

Kashmiri Gate
Delhi - 110 006.

.. Respondents

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(None)

O R D E R (Oral)

By Reddy, J.-

None appears for the parties either in person or through their counsel. Since this is the matter of 1996, we are proceeding to dispose of the matter on merits on the basis of the available pleadings on record.

2. The Charge-sheet issued against the applicants are sought to be quashed in this case. The facts as stated by the applicants are as follows:

3. Applicant No.1 retired on 30.6.1996 as Assistant Registrar, Cooperative Societies, Delhi (DANICS Regular). Applicant No.2 also retired on 30.9.1996 as Deputy Director of Social Welfare, Delhi(DANICS) and Applicant No.3 is in service as Superintendent, Delhi Commission for Women, Government of NCT, Delhi. They are served with the charge memos dated 31.5.1995, Annexures 1/A, 1/B and 1/C. This was followed by the issuance of the order dated 5.5.1995, Annexure-1/D to hold an enquiry against all the applicants. The applicants represented to drop the enquiry as the CBI had dropped the FIR against them on the same allegations but the respondents had not given any reply to these representations. Hence the OA is filed challenging the charge memos.



4. Several grounds are raised by the applicants against the invalidity of the charge memos. It was alleged that they are flimsy and that the disciplinary authority has not applied its mind to the fact that the CBI has already dropped the proceedings against them. It is also submitted that the delay in initiating the enquiry vitiated the proceedings and that the documents which are necessary for the enquiry, cannot be procured at this stage as the allegations pertain to 1984, about more than 11 years old. It is also difficult for the applicants to defend their case by producing the necessary documents.

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5. In the reply it is stated that the CBI has registered the case against the applicant in 1990 and on the basis of the investigations made by the CBI the present charge sheets have been issued. The CBI has withdrawn the case against the applicant on the ground of lack of sufficient evidence to prove the case in the Court of Law and as the material gathered by the investigating officer during the investigation is sufficient to issue the present charge sheet. It is stated that the delay is due to the above circumstances. Other grounds alleged by the applicants are refuted.

6. We have considered the pleadings and the points raised carefully. The main ground of challenge is the delay in initiating the disciplinary proceedings. It is true that the charge memos have been issued in 1995 but in view of the factual matrix of the case where the case registered by the CBI in

1990 against the applicants having been investigated by the CBI and the investigations have spread over several years and thereafter as the CBI dropped the proceedings, there was delay in issuing the charge memos. Since the investigation by CBI has been pending, the delay caused, during the said period, in initiation of the disciplinary proceedings cannot be attributed to the Department. Thus, we are satisfied that the delay is properly explained. The Supreme Court in Food Corporation of India Vs. V.P.Bhatia, JT 1998(8) SC 16 has found in identical circumstances that the delay caused pending the CBI enquiry is not fatal to the department^{al} proceedings initiated after the CBI submitted its report. In the circumstances, the delay which was properly explained cannot vitiate the charge memos.

7. The contention that the disciplinary authority has not applied its mind has no force. The material that has been gathered by the investigating officer may not be sufficient to prove the case before the criminal court but on the same material departmental enquiry can be proceeded to find whether the applicants are fit to continue in the service. The object and the quantum of proof in both the enquiries is wholly different. What is required to prove in departmental proceedings is the preponderance of probabilities. In the circumstances, just because the proceedings are dropped by the CBI it cannot be a ground to presume that the disciplinary authority has not applied its mind to initiate the departmental proceedings. We may agree that the lapse of time itself renders it very difficult for the department to

procure the documents in order to prove the case. In such an event the department alone will have to be blamed.

8. In the present case, third applicant is not under suspension. Hence he cannot have much prejudice for the delay in initiating the disciplinary proceedings. In so far as the first and second applicants are concerned as they are retired they cannot also make much grievance of the delay.

9. In the circumstances, the OA is devoid of merits and is accordingly dismissed. No costs.

Shanta Shatry
(SHANTA SHATRY)
MEMBER(A)

V. Rajagopala Reddy
(V. RAJAGOPALA REDDY)
VICE-CHAIRMAN(J)

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