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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

OA No.1126/2001

NEW DELHI, THIS THE 3rd DAY OF OCTOBER, 2002.

HON'BLE MR.JUSTICE V.S.AGGARWAL, CHAIRMAN
HON'BLE MR.M.P.SINGH, MEMBER (A)

Surender Jit Singh
S/o LateShri Sohan Singh
R/o 1295, Sector 12
R.K.Puram
New Delhi-110022.

...Applicant

(BY SHRI D.S.MAHENDRU, ADVOCATE)

vs.

1. Director General of Civil Aviation,
Dept.of Civil Aviation
Technical Centre
Safdarjung Airport
New Delhi.
2. Union of India
through the Secretary
Ministry of Civil Aviation
Rajeev Bhawan
Safdarjung Airport
New Delhi.

...Respondents

(BY SHRI R.N.SINGH, ADVOCATE)

ORDER

JUSTICE V.S.AGGARWAL

Applicant (Surender Jit Singh) seeks quashing of the charge-sheet/Memorandum dated 13.11.2000 and further to restrain the respondents from taking any further action in pursuance of the said charge-sheet. It is also the claim of the applicant that the respondents should release all consequential benefits including promotion.

2. The relevant facts are that the applicant was appointed as Assistant Aerodrome Officer with the Director General of Civil Aviation with effect from 26.2.1973. In

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1979, he was promoted as Aerodrome Officer. He became unwell and had to undergo extensive consultations in different hospitals. It was diagnosed as abnormal growth in vocal cord. He had prayed for half pay leave from 16.7.1983 to 15.8.1983. Thereafter, he wanted extension of leave which was not granted and he joined on 16.8.1983. The applicant thereafter took leave from 24.8.1983 on medical grounds. He had still to seek further extension. A memorandum was served in this regard for the misconduct that he remained absent unauthorisedly from duty. The applicant had submitted the reply.

3. It is asserted that the National Airport Authority Act, 1985 came into being. The applicant is alleged to be not on duty from 1.6.1989 to 12.5.1997. A charge-sheet had been served (in question) which is being assailed on the ground that after 12 years, it could not be served and further that the applicant could not be served with another charge-sheet while earlier a similar charge-sheet had been served.

4. In the reply filed, the application has been contested. It has been pleaded that the applicant had been sent on deputation to National Airport Authority. He was transferred from Delhi to Ranchi but the applicant informed that he had fallen sick and was under treatment at Moolchand Hospital. The Director of Aerodromes, Calcutta advised the applicant to join his station immediately otherwise disciplinary action would be taken. The applicant neither reported for duty nor produced any application for leave. He tendered his resignation on 16.11.1992 which was not accepted because disciplinary proceedings were pending against him. The Ministry of Civil Aviation advised the Airport Authority of India to repatriate the applicant. In pursuance of the order, the applicant was repatriated on

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13.5.1997. The assertion of the applicant that the impugned Memo/Charge-sheet should be quashed has been controverted.

5. The learned counsel for the applicant in the first instance has urged that already the applicant has been issued a charge-sheet and, therefore, the second charge-sheet could not be served upon him. So far as this contention is concerned, it is indeed totally devoid of any merit. The first controversy of absence from duty or any other misconduct pertained to the period before 1.6.1989. Presently, the Memorandum so served refers to the absence of the applicant from 1.6.1989 to 13.5.1997. It is totally a different cause for a departmental action unconnected with the first. The law will not bar it. Therefore, the plea has necessarily to be rejected.

6. The main argument advanced on behalf of the applicant has been that even in this regard for the absence from duty from 1.6.1989 to 13.5.1997, action could not be initiated after 12 years and, therefore, the Memorandum so served should be quashed.

7. In support of his allegation, the learned counsel relied upon a decision of the Supreme Court in the case of State of Madhya Pradesh v. Bani Singh and another, AIR 1990 SC 1308 besides, decisions rendered by the Delhi High Court in the case of P.K.Bharia v. Municipal Corporation of Delhi and anr. in Civil Writ No.4432/1995 decided on 21.11.1997 and Shri M.M.Singh Saini v. Delhi Water Board &Anr. in Civil Writ No.2027/1999.

8. At the outset, we deem it necessary to mention that the principle of law has never been in dispute that a stale claim after many years could not be used as a tool in the



deparmental proceedings. In fact,in the case of Bani Singh (supra), the Supreme Court held:-

"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 grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."(Emphasis added).

In other words, the Supreme Court even felt that if there is satisfactory explanation, in that case, the delay will not be a good ground for quashing the departmental proceedings, if any. So far as the decisions in the cases of M.M.Singh Saini and P.K.Bharija (supra) are concerned, they were on peculiar facts of those cases. In both the cases, the Delhi High Court came to the conclusion that there is inordinate delay obviously not explained and, therefore, the proceedings were quashed. It also held that the explanation offered was not satisfactory.

9. In the case of P.K.Bharija (supra), the Delhi High Court held:-

"Now to permit the respondents to continue further with a stale enquiry for which no action was taken for a period of about 11 years and for which delay the explanation aforementioned that voluminous record had to be scrutinized,which is nothing, but a flimsy ground."

10. We may also take advantage in referring to a later decision of the Supreme Court in the case of **Food Corporation of India and Another v. V.P.Bhatia**, (1998) 9 SCC 131. Herein, the Supreme Court held that when the Central Bureau of

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Investigation was carrying out checks and taking samples, the delay occurred because thereafter the matter was referred to the Central Vigilance Commission. It was further held that the question as to whether there is undue delay in initiation of disciplinary proceedings or whether they are being unnecessarily prolonged has to be considered in the light of the facts of the particular case. Proceedings were not quashed on the said ground.

11. Reverting back to the facts of the present case, one necessarily has to look at the explanation that is offered. Applicant remained absent from 1.6.1989 to 12.5.1997. Therefore, he cannot be allowed to state that for the aforesaid absence from 1.6.1989 to 12.5.1997, proceedings cannot be started. This is one composite proceeding that is continuing till the applicant joined on 13.5.1997. When the applicant was himself absent, in that event, the delay has necessarily to occur in this regard. The charge-sheet could be served after few years of his joining duty and it cannot be termed in the facts of the present case that there had been inordinate delay in this regard.

12. Confronting with this position, the learned counsel for the applicant contended that the respondents themselves had been asking for legible copy of the representation dated 20.11.2000. After carefully considering the said letter, we find it is only in office procedure that is being adopted for disposal of the pending representations. It has no reflection on Memorandum/Charge-sheet that had been issued.

13. Applicant has approached this Tribunal at the initial stage. It is totally inappropriate while judicially reviewing to interfere at this initial stage. The Tribunal has only to see whether the statement of facts

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supplied disclosed the misconduct or not. The Supreme Court in the case of Dy. Inspector General of Police v. K.S. Swaminathan, (1996) 11 SCC 498 had gone into this controversy that the Tribunal or the court will not interfere if on the face of it, misconduct is disclosed. In para 4, in this regard, the Supreme Court held:-

"4. It is settled law by a catena of decisions of this Court that if the charge memo is totally vague and does not disclose any misconduct for which the charges have been framed, the tribunal or the court would not be justified at that stage to go into whether the charges are true and could be gone into, for it would be a matter on production of the evidence for consideration at the enquiry by the enquiry officer. At the stage of framing of the charge, the statement of facts and the charge-sheet supplied are required to be looked into by the court or the tribunal as to the nature of the charges, i.e. whether the statement of facts and material in support thereof supplied to the delinquent officer would disclose the alleged misconduct. The Tribunal, therefore, was totally unjustified in going into the charges at that stage. It is not the case that the charge memo and the statement of facts do not disclose any misconduct alleged against the delinquent officer."

to the contrary

After observing so, the order of this Tribunal was set aside.

14. Identical was the position in the case of State of Punjab and Ors. v. Ajit Singh, (1997) 11 SCC 368. In the said case, the High Court had set aside the charge-sheet that was served at the initial stage. The High Court had gone into the merits of the allegations. The Supreme Court held:-

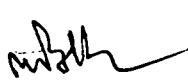
"3. We are, however, of the view that the High Court was in error in setting aside the charge-sheet that was served on the respondent in the disciplinary

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proceedings. In doing so the High Court has gone into the merits of the allegations on which the charge-sheet was based and even though the charges had yet to be proved by evidence to be adduced in the disciplinary proceedings. The High Court, accepting the explanation offered by the respondent, has proceeded on the basis that there was no merit in the charges levelled against the respondent. We are unable to uphold this approach of the High Court. The allegations are based on documents which would have been produced as evidence to prove the charges in the disciplinary proceedings. Till such evidence was produced it could not be said that the charges contained in the charge-sheet were without any basis whatsoever."

Identical is the position herein. Looking at the charge-sheet, the continuous absence of applicant would clearly indicate that as at present there is no mis-conduct on the part of the applicant. It is entirely to be gone into by the concerned authority ^{later} as to whether a mis-conduct is established or not. At this stage, therefore, there is no ground to interfere.

15. For these reasons, the application being without merit must fail and is dismissed. No costs.


(M.P.SINGH)
MEMBER (A)


(V.S.AGGARWAL)
CHAIRMAN

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