

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1990/1999

New Delhi, this 18th day of April, 2000

Hon'ble Shri Justice V.Rajagopal Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

B.S. Bhatia
B-2, Officers Flats
Central Jail, Tihar, New Delhi .. Applicant

(By Smt. Meera Chhibber, Advocate)

versus

Union of India, through

1. Lt. Governor
Raj Niwas, Delhi ,
2. Chief Secretary
5, Sham Nath Marg
Govt. of NCT of Delhi
3. Inspector General of Prisons
Tihar Jail, Delhi .. Respondents

(By Shri Rajan Sharma, through proxy counsel
Shri A. Bhardwaj)

ORDER(oral)

By Reddy, J. -

The applicant is a Dy. Supdt. Grade II in Tihar Jail, New Delhi. It is stated that during 1983 there was an agitation in Jawahar Lal Nehru University (JNU, for short) in which a number of students were arrested as they were staging a demonstration. Out of the girl students who were kept in a separate cell in the jail 4 girls escaped from custody. On an allegation that the applicant along with some other jail officials were responsible for the escape of four girl students from the cell, a criminal case has been registered against the applicant and others in 1983 in the court of Smt. Kanwal Inder, ACMM, Delhi. Before the charge has been framed against them, an application was moved by the State on 10.3.83 to withdraw the case from prosecution



against all the accused in the case. The applicant was one of the accused persons in the above case. The case was accordingly allowed to withdraw^{by} by the court by an order dated 11.9.86. Subsequent to the above proceedings, on the self-same allegations a departmental enquiry was sought to be initiated and a charge-memo has been issued on 11.3.91. This charge-memo is now impugned in this OA.

2. The applicant pleads that no Enquiry Officer (EO, for short) has been appointed in this case and nothing has been done in pursuance of the charge-memo. It is stated that in 1994 departmental enquiry has been initiated by the department against three other officials again on the same allegations but these proceedings were closed by the Department in the proceedings dated 17.8.94. But the proceedings against the applicant still continued, without any justification.

3. It is contended by the learned counsel Mrs. Meera Chhibber that the impugned enquiry is vitiated by unexplained and inordinate delay and that there is no material for the prosecution to initiate or proceed with the enquiry against the applicant. Since the incident pertains to 1983, there is an inordinate delay even in initiating disciplinary proceedings against the applicant in 1991. Even thereafter the respondents were not at all taking any interest in the matter and even EO has not been appointed in the case. It is contended that the delay has vitiated the entire proceedings.

CAB

(12)

4. Learned counsel for the respondents however submits that since the matter pertains to more than one department, there was some delay in initiating and completing the proceedings against the applicant. It is further submitted that the enquiry would be over within three months from today and hence it is not a case where the charge-memo has to be quashed.

5. We have given careful consideration to the arguments advanced by the learned counsel for the parties. It is seen that as the respondents have not availed of the opportunities afforded to them for filing reply, their right to file reply was forfeited by an order dated 24.3.2000.

6. This is a case where four girl students who were arrested on account of an agitation, escaped from the jail custody. These girls were students of JNU and were remanded only to be released later. They were not criminals where the department should have taken a serious view of the escape of ~~four~~ girl students. It should be noticed that the prosecution of the applicant and others was allowed to be withdrawn by the court by its order dated 11.9.86, where the Court has stated as to the grounds given in the application for withdrawal ~~where~~ that "there was nothing on record to show that there was any deliberate act attributed to these jail officials in the whole episode and pendency of these criminal proceedings against the custodians of jail inmates is having a great demoralising effect on jail administration and jeopardising the efficiency and

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effectiveness of the jail official over their inmates". (3)
 It is seen from the above that the prosecution has been dropped against all the accused which included the applicant also. Thus it was clearly admitted by the ~~respondent~~ applicant that there was factually no material against the applicant, to proceed against him.

7. Learned counsel for the respondents does not give ~~value~~ any explanation for the delay from 1986 to 1991. Even after the charge-memo was given there is no explanation for not appointing the EO till now. It is admitted that no EO has been appointed so far. Even in 1994 when proceedings against two other jail officials were dropped on the same allegations, no action was taken by the respondents in so far as the applicant is concerned. It therefore appears that the department is not serious in pursuing the charges against the applicant. In the circumstances, we are of view that there is unexplained and unconscionable delay in the enquiry and that in their own showing, there does not seem to be any material against the applicant to persist the enquiry. The nature of allegations also, in our view, are not serious as to ~~persecute~~ prosecute the applicant even after the criminal proceedings were dropped.

8. In a similar situation in the case of State of AP Vs. N.Radhakishan (1998) 4 SCC 154, the learned judges have observed as under:

"In considering whether delay has vitiating the disciplinary proceedings, the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained, prejudice to the delinquent employee is writ large on the face of it. It could also be

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seen as to how much the disciplinary authority is serious in pursuing the charges against its employee." 14

Further it was observed that the "delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting disciplinary proceedings".

9. In view of the above, we are of the view that as the delay has caused serious prejudice to the applicant, the impugned charge-sheet has to be quashed.

10. The OA is allowed. As it is alleged by the learned counsel for the applicant that the respondents have promoted juniors to the applicant, pending the above charge memo/enquiry, ^{✓ respondents} they are directed to consider the case of the applicant for promotion and take suitable action, expeditiously, in this regard. L

No costs.

Shanta F

(Smt. Shanta Shastry)
Member(A)

Om Prakash
(V.Rajagopala Reddy)
Vice-Chairman(J)

/gtv/