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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

1. OA No.608/97
2. OA No.609/97

New Delhi this the 28th day of June, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman
Hon'ble Mrs. Shanta Shastry, Member (Admnv)

OA No.608/97

Shri P.P. Kaura,
S/o late Sh. M.C. Kaura,
R/o 7-LF, Todar Mal Sequare,
Bengali Market,
New Delhi-1.

...Applicant

(By Advocate Shri S.K. Gupta)

-Versus-

Union of India through:

1. Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. Director General,
(Research and Development),
D.R.D.O. Ministry of Defence,
Directorate of Vigilance,
West Block No.8,
Wing No.5, IInd Floor,
R.K. Puram, New Delhi.
3. Sh. B.N. Mehra,
Enquiry Officer,
C/o Director General,
(Research and Development)
D.R.D.O. Ministry of Defence,
Directorate of Vigilance,
West Block No.8,
Wing No.5, IInd Floor,
R.K. Puram, New Delhi.

...Respondents.

(By Advocate Shri A.S. Singh, proxy for Mr. R.V. Sinha,
Advocate)

OA No.609/97

Shri Rajinder Shah Singh,
S/o Shri Hargobind Shah Singh,
R/o EA-262, SFS Maya Enclave,
New Delhi-110 064.

...Applicant

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O R D E R (ORAL)

By Reddy, J.-

Since these two OAs raise common question of law and fact, they are disposed of by a common order. However, for the facility of disposal, the facts in OA No.608/97 are stated.

2. The applicant, while he was working as a Junior Scientific Officer in the Defence Institute of Fire Research, Delhi was issued a charge-memo on 25.10.93, alleging that while he was working as Senior Scientific Assistant during the year 1981 he defrauded the Government funds by claiming Rs.3458/- on account of Leave Travel Concession (LTC) for the purported journey from Kanyakumari and back, without actually performing the journey. As the applicant denied the allegations, the disciplinary proceedings under Rule 14 of CCS (CCA) Rules, 1965 were initiated against him. The enquiry officer relying upon the documentary evidence found the charge as proved. Thereupon,

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the disciplinary authority, agreeing with the findings of the enquiry officer imposed the penalty of withholding of two increments for a period of four years with cumulative effect by the impugned order dated 12.1.96. The said order was confirmed by the appellate authority by order dated 6.3.97. The present OA is filed, challenging the above orders.

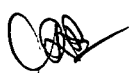
3. The learned counsel for the applicant firstly contends that there is an inordinate delay in initiating the disciplinary proceedings and hence they are vitiated.

4. It is next contended that there is no material in this case in support of the charge.

5. The learned counsel for the respondents, however, contends that the delay has been properly explained. It is contended that the basis for suspicion arose only in 1985 when the CBI report was made available. The department had considerable difficulty in locating the various documents and in the meantime the office has been shifted from Delhi to Chandigarh. Thus, the actual enquiry was commenced in 1986.

6. It is next contended that on the basis of the documentary evidence on record and on the findings of the enquiry officer the penalty was imposed on the applicant and hence it cannot be interfered with.

7. We have given our careful consideration to the arguments advanced on either side. The only allegation in this case was that the applicant without actually performing the journey on LTC in 1981 has claimed an amount of



Rs.3458/- thus defrauded the Government. In support of the charge 11 documents have been listed. No witness was sought to be examined. The incident was alleged to have occurred in 1981 and admittedly the charge memo was issued in 1993, that is 12 years had elapsed by the time the disciplinary proceedings were initiated against the applicant. The law is well settled that the disciplinary proceedings should be initiated and completed with all promptitude and any delay either in initiation or completion of the proceedings was viewed very seriously by the Supreme Court as it would prejudice the case of the charged officer. In a given case the delay might have occurred on account of certain circumstances due to which there might occur delay. Hence, if the delay is properly explained the vice of arbitrariness or prejudice will not exist. In the present case the respondents have stated in the counter-affidavit that the enquiry was commenced in 1985 on the basis of a finding of CBI. Only thereafter the department had taken up the enquiry, from 1985 till 1993 the delay was sought to be explained on the ground that the concerned department could not get documents as the CDA (WC) has been shifted to Chandigarh. No other reason is shown in the counter-affidavit for the delay. The delay in collecting the documents due to shifting of the office from one place to another might involve a delay of few months but it will certainly not take 8 years from 1985 to 1993. It is not the case of the respondents that several witnesses had to be examined and other necessary documents were to be collected from several departments. As seen in the charge memo, out of 11 documents 7 pertain to the application made by the applicant to perform the journey on LTC and for claiming the amount after performing the journey. The remaining four documents were of 1989 which has no direct bearing with

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misconduct sought to be established. It must be noticed that the CBI has submitted the report as early as in 1985 itself to show that the Motor Agency which has issued the purported bogus certificate was a bogus one. There is thus no proper explanation for the period that was taken by the department from 1985 to 1993, even assuming that the period from 1981 to 1985 needs to be explained.

8. In this case the delay has caused serious prejudice to the applicant in that he could not produce the necessary evidence or documents to disprove the case against him. The enquiry officer, in fact, based the inability of the applicant to recollect and give the details of his journey in the concerned bus as the main ground to establish the charge against him. It should be noticed that the details of the journey performed in 1981 cannot be recollected in 1993 and the delay cannot be attributed to him. It is also the case of the applicant that High Way Tours and Travels Ltd. which has issued the certificate of the performance of the journey wound up its business and its whereabouts were not known. The Enquiry Officer has also, on more than one occasion, stated that the department has taken too long a period to initiate disciplinary enquiry which caused prejudice to the applicant. It is also the case of the respondents that the cash receipts produced by the applicant could not be made available due to the lapse of time. Thus, it is evident that the delay had worked against the applicant in disproving the case of the Government. In Collector of Central Excise, Ahmedabad v. Television & Components Pvt. Ltd., JT 1998 (8) SC 16, the Supreme Court held thus:

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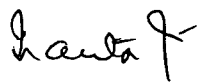
"It is no doubt true that undue delay in initiation of disciplinary proceedings may cause prejudice to the employee concerned in defending himself and, therefore, the courts insist that disciplinary proceedings should be initiated with promptitude and should be completed expeditiously. The question as 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."

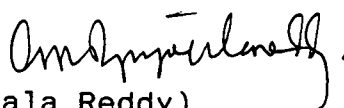
9. Having considered the facts of the present case in the light of the above law declared by the Supreme Court, we are satisfied that there is an inordinate delay in the case which was not properly explained. Further the delay has caused prejudice to the applicant inasmuch as he was not able to procure the material or the witnesses in defence of his case.

10. Hence the impugned orders are vitiated and are liable to be quashed.

11. In view of the above finding, we are of the view that the second point raised by the applicant need not be adverted to.

12. The impugned orders are quashed in both the OAs. Both the OAs are accordingly allowed. No costs.


(Smt. Shanta Shastri)
Member (Admnv)


(V. Rajagopala Reddy)
Vice-Chairman(J)

'San.'