

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A.No. 2255 1997

15

DATE OF DECISION 1st July, 1998

Sh. Badh Raj Chugh

..... Petitioner

Sh. Sant Lal

..... Advocate for the
Petitioner(s)

VERSUS

1. Secretary, M/O Communication
2. Director of Accounts (Postal)

..... Respondent

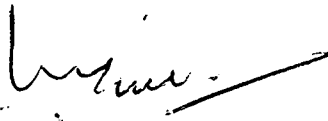
Sh. S.M. Arif

..... Advocate for the
Respondents

CORAM

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

1. To be referred to the Reporter or not? *yes*
2. Whether it needs to be circulated to other
Benches of the Tribunal? *m*


(T. N. BHAT)
Member (J)

(16)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 2255/97

New Delhi, this the 1st day of July, 1998

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

Shri Bodh Raj Chugh
S/O Late Shri Arjan Dass,
retired Sr. Accounts Officer,
O/O the Director of Accounts (Postal),
Delhi - 54, Group "B" resident of Delhi,
address for service of notices,
C/O Shri Sant Lal Advocate,
C-21(B), New multan Nagar,
Delhi - 110056.
(By Advocate: Sh. Sant Lal)

..... Applicant

Vs.

1. The Union of India, through the Secretary,
Ministry of Communication &
Director General of Posts,
Dak Bhawan,
New Delhi-110001.

2. The Director of Accounts (Postal),
Civil Lines,
Delhi - 110054.
(By Advocate: Sh. S.M. Arif)

..... Respondents

O R D E R

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

The applicant has come to the Tribunal against the memo of charges issued to him on 3.4.97 just four weeks before he was due to retire. The applicant was working as Junior Accounts Officer in the Postal Department when on 31.5.83 he was sent on deputation to the Delhi Development Authority and he continued to remain on deputation upto 30.10.87. In the meantime, he was also given proforma promotion to the cadre of Assistant Accounts Officer w.e.f. 1.4.87. He was further promoted to the cadre of Accounts Officer (Group 'B') w.e.f. 1.4.90 and as Senior Accounts Officer (Group 'B') w.e.f. 22.12.95. He was due to retire on 30.4.97 after putting in 38 years of service.

Signature
1.7.98.

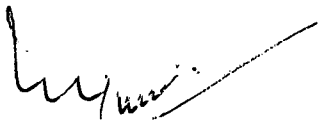
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2. By the memo dated 3.4.97 the Secretary-cum-Director General of Posts, New Delhi issued a charge-sheet under Rule 14 of CCS (CCA) Rules 1965 on the following allegations:-

That the applicant who was working as Jr. Accounts Officer with D.D.A. during the year 1983 by forwarding/recommending for payment the Xth Running Account Bill relating to the work "Construction of Asian Games Village Complex SH: construction of Overhead Water Tank-cum-restaurant-cum-viewing gallery" failed to point out that according to the terms of the agreement of work an amount of Rs.4 lakhs was admissible to the Contractor only if the work was completed within a particular time frame, with the result that payment of an amount of Rs. 4 lakhs was made to the Contractor despite the fact that the work had not been completed within the scheduled time.

According to the contents of the statement of articles of charge framed against the applicant the work was to be completed by 24.4.82 while it was actually completed on 25.7.82 and since the applicant had not pointed out this fact while forwarding the bill to the concerned Executive Engineer the aforesaid amount of Rs.4 lakhs was released by the Executive Engineer to the contractor. It is stated in the charge-sheet and the articles of charge that the applicant had thereby committed gross misconduct and had failed to maintain absolute integrity and devotion to duty.



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3. The applicant has assailed the memo of charges mainly on two grounds. Firstly, it is stated that there was inordinate delay in serving the charge sheet on the applicant when the incident related to the period more than 14 years prior to the date of issuance of the charge sheet. In this regard it is further pointed out that the respondents were aware of the alleged incident but that they did not take any steps to issue the charge memo within a reasonable time. Secondly, it is contented by the applicant that issuance of a charge sheet less than 4 weeks before the date of superannuation of the applicant was liable to be quashed on that ground alone.

4. On the merits of the imputations of misconduct, the applicant states that even according to the admissions made by the respondents themselves the delay in completion of the work by the contractor was caused due to the frequent changes made by the concerned engineers. It is further averred that the aforesaid amount of Rs. 4 lakhs was later deducted from the final bill (XIth Bill) of the contractor and when the contractor assailed that action before the arbitrator, the arbitrator allowed the aforesaid amount to the contractor together with 10% interest. The relevant portion of the award made by the arbitrator has been reproduced in para 5.6 (c) of the OA.

5. The respondents have contested the OA on the ground that the chargesheet issued prior to the date of retirement of the applicant could validly be continued even after the date of retirement and that there had really been no delay in issuing the charge sheet. In this

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regard it is stated that the matter was referred to different authorities including the Vigilance Organisation of the DDA as also the Central Vigilance Commission and soon after the receipt of final reports from them the charge sheet was issued.

6. The applicant has filed rejoinder to the counter filed by the respondents wherein it is pointed out that in view of the fact that the respondents have not seriously disputed the correctness of the facts stated by the applicant in his OA, the applicant is entitled to the relief prayed for.

7. We have heard the learned counsel for the parties and have perused the material on record of the case as well as the relevant record furnished by the learned counsel for the respondents. As already indicated, the alleged event on the basis of which the charge memo has been issued relates to a period nearly 14 years before the date when the charge memo was issued. It is not disputed by the respondents that they were aware of the entire facts even in the year 1983 and that when the final bill was paid to the contractor in 1989 a deduction of the aforesaid amount of Rs. 4 lakhs was made. It is also not disputed that when the contractor raised a dispute and the dispute was referred to the arbitrator appointed by respondents the contractor's claim was upheld by the arbitrator who directed the respondents to refund the aforesaid amount to the contractor. A perusal of the relevant portion of the award made by the arbitrator reveals that since a large number of changes had been made by the concerned department from time to time right from

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the beginning, delay in completion of the machine room, could not be attributed to the contractor. It is ~~was~~ specifically held by the Arbitrator that had the respondents been clear about their requirements and had they not made any changes only then they could blame the contractor for non-completion of the work within the stipulated time. According to the arbitrator it was the respondents who were responsible for the changes made in such construction of urgent nature. It is true, as contended by the learned counsel for the respondents, that the amount of Rs. 4 lakhs was payable only as a bonus and therefore time was the essence of the contract. But it is equally true that the delay was caused due to many changes made by the respondents. According to the arbitrator it was only in the month of June 1982 that a final decision was taken by the respondents relating to the work and the contractor completed the work by July 1982 which, in the circumstances of the case, should be considered as reasonable time.

8. A perusal of the departmental records also reveals that all the above facts were taken note of not only by the respondents but by the various vigilance organisations. But for some strange reason disciplinary action was recommended and that too after 14 years of the ~~happening~~ ^{happening} of the event. Such a long and inordinate delay is, in the circumstances of the case, fatal, especially so when the charge sheet has been issued only a few weeks before the applicant was due to retire on superannuation. In somewhat identical circumstances another bench of this Tribunal headed by Hon'ble the Chairman held in the case



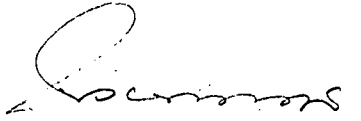
of Zile Singh Vs. Delhi Administration in the judgement dated 11.12.87, reported in 1998 (1) ATJ 511, that inordinate delay in initiating enquiry proceedings would make the charge sheet liable to be quashed. In that case a Sales Tax Inspector was served with memo of charges dated 9.4.87 just one day before the date of his retirement (31.5.94). Although on facts the Tribunal held that the charge sheet had been served on the applicant before the date of his retirement, it was further held that the knowledge of the alleged misconduct had all along been there and even so great delay had been made in serving the charge sheet. In the case before that Bench the alleged event had taken place on 6.1.84 and the charge sheet for initiating disciplinary enquiry was served on 30.5.94, just a day before the applicant in the case was due to retire. In the meantime, like the applicant in the present case, the applicant in that case got promotions to higher posts. The Tribunal held that since the misconduct in that case which had allegedly been committed in the year 1984 had admittedly come into light in 1987 before issuance of show cause notice to the employee, there was no justification for the respondents in that case to wait till 30.5.94 for initiating the DE proceedings. The impugned charge sheet dated 30.5.94 was quashed on the ground of laches and the respondents in that case were directed to settle and pay the various post retiral benefits to the applicant in that case within a period of 4 months from the date of receipt of copy of that order. In the instant case we find that despite the fact that the respondents were aware of the alleged act of the applicant which, according to the respondents, amounted to misconduct, right from the year 1989 when recovery was

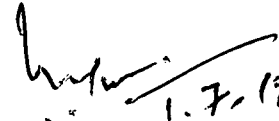
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effected from the final bill of the contractor. Thereafter a show cause notice was also issued sometime in the year 1995 to which he gave a reply. Even prior to that the matter remained under consideration with different officers but for reasons which have not been disclosed by the respondents it was only a few weeks before the date of superannuation of the applicant that the charge sheet was actually issued and served upon the applicant.

9. For the aforementioned reasons, we are convinced that the memo of charges served on the applicant cannot be sustained nor allowed to stand. In the result this OA is allowed and the impugned memo of charge sheet dated 3.4.97 issued against the applicant is hereby quashed on the ground of delay and laches. The respondents are directed to finalise and pay to the applicant all the post retiral benefits within a period of 4 months from the date of receipt of a copy of this order. In case payment is not made within the aforesaid period the respondents shall be liable to pay interest @ 12% p.a. from that date till the date of actual payment.

10. In the circumstances of the case we make no order as to cost.


(S.P. BISWAS)
Member (A)


1.7.1998.
(T.N. BHAT)
Member (J)