2002. It is stated by the counsel for the petitioner that in between the petitioner had preferred a representation to the respondents on 26th February, 2001. No such representation, however, is in the records of the respondents. It is the specific stand of the respondents that the records of the disciplinary proceedings have been destroyed in the meantime due to delay and with the passage of time and also for lack of knowledge of filing of the case before the Tribunal. In any case, the present petition in this court, in our considered opinion is barred by inordinate delay and laches on the part of the petitioner. The facts stated herein above would clearly establish that the petitioner was never diligent in pursuing his remedy, for although the order of punishment and his appeal was disposed of on 2nd December, 1982 and 16th April, 1983, the petitioner approached the Central Administrative Tribunal in the month of February 1986. The said petition before the Tribunal was barred by limitation as provided for u/s 21 of the Administrative Tribunal Act which is also observed by the Tribunal in its order dated 8th February, 2001. The petition was not maintainable as CISF is not within the purview of Tribunal. Ignorance of law cannot be pleaded as excuse. The said OA was dismissed in default on 8th July, 1992 and the restoration application came to be filed by the petitioner in the Central Administrative Tribunal only some time in 1995. In any case the Tribunal refused to exercise the jurisdiction for restoration of the original petition, as stated in the order dated 8th February, 2001. Even thereafter the petitioner did not approach this Court immediately but instead allegedly submitted a representation to the respondents, which is again not available in the records of the respondents. There was no scope for filing any representation at that stage. The entire records of the disciplinary proceedings have been destroyed by the respondents due to long passage of time and delay in approaching the Court by the petitioner for which only the petitioner is responsible as the petitioner was not diligent in approaching this Court.

7. Besides, one of the contentions that is raised by the petitioner is that the respondents should have changed the Enquiry Officer immediately after the petitioner sought for a change of the Enquiry Officer. In support of the said contention, the counsel relies upon the decision of the Supreme Court in *Indrani Bai (Smt) Vs. Union of India (UOI) and Others*, . We have perused the said decision. As is indicated from the ratio of the aforesaid decision, the same was rendered in the facts and circumstances of the said case. The Enquiry Officer in the said case did not recall the ex parte order nor did he recall the witnesses despite the orders issued by the Director General in his letter dated September 26, 1981. He even flouted the spirit of the order of the Director General and, Therefore, in that context it was held by the Supreme Court that the request for

change of the Enquiry Officer should have been accepted. The said decision, in our considered opinion, is not applicable to the acts and circumstances of the present case particularly in view of the fact that no such orders of the disciplinary authority could be said to have been flouted by the Enquiry Officer in the present case. Besides the allegations of the petitioner against the Enquiry Officer cannot be investigated into and enquired and no findings could be rendered in respect of the said pleas without availability of the records of the said enquiry proceeding.

8. In view of the aforesaid position, we are not inclined to entertain the writ petition. The same is dismissed on the ground of inordinate delay and laches.