

Central Administrative Tribunal
Principal Bench: New Delhi

(8)

O.A. No. 2060/2001

This the 25th day of September, 2002

Hon'ble Mr. Justice V.S. Aggarwal, Chairman.
Hon'ble Mr. V.K. Majotra, Member (A)

A.K. Gupta
Deputy Director
Central Social Welfare Board
B-12, Institutional Area,
South of IIT
New Delhi.

-Applicant

(By Advocate: Shri Jayant Das with Shri Ajit
Pudussery)

Versus

1. Union of India
Through Secretary
Department of Woman and Child Development
Shastri Bhawan
Dr. Rajendra Prasad Marg
New Delhi.
2. The Central Social Welfare Board
B-12, Institutional Area,
South of IIT,
New Delhi
Through its Chairperson.

-Respondents

(By Advocate: Shri Arun Bhardwaj)

ORDER

Mr. V.K. Majotra, Member (A)

Applicant has challenged memorandum of charge dated

1/2.11.2000 (Annexure -A).

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2 Briefly stated the facts of this case are that as Assistant Project Officer, applicant was posted in Orissa State Social Welfare Advisory Board (for short 'Board') between 22.1.1987 and 19.11.1990. Under the Socio-Economic Programme, the Board used to finance voluntary organizations through concerned State Social Welfare Advisory Board for setting up small scale industries for the upliftment of the economic condition of the needy and destitute women. One Shri Manoj Kumar Das, Secretary of Jai Durga Cultural Association submitted an application on 15.2.1986 for grant of Rs.90,400/- under the Socio Economic Programme to set up a Plastic Industry. In his pre-investment and marketing survey report, applicant had observed that the financial condition of the said unit was poor on the basis of the balance sheet, statement of accounts etc. Central Social Welfare Board rejected the proposal of the said association. The applicant visited the unit again on 17.8.1987 and submitted a favourable report on the basis of which the Board sanctioned an amount of Rs.90,400/- as Grant-in-Aid in favour of the said association. It is alleged that applicant had submitted a tailored survey report on the basis of which the Board granted funds to the non-existent Association and no Plastic Industry was set up by the said organization as per the terms and conditions of the Grant.

3. The learned counsel of the applicant contended that

Annexure-A should be quashed and set aside on the following grounds:-

- i) That applicant's duty constituted pre-investment and marketing survey report to assess whether the association would raise necessary funds to claim Grant-in-Aid. His duty did not relate to preparation of technical feasibility report which fell within the ambit of the industry department. The Grant-in-Aid could have been sanctioned if the technical feasibility report was positive.
- ii) In their investigation, CBI did not find any incriminating evidence against the applicant and recommended that case against the applicant be closed and, as such, as per Annexure A-C dated 8.10.1990, the Board closed the case against the applicant.
- iii) Immediately after closer of the case on the recommendations of the CBI vide Annexure A-D dated 22.10.90, applicant was promoted to the post of Deputy Director in the office of the Board. This promotion wiped out prior misconduct, if any, of the applicant.
- iv) Relying on **State of Madhya Pradesh Vs. Bani Singh** 1990 (Suppl.) SCC 738, delay of 13 years in initiating disciplinary proceedings has made them liable to be quashed.

4 It has not been rebutted on behalf of the respondents that whereas pre-investment and Marketing survey report is made by the applicant, technical feasibility is certified by the Industry department. However, the Grant-in-Aid is sanctioned on the recommendations of the Board on taking into consideration pre-investment and marketing survey report as well as technical feasibility report. Admittedly, earlier the

applicant had submitted a report that on the basis of balance sheet for the year 1985 the financial health of the organization was unsound. A positive report was submitted later on, on the basis of the balance sheet for the year 1986. In the teeth of a positive balance sheet for the year 1986, it could not be said that the applicant had tailored a report to favour the said organisation. Pre-investment and marketing survey report is important for evaluating the worthiness of the unit seeking Grant-in-Aid but no basis has been shown to state that the pre-investment and marketing survey report has been tailored when it was based on balance sheet for the year 1986.

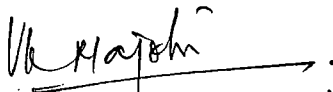
5. In their report dated 31.8.89 (Annexure-B) CBI has concluded that Shri M.K. Das and Shri S.P. Mohanty had entered into criminal conspiracy and committed criminal breach of trust. However, "no incriminating evidence could be established against Shri A.K. Gupta and Smt. Sanjukta Choudhary in the alleged transaction". Consequently, vide Annexure-C the Board on 8.10.90 on the basis of the CBI report closed the case against the applicant. Further, the applicant Vide Annexure-D dated 22.10.90 was also promoted to the post of Deputy Director. It has been contended on behalf of the applicant that applicant's pre-promotion misconduct, if any, of the applicant stood wiped out, ~~as has been settled by the Hon'ble Supreme Court of India in several cases.~~


6. On the other hand, the learned counsel of the respondents stated that the DPC for promotion was held on 19.4.90 when it was mentioned that CBI had filed FIR under Crime No. RC 37(S)89 under section 120(P)/406/IPC against the applicant and hence DPC decided to keep its recommendation about the applicant under 'sealed cover'. However, when no incriminating evidence was found by CBI against the applicant, he was promoted. Learned counsel stated that actually CBI had filed two cases against the applicant. The second case namely, RC-37(S)/89 dated 20.5.91 was still pending against the applicant which could not be brought to the notice of the DPC. In the departmental proceedings related to charge under RC-26(S)/91, the applicant was imposed minor penalty of censure for failure to properly supervise the functioning of the organization. Case relating to RC-37(S)/89 was not concluded and was pending when the applicant was promoted. Thus, the applicant was wrongly promoted and such promotion cannot wash-off the prior misconduct. The fact about two CBI cases against the applicant has not been denied on behalf of the applicant. It has also not been denied that departmental proceedings relating to the case RC-26(S)/91 were concluded prior to DPC for promotion to the post of Deputy Director ^{is} held. Promotion of the applicant would certainly have been adversely affected by punishment in RC 26(S)/91. Be that as it may, the disciplinary authority had a right to proceed departmentally

against the delinquent while criminal investigation/proceedings were pending against him.

7. In response to the plea of inordinate delay in initiating disciplinary proceedings against the applicant, it has been stated on behalf of the respondents that lot of time has been consumed in correspondence with the CBI and Central Vigilance Commission. According to them, statement of documents was received from the CBI on 19.7.2001 only. In our considered view, consultation with Central Vigilance Commission or process of obtaining copies of documents from CBI is no satisfactory explanation for causing inordinate delay in initiating disciplinary proceedings against the applicant. Whereas a reasonable period can, of course, be accepted as a plausible explanation for the above process, In the present case respondents have consumed more than a decade in this regard which has to be termed as inordinate delay in initiating the disciplinary proceedings against the applicant. ^b in the facts of the case. ^b

8. Having regard to the discussion made above and particularly as no satisfactory explanation has been rendered for the inordinate delay caused for proceeding against the applicant departmentally, OA succeeds and is allowed and Annexure-A dated 1/2.11.2000 is quashed and set aside.


(V.K. Majotra)
Member (A)


(V.S. Aggarwal)
Chairman