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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 92/2002

New Delhi this the 8th day of November, 2002.

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

HON'BLE SHRI M.P.SINGH, MEMBER (A)

Shri Atma Ram
Assistant Commissioner of Police
Communication Unit
Rajpur Road, Old Police Lines
Delhi.

... Applicant

(By Dr.M.P.Raju, Advocate)

-versus-

1. Commissioner of Police
Police Headquarters
I.T.O. New Delhi.

2. The Secretary (Home)
Govt. of National Capital Territory of Delhi
Home (Police) Estt. Deptt.
5, Sham Nath Marg,
Delhi.

... Respondents

(By Advocate Shri George Paracken)

O R D E R

Justice V.S.Aggarwal:-

Shri Atma Ram (hereinafter described as the applicant), by virtue of the present application seeks to set aside the departmental enquiry and the proceedings pending against him in pursuance of the orders dated 5.1.1998 and 31.3.2000 to be without jurisdiction and it be directed that the respondents should drop the departmental proceedings.

2. Applicant had been working as an Assistant Commissioner of Police. He was to attain the age of superannuation on 31.8.1996. A few days before that,

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pertaining to an incident of 1992, a statement of articles of charge was served on the applicant on 26.8.1996. The same reads:-

"That the said Shri Atma Ram while functioning as Asstt. Commissioner of Police at Indira Gandhi International Airport during the year 1992 committed gross misconduct inasmuch as he abused his official position by favouring/helping unauthorised and unscrupulous persons to emigrate from the country on forged and tampered/interpolated documents with ulterior motive and malafide intention.

Shri Atma Ram, Asstt. Commissioner of Police has thus failed to maintain absolute integrity and conducted himself in a manner unbecoming of a Govt. servant thereby violating the provision of rule 3 of the CCS(Conduct) Rules, 1964."

The sum and substance of the assertions was that one Harbhajan Singh and one Jasvir Singh had checked in on their genuine passports and handed over their passports, boarding cards, green cards and tickets to the persons already sitting in the Transit Hall. The applicant is alleged to be responsible for sending two fake persons after changing them with the genuine passengers with the help of Inspector Om Parkash. On 8.7.1997, the LT.Governor had passed the following order:-

"I have carefully examined the file of Sh. Atma Ram. I have also perused the comments recorded in the file at page 53-55/N. The appeal of Sh. Atma Ram is primarily on the question of delay in commencement of enquiry against him. He has also made a reference to his past record which has earned him 4 years seniority for very good performance. Both these points raised by him have not been replied to. I have, therefore, gone through the material which is on the basis for the departmental enquiry. The charge against Sh. Atma Ram relates to the incidents of 1992. The only material against him is the statement of Insp. Om Prakash. He is an accused in the

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criminal case arising out of these incidents of 1992. There is no other corroboration. The delay that has taken place in starting the departmental enquiry is against canons of natural justice. His supervisory failure, if any, should have been instantly dealt with. It was not done in 1992 nor even in 1993. Moreover, departmental enquiry is based solely on the statement of an individual who is an accused in criminal case arising out of the same incident i.e. Insp. Om Prakash and Sh. Om Prakash's statement is without corroboration. I, therefore, am of the opinion that the departmental enquiry after his retirement is a delayed action and it is against the principles of natural justice. The delay in starting the departmental enquiry may be accounted for by the Commissioner of Police.

The only recourse at this stage is to complete investigation and if there is corroborative evidence available, Shri Atma Ram alongwith others, be prosecuted for the incidents of 1992. The decision to prosecute or otherwise should be taken within a month and I may be apprised of the action taken thereafter."

Subsequently, on the advice of the Central Vigilance Commission, the LT.Governor on 29.12.1997 had passed the order which reads:-

"I have gone through the records of the case. Action against Sh. Atma Ram Astt. Commissioner of Police (Retd) retired may be taken as recommended by the CVC vide its letter dated 23.8.96."

In pursuance of the same, the departmental proceedings had again been re-started and the applicant challenges the said action of initiating the disciplinary proceedings against him to be illegal.

3. In the reply filed, the application has been contested. It has been asserted that with respect to the lapses of the applicant, a departmental enquiry

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for major penalty was initiated. The applicant was served with a copy of the charge-sheet on 27.8.1996 before his retirement. The applicant filed Original Application No.773/2000 and even filed a writ petition in the Delhi High Court which was dismissed as withdrawn. In the application filed by the applicant in this Tribunal, a direction was issued to re-check the rule position with regard to the payment of commuted value of pension. The direction of this Tribunal was carried out. So far as the orders passed by the LT.Governor of Delhi are concerned, there was no dispute but it has been pointed that the LT.Governor had revoked his order of 5.1.1998. Thereafter, the departmental enquiry is continuing and can continue.

4. The learned counsel for the applicant urged that once the LT.Governor had dropped the departmental proceedings, he did not have the authority to re-start the said proceedings all over again. The argument proceeds on the premise that the LT.Governor could not revoke or recall the said order.

5. Perusal of the record reveals that when the memo and statement of articles of charge had been served on the applicant, he preferred an appeal against the proposed enquiry to the LT.Governor of Delhi. It is in pursuance of the said appeal that the LT.Governor had passed the order already reproduced above.

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6. Under Delhi Police (Punishment & Appeal) Rules, 1980, the Commissioner of Police, an Additional Commissioner of Police; Deputy Commissioners of Police and Additional Deputy Commissioners of Police; Principal, Police Training School or College; or any other officer of equivalent rank can at any time call for the records of awards made by any of his subordinate either on his own motion or otherwise and pass appropriate orders in terms of Rule 25-B of the said rules. Under Rule 25-C, the LT.Governor can at any time on his own motion or otherwise can call for the records of any case decided by the Commissioner of Police and confirm, modify, or annul the order forced in it.

7. It was rightly contended on behalf of the respondents that the order passed by the LT.Governor must be taken to be non est whereby the proceedings were dropped. There was no order passed by the Commissioner of Police as yet. In that view of the matter, it appears that the contention so raised that the order must be taken to be non-existent cannot be ignored.

8. Once the order of the Lt. Governor is non-est, we find no reason to accept the argument that it amounted to review of the earlier order or that it

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was re-starting of the departmental proceedings afresh.

9. In that event, it was urged vehemently by the learned counsel for the applicant that in any case, the proceedings could not be initiated after four years of the incident which pertains to the year 1992 and in support of his claim, reliance was placed on Rule 9 of the Central Civil Services (Pension) Rules, 1972. Sub-rules (1) and (2) of Rule 9 read as under:-

"9. Right of President to withhold or withdraw pension.

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pensions shall not be reduced below the

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amount of rupees three hundred and seventy-five (Rupees One thousand two hundred and seventy-five from 1.1.1996- see GID below Rule 49) per mensem.

(2)(a) The departmental proceedings referred to in sub-rule(1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment,-

(i) shall not be instituted save with the sanction of the President,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service."

10. Perusal of the Rule referred to above clearly indicates that it pertains to different eventualities. If the departmental proceedings had started while the Government servant was in service, the proceedings would be deemed to be continuing as if he continues to be in service. However, if the departmental proceedings are not instituted while the Government servant was in service and are re-started

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after his retirement, in that event the powers are hedged by the fact that they cannot be instituted save with the sanction of the President and shall not in respect of any event which took place more than four years before such institution.

11. In the present case, it is the first part of the rule which comes into play. The proceedings admittedly had been started while the applicant was in service. Therefore, the embargo of four years that the proceedings cannot start four years after the institution after retirement will have no role to play. Present proceedings had started while the applicant was in service. The LT.Governor by the subsequent order had reopened the same. It cannot be taken that there were de novo proceedings. Only the same charge-sheet which was earlier served is continuing and keeping in view this important fact, there is no escape from proceeding that the said argument about taking sanction of the President and institution after four years of the incident must be rejected.

12. Reliance was placed by the learned counsel on a decision of the Supreme Court in the case of *Bhagirathi Jena v. Board of Directors, O.S.F.C. and others*, (1999) 3 SCC 666. Perusal of the cited decision reveals that the disciplinary proceedings

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were instituted against Shri Bhagirathi Jena but the same could not be completed till his retirement. It was noted that there was no provision in the Orissa Financial State Corporation Staff Regulations, 1975 for deducting any amount from the provident fund for any misdemeanour. There was no provision for conducting disciplinary proceedings after retirement. The position herein is different. We have already referred to the relevant rules which permit continuance of the proceedings which had started while the Government servant was in service. Therefore, the case of Bhagirathi Jena (supra) is clearly distinguishable.

13. For these reasons, we have no hesitation in concluding that the present application is without merit; it must fail and accordingly is dismissed. No costs.

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(M.P.Singh)
Member (A)

/sns/

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(V.S.Agarwal)
Chairman