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Central Administrative Tribunal
Principal Bench

O.A.2059/2001

New Delhi this the 2nd day of May, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J).
Hon'ble Shri S.A.T. Rizvi, Member(A).

Jai Chand,
S/o late Shri Sant Ram,
R/o A-2/109, Sector-5,
Rohini,
Delhi-110 085. Applicant.

(By Advocates S/Shri Nabin Singh, C.L. Dhawan and
Purushottam Dhakanlia)

Versus

1. Government of NCT of Delhi
through the Directorate of
Vigilance,
Old Secretariat,
Delhi.
2. The Commissioner of Police,
Police Headquarters,
Indraprastha Estate,
New Delhi.
3. The Dy. Commissioner of Police
(Vigilance),
Police Headquarters,
Indraprastha Estate,
New Delhi. Respondents.

(By Advocate Shri George Paracken)

O R D E R (ORAL)

By Shri S.A.T. Rizvi, Member(A).

In May, 1994, the applicant, who was then SHO Prasad Nagar, was found responsible for dereliction of duty which led to a vigilance enquiry being made into the incident. The incident took place on 5.5.1994. Based on the aforesaid inquiry, a show cause notice for awarding a censure entry to the applicant was issued on 13.5.1994. However, the same was withdrawn on 15.9.1994. *D*

2. Before the aforesaid notice was withdrawn, an order had been passed on 8.9.1994 initiating departmental proceedings against the applicant. He was then still an Inspector in Delhi Police. A month thereafter, the applicant was promoted to the post of Assistant Commissioner of Police (ACP). This was done on 10.10.1994. In the circumstances, the aforesaid order dated 8.9.1994 became invalid as it related to the applicant's status as an Inspector. The respondents had in these circumstances the option to proceed against the applicant in accordance with the relevant rules applicable to ACPs. In other words, the respondents could proceed against the applicant in accordance with the CCS (CCA) Rules, 1965. They did not do so and have ultimately, after a gross delay of more than 7 years, issued Memorandum dated 23.7.2001 initiating departmental proceedings against the applicant.

3. The learned counsel appearing on behalf of the applicant submits that the aforesaid proceedings initiated belatedly on 23.7.2001 in relation to an incident which took place way back in 1994, without any explanation whatsoever for the delay, deserve to be set aside. In support of his submission, the learned counsel places reliance on the case of **State of M.P. Vs. Bani Singh and anr.** decided by the Supreme Court on 5.4.1990 (AIR 1990 SC 1308). In that case, the departmental proceedings had been initiated against the delinquent official after more than 12 years of delay and no satisfactory explanation had been offered for the delay. The Court held that the

disciplinary proceedings, in the circumstances, deserved to be quashed. The relevant paragraph taken from the aforesaid judgement can be usefully produced as under:

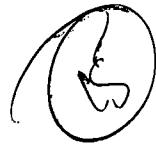
"4. The appeal against the order dt. 16-12-1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned Counsel. The irregularities which were the subject-matter of the enquiry is said to have taken place between the years 1975-1977. 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 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".

4. The learned counsel appearing on behalf of the respondents agrees that a reasonable explanation for the delay in question is not forthcoming in the reply filed on behalf of the respondents. However, he has placed before us a copy of the letter dated 18.4.2002 addressed by the Deputy Commissioner of Police, Vigilance, Delhi to the Deputy Secretary (Home), Government of NCT, Delhi. The aforesaid letter, we find, has been written on the initiative of the learned counsel appearing on behalf of the respondents. A perusal of the aforesaid letter reveals that the show cause notice issued for imposing the penalty of censure was withdrawn after the respondents were satisfied that a departmental inquiry needed be initiated

against the applicant. The delay in initiating disciplinary proceedings thereafter remains totally unexplained, excepting for a period of two years between 1994 and 1996 when certain consultations reportedly took place, as reflected in the aforesaid letter dated 18.4.2002. In our judgement, such consultations are of no consequence and cannot help the respondents in tiding over the problem of delay. Furthermore, there is no explanation at all in respect of the period after 1996. The facts of this case are simple and straight forward. A certain person was beaten up by the police which led to collection of a good number of members of the public and to a state of commotion. It is alleged that the applicant-Inspector made no efforts to bring the situation under control. This is all that has been alleged against the applicant. The matter was nevertheless inquired into by the Vigilance. Thereafter, the respondents decided to impose the penalty of censure. Eventually, they did not proceed to impose that penalty and took a tentative decision to initiate the departmental proceedings. These proceedings were, however, initiated only after a prolonged delay of over seven years and there is no explanation whatsoever in respect of the delay.

5. The learned counsel appearing on behalf of the respondents seeks time to unravel the cause of delay by accessing the Lt. Governor's office. We are not inclined to grant him time and for this again the reason is simple. Firstly, the reply filed on behalf of the respondents miserably fails to come out with any plausible reason for the delay. Secondly, the letter dated 12.4.2002 placed before us by way of explanation of the delay has failed to

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convince us. In fact, we have already noted that the contents of the aforesaid letter make the situation even worse insofar as the delay is concerned. It is clear from the aforesaid letter that the show cause notice for imposing the penalty of censure was withdrawn, on the ground that the respondents were considering initiation of departmental proceedings against the applicant. This would mean that a tentative decision to initiate departmental proceedings had been taken in September, 1994 itself. The delay, therefore, starts from September, 1994. After all, the present O.A. was filed on 16.8.2001. The respondents thus had plenty time at their disposal to tell us the entire truth about the delay. In any case, as already concluded by us, there is no explanation whatsoever for the delay. In the circumstances, we do not consider it necessary to grant him any further time.

6. In the light of the foregoing and having regard to the rule laid down by the Supreme Court in Bani Singh's case (supra), the O.A. succeeds and is allowed. The impugned Memo dated 23.7.2001 stands quashed and is set aside. No order as to costs.

(S.A.T. Rizvi)
Member(A)

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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