

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 565/95
 T.A. No.

199

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DATE OF DECISION 19-1-1996

Shri K.D. Tripathi

Petitioner

Shri. D.R. Gupta

Advocate for the Petitioner(s)

Versus

U.O.I. & others

Respondent

Shri V.S.R. Krishna

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. N.V. Krishnan, Acting Chairman

The Hon'ble ~~Mr.~~ Smt. Lakshmi Swaminathan, Member (J)

1. To be referred to the Reporter or not? *Y*

2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi Swaminathan
 (Smt. Lakshmi Swaminathan)
 Member (J)

N.V.Krishnan
 (N.V.Krishnan)
 Acting Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 565/95

Date of Decision: 19-1-1996

(11)

Hon'ble Shri N.V. Krishnan, Acting Chairman

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Shri K.D. Tripathi,
s/o Shri B.L. Tripathi,
DANICS Officer (Retd.)
LU-27, Pitam Pura,
Delhi.

....Applicant

By Advocate: Shri D.R. Gupta

Vs.

1. Union of India
through the Secretary,
Ministry of Home Affairs,
North Block, New Delhi.

2. The Chief Secretary,
Govt. of NCT of Delhi
5 Sham Nath Marg, Delhi.

3. Commissioner of Sales Tax
Govt. of NCT of Delhi
Bikri Kar Bhawan, IP Estate,
New Delhi.

.... Respondents

By Advocate: Shri VSR Krishna

ORDER

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The applicant, who retired as Deputy Commissioner of
Sales tax on 30.6.94, is aggrieved by the charge memo. dated
29.6.94 issued by respondent No.1 instituting a departmental
action against him and withholding payments of retiral benefits
including DCRG, leave encashment and commutation of pension

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By the memo. dated 29.6.94, the applicant had been charged for misconduct and misbehaviour under Rule 14 of the CCS (CCA) Rules, 1965. (Annexure A-2)

2. The brief facts of the case are that the applicant, who is a DANICS Officer, Grade I, retired as Deputy Commissioner, Sales Tax from the office of Commissioner, Sales Tax, Delhi with effect from 30.6.94. During the course of his employment under Delhi Administration he was sent on deputation as General Manager to Delhi State Civil Supplies Corporation Ltd.

to
(hereinafter referred as DSCSC Ltd.) from 6.5.87 to 6.5.88.

The statement of articles of charge framed against the applicant relates to the discharge of his duties in respect of certain contracts he had entered into for supply of Bhuna Chana and Murmura while he was working in DSCSC Ltd. for supply to the Directorate of Social Welfare. According to him the officially Chairman, DSCSC had called for an explanation regarding the tenders etc. and after considering his explanation, he had been issued a warning to be more careful in future by the Chairman on 20.1.88 (Annexure A-3).

3. Shri D.R. Gupta, learned counsel for the applicant submits that since the case has been closed with a warning by the competent authority i.e. the disciplinary authority

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of the applicant under Rule 20(1) of the CCS (CCA) Rules 1965, the same cannot be reopened by the respondents by issuing another chargesheet by the impugned order dated 29.6.94 with regard to ^{the} ~~same~~ transactions. He relies on the following cases:-

- i) B.J. Edward Vs. Collector of Central Excise, Madurai 16 ATC 627;
- ii) Hemant Kumar Sharma Vs. UOI & others 1992(3) SLJ(CAT 28 ;
- iii) R.K. Singh Vs. State of U.P. 1990(13) ATC 590 and
- iv) State of Assam Vs. J.N. Roy Biswas 1975 ATR SC 277

4. On behalf of the applicant it is submitted that the Chairman DSCSC Ltd. which is ^{the} ~~same~~ borrowing authority was competent to close the case against the applicant and it has been admitted by the respondents in their reply that the Chairman had, in fact, decided not to proceed further in the matter. In the circumstances, Shri D.R. Gupta submits that on the same facts respondent No.1 cannot issue the chargesheet, and that too on the eve of his retirement after seven years of the incident giving rise to the imputation of charges. He submits that the delay of seven years is unexplained and in the meanwhile the prime witness of the case, the then Chairman, DSCSC, Shri Gorakh Ram has expired in 1993 soon after his retirement which will cause prejudice to him, as the tender and further dealings in connection with purchase of Bhuna Chana and Murmura was done at the behest of the Chairman.

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5. The next ground taken by the applicant is that Respondent No.1 had issued the chargesheet at the behest of the Central Vigilance Commission (CVC) without application of mind. He submits that the advice of the CVC is itself erroneous because it is based on incomplete record and information, as he submits that the entire record after 28.8.87 of the case which was with the then Chairman, DSCSC Ltd. was not submitted to the CVC.

6. His next contention is that the charge is vague as it does not indicate the precise role of the applicant and lapse committed by him. He submits that reference to him as Chairman of the Purchase Committee in the articles of incorrect and charge is itself vague because he was not the Chairman of this Committee. Shri D.R. Gupta, therefore, submits that the Tribunal ought to call for the records and satisfy itself that the charges cannot be sustained and on this count also the same should be quashed and set aside.

7. The respondents have filed their reply in which they have denied the above averments. They have denied that the Chairman, DSCSC Ltd. is the disciplinary authority of the applicant but have stated that the disciplinary authority is

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the President of India. They have clarified that the case was referred to by Delhi Administration to the disciplinary authority for taking a decision in the matter and thereafter it was referred to the CVC for advice who had given its decision for major penalty against him. They have stated that the disciplinary authority after consultation with the CVC as required under the Vigilance Manual, decided to initiate major penalty proceedings under Rule 14 of the CCS(ACCA) Rules 1965 against the applicant. They have stated that the disciplinary authority had examined the case on merits on a number of representations made by the applicant, which he has himself referred to, by letters dated 7.4.93 and 26.4.93. They submit that the then Chairman, CSCSC Ltd. Shri Gorakh Ram, had retired from service on 30.4.93 and had also expired in the same year, but no relevant record has been withheld by him and the respondents are having ~~all~~ the relevant records which the applicant can inspect during the course of the inquiry. They have submitted that the delay has not been intentional and has been caused by several representations made by the applicant which have also been examined in the meantime. They have denied that the President of India, who is the disciplinary authority, had at any time, ~~closed the enquiry~~ ^{and} therefore, there was no question of re-initiation of disciplinary proceedings, which have only been initiated now by the order dated 29.6.1994

In the circumstances, the cases relied upon by the applicant are not relevant. Regarding the ground that the applicant had got a promotion in 1989, they have stated that since no chargesheet has been served on him on that date, the vigilance clearance had/given and it does not mean any condonation of the misconduct which was being inquired into at that time.

8. Shri VSR Krishna, learned counsel for the respondents has submitted that the applicant has filed a reply to the chargesheet in which all the grounds in this application have been taken. Relying on the judgement of the Hon'ble Supreme Court in Union of India and Others vs. Upendra Singh ((1994) ATC 200), he submits that the Tribunal ought not to examine the correctness of the charges as it does not come within the jurisdiction of the Tribunal at this stage. He submits that under Rule 20(1) of the CCS(CCA) Rules the borrowing authority, which in this case is the DSCSC Ltd., has only limited powers, as provided therein for placing the Government servant under suspension and of the disciplinary authority for the purpose of conducting a disciplinary proceeding against him. He

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submits that in this case the disciplinary authority is the President of India and at no stage the competent authority has taken the decision to close the case against the applicant in respect of which the chargesheet has now been issued on 29.6.94 in accordance with the rules. He further submits that the death of Shri Gorakh Ram, Chairman, DSCSC Ltd. does not in any way prejudice the case of the applicant, as the charges would be proved by the relevant records which are available with the respondents. The delay, if any, in initiating the chargesheet was due to the fact that the applicant had made several representations which were examined on merit and hence he submits that there is no inordinate or unexplained delay in this case. He has also denied that the initiation of the disciplinary proceedings has been without application of mind. In this regard, he has submitted the relevant files on which the decision has been taken by the competent disciplinary authority to initiate disciplinary proceedings by the impugned order.

9. The applicant has filed a rejoinder to the reply reiterating his stand taken in the application. M.A. 1523/95

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had also been filed by the applicant for production of two relevant files for perusal of the Tribunal relating to the charge memo. The respondents have filed a reply to the M.A. and they have also produced the relevant files for our perusal.

10. We have carefully considered the pleadings, arguments of both the learned counsel and record in the case.

11. The first question to be considered is whether the case had been closed by the competent authority by the issue of a warning dated 20.1.88 by the then Chairman, DSCSC Ltd. Rule 20(1) of the CCS(CCA) Rules provides as follows:-

" 20(1) Where the services of a Government servant are lent by one department to another department or to a State Government or an authority subordinate thereto or to a local or other authority (hereinafter in this rule referred as "the borrowing authority"), the borrowing authority shall have the powers of the appointing authority for the purpose of placing such Government servant under suspension and of the disciplinary authority for the purpose of conducting a disciplinary proceeding against him;

Provided that the borrowing authority shall forthwith inform the authority which lent the services of the Government servant (hereinafter in this rule referred to as "the lending authority") of the circumstances leading of the order of suspension of such Government servant or the commencement of the disciplinary proceeding, as the case may be.

(2) In the light of the findings in the disciplinary proceeding conducted against the Government servant-

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(i) If the borrowing authority is of the opinion that any of the penalties specified in clauses (i) to (iv) of Rule 11 should be imposed on the Government servant, it may, after consultation with the lending authority, make such orders on the case as it deems necessary;

Provided that in the event of a difference of opinion between the borrowing authority and the lending authority, the services of the Government servant shall be replaced at the disposal of the lending authority;

(ii) If the borrowing authority is of the opinion that any of the penalties specified in clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, it shall replace his service at the disposal of the lending authority and transmit to it the proceedings of the inquiry and thereupon the lending authority may, if it is the disciplinary authority, pass such orders thereon as it may deem necessary or, if it is not the disciplinary authority, submit the case to the disciplinary authority which shall pass orders on the case as it may deem necessary :

Provided that before passing any such order the disciplinary authority shall comply with the provisions of sub-rules (3) and (4) of Rule 15.

(emphasis added)

This rule vests in the borrowing authority, the powers of the appointing authority for placing a Govt. servant under suspension which is provided in Rule 10. Rule 12 of the CCS(CCA) Rules enumerates the disciplinary authority who may impose the ~~penalties~~ specified in Rule 11 on any Govt. servant. Rule 13 empowers the President or any other authority empowered by him by general or special order to institute disciplinary proceedings against any Govt. servant. In this case, the applicant has failed to show any such order by V.S which the President has empowered the borrowing authority

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i.e. the DSCSC Ltd. to institute any disciplinary proceedings against the Govt. servant. Rule 20 read with Rule 12 of the rules shows that the borrowing authority is vested with limited powers of the disciplinary authority for purposes of conducting disciplinary proceeding against him but it has not been given the power to impose in any of the penalties. This becomes abundantly clear from the proviso which further provides that the borrowing authority shall forthwith will inform the lending authority of the circumstances leading to the order of suspension or the commencement of the disciplinary proceedings, as the case clearly may be. A reading of these rules therefore shows that the disciplinary power to impose any of the penalties specified in Rule 11 continues to vest in the President which is of India in this case and not with the Chairman, DSCSC Ltd. / the "borrowing authority", as contended by the applicant. Similarly, the authority to institute disciplinary proceedings also continues to be with the President and not with the lending authority i.e. DSCSC Ltd. If that is the position under the rules, the contention of the applicant that since the competent authority i.e. Chairman, DSCSC Ltd. has closed the proceedings, it cannot be reopened has no merit and has to be rejected. The only authority that can initiate or take a decision not to initiate disciplinary proceedings against the applicant is the President of India in this case and the contention to the contrary is

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unsustainable. Having regard therefore to the rule position, the cases relied upon by the applicant are of no avail. By issuing the warning the borrowing authority has not imposed any of the penalties specified in Rule 11, which can only be imposed by the competent authority i.e. the President. Therefore, the arguments of the applicant's counsel based on Rule 20(1) of the CCS(CCA) Rules is erroneous and is accordingly rejected.

12. It is settled law that any inordinate and unexplained delay in framing the charges may be a ground to set it aside, ~~as the instant case especially if the applicant could show that the delay has caused him prejudice. In the out~~
instant case the applicant has tried to make a case that the prime witness i.e. Chairman, DSCSC Ltd. Shri Gorakh Ram had expired in 1993 and this will cause prejudice to his case. ¹⁵ / as the case will depend on the records. We are unable to accept this contention/ It is settled law that ~~the~~ each case of delay will depend on the particular facts and circumstances of the case. In the instant case, the applicant has admitted that he has made a number of representations that the case should be examined on merits even while Shri Gorakh Ram was alive. We find from the documents enclosed by the

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applicant himself containing the replies from the respondents that the matter was under consideration.

Considering the nature, allegations and imputation of charges made against the applicant, the delay if any, can neither be considered as arbitrary or unexplained.

The respondents have stated that it is true that on consideration of the report of the Anti Corruption Bureau (ACB) and the explanation of the applicant the then Chairman, DSCSC Ltd. closed the case by issuing a warning. Since he was not the disciplinary authority of the applicant, the competent authority considered the matter further.

They had consulted the CVC when the Delhi Administration had referred the matter to the Ministry for appropriate action. Therefore, in the particular facts and circumstances of the case, decision taken by the respondents to initiate the charges cannot therefore be set aside at this stage merely on the ground of delay, as they have satisfactorily explained the delay, if any, which has occurred. In the circumstances, therefore, we are not satisfied that the departmental proceedings ought to be quashed at this stage only on the ground of delay and this ground is also, therefore, rejected.

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13. We are also unable to accept the argument of the learned counsel for the applicant that the charge is vague. A mere perusal of the memo. of charges together with the statement of articles of charge shows that the particulars relating to the charge have been given. We note that the applicant was also given a reply to the chargesheet on 8.7.94. His further contention that the Tribunal ought to verify the facts from the relevant record that the applicant was not the Chairman of the Purchase Committee when the contracts were entered into and therefore the chargesheet had to be quashed is also without any basis. These are grounds which the applicant ought to take before the competent authority in his defence statement. It is not for this Tribunal to usurp or interfere with the jurisdiction of the competent authority in a matter which is exclusively within the domain of the disciplinary authority or substitute its own discretion for that of the authority. These are matters which the applicant ought to take up before the Inquiry Officer/ disciplinary authority and we do not, therefore see any validity in the contentions raised by the applicant on the ground of vagueness.

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The last ground taken by the

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applicant is that the charge-sheet for major penalty issued by the President was solely at the behest of the CVC, is without application of mind and is therefore not sustainable. His claim is that the charge-sheet is therefore ab initio void in the light of the judgments in Nagaraj Shivrao Karjagi vs. Syndicate Bank (1992) 19 ATC 639 and Anil Goel vs. UOI(Del) 1994, 28 ATC 646).

15. In this connection, we have seen the photocopy of the relevant file number 14033/16/88 UT/ dated 20.4.1988. By their advice, the CVC had recommended initiation of major penalty proceedings against the applicant and another officer. After re-examination of this advice, the Ministry of Home Affairs, Respondent No.1 decided in April, 1989 to send the case back to CVC for reconsideration. CVC then examined the case in detail on pages 23 to 33 of the file and reiterated on 11.5.1990 their advice for initiating major penalty proceeding against the applicant in relation to the case of purchase of ¹⁴ Land minor penalty proceedings in the other cement licence cases Bhuna Chana and Murmura. Thereafter, the Ministry has examined the matter from pages 34 to 42 and 46 to 57, including the advice of the CVC. They have noted that the Commission has not agreed to their appreciation of

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evidence and has attempted to meet each argument of the Ministry. They have summarised the two views as under:

"Purchase of 'bhuna chana and murmura"

Ministry was of the view that since the agreement for supply of the items in question was entered into between the Corporation and the Directorate of Social Welfare only on 15.6.87, for supplies to be made from 1.7.87, there was not enough time to resort to the regular codal formalities. Ministry was of the view that keeping the demand supply ~~as it~~ situation and Corporation's business interests also in view, some steps extraordinary steps were required by the Corporation for the contractual liability,

However, CVC has not agreed to our view and observed that this point is not valid because in the month of July, 1987, itself, the tenders were called whereas they ought to have been called in the begining itself. Besides, a period of 15 days was enough for calling the tenders and deciding the tenders. Ministry was of the view that the commercial character of the Corporation should be given due importance.

The Commission has also not agreed with the view of the Ministry that the supply order for both bhuna chana and murmura awarded to only one firm M/S Parmanand Darshan Lal was in the interest of the Corporation as it restricted the number of suppliers. Commission, however, feels that the contract for supply of murmura should have been given to M/s Mehra Sons since their rates were lower than the quoted by M/s Parmanand Darshan Lal.

The Commission has also not agreed to our argument that since M/S Parmanad Darshan Lal had agreed to supply the murmura at the lowest rate as quoted by M/s Mehra Sons and there had been no loss to the Corporation. The Commission, however, feels that the correct thing would have to hold negotiations with all other suppliers and not only with M/s Parmanand Darshan Lal. Thus, singling our M/s Parmanad Darshan Lal for holding negotiations has not been held proper.

The Commission has also not appreciated our view point in para 16 of their note on page 17/p wherein the fact of Shri Tripathy's referring the case for legal advice has been defended. Commission feels that there was enough time with the Delhi State Civil Supplies Corporation from the date of

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opening of sealed tenders on 10.8.87 to the date of requisitioning the files on 27.8.87 and the date of sending the files on 7.9.87 to the Director of Vigilance, for taking a decision on the tender rates which were lower than the rates at which the items were being supplied by the supplier at the time of tender. Thus Commission feels that an undue favour has been shown to the firm by purchasing them items at higher rates.

Commission in its earlier advance had advised initiation of major penalty proceedings against two officials only namely, Shri K.D.Tripathi and Shri Gupta. However, now they have advised action against all the officials including the Managing Director who had dealt with the file regarding supply of 'bhuna chana and murmura'.

Case of M/s M/W J.K.Cement:

In case of J.K.Cement the Commission has reconsidered their advice and instead of major penalty against Shri K.D.Tripathi, have advised minor penalty proceedings against Sh.K.D.Tripathi. In this regard para 12 on page 31-32/n may be glanced through."

In view of above mentioned facts, the Ministry felt that no purpose will be served by referring the case again for re-consideration to CVC. In the circumstances it was decided to go ahead as per advice of the CVC by note of J.S.(UT) dated 5.1.1991. Again, the matter was examined in the of Desk Officer Ministry and by note dated 3.3.1993, it was suggested that the matter should be referred again to CVC. This was, however, not agreed to by the higher authorities in note dated 14.3.1993 as the matter had already been decided at the level of the Joint Secretary(UT) dated 5.1.1991 to go ahead with the views of the CVC.

16. From the above, it is seen that the Ministry had indeed examined the matter in detail, including the evidence available on record before accepting the advice of the CVC. It may also be seen

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that the CVC thus had, while recommending major penalty proceedings against the applicant in respect of contract regarding supply of Bhuna Chana and Murmura had modified its earlier advice in the other case of Cement Contract, instead of its earlier advice to initiate major penalty proceedings, advised only minor penalty proceedings. The Ministry has agreed with the CVC's advice only after analysis of the facts and initiation by order of the Minister dated 2.5.1993 and it cannot therefore be said that they had acted at the behest of CVC without application of mind. In between this time, the Ministry has also examined the various representations made by the applicant. The facts in this case are different from the facts in Anil Goel's case(supra) as in this case the disciplinary authority has come to his own decision without pressure from CVC to initiate disciplinary proceedings. In the circumstances, we reject the applicant's plea that the competent authority, namely, the President had not acted independently ~~or has acted without application of mind or that the charge sheet should be quashed on this ground.~~

17. Now, ^{that} the President, who is the disciplinary authority has taken a decision to initiate major penalty proceedings against the applicant in accordance with the relevant rules and instructions, it will be for him to proceed further with the matter in accordance with procedure laid down under the CCS(CCA) Rules.

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We do not find any irregularity or illegality in the framing of the charges which warrants any interference or quashing of the charge-sheet at this stage. As held by the Supreme Court in Union of India & others vs. Upendra Singh(1994(2) ATC 200), this Tribunal cannot examine the correctness of the charges at the stage of framing charges and may interfere only if on the charges framed (read with imputation of particulars of the charge, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, therefore, the Tribunal has no jurisdiction to go into the correctness or truth of the charges or examine the records to verify the facts as put forward by the applicant's counsel.

18. For the reasons given above, we do not find any good grounds warranting any interference with the initiation of disciplinary proceedings or quashing of the memo. of charge at this stage.

19. In the result, this application fails and is dismissed. No costs.

/ek,sds/

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

N.V.Krishnan
(N.V.Krishnan)
Acting Chairman

19/1/96.