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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.199/2002

New Delhi this the 30th day of December, 2002.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI V.SRIKANTAN, MEMBER (A)

Shri A.K.Malhotra
S/o Late Shri B.L.Malhotra
R/O PD-28C, LIG Flats,
Vishakha Enclave
Pitam Pura
Near ND Market
Delhi-110088.

... Applicant

(By Shri S.M.Rattan Paul, Advocate)

-versus-

1. Union of India through
The Secretary,
Ministry of Textiles.
Udyog Bhawan
Rafi Marg
New Delhi.
2. The Development Commissioner (Handicrafts)
West Block No.7
R.K.Puram
New Delhi-110066.
3. Additional Development Commissioner
(Handicrafts)
Office of the Development Commissioner
(Handicrafts)
West Block No.7
R.K.Puram
New Delhi.
4. Shri Ashok Shah
Deputy Director (Vigilance)
Office of the Development Commissioner
(Handicrafts), West Block No.7
R.K.Puram
New Delhi. Respondents

(By Shri Rajeev Bansal, Advocate)

O R D E R (ORAL)

Justice V.S.Aggarwal:-

Applicant (A.K.Malhotra) had been working as

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Assistant Director (Administration & Coordination) in the office of the Development Commissioner (Handicrafts), West Block, R.K.Puram, New Delhi. He had been placed under suspension and the statement of articles of charge framed against him reads:-

"The said Shri A.K.Malhotra, Asstt. Director (A&C) while working in Carpet Weaving Training-cum-Service Centre, Allahabad (U.P.) as incharge Asstt.Director during the year 1990 and 1991 kept 80% Carpet Weaving Training Centres defunct deliberately. This attitude of Shri A.K.Malhotra, AD (A&C) shows his complete inability towards his official duty causing loss of heavy amount of Govt.money towards the payment of rent of defunct centres besides payment of salaries to the staff posted in these centres for several months without any work.

By his aforesaid act Shri A.K.Malhotra, Asstt.Director (A&C) has failed to maintain absolute integrity, lack of devotion to duty and acted in a manner unbecoming of a Govt.servant therefore violated Rule 3(1)(i)(ii) and (iii) of CCS (Conduct) Rules, 1964."

A statement of imputation of misconduct had also been submitted and the applicant had also filed his reply.

2. By virtue of the present application, the applicant seeks quashing of the charge-sheet dated 13.12.2001 and also declaring the suspension order to be illegal.

3. The pleas offered on behalf of the applicant have been:-

(a) that there is inordinate delay of 12 years in serving the articles of charge and,

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therefore, it has caused prejudice and
should be quashed; and

(b) the articles of charge and the imputation
thereto are totally vague.

4. In the reply filed, the application has been contested. The respondents contend that from the year 1986 onwards, the department had received more than 30 complaints from different sources and directly even from the employees and employees associations. They were of different nature ranging from harassment to his subordinates to exploitation of women; from accepting grafts from outsiders to seek commission of different payments to employees and embezzlement of Government money. The complaints were pertaining to harassment to weaker sections of the society. Either the complaints were not investigated at all or enquired in such a manner that even after the confession of the applicant, he was not punished. Instead for that very acts of the applicant, some other employees were punished. The vigilance section had initiated one after another inquiries against the applicant. Some of the inquiries were filed. After so much act of investigation in the year 2000, it was decided to drop all the charges against the applicant except the charges of keeping the centres defunct in Allahabad and misuse of official telephone. The matter could be referred to the Central Vigilance

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Commission only on 15.6.2001 and on the advice of the Central Vigilance Commission received on 12.10.2001, disciplinary proceedings had been initiated against the applicant. The applicant was placed under suspension as a precautionary measure to prevent him from tampering the records and threatening of the witnesses. Some of the serious charges were under investigation. The explanation of the applicant was not found to be satisfactory by the disciplinary authority. Though the matter was old but the charge-sheet could only be issued after the advice of the Central Vigilance Commission.

5. On behalf of the applicant as has been referred to above, it was highlighted that there is inordinate delay in service of the charge-sheet and, therefore, the same should be quashed. We had repeatedly put to the respondents' learned counsel as to what were the grounds for the said inordinate delay but no satisfactory explanation in this regard was forthcoming. He had vehemently urged that once the charge-sheet had been served, the enquiry may be directed to be completed within a stipulated time so that the truth precipitates.

6. The learned counsel for the respondents had drawn our attention to a decision of the Apex Court in Civil Appeal Nos.36258-59 of 1996 in the case of Secretary to Government, Prohibition & Excise

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Department v. L.Srinivasan rendered on 15.2.1996 to contend that the said submission of the applicant's learned counsel should be rejected keeping in view the ratio decidendi of the decision of the Supreme Court in the aforesaid case. The short judgement rendered by the Supreme Court reads:-

"3. Order dated November 12, 1993 in O.A.No.1702/93 and 2206/93 of the Tamil Nadu Administrative Tribunal, Madras is in question before us. The respondent while working as Assistant Section Officer, Home, Prohibition and Excise Department had been placed under suspension. Departmental inquiry is in progress. We are informed that charge sheet was laid for prosecution for the offences of embezzlement and fabrication of false records etc. and that the offences and the trial of the case is pending. The Tribunal had set aside the departmental enquiry and quashed the charge on the ground of delay in initiation of disciplinary proceedings. In the nature of the charges, it would take long time to detect embezzlement and fabrication of false records which should be done in secrecy. It is not necessary to go into the merits and record any finding on the charge levelled against the charged officer since any finding recorded by this Court would gravely prejudice the case of the parties at the enquiry and also at the trial. Therefore, we desist from expressing any opinion on merit or recording any of the contentions raised by the counsel on either side. Suffice it to state that the Administrative Tribunal has committed grossest error in its exercise of the judicial review. The member of the Administrative Tribunal appear to have no knowledge of the jurisprudence of the service law and exercised power as if he is an appellate forum de hors the limitation of judicial review. This is one such instance where a member had exceeded his power of judicial review in quashing the suspension order and charges even at the threshold. We are coming across frequently such orders putting heavy pressure on this Court to examine each case in detail. It is high time that it is remedied.

4. The appeals are accordingly allowed and the order of the Tribunal is set aside. The

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controversy is at large; the disciplinary authority would be free to proceed with the enquiry and trial also be proceeded in accordance with law. No costs."

Perusal of the quoted judgement reveals that the charge pertained to the embezzlement and fabrication of false records and the trial pertaining to the offences was pending. The Supreme Court felt that in the nature of the charges, it would take long time to detect embezzlement and fabrication of false records which should be done in secrecy. It is in the backdrop of these facts that the Supreme Court held that this Tribunal had committed gross error in its exercise of judicial review. It leaves no doubt that it was confined to the peculiar facts of that particular case where necessarily there had to be delay in initiation of the disciplinary proceedings.

7. In fact, the Supreme Court has consistently held that there should not be inordinate delay in initiation of the disciplinary proceedings. In case there is inordinate delay, satisfactory explanation should be forthcoming. In the decision rendered by the Supreme Court in the case of **State of Madhya Pradesh v. Bani Singh and Another**, 1990 (Supp) SCC 738, the Supreme Court was concerned with a similar controversy. In paragraph 4 of the judgement, the Supreme Court held:-

"The appeal against the order dated December 16, 1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to

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go on to decide the matter on merits. We are unable to agree with this contention of the learned counsel. The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no ground to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

Similar question came up for consideration before the Supreme Court in the case of State of Andhra Pradesh v.N.Radhakishan, 1998(2) SLR 786, the Supreme Court after scanning through various precedents concluded:-

"19. It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If

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the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

8. From the aforesaid, we can conveniently draw the inference that delay by itself is not a ground to quash the departmental proceedings. There is no straight-jacket formula in this regard to be prescribed as a pre-determined principle applicable to all cases and in all situations. Each case has to be decided on its own merits. As a broad workable rule, if the delay is explained, it cannot be a ground for quashing the disciplinary proceedings. If the delay is unexplained, the proceedings can be quashed. If there is inordinate delay from where an inference of prejudice can be drawn, the proceedings can be quashed. The court has to balance and weigh all these factors and determine each case whether prejudice has been caused or not. The nature of the dereliction of the duty and all other factors can also be taken into consideration.

9. Reverting back to the facts of the case as referred to above, the articles of charge against the

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applicant indicated that while as incharge Assistant Director in the year 1990 and 1991, he kept a large number of Carpet Weaving Training Centres defunct which showed his complete inability towards his official duty. It caused loss to the Government. The explanation for such an inordinate delay as referred to above, is not forthcoming. It was pointed that the Central Vigilance Commission had given the advice only on 12.10.2001 but that is not going to make any material difference as the matter was referred to the Central Vigilance Commission only on 15.6.2001.

10. In that event, it had been pointed that the investigation and enquiry had taken such a long time but the facts clearly show that the nature of the charge pertained to dereliction of duty with respect to certain Carpet Weaving Training Centres which were kept as defunct. It is not the assertion that it came to the notice of the Department/Ministry much later. If that was so, the position would have been different. If the fact was to the knowledge of the Department/Ministry, then it was not something that required some detailed investigation so as to take 12 years. In that view of the matter, it is obvious that the delay is inordinate and in the facts of the case, the delay can prompt us to conclude that it would cause prejudice.

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11. Accordingly, we allow the application and quash the impugned charge-sheet as well as the suspension order. No costs.

Announced.



(V. Srikantan)
Member (A)



(V.S. Aggarwal)
Chairman

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