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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 738/1998

New Delhi, this 6th day of May, 1999

Hon'ble Shri T.N. Bhat, Member (J)
Hon'ble Shri S.P. Member, Member (A)

R.K. Gupta
Retd. Sr. AO, M/Health & Family Welfare
Nirman Bhavan, New Delhi .. Applicant
(By Shri S.C. Luthra, Advocate)

versus

Union of India, through

1. Secretary
M/Health & Family Welfare
Nirman Bhavan, New Delhi
2. Chief Controller of Accounts
M/Health & Family Welfare
Nirman Bhavan, New Delhi Road
3. Controller General of Accounts
Ministry of Finance
Lok Nayak Bhavan, New Delhi
4. Director General (Works)
CPWD, New Delhi
5. Shri H.S. Rastogi
Retd. Chief Engineer Food
CPWD, 60, DDA Flats
Hauz Khas, New Delhi .. Respondents

(By Shri D.S. Mehandru, Advocate)

ORDER

Hon'ble Shri S.P. Biswas

1. The legal issues that fall for determination are as under:

(i) whether the delay in issuance of charge-sheet could be a valid ground for quashing the same at the interlocutory stage?; and (ii) whether pensionary benefit to the extent of about Rs.5 lakhs could be withheld for alleged misconduct of an offence causing pecuniary loss of only Rs.13,985 as has been done against the applicant?

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2. Applicant retired as Accounts Officer from the office of Chief Controller of Accounts, Ministry of Health & Family Welfare with effect from 30.11.97. Six days before his superannuation, i.e. 24.11.97, he was served with a major penalty charge-sheet under Rule 14 of CCS(CCA) Rules, 1965. The incidents dated back to 28.7.93 i.e. more than four and a half year before issuance of the charge-sheet. As a result of the charge-sheet having been issued to the applicant, he got only provisional pension. His DCRG and commuted pension totalling to a little over Rs.5 lakhs were withheld pursuant to the issue of the charge-sheet.

3. Applicant would argue that action of the respondents to withhold Rs.5 lakhs by slapping charge-sheet under Rule 14 for alleged misconduct relating to 28.4.93 cannot be justified on any account. Reverting back to the charge-sheet, applicant has argued that the charge related to reimbursement of a paltry sum of Rs.13,985 for bills of his residential telephone and that there is no question of suppressing the facts of earlier rejection by DG/CPWD and fraudulent receipt of subsequent approval of the Chief Engineer. This is because all the Chief Engineers were in the know of the circumstances and it was only on the recommendations of Chief Engineer (Food Zone) that the applicant had put up a note and received approval of the competent authority for the aforesaid reimbursement. In support of his

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contention, learned counsel for the applicant has cited the orders of this Tribunal in OA No. 126/97 in the case of K.C.Brahmachary Vs. UOI 1998(1) SLJ CAT 383 decided on 11.7.97. It was held therein that charge-sheet shall not be issued for a cause of action of more than 4 years old and that it cannot be served just on the eve of retirement.

4. The respondents have argued that charge-sheet under Rules 14 and 16 of COS (CCA) Rules were issued for the misconduct committed by the applicant during the period from 20.12.90 to 8.1.96 when he was working as Financial Officer to the Chief Engineer (FZ). Proceedings against the applicant were initiated under the aforesaid Rules by the Disciplinary Authority, which after the retirement of the applicant are deemed to be proceedings under sub-rule 2 of Rule 9 of COS (Conduct) Rules. Respondents would argue that the applicant got reimbursement of his residential telephone bills wrongly as he was not eligible for the same. His case for reimbursement of the bills was turned down by the DG/CPWD vide his letter dated 7.9.92. Applicant suppressed the above fact regarding rejection of his earlier claim and approached R-5 on 30.4.93 on the last day of latter's service and mischievously got approval of his claim. Applicant did not provide any certificate that the calls made were official and that he could claim reimbursement as per rules.

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5. In the very nature of things question whether there is undue delay and whether there is reasonable explanation for the delay are questions which depend upon the facts and circumstances of each case. There cannot be any general rule that the charge-sheets should be quashed if there is some delay. Although the applicant has cited the case of Brahmachary (supra), we find that the apex court has held that delays cannot always defeat the charge-sheet. This aspect was examined by the apex court in the case of UOI & Ors. Vs. Raj Kishore Parija 1996 SCC (L&S) 196. That was a case where the Tribunal had quashed the charge-sheet on the ground of delay and directed the suspended officer to be reinstated in service. In that case the officer was under suspension from 1984, charge-sheet issued in 1988 and the enquiry was still pending in 1993 when the apex court passed the order. It was a case where there was delay of 4-5 years in issuing the charge-sheet and the matter was again kept pending for another three years. While examining the case, the Supreme Court observed that the Tribunal had travelled beyond its jurisdiction in quashing the charge-sheet and the order of the Tribunal was set aside accordingly. The apex court, however, directed that the inquiry should be expedited and completed within a period of six weeks.

6. In the present case, there are allegations of misconduct against the applicant. Learned counsel for the respondents brought to our notice the

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circumstances that resulted in delay in the issue of charge-sheet. Having regard to the gravity of charge and circumstances of the case, we are of the view that it is not a fit case to quash the charge-sheet at the threshold on grounds of delay. It is also not a fit case where we can go and examine the merit of the charge-sheet since this is too premature a stage to quash the charge-sheet on the merits of the case. Though there are many decisions on this point, we refer only to the law laid down by the apex court on this issue in the case of UOI & Anr. Vs. Ashok Kacher 1995 SCC (L&S) 374. It was held therein that it is too premature on the part of the Tribunal to entertain the application and quash the charge-sheet when the enquiry is pending. A similar view was expressed by the apex court in the case of UOI V. Upendra Singh JT 1994(1) SC 658 wherein it was observed that the Tribunal ought not to interfere at an interlocutory stage and that the Tribunal had no jurisdiction to go into the correctness or truth of the charges. Yet, in another case namely DIG of Police Vs. K.S. Swaminathan 1997(1) SC SLJ 259, the apex court observed that even if allegations in the charge-sheet are vague it is not for the Tribunal or Court to interfere at the initial stage and go into question whether charges were correct or otherwise.

7. We find that in the present case, the applicant had not even submitted his defence statement, at least when the OA was filed.

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8. In view of the above discussions, we are of the view that it is not a fit case for this Tribunal to interfere on the grounds of delay.

9. The question whether disciplinary proceedings pertaining to a serious or grave act of misconduct/negligence committed by a Government servant can be continued or instituted in terms of Rule 9 of CCG (Pension) Rules, 1972 even in cases where pecuniary loss caused to the Government has been negligible has been examined in a number of cases by the Court/Tribunal. We find in the case of Amarjit Singh v. UOI ATR 1988 (2) CAT 637, the Full Bench after examining at length held that institution of/continuation of proceedings is not dependent upon any pecuniary loss being occasioned to the Government. Even in the absence of any pecuniary loss, the pension of a pensioner can be withheld or withdrawn in whole or part, after following the prescribed procedure, for an act of misconduct/negligence committed while in service. We find the aforesaid stand of the Tribunal gets well supported by a recent judicial pronouncement of the apex court in the case of UOI & Ors. Vs. B. Dev 1999 (1) SLJ 196. It was held therein that pension can be withheld for misconduct other than causing pecuniary loss as well.

10. In the background of detailed discussions aforesaid, the OA deserves to be dismissed and we do so accordingly. We, however, make it clear that

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the respondents shall do well to complete the proceedings within a period of three months from the date of receipt of a certified copy of this order. The applicant shall also render necessary timely cooperation in expediting the proceedings.

No costs.

Biwas
(S.P. ~~Biwas~~)
Member(A)

6.5.99.
(T.N. Bhat)
Member(J)

/gtv/