CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.3237/2001

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New Delhi this the 13th day of September, 2002.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

Shri R.D.Chetival
S/o Late Shri Ram Sarup
R/o B-1/149
Paschim Vihar
New Delhi- 110063. ..... Applicant

(By Shri Madhav Panikar, Advocate)

-versus-

1. Union of India
Through its Secretary
Ministry of Labour
Sharam Shakti Bhawan
Rafi Marg
New Delhi-110001.

2. Central Provident Fund Commissioner
Bhavishya Nidhi Bhawan
14, Bhikaji Cama Place
New Delhi-110066.

3. The Chairman
Central Board of Trustees
Employees Provident Fund Organisation
Shram Shakti Bhawan
Rafi Marg
New Delhi-110001.

4. Shri A.K.Aggarwal
Commissioner for Departmental Inquiries
Central Vigilance Commission
Satarkata Bhawan
Block -A, GPO Complex
INA, New Delhi-110003. .... Respondents

(By Shri V.S.R.Krishna, Advocate)

O R D E R

Justice V.S.Aggarwal:-

Applicant (R.D.Chetival) was working as

VS Agg

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Regional Provident Fund Commissioner during the year 1990-91. He was served with a Memo dated 1.6.2000 with articles of charge. By virtue of the present application, he seeks quashing of the said Memo, allegations contained therein and the disciplinary proceedings stating to be illegal, arbitrary and mala fide. The applicant raised two pertinent questions in this regard-

(a) the departmental proceedings cannot be initiated after an inordinate delay of about 9 years of the alleged action/order of the applicant; and

(b) it was a quasi judicial order passed by the applicant and in this regard, the disciplinary proceedings cannot be initiated.

2. Needless to state that the application as such has been contested by the respondents asserting that the action of the disciplinary authority is just and proper and bona fide. There is no malice or arbitrariness in it. It is denied that on the assertions made by the applicant on the abovesaid grounds, the application deserves to be allowed.

3. Taking up the first plea of the applicant that after an inordinate delay of almost 9 years, the departmental proceedings cannot be initiated, we deem it necessary to mention that this principle that there should not be an inordinate delay in initiation of departmental proceedings is based on equity and fair play. If after many years of the alleged order, departmental proceedings are not

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initiated, the concerned officer may not be aware of the facts. With the passage of time, some documents may not be available and at times, it may not be possible in the facts of a case to defend the charge properly. All the same, there is no hard and fast rule. Nor any particular time-limit has been prescribed. The said matter has to be examined on the touch-stone of prejudice, if any, that may be caused to the concerned person in the facts of that particular case.

4. In para 1.7 of Chapter III of Volume I of the Vigilance Manual of Central Vigilance Commission, it has been stated that once a case has been entrusted to the Central Bureau of Investigation for investigation, further inquiries should be left to them and the departmental enquiry should be held in abeyance till such time the investigation is completed by the Central Bureau of Investigation.

5. The question pertaining to delay has always drawn the attention of the courts. In the case of **State of Madhya Pradesh** v. **Bani Singh & another**, 1990 (Supp) SCC 738, the Supreme Court took strong objection to the initiation of departmental proceedings after 12 years. It was held that it would be unfair to permit the departmental enquiry to proceed at that stage. In para 4 of the judgement, the Supreme Court held :-

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"4. The appeal against the order dated December 16, 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 1975-77. 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 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."

6. Few years later, in the case of **B.C.Chaturvedi** v. **Union of India and Ors.**, JT 1995 (8) S.C. 65, the Supreme Court was concerned with the same question. Therein the Central Bureau of Investigation had investigated and recommended that evidence was not strong enough for successful prosecution but disciplinary proceedings may be initiated. The Supreme Court further held that each case depends on its own facts and delay by itself will not violate Article 14 or 21 of the Constitution. The findings of the Apex Court in this regard reads:-

"11. The next question is whether the delay in initiating disciplinary proceedings is an unfair procedure depriving the livelihood of a public servant offending Article 14 or 21 of the

> Constitution. Each case depends upon its own facts. In a case of the type on hand, it is difficult to have evidence of disproportionate pecuniary resources or assets or property. The public servant, during his tenure, may not be known to be in possession of disproportionate assets or pecuniary resources. He may hold either himself or through somebody on his behalf, property or pecuniary resources. To connect the officer with the resources or assets is a tardious journey, as the Government has to do a lot to collect necessary material in this regard. In normal circumstances, an investigation would be undertaken by the police under the Code of Criminal Procedure, 1973 to collect and collate the entire evidence establishing the essential links between the public servant and the property or pecuniary resources. Snap of any link may prove fatal to the whole exercise. Care and dexterity are necessary. Delay thereby necessarily entails. Therefore, delay by itself is not fatal in this type of cases. It is seen that the C.B.I. had investigated and recommended that the evidence was strong enough for successful prosecution of the appellant under Section 5 (1)(e) of the Act. It had, however, recommended to take disciplinary action. No doubt, much time elapsed in taking necessary decisions at different levels. So, the delay by itself cannot be regarded to have violated Article 14 or 21 of the Constitution."

Identical was the view expressed by the Apex Court, in the case of **Secretary to Government, Prohibition & Excise Department** v. **L.Srinivasan**, 1996(1) ATJ 617, the Supreme Court had expressed the same view that when it takes long time to detect such charges, the proceedings as a result of delay need not be quashed. The order passed by the Central Administrative Tribunal on the contrary had been set aside.

7. Lastly we take advantage in referring to a decision of the Supreme Court in the case of **Food Corporation of India** v. **V.P.Bhatia**, JT 1998 (8) SC

16. In that matter also disciplinary proceedings had been initiated after a long time. On the said ground, the delinquent had preferred a petition in the High Court. The High Court had quashed the proceedings because of inordinate delay. The Supreme Court had set aside the order of the High Court holding that undue delay in initiation of disciplinary proceedings may cause prejudice to the employee and, therefore, the courts have been insisting that the disciplinary proceedings should be initiated with promptitude and expeditiously. The facts of each case cannot be lost sight of. Since earlier Central Bureau of Investigation was looking into the matter and thereafter it had been referred to the Central Vigilance Commission, It was held that the proceedings need not have been quashed.

8. From the aforesaid, we can conveniently draw a conclusion that delay as such in initiation of departmental proceedings should be discouraged and if it causes prejudice, necessarily the proceedings can be quashed. However, if the delay is explained as held in the case of Bani Singh (supra), the proceedings need not be quashed and facts of each case necessarily have to be looked into.

9. In the present case in hand, the respondents have preferred their counter and have explained the reason for the delay. In this regard, it has been explained that the matter has been investigated by various Government agencies. Precise answer of the respondents reads:-

> " The matter has been investigated by various Govt.agencies and in view of the fact that performance of quasi-judicial duties was involved, lot of care and caution had to be observed before a definite view could be formed in this case. It is a fact that the CBI conducted investigation into the matter on the basis of source information registered during September, 1996 and held a preliminary inquiry and later on, the matter was referred to the Department during January, 1998 for further examination of the reported misconduct on part of the various officers including the applicant. The Department, thereafter, undertook a detailed examination of the matter and after undergoing the laid down procedure initiated disciplinary proceedings in the matter on 1.6.2000 as a prima facie case indicating misconduct on the part of the applicant had emerged. It is improper for the applicant to seek setting aside of the same without contesting the charges before the Inquiry Officer who has been appointed with the specific purpose of giving rival sides the opportunity to produce evidence in their favours. There is no inordinate delay and a prima facie case exists against the applicant and hence, an inquiry is warranted in the facts and circumstances of this case."

In other words, it is obvious that the delay has been explained. Firstly the Central Bureau of Investigation had conducted the investigation and a preliminary enquiry was held. It was referred to the department in the year 1998 for further examination of the reported misconduct. There was a detailed examination and the Memo was served on

the applicant on 1.6.2000. It is clear from the aforesaid that the delay occurred because of the earlier enquiry that was pending investigation and examination by the department. In the facts of the case, therefore, it is not a fit and proper case where there is unexplained delay to prompt us to quash the disciplinary proceedings. Once the delay has been explained, the case of Bani Singh (supra) will not apply or come to the rescue of the applicant.

10. As regards the second question urged at the Bar, the learned counsel had vehemently argued in turn that since it is a quasi judicial order passed, there could be an error of judgement or not but disciplinary proceedings should not be initiated.

11. At the outset, we deem it necessary to mention that it is not being disputed that the order passed was quasi judicial order. The question that has to be answered is as to whether when such is the situation, the departmental proceedings should be initiated or not.

12. The learned counsel for the applicant strongly relied upon a decision of the Supreme Court in the case of **Zunjarrao Bhikaji Nagarkar v. Union of India and others**, AIR 1999 SC 2881. The Supreme Court had held that an error of law assuming it was committed should be corrected by

recourse to the appellate forum. It was further held:-

> "40. When we talk of negligence in a quasi judicial adjudication, it is not negligence perceived as carelessness inadvertence or omission but as culpable negligence. This his how this Court in State of Punjab v. Ram Singh Ex-Constable (1992) 4 SCC 54): (1992 AIR SCW 2595): AIR 1992 SC 2188) interpreted ""misconduct"" not coming within the purview of mere error in judgement, carelessness or negligence in performance of the duty. In the case of K.K.Dhawan (1993 (2) SCC 56) : (1993 AIR SCW 1361 : AIR 1993 SC 1478 : 1993 Lab IC 1028) the allegation was of conferring undue favour upon the assessees. It was not a case of negligence as such. In Upendra Singh's case (1994 (3) SCC 357) : (1994 AIR SCW 2777) the charge was that he gave illegal and improper directions to the assessing officer in order to unduly favour the assessee. Case of K.S.Swaminathan (1996 (11) SCC 498), was not where the respondent was acting in any quasi judicial capacity. This Court said that at the stage of framing of the charge the statement of facts and the chargesheet supplied are required to be looked into by the Court to see whether they support the charge of the alleged misconduct. In M.S.Bindra's case (1998 (7) SCC 310) : (1998 AIR SCW 2918 : AIR 1998 SC 3058 : 1998 Lab IC 3491) where the appellant was compulsorily retired this Court said that judicial scrutiny of an order imposing premature compulsory retirement is permissible if the order is arbitrary or malafide or based on no evidence. Again in the case of Madan Mohan Choudhary (1999) 3 SCC 396 : (1999 AIR SCW 648 : AIR 1999 SC 1018), which was also a case of compulsory retirement this Court said that there should exist material on record to reasonably form an opinion that compulsory retirement of the officer was in public interest. In K.N. Ramamurty's case (1997) 7 SCC 101 : (1997 AIR SCW 3677 : AIR 1997 SC 3571), it was certainly a case of culpable negligence. One of the charges was that the officer had failed to safeguard Government revenue. In Hindustan Steel Ltd.'s case (AIR 1970 SC 253), it was said that where proceedings are quasi judicial penalty will not ordinarily be imposed unless the

party charged had acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. This Court has said that the penalty will not also be imposed merely because it is lawful so to do. In the present case, it is not that the appellant did not impose penalty because of any negligence on his part but be said it was not a case of imposition of penalty. We are, however, of the view that in a case like this which was being adjudicated upon by the appellant imposition of penalty was imperative. But then, there is nothing wrong or improper on the part of the appellant to form an opinion that imposition of penalty was not mandatory. We have noticed that Patna High Court while interpreting Section 325, I.P.C. held that imposition of penalty was not mandatory which again we have said is not a correct view to take. A wrong interpretation of law cannot be a ground for misconduct. Of course it is a different matter altogether if it is deliberate and actuated by mala fides."

13. It was further concluded that a wrong interpretation of law cannot be a ground for misconduct. But it was a different matter altogether if it was deliberate and actuated by mala fides. The Supreme Court further held :-

"42. Initiation of disciplinary proceedings against an officer cannot take place on an information which is vague or indefinite. Suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent officer. Merely because penalty was not imposed and the Board in the exercise of its power directed filing of appeal against that order in the Appellate Tribunal could not be enough to proceed against the appellant. There is no other instance to show that in similar case the appellant invariably imposed penalty.

"43. If, every error of law were to constitute a charge of misconduct, it would impinge upon the independent

> functioning of quasi judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi judicial authority something more has to be alleged than a mere mistake of law, e.g.in the nature of some extraneous consideration influencing the quasi judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge-sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi judicial authority. The entire system of administrative adjudication whereunder quasi judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings."

This question has been drawing the attention of various courts including the Supreme Court more often than once. In the case of **Union of India and others v. A.N.Saxena**, AIR 1992 SC 1233, there were serious charges against an Income Tax Officer where the assessee-trust was used apparently only as a device for converting the unaccounted income of the family of the trustees. The Supreme Court negatived the argument that no disciplinary proceedings can be initiated in regard to a judicial or quasi judicial order. It was concluded:-

> "8. In our view, an argument that no disciplinary action can be taken in regard to actions taken or purported to be done in the course of judicial or quasi-judicial proceedings is not correct. It is true that when an officer is performing judicial or quasi-judicial

> functions disciplinary proceedings regarding any of his actions in the course of such proceedings should be taken only after great caution and a close scrutiny of his actions and only if the circumstances so warrant. The initiation of such proceedings, it is true, is likely to shake the confidence of the public in the officer concerned and also if lightly taken likely to undermine his independence. Hence the need for extreme care and caution before initiation of disciplinary proceedings against an officer performing judicial or quasi-judicial functions in respect of his actions in the discharge or purported to discharge his functions. But is not as if such action cannot be taken at all. Where the actions of such an officer indicate culpability, namely, a desire to oblige himself or unduly favour one of the parties or an improper motive there is no reason why disciplinary action should not be taken."

Same view found favour in the decision rendered by the Supreme Court in the case of **Union of India** and **Others** v. **Upendra Singh**, (1994) 3 SCC 357 and the Supreme Court held that the Government is not precluded from taking disciplinary action for violation of the Conduct Rules and even if there is no judicial or quasi judicial order passed, departmental proceedings can be initiated. The guide-lines provided for such like case were:-

> "(i). Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty ;
>
> (ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;
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> (iii) if he has acted in a manner which is unbecoming of a government servant;
>
> (iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party;

(vi) if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago 'though the bribe may be small, yet the fault is great'.

"29. The instances above catalogued are not exhaustive. However, we may add that for a mere technical violation or merely because the order is wrong and the action not falling under the above enumerated instances, disciplinary action is not warranted. Here, we may utter a word of caution. Each case will depend upon the facts and no absolute rule can be postulated"

Similarly in the case of **Union of India** v. **Ajoy Kumar Patnaik, (1995) 6 SCC 442 when a similar** question had been urged, the Supreme Court held:-

"9. It would thus be clear that an officer though performs official quasi-judicial functions, his conduct in the discharge of the quasi-judicial act or omission relates to the activity in the course of the discharge of his duties as a servant of the Government and bears reasonable relation or nexus with the nature and conduct of the service and, when it casts reflection upon his reputation, integrity or devotion to duty as a public servant, that would be squarely referable to the conduct of the public servant amenable to disciplinary proceeding. When it is a misconduct, the competent authority is equally entitled to take a decision whether an officer has impeccable integrity and absolute devotion to duty for further continuation in service. The competent authority would be free to consider the material, particularly the latest one, and form a bona fide decision in the public interest to compulsorily retire an officer from service."

14. Though at the first blush, it appears that the case of Zunjarrao Bhikaji Nagarkar (supra) takes a different view from the earlier decisions, but on a closer scrutiny, it is obvious that in

fact there is no difference of opinion. Ordinarily in order to maintain administrative efficiency, orders passed by judicial or quasi judicial authorities should not be the subject matter of departmental proceedings. Correctness of the order can only be challenged in appeal but if it results in dishonestly intentionally trying to help another person, the things would take a different shape. If it is deliberate or done actuated by mala fides, departmental proceedings can always be initiated.

15. Imputation of charge has been appended as Annexure A-1. The nature of the imputation of charge clearly shows that it is not the correctness of the order which is the subject matter of the departmental proceedings. The question to be gone into would be whether there is culpability, a desire to oblige himself or unduly favour a party by his act in passing the order, it can be looked into. In this regard some element of the nature of the order always comes in and can be looked into. If all judicial or quasi judicial orders are made free from departmental proceedings irrespective of the nature of the assertion indeed it would cause greater harm to the administration and, therefore, the said principle has not been accepted by the courts. Consequently the said plea in the facts of the present case must also be negatived.

16. For the aforesaid reasons, the application being without merit must fail and is dismissed.

(V.K.Majotra)
Member (A)

(V.S.Aggarwal)
Chairman

/sns/