

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1433 of 2001

New Delhi, this the 29th day of October, 2001

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)
HON'BLE MR. G.S. TAMPI, MEMBER (A)

A.K. Vohra
Superintending Surveyor
of Works (Civil)-I,
Civil Construction Wing,
All India Radio, Sookna Bhawan,
7th Floor, Lodhi Road, CGO Complex,
New Delhi.

..Applicant

By Advocate: Shri R. Venkatramani, Sr. Counsel with
Shri S.M. Garg, Counsel.

Versus

1. Union of India
through the Secretary,
Ministry of Information and Broadcasting,
Shastri Bhawan, New Delhi-110 001.
2. The Chief Engineer (Civil)-I,
All India Radio, 6th Floor,
Sookna Bhawan, Lodhi Road,
CGO Complex, New Delhi.

..Respondents

(By Advocate: Shri R.N. Singh)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Judl)

Applicant Shri A.K. Vohra has filed this OA under Section 19 of the Administrative Tribunal's Act, 1985 seeking to quash the charge-sheet issued to him vide memo dated 7.9.2000 by respondent No.1.

2. Facts in brief are that the applicant was working as Superintending Engineer (C) CCS, AIR, New Delhi. Certain tenders were accepted for the work of Construction of Transmitter Building for AIR at Kalpa (HP) in the year 1990-91 and the applicant is alleged to have committed irregularity in accepting of the tender for the said work.

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3. It is further alleged that in June, 1990 tenders for the said work were called by the Executive Engineer (C), CCW, AIR, Chandigarh and in the first instance only two agencies had quoted for the work in which the agency of Shri Om Prakash Sharma was found to be lowest, but he was forced to attend for negotiation and somehow the agency withdrew his offer and the intimation in this regard was sent to the department after expiry of the validity of tender. Thereafter tenders were recalled in January, 1991 without any change in the scope of the work and the applicant is alleged to have accepted the tender for the said work during the second call at a higher cost than the reasonable tender amount which was submitted by the earlier agency of Shri Om Prakash Sharma during the first call and within a short span of time, the exchequer was burdened with additional financial liability of Rs.2.06 lakhs. Thus, it is alleged against the applicant that this act of the applicant showed a lack of devotion to duty and is alleged to have behaved in a manner unbecoming of a Government servant and thus alleged to have committed violation of Central Civil Services (Conduct) Rules, 1964.

4. The case of the applicant is that he was also called upon to submit his explanation and he had submitted a detailed clarification as to how the appropriate procedure had been followed.

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5. The applicant further alleges that the transactions pertain to the year 1991 and the charge-sheet has been issued now in September, 2000, which is totally mala fide and only unreasonable charges have been framed against him after a delay of about 7 years. The applicant also submitted that even on merits the difference in the revised justification and the lowest tender received was about 9.9% and the said difference in the percentage mentioned by Shri C.K. Ahuja was above the permissible limit of 5% for acceptance of tender and as the justification was above 5%, it was beyond the competence of the applicant to accept the tender without negotiations. Thus no charge is alleged to have been made out against the applicant even on merits.

6. The applicant also submitted that since the charge-sheet has been issued with an inordinate delay, so the same is liable to be quashed.

7. The respondents who are contesting the OA submitted that in May, 1992, Central Vigilance Commission forwarded a complaint of alleged irregularities committed by the applicant with regard to the Construction of Transmitter Building for AIR at Kalpa. The complaint was forwarded to the DG, AIR who got a preliminary enquiry conducted in the matter. The report was received in July, 1993 which was examined by DG, AIR and CCW and it was found that certain irregularities did exist and the allegations were prima facie established against the applicant and two other officers who were on deputation to the CCW from other departments of the Government of

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India. The said appeal was forwarded to the DG, AIR in 1993. Thereafter explanations of the applicant and other officers were called for. Then the case was examined in the Ministry of I&B and then forwarded to CVC in June, 1996 for their advice and CVC gave their advice on 24.4.1997 for initiation of major penalty proceedings against all the officers including the applicant.

8. It is further submitted that along with the advice the documents were not received back from CVC so charge-sheet could not be issued to the applicant immediately. Sometime was consumed for return of documents from the CVC and ultimately in December, 1997, a charge-sheet was issued to the applicant. On merits also it is submitted that the procedure adopted by the applicant for holding negotiations and for acceptance of document was not in accordance with the CPWD manual, so a charge-sheet was issued.

9. We have heard the learned counsel for the parties and gone through the records of the case.

10. Shri R. Venkatramani, learned Senior Counsel appearing along with Shri S.M. Garg submitted that there was an inordinate delay in issuing the charge-sheet as the matter pertained to the year 1990-1991 and the charge-sheet had been issued only in September, 2000.

11. The counsel for the applicant has also stated that in the counter-affidavit the respondents have alleged that a complaint was received against the applicant from the CVC about the alleged irregularities

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committed by the applicant, but the charge-sheet does not mention about any such complaint nor the applicant has ever been informed about the said complaint and no explanation from the applicant has ever been called upon any such complaint, so on that ground also the charge-sheet could not have been issued to the applicant without seeking his explanation first.

12. In reply to this, the learned counsel for the respondents submitted that a perusal of the charge-sheet itself disclosed serious irregularities committed by the applicant and the enquiry is in progress. The applicant will not be punished without affording him an opportunity of hearing and even the courts at this stage should not normally interfere with the administrative action taken by the department for holding an enquiry.

13. As regards the delay is concerned, the counsel for the respondents submitted that the delay alleged to have been caused in issue of charge-sheet is fully explained as the complaint was received from the CVC with regard to the irregularities committed by the applicant during construction of the building in question at Kalpa.

14. The complaint was first forwarded to DG, AIR who got a preliminary enquiry conducted and a report was received only in 1993 which was examined by the DG and it was found that there were certain irregularities during processing of the tender. Thereafter explanations were called from the applicant and two other officers who were also involved. Then the entire material was sent to the CVC in 1996 for their advice and file was received back

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sometime in April, 1997 but when the file was received, still the original documents which were sent to the CVC were not received back along with the file and thereafter various requests were made for return of the original documents and ultimately the same were received back on 5.12.1997 and then again the matter was placed before DG,AIR for preparation of draft charge-sheet in respect of all the officers as per the advice of CVC. After the charge-sheet in respect of two officers was received, same was forwarded to CPWD for further action, but in the meanwhile the applicant has submitted one more representation which caused further delay in his case and it was only an administrative delay as the file had been shuttling between the Ministry of I&B and CVC and various correspondences had been exchanged so time has been spent for this purpose till the finalisation of decision for issue of charge-sheet is normal and the court should not interfere with the same.

15. As regards the contention raised by the applicant that the charge-sheet had been issued without any merits, we are of the view that this contention of the applicant is not sustainable because the charge-sheet had been issued to the applicant after seeking his explanation in detail and the replies submitted by him have also been placed on record which also shows that the department while taking a decision to initiate departmental enquiry against the applicant had also consulted the CVC and had examined the explanation given by the applicant in detail. While exercising the power of judicial review the Tribunal cannot go into the question at this stage particularly with regard to the

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fact that the variation in percentage of acceptance of price of the tender was within the limit or not and whether on that score a charge-sheet could have been issued or not. Since the explanation given by the applicant had not been found satisfactory by the department, that is why this charge-sheet is being issued and the applicant will be given appropriate opportunity to explain the same during the enquiry.

16. The next question is with regard to the delay and the counsel for the applicant has also referred to a judgment reported in 1993 (3) CAT page 133 (SLJ) entitled as Sushil Kumar Dutta Vs. UOI & Others wherein it has been held that when an employee was issued a charge-sheet on 16.7.1991 on a misconduct alleged to have been committed in 1977-78 and there was no satisfactory explanation for an inordinate delay, the court had held the disciplinary proceedings could not be continued.

17. The counsel for the applicant has also cited another judgment reported in 1998(4) SCC 154 entitled as State of A.P. Vs. N. Radhkishan wherein it was held as follows:-

" Departmental enquiry - Delay in conclusion of - When vitiates the proceedings - Held, there are not predetermined principles applicable to all case and in all situations - Each case has to be considered taking into account all relevant facts and circumstances - Balance has to be maintained between purity of administration and the adverse effect which the prolonged proceedings have on an employee - Unexplained delay in conclusion of the proceedings, further held, itself is an indication of prejudice caused to the employee - Disciplinary proceedings in the present case therefore quashed -

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Employee directed to be promoted in accordance with the recommendations of the DPC - Two charge memos subsequent to DPC also directed to be ignored for the purpose of promotion - Andhra Pradesh Civil Services (CCA) Rules, 1963, R.19(2) - Andhra Pradesh Civil Services (CCA) Rules, 1991 Rr.20, 21 and 45 - Promotion - Sealed cover procedure - Delay in conclusion of departmental enquiry - Effect".

18. The counsel for the applicant has also relied upon another case reported in 1995(2) SCC 570 entitled as State of Punjab and Others Vs. Chaman Lal Goyal wherein it has been held as under:-

" Service Law - Departmental enquiry - Charge-sheet - Delay in service of, whether vitiated the charges - Held, should be decided by the balancing process i.e. weighing the factors for and against and taking decision on the totality of circumstances - Hence, where the Superintendent of Jail was charged after a long period of 5.1/2 years for being responsible for escape of prisoners involving death of a number of persons and there were facts for as well as against him and in the departmental enquiry prosecution evidence was completed, held, the charges and the appointment of the enquiry officer should not have been quashed but the delinquent officer, in his turn should have been considered for promotion and, if found fit, granted promotion subject to the result of the departmental enquiry - Further, the departmental enquiry directed to be concluded within eight months, failing while the same would be deemed to be dropped".

19. Relying upon these judgments, the counsel for the applicant submitted that since there is a lot of delay as the charge-sheet had been issued in September, 2000 for an alleged misconduct which pertains to the year 1990-1991 and since the same has been issued after a lapse of a period of 10 years, the same is liable to be quashed.

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20. In reply to this, the counsel for the respondents has also relied upon a judgment reported in 1996(3) SCC 157 entitled as Secretary to Government Prohibition & Excise Department Vs. L. Srinivasan wherein it has been held as follows:-

" Service Law - Suspension - Suspension pending enquiry into charges of embezzlement and fabrication of records - Criminal trial on those charges also pending - Scope of judicial review - Quashing of suspension ad charges at this very stage, held, grossest error on the part of the Administrative Tribunal as it could not act as an appellate forum - Departmental enquiry - Charge-sheet - Scope of judicial review - Administrative Tribunal's Act, 1985, Ss.14 and 15 - Administrative Tribunal - Powers of "

21. The counsel for the respondents has also relied upon another judgment reported in 1998(9) SCC 131 entitled as Food Corporation of India and Another Vs. V.P. Bhatia wherein it has been held as follows:-

" Service Law - Departmental enquiry - Enquiry Procedure - Delay - Whether in a particular case, unduly long - Determination of - Held, has to be determined on facts - So examined, the delay, held, not unduly long - CBI receiving information that sub-standard crates were supplied to FCI - After carrying out checks and taking samples in the year 1986, CBI undertaking suo motu investigation and finding the information to be correct - On 30.12.1988, CBI recommending the holding of department enquiry against the employees concerned of FCI - Matter referred to Central Vigilance Commission which, on 22.5.1989 recommending initiation of departmental enquiry for imposing major penalty - Consequently, charge-sheet served on the delinquent employees in September, 1990 - In view of provision in Vigilance Manual (adopted by FCI) prohibiting departmental enquiry during investigation by CBI and having regard to the alleged misconduct involving a large number of documents and witnesses (69 documents and 44 witnesses)

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the delay of slightly more than a year in serving the charge-sheet after the recommendation of the Central Vigilance Commission, held, not unduly long and not vitiation of the initiation of departmental enquiry - Vigilance Manual of Central Vigilance Commission, Vol.I Ch.II para 1.7 (as adopted by FCI)".

22. As regards the merits of the case is concerned, the counsel for the respondents has referred to a judgment reported in 1996(11) SCC 498 entitled as Dy. Inspector General of Police Vs. K.S. Swaminathan wherein it has been held as follows:-

" 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 of 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, 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".

23. After examining the relevant documents on record and the law as cited by the respective counsel appearing for the parties, we may mention that as regards the merits of the case is concerned, we would like to refrain ourselves from going into the merits whether a charge-sheet issued to the applicant has any merits or not because it is not a case of the applicant that the charge-sheet is vague and the statement of allegations

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annexed along with the charge-sheet do not disclose any misconduct on the part of the applicant. On the contrary, the charge-sheet along with the documents do show that prima facie there were certain irregularities committed for processing the tender which resulted in the loss of funds to the exchequer.

24. As regards the delay is concerned, the judgments quoted by the counsel for the applicant also do not apply to the present facts of the case because the delay which has occurred in issuance of charge-sheet has been properly explained by the respondents. The irregularities when came to the light and only thereafter the department had started issuing memos seeking explanation and a preliminary enquiry is also alleged to have ben conducted and only thereafter, after consulting the CVC, the charge-sheet had been issued, So we are of the considered opinion that the law as referred to by the applicant does not apply to the present facts of the case. It differs from case to case and whether any inordinate delay has taken place for issuing a charge-sheet and in this case we find that there is no inordinate delay and whatever delay has occurred, that is only a procedural delay which has been explained by the respondents. Hence, we find that the OA has no merits and the same has to be dismissed.

25. In view of the above, nothing survives in the OA which is accordingly dismissed. No costs.

(GOVINDAN S. TAMPI)
MEMBER (A)

(KULDIP SINGH)
MEMBER (JUDL)