

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 368 of 1994

New Delhi this the 27th day of July, 1999

HON'BLE MR. JUSTICE D.N. BARUAH, VICE CHAIRMAN
HON'BLE MR. N. SAHU, MEMBER (A)

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Shri Mawasi Ram Saini
S/o Shri Aari Mal Saini
R/o Village & P.O. Jharsa
District Gurgaon (Haryana) ..Applicant

By Advocate Shri B.T. Kaul.

Versus

1. The Chief Secreatary,
Government of National Capital
Territory of Delhi,
5, Sham Nath Marg,
Delhi-54.
2. The Director of Education
Govt. of National Capital
Territory of Delhi,
Old Secrtariat,
Delhi.
3. The Deputy Director of Education,
Govt. of National Capital Territory of Delhi,
Old Secretariat,
Delhi.
4. The Principal,
The Government Co-Education Composit
Model Senior Secondary Schoool,
Ghitroni Mehrauli,
New Delhi. ..Respondents

By Advocate Shri S.K. Gupta.

ORDER (ORAL)

Hon'ble Mr. Justice D.N. Baruah, Vice Chairman

The applicant was working as Upper Division Clerk
in the Government Co-Education Composit Model Senior
Secondary School, Ghitroni, Mehrauli. An FIR was
lodged by respondent No.2 alleging misappropriation

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to the tune of Rs.17,000/- approximately. The FIR was lodged under Section 409 IPC. The police registered a case. However, after investigations, nothing was found. Even the informer, i.e., the respondent No.4 was also not traceable. The case was lodged on 1.8.84. Pending drawal of disciplinary proceeding on the ground of alleged misappropriation the applicant was placed under suspension. A disciplinary proceeding was thereafter initiated by the disciplinary authority. Copy of the Article of Charges along with statements of imputation were also served on the applicant asking him to give reply as to to the show case/ why action should not be taken on the alleged misappropriation. The applicant duly submitted his reply. Thereafter, nothing was done till 1997. Only in 1997 the disciplinary authority appointed an Enquiry Officer. The Enquiry Officer has not done anything and to the best of knowledge the disciplinary proceeding has not come to an end. For the last 15 years disciplinary proceedings has been pending without any reason. Hence, the present application.

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2. The application was filed as far back in this Tribunal 1994. Applicant has approached because of the inordinate delay in taking any decision on the disciplinary proceedings. The applicant has approached this Tribunal by filing the present application to quash the proceeding because to allow the proceeding to continue in this manner would amount to abuse of process of law. In the due course the respondents have filed their written statement. The contention of the respondents in this case is as the criminal case has not been disposed of, the action could not be taken. We have heard both sides.

3. Mr. B.T. Kaul, the learned counsel appearing on behalf of the applicant submits that the police has not been able to proceed in the matter because of the lack of evidence. Besides, the informer who lodged the FIR is untraceable. Till now no challan has been filed, charge-sheet has not been issued and papers under Section 173 of Cr.PC has not been filed. Mr. Kaul has today produced a photocopy of the letter addressed to the DDO, Govt. Boys Sr. Secondary School Fatehpur Beri, New Delhi in which

[Signature]

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the applicant has been working. This is letter issued by ACP, Additional SHO, Mehrauli and MCH(R) dated 20.2.1995. A copy of which has also been supplied to the learned counsel for the respondents Mr. Gupta. Mr. Gupta does not dispute the said letter. The contents of this letter is extracted below:-

"In ref. to your letter No.F.13.B/49/20 dated 30.1.95 regarding case FIR No. 300/84 u/s 409 IPC PS Mehrauli it is to inform you that no as per the available records this PS the above mentioned case was registered and was finally send untraced on 19.1.86. No further detail regarding the grounds for sending the case as untraced is available in the PS as the case is old one and the records has already been destroyed".

From this letter it is clear that for the last 11 years, i.e., till the date of issuance of the letter nothing was done. On the other hand the papers were finally sent on 19.1.86 as untraced. No further details regarding the grounds for sending the case as untraced is available in the Police Station. Records were also destroyed. Mr. Kaul further submits that the applicant has been harassed because of the long pendency of the departmental proceedings. Normally, according to him, the disciplinary proceedings ought to have completed within a period of not more than 2 years and for the last so many years, nothing has been done. Mr. Kaul further submits that the proceedings

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should not be allowed to continue in this manner.

Mr. Gupta on the other hand tries to support the action by saying that because of the pendency of the criminal case, the proceedings could not be completed. However, he does not dispute/ that no challan or charge-sheet has been served on the applicant in the aforesaid criminal case.

4. Law in this regard is well settled, In State of A.P. Vs. N. Radha Krishnan reported in 1998 (4) SCC page 154, the Supreme Court ... held that the delay in conclusion of the departmental proceedings in certain cases can be held to ... vitiate the proceedings. In the aforesaid case the Supreme Court observed as follows:-

"19. As a result of our aforesaid findings on the first three points it must be held that the writ petition filed by the respondent-writ petitioner was rightly rejected by the learned Single Judge and was erroneously allowed by the Division Bench of the High Court by the impugned judgment".

In this case also the respondents have not given proper explanation of the delay except saying that the criminal case was pending. While saying so, the respondents have not given full attention to the facts that the criminal case did not progress after its registration. On the other hand the police informed

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the DDO that the complaint was not traceable. Records were destroyed. Even during the pendency of the criminal case it is well settled that the department can proceed with the departmental enquiry de hors the criminal proceedings.

5. Considering the entire facts and circumstances and following the case of in Radha Krishnan's (Supra), we feel that the proceedings should not be allowed to continue. Accordingly, we quash and set aside the disciplinary proceedings initiated in 1985 Annexure A-8. The applicant is also entitled to get all consequential benefits.

No costs.


(N. SAHU)
MEMBER (A)


(D.N. BARUAH)
VICE CHAIRMAN

Rakesh