

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA-1059/98

New Delhi this the 20th day of December, 1999.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN  
HON'BLE MR. R.K. AHOOJA, MEMBER (ADMN.)

Sh. Gopal Saran,  
Assistant Engineer,  
R/o H.No. 177,  
Paper Wali Gali, Hapur,  
Distt. Ghaziabad (UP).

...Applicant

(By Advocate Shri S.P. Sharma)

-Versus-

1. Union of India through  
Secretary to the Govt. of India,  
Ministry of Urban Development,  
Nirman Bhawan,  
New Delhi.

2. The Director General Works,  
Directorate General of Works,  
Central Public Works Department,  
Nirman Bhawan,  
New Delhi.

3. The Director of Administration,  
Directorate General of Works,  
CPWD, Nirman Bhawan,  
New Delhi.

...Respondents

(By Advocate Shri N.K. Aggarwal)

O R D E R

By Reddy, J.-

The applicant seeks to quash the chargesheet and the enquiry that is sought to be held in pursuance of the said chargesheet, against him.

2. The facts leading to filing of the case are as follows:

2.1 The applicant joined the Central Public Works Department (CPWD) during 1968. He was promoted as Assistant Engineer (Civil) in 1981 and thereafter he has been working as such to the satisfaction of the

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department. The applicant was working as an Assistant Engineer (Civil) in Manipur from 17.5.81 to 21.3.83. He was posted on the work of construction of CRPF residential and non-residential buildings. He was relieved therefrom to join the Government of Mozambique on foreign assignment. He returned from foreign assignment in 1985 and thereafter he has been posted at Delhi and working continuously as Assistant Engineer (Civil) in Delhi.

2.2 After a lapse of eight years the applicant received a memorandum dated 4.11.91, wherein certain irregularities were alleged against him regarding his duties during the period of his posting at Manipur from 17.5.81 to 21.3.83. The applicant denied the allegations in his explanation dated 19.11.91. Apparently, satisfied with the reply, no action was taken by the respondents thereafter. Surprisingly, he received the chargesheet dated 22.12.97, alleging the same irregularities that were contained in the memo dated 4.11.91. Thus after a lapse of 15 years, the applicant is now chargesheeted for the alleged irregularities committed by him during the period when he worked at Manipur. He, therefore, made a representation against the chargesheet, asking for the inspection of the records and also for supply of the copies of other relevant records to enable him to refresh his memory in view of the alleged incidents occurred as back as in 1981-83. He also stated that the charges were vitiated on grounds of inordinate delay. Again he made a representation on 6.1.98 against holding of the enquiry and requesting to drop the same. The

applicant received the letter dated 20.3.98 stating that the applicant would get full opportunity to inspect the documents during the course of the enquiry. Hence the present OA.

2.3 It is the case of the respondents that due to various administrative reasons the chargesheet could not be issued earlier. <sup>It is</sup> ~~They is~~ further stated that the charges are serious and the applicant has caused heavy loss of about Rupees one lakh by his negligence, carelessness and lack of devotion to duty. It was, further stated that since the contractor filed a suit questioning the cancellation of the agreements entered into by the department with the contractor during the period when the applicant was working at Manipur and for the purpose of defending the suit, the original records from the department have been sent to the court. Arbitration cases have also been initiated by the contractor against the respondents. Hence, there was delay in completing the enquiry before issuing the chargesheet.

3. It is vehemently contended by the learned counsel for the applicant that it is impermissible in law to initiate the disciplinary proceedings after a lapse of 15 years and the inordinate and unexplained delay vitiated the chargesheet. It is further contended that as the charges are technical in nature as they relate to supply of the material to the contractor in advance, contrary to the instructions. It is also stated that charges being not serious and the delay was

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not properly explained, it is not appropriate for initiating the disciplinary proceedings after a lapse of 15 years.

4. It is lastly contended by the learned counsel that the charge and the proposed enquiry are malafide and motivated to deprive the applicant of his due promotion and to enable his juniors to be promoted.

5. The learned counsel for the respondents, raises a preliminary objection as to the maintainability of the OA. Relying upon Union of India & Anr. v Ashok Kakker, 1995 (1) Supp. SCC p. 180 learned counsel submits that the OA is pre-mature as the charge memo was challenged without reply to the charge memo. The above decision undoubtedly supports the plea of the learned counsel. But this decision need not detain us any longer as the applicant did file the reply to the charge in Annexure A-5 requesting for the supply of the documents and submitting that the charges being delayed should be dropped. Hence, we are, therefore, of the view that the objection is sustaintable. Learned counsel, however, refutes the contentions and submits that in view of the reasons given as stated in the counter-affidavit the delay was properly explained why the chargesheet could not be issued earlier. It is further contended that the charges being serious, mere delay would not vitiate the proceedings.

6. We have given careful consideration to the pleadings as well as to the arguments advanced by the learned counsel on either side.

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7. Before we proceed further it is necessary to notice the nature of charges that are contained in the impugned memorandum. They are as under:

"The said Shri Gopal Saran while posted and functioning as Assistant Engineer, Sub-division-III of Manipur Central Division, CPWD, Imphal during 17.5.81 to 21.3.83 was incharge of the works of Construction of 3 Bn Group Centre at Imphal (Residential and Non-residential buildings) (i) SH: Construction of 12 Nos. type-III Quarters (a) building portion (b) internal W/S and S/I, (ii) SH: Construction of 152 Nos. Type I (spl.) quarters Double Storeyed including W/S & S/I and (iii) SH: Construction of Primary School (a) Building portion (b) W/S & S/I. During the execution of said works carried out under Agreement NOs. 16/SE/EE/MCD/79-80, 21/CE/EE/EE/-MCD/79-80 and 22/SE/EE/EE-/MCD/80-81 respectively, the said Shri Gopal Saran committed the following lapses in violation of the codal provisions thereby facilitating the mis-appropriation of Govt. stores amounting to Rs.84,260/- by the contractor.

#### ARTICLE-I

The said Shri Gopal Saran issued the steel to the contractor far in excess when compared with the actual requirement as per the progress and pace of execution of works.

#### ARTICLE-II

The said Shri Gopal Saran failed to propose recovery of the entire cost of the materials issued to the contractor while submitting the various R/A bills of the aforesaid works.

Thus, the said Shri Gopal Saran, Assistant Engineer (Civil) by above acts failed to maintain absolute integrity and exhibited lack of devotion to duty, thereby contravening Rules 3 (1) (i) and 3 (1) (ii) of C.C.S. (Conduct) Rules, 1964."

8. A perusal of the Articles of charge would disclose that they relate to the work of the applicant during the period 17.5.81 to 21.3.83 while he was incharge of the construction of the residential and

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non-residential buildings at Manipur. They pertain to the issuance of the steel to the contractor in excess to the actual requirements and failure to recover the steel issued to the contractor, thus facilitating the contractor to misappropriate an amount of Rs.84,260/-.

9. It is no doubt true that there is considerable delay in issuing the chargesheet.

10. The question, therefore, to be decided is whether the delay vitiated the charge memo and enquiry. The law is well settled on this point. The Supreme Court has in a catena of decisions held that the disciplinary enquiry should be initiated with promptitude soon after the irregularities were noticed and that the delay would not only prejudice the charged officer in his defence but also makes it difficult to prove the charges. In State of Punjab & Others v. Chaman Lal Goyal, (1995) 2 SCC 570, the learned Judges held:

"It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the

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factors appearing for and against the said plea and take a decision on the totality of circumstances."

10. Again in Collector of Central Excise, Ahmedabad v. Television & Components Pvt. Ltd., JT 1998 (8) SC 16 the Supreme Court reiterated:

"that undue delay in initiation of disciplinary proceedings may cause prejudice to the employee concerned in defending himself and, therefore, the courts insist that disciplinary proceedings should be initiated with promptitude and should be completed expeditiously. The question as to whether there is undue delay in initiation of disciplinary proceedings or whether they are being unnecessarily prolonged has to be considered in the light of the facts of the particular case."

11. It is, therefore, necessary to examine the facts of the present case to find out whether there is undue and unexplained delay in the initiation of the disciplinary proceedings. The delay is sought to be explained in the counter-affidavit. It was stated that after the alleged irregularities were discovered by the Chief Engineer, all the three works under the charge of the applicant were rescinded on 28.12.84 and thereafter the case was referred to the Vigilance Unit by the Chief Engineer by letter dated 14.5.86. The main reason why the Vigilance Unit could not proceed with the enquiry was stated to be that as the contractor moved the court by filing a suit and also initiated arbitration proceedings in respect of the construction works, the records had to be sent to the Executive Engineer, Manipur for defending the court case on 27.11.87. It is stated that the records were received back only on 27.2.96 and thereafter the investigation was taken up by the vigilance unit and was completed in July, 1997 and



thereafter the chargesheet was issued on 22.12.97. The chronological statement of details of investigation of case and the movement of the files were shown in Annexure R-1 filed with the reply-affidavit. Annexure R-1 reads as follows:

"STATEMENT SHOWING CHRONOLOGICAL DETAILS OF THE CASE

Annexure R1

1. 14.5.86 The case was referred to Vigilance Unit by Chief Engineer (EZ).
2. 26.6.86 The records of the case were sought from the Executive Engineer, Manipur Central Division.
3. 12.11.86 Reminder sent to Executive Engineer, MCD.
4. 5.12.86 Some of the records received from Executive Engineer, MCD.
5. 24.8.87 Some more records (cement register) receivedd form Executive Engineer, MCD.
6. 27.11.87 File pertaining to 152 Nos. Type 1(Spl.) quarters sent to Executive Engineer, MCD by Air parcel as the contractor had filed suit in the Court.
7. 19.9.89 Report of Chief Engineer on the draft Audit para received.
8. 18.1.90 Some more records were sought from Executive Engineer, MCD.
9. 31.10.90 Certain records received from Executive Engineer, MCD.
10. 4.11.91 Explanation of Shri Gopal Saran called.
11. 18.11.91 Explanation of Shri Gopal Saran received.
12. 12.12.91 File for the work of 12 Nos. Type III quarters returned to Executive Engineer, MCD as the contractor had gone for arbitration.
13. 29.10.95 The explanation of various officers were being received. This was mainly due to that various officers involved in the case posted a different places and for furnishing reply to the explanation they had to inspect the records.

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14. 27.2.96 The records sent to Executive Engineer, MCD for defending the court/arbitration case received back.
15. 10.4.96 File No.18/1/80 received from FO to DG(W).
16. 6.8.97 Case concluded and the report sent to Ministry of Urban Affairs & Employment.
17. 22.12.97 Chargesheet issued to Shri Gopal Saran under the order of the President."

12. A perusal of the R-1 makes it clear that after the file was entrusted to the Vigilance Unit in 1986, the files were called for from the Executive Engineer, Manipur and he took some time to send all the files relating to the case. By August, 1987, the records were sent. But by that time, it appears that the Contractor had filed the suit, aggrieved by the cancellation of the contracts. By 31.10.90 certain records were received from the Executive Engineer, MCD. Thereafter on 4.11.91, the applicant was asked for his explanation. But again on 12.12.91, the files relating to the enquiry had to be returned to MCD as contractor initiated arbitration proceedings. It was stated that it took considerable time to obtain explanation from various officers who were posted at different places and they had to inspect documents. Only in 1996, all the concerned records were returned by the Executive Engineer, MCD and by 6.8.97 the enquiry was conducted by the Vigilance Unit and the report was submitted to the concerned Ministry. The charge memo was filed soon thereafter. It was also stated that Manipur is far away from Delhi and the distance also contributed to the delay in sending and receiving the files. From the above, it is evident that the pendency of the suit and

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the arbitration proceedings initiated by the contractor contributed mainly for the delay from 1986 when the irregularities were discovered till 1997.

13. It is contended by the learned counsel for the applicant that when the department could find sufficient material in the allegation when the applicant was served with a letter on 4.11.91, the respondents could have initiated the disciplinary proceedings soon thereafter. We do not agree. It must be noted that the file had to be sent back on 12.11.91 to Executive Engineer, CD as the contractor initiating arbitration proceedings. We thus find that the delay was properly explained by the respondents.

14. On the other hand, if we consider <sup>about</sup> the prejudice caused to the applicant, it appears that there is substance in the grievance of the applicant that the promotional chances of the applicant are delayed. As the case mainly hinges upon the documentary evidence and as the records are now available, the question of witnesses remembering the facts of the case which occurred in 1983 would not arise. Thus it would not cause prejudice to the applicant's defence. As he is also not under suspension, he would be drawing the entire salary during the entire period. Thus we find that the applicant is not seriously prejudiced in view of the delay <sup>except for the delay in promotion.</sup> Learned counsel cited across the bar several judgements of the Delhi High Court and other High courts as well as Supreme Court. But, the facts of each case have to be examined and find out whether the delay was properly explained and whether delay caused

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serious damage to the defence of the delinquent or to his career. Hence, we have not noticed and discussed the cases cited.

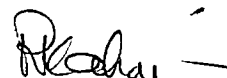
15. It is contended that the charges are not serious and the applicant was not attributed with the charges of bribery and defalcation of funds so as to pursue them even at this late stage. But, it should be noted that the allegations pertain to the loss of about Rs. one lakh by facilitating the contractor to misappropriate the said amount. Though the applicant was not directly indicted for misappropriation, it cannot be said that the charge is only technical.

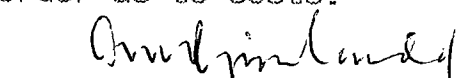
16. In view of the aforesaid discussion, we are of the view that the respondents have explained the delay and that the delay has not caused prejudice to the defence of the applicant.

17. We, however, direct the respondents to complete the enquiry within a period of four months from the date of receipt of a copy of the order. Needless to point out that the applicant should cooperate with the enquiry.

18. The O.A. is dismissed, subject to the above observations.

19. There shall be no order as to costs.

  
(R. K. ARORA)  
Member (A)

  
(V. RAJAGOPALA REDDY)  
Vice-Chairman (J)