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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.2566/2001

Friday, this the 8th day of March, 2002

Hon'ble Shri S.A.T. Rizvi, Member (A)

Murli Manohar Singh
Under Secretary,
National Commission for SCs/STs
20/65, Lodhi Colony
New Delhi-3

..Applicant

(By Advocate: Shri Amrendra Singh, senior counsel
with Shri C.D.Singh)

Versus

The Secretary,
Department of Personnel & Training,
North Block,
New Delhi

..Respondents

(By Advocate: Shri K.C.D.Gangwani)

O R D E R (ORAL)

Under challenge in this O.A. is the order passed by the disciplinary authority on 11.4.2001 (A-9) by which a penalty of reduction in pay by two stages in the time scale of pay for a period of two years has been imposed on the applicant with a further direction that during the period of such reduction, the applicant will not earn any increment of pay and that on the expiry of such period, the reduction will not have the effect of postponing future increments of his pay. The applicant has also challenged the respondent's Memorandum dated 20.11.1996 (A-1) by which a charge-sheet has been served on him which has, in due course, led to the imposition of the aforesaid penalty. He also seeks a direction to the respondent to promote/upgrade him to the post of Deputy Secretary.

2. I have heard the learned counsel at length and have perused the material placed on record.

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3. The various contentions raised on behalf of the applicant are that he was not allowed to avail of the services of a legal practitioner as defence assistant and certain documents necessary for his defence were not made available by the respondent. According to the learned counsel appearing on behalf of the applicant, the aforesaid penalty has been imposed without proper application of mind on the part of the disciplinary authority. Furthermore, according to him, it is also a case of no evidence as well as malice in law. The charge against the applicant relates to an event which took place as far back as in June, 1988, the charge-sheet in respect whereof was also served some five years ago on 20.11.1996. The disciplinary proceedings have been initiated after a period of eight years from the date of the event and the same have been concluded more than five years after the charge-sheet was served on the applicant. In all, therefore, the respondent has taken more than 13 years to impose the aforesaid penalty on the applicant. Inordinate delay which has thus taken place has caused serious prejudice to the applicant's case and on this ground alone, the aforesaid impugned orders deserve to be quashed.

4. The learned counsel appearing on behalf of the respondent has, on the other hand, submitted that the delay which has taken place in this case was unavoidable as the matter remained under CBI investigation. He has also submitted that the disciplinary proceedings have been conducted properly and in accordance with the prescribed procedure and the penalty imposed on the applicant is in order. *Dr*

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5. After a careful consideration of the facts and circumstances of this case in their entirety and having regard to the various contentions raised on behalf of the parties, I have reached the conclusion that for reasons set out below there is considerable merit in the applicant's case and accordingly, the impugned orders deserve to be quashed and set aside.

6. It appears that on 25.6.1988, the official desk of the applicant, who was then an Assistant Director in the Directorate of Estates, was inspected on surprise in association with the CBI leading to the recovery of 33 receipts which had remained pending at his desk from three weeks to over two months without being attended to. The applicant had not cared to get the aforesaid receipts diarised and despite orders/directions of the higher officers, the said receipts were not processed for appropriate orders. The applicant did not take any action on the aforesaid receipts with malafide intention and he was also indifferent to work. The charge-sheet served on him, therefore, provided that the applicant had failed to maintain absolute integrity and devotion to duty thereby contravening Rule 3(1)(i) and 3 (1) (ii) of the CCS (Conduct) Rules, 1964. Not attending to the aforesaid receipts in a timely fashion, nor getting them diarised with an ulterior motive is, in short, the charge levelled against the applicant.

7. The report of the inquiry authority became available on 13.4.1998 which found the charges levelled

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against the applicant as only partly proved. Since the

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disciplinary authority did not agree with the aforesaid finding, his note of disagreement was issued on 21.8.1997 (A-6) which gave the following reasons for disagreement with the findings arrived at by the inquiry authority:-

"a) The inquiry officer has found that CO has to accept responsibility of delaying a large number of receipts, some of which were of urgent nature and that he has not been able to explain the delay satisfactorily.

b) Considering the nature of the receipts and the period of delay the inference of malafide is obvious, especially from the fact that he officer could not give before the inquiry officer a satisfactory explanation for the delay on his part."

The aforesaid note of dissent has been replied to by the applicant in detail in his representation placed at A-7.

8. In the aforesaid representation, the applicant has pointed out that the charge of malafide has been specifically ruled out by the inquiry authority, who has observed in that regard as under:-

"But the prosecution has failed to produce any evidence whatsoever to support the charge that the CO did not take action on these receipts with malafide intentions just to exploit the anxiety of the applicants. Therefore, this part of charge is not proved."

9. The UPSC also, as brought out in the counter reply filed on behalf of the respondent, did not agree that the receipts in question had been kept pending by the applicant with malafide intention. The UPSC had further gone on to assert that merely because of the pendency of a few receipts, it would not be proper to generalise and

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hold that the applicant was indifferent to work having regard to the fact, in particular, that the diary register asked for by the applicant as a defence document could not be made available to him during the enquiry. On the aforesaid basis, the UPSC recommended imposition of a minor penalty of censure on the applicant.

10. The disciplinary authority, who had disagreed with the findings arrived at by the inquiry authority, also disagreed with the views held by the UPSC for which following reasons have been assigned in the counter reply:

i) Since the UPSC held the applicant responsible for non-disposal/delay in attending to 10 receipts out of the 33 mentioned in the charge, the delay incurred which has remained un-explained could have taken place intentionally with a view to exploiting the applicant.

ii) The nature of receipts on which no action was taken by the applicant was quite sensitive and there were clear directions from the higher authorities to attend to them. Since the applicant had failed to do so, malafide on his part could be definitely inferred.

iii) Even if the conduct of the applicant of being indifferent to work could not be generalised as held by the UPSC, the fact remained that at least in respect of the aforesaid 10 receipts no action was taken by the applicant.

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(emphasis supplied)

11. In the impugned order dated 11.4.2001, the disciplinary authority has reiterated the grounds mentioned in the previous paragraphs and has held that malafide could be inferred from the examination of the case.

12. I have carefully considered the material placed on record and the order passed by the disciplinary authority. Malafide, in my judgement, can never be established by inference. It has to be established by positive evidence. The disciplinary authority has not placed reliance on positive evidence in support of the conclusion reached by him as regards the allegation of malafide. No such material was available before the inquiry authority either. The UPSC has also held that the charge of malafide cannot be proved. The inquiry authority has also ruled out the possibility of malafide as per his observation reproduced in para 8 above. In order to sustain the charge of malafide, the respondent could have examined the persons connected with the aforesaid receipts so as to ascertain from them whether the applicant was actually engaged in exploiting them with an ulterior motive. No such attempt has been made by the respondent in this case. The charge of malafide cannot, therefore, be sustained. Inasmuch as the said charge of malafide is at the core of the allegations made against the applicant, the order passed by the disciplinary authority stands vitiated.

13. Initially, a total of 33 receipts were found
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number got reduced to 16 when it was found that the remaining receipts related to some other desk and not to the official desk of the applicant. This number has been reduced further to 10 only on the basis that these 10 were sensitive in nature. It appears that these 10 receipts related to MPs and other important persons and have, therefore, been regarded as urgent requiring speedy disposal. Since these 10 receipts were not, according to the disciplinary authority, disposed of in a timely fashion, the said authority has proceeded, in the impugned order dated 11.4.2001, to raise a presumption that the applicant delayed the disposal of the aforesaid 10 receipts intentionally with a view to exploiting the applications. This again is an inference drawn from the delay such as had taken place. In my judgement, it will be unfair to draw such an inference merely because the disposal of the aforesaid receipts had been delayed. Here again, as in the case of the allegation of malafide, an attempt should have been made by the respondent to examine individual receipts. The respondent has not done so. Moreover, the judgement as regards delay does not seem to be based on norms set for the disposal of receipts. No such norm has been mentioned or referred to by the disciplinary authority in the impugned order dated 11.4.2001. As a matter of fact, each of the 10 receipts in question should have been meticulously examined so as to ascertain the true intention of the applicant, by relying on the norms aforesaid and the time that had actually elapsed since the receipts in question came into the applicant's possession. Furthermore, such receipts are generally reviewed periodically by higher officers so

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as to minimize and eliminate delays in the handling and disposal of receipts. Some of the aforesaid receipts, it is admitted, remained pending for over 2/3 months. If the higher authorities had carried out periodical review of the pendency of receipts, the position could have improved and the delays would have come to their notice much earlier. No such action appears to have taken by the respondents. No detail whatsoever of any of the aforesaid receipts has been given in the order passed by the disciplinary authority, and yet he has gone on to say that "This un-explained delay needed to be viewed seriously".

14. The applicant had asked for the production of the diary register to establish his contention that the delay in the disposal of the receipts in question had taken place on account of excessive work load and partly also due to the practice of working prevalent in the section concerned. Certain other documents were also required by the applicant to bring home his contention of excessive work load. These too were not supplied. The applicant had produced three defence witnesses mainly in support of his contention that the aforesaid working practices of his section inevitably led to delays which remained in the knowledge of the higher officers. The evidence given by these witnesses has not been analysed by the inquiry authority, who has thus arrived at his conclusion in regard to delay without any basis. For the same reason, the charge relating to non-diarising of the receipts also cannot be sustained.

15. Insofar as the engagement of a legal practitioner as the applicant's defence assistant is concerned, the

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applicant does not seem to have a case inasmuch as a legal practitioner is generally allowed in complicated cases and where the respondents themselves engage a legal practitioner as presenting officer. Non-supply of documents has indeed, in the circumstances outlined in the preceding paragraphs, caused serious prejudice to the defence of the applicant and on this ground also, the proceedings stand vitiated.

16. The learned counsel appearing on behalf of the applicant has drawn my attention to the judgement rendered by the Hon'ble Supreme Court in Union of India Vs. H.C. Goel decided on 30.8.1963 and reported in AIR 1964 SC 364 to contend that in a departmental enquiry, the charged officer cannot be punished on the basis of mere suspicion. The relevant extract taken from the aforesaid judgement reads as under:-

"26.... Though we fully appreciate the anxiety of the appellant to root out corruption from public service, we cannot ignore the fact that in carrying out the said purpose, mere suspicion should not be allowed to take the place of proof even in domestic enquiries. It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules..."

17. I have noticed that the charge of malafide as well as the charge of delay in the disposal of some of the receipts is based on presumptions raised by the disciplinary authority. This amounts to judging the

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situation on the basis of conjectures and surmises and even suspicion. I have also not failed to notice that malafide forms the very basis of the disciplinary proceedings drawn up against the applicant. But the said charge, for the reasons already stated, cannot be sustained. Like-wise the other related charges cannot also be sustained for the reasons already mentioned. In conclusion, therefore, I hold that the disciplinary authority has failed to apply his mind properly and judiciously and has proceeded to impose the penalty in question on the applicant even though proper evidence was not available. The proceedings have been grossly delayed and this too was without any justification. Such abnormal delays most generally cause prejudice to the cases of charged officers. In the present case, the delay of 13 long years has, without any doubt, caused a serious prejudice to his defence as reflected in the facts and circumstances revealed in the OA and referred to in the preceding paragraphs.

18. In arriving at the aforesaid conclusions, I have not considered it necessary to dwell on the recommendation made by the Central Vigilance Commission (CVC) to which a passing reference has been made in the counter reply by saying that at the second stage of advice sought from the CVC, that Commission had held the charges as fully established against the applicant and had advised imposition of a major penalty on the applicant. A copy of the advice given by the CVC has not been placed on record, nor the same appears to have been supplied to the applicant. Further, the advice of the CVC is, by no

means, binding on the disciplinary authority, who is expected to take a final decision in the matter in his own discretion and subject to his own satisfaction.

19. In short, in the background of above discussion, I hold that these departmental proceedings suffer from the vice of lack of proper evidence, non-application of mind, gross unexplained delay and violation of principles of natural justice.

20. In the light of the foregoing, the OA is found to have considerable merit and is allowed by quashing and setting aside the order dated 11.4.2001. The respondent is directed to grant all the consequential benefits to the applicant. There shall be no order as to costs.


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

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