

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

26

O.A. ~~XXX~~ NO. 1925 /19 94 Decided on : 11.12.1997

Zile Singh ... Applicant (X)

( By Shri Sunil Malhotra Advocate )

versus

Delhi Administration & Anr ... Respondent (s)

( By Shri None Advocate )

CORAM

THE HON'BLE SHRI JUSTICE K. M. AGARWAL, CHAIRMAN  
THE HON'BLE SHRI S. P. BISWAS, MEMBER (A)

1. To be referred to the Reporter or not ? Yes
2. Whether to be circulated to other Benches  
of the Tribunal ? X

*KM*  
( K. M. Agarwal )  
Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH.

O.A. No.1925/94.

NEW DELHI, THIS THE DAY 11/12 OF DECEMBER, 1997.

27

HON'BLE MR. JUSTICE K.M.AGARWAL, CHAIRMAN

HON'BLE MR. S.P. BISWAS, MEMBER (A).

Zile Singh,  
son of Sh. Mansa Ram,  
WZ-36, Vill. Asalatpur near A-3 Block,  
Janakpuri, New Delhi-58.

...APPLICANT.

(BY ADVOCATE SHRI SUNIL MALHOTRA)

Vs.

1. Delhi Administration (Now N.C.T. of Delhi)  
5-Sham Nath Marg, Delhi  
through its Chief Secretary.
2. The Director of Education,  
Delhi Administration (Now NCT of Delhi)  
Old Secretariat, Delhi-11004.

....RESPONDENTS.

(NONE FOR THE RESPONDENTS)

ORDER

JUSTICE K.M.AGARWAL:

This is an application under Section 19 of the Administrative Tribunals Act, 1985 for quashing the chargesheet dated 30.5.1994 and for consequential reliefs.

2. Briefly stated, as Sales Tax Inspector Grade II, the applicant was served with the Memo dated 9.4.1987, (Annexure A), by the Dy.Commissioner (Vig.), Sales Tax, New Delhi and called upon to explain how he had submitted normal Survey Report No.156920 dated 6.1.1984, consequent upon his survey of M/s. Suvidha System, 5601, Basant Road, Paharganj, New Delhi, when the "dealer was indulging in nefarious activities and was not functioning from the given address." By his reply dated 14.3.1989, (Annexure B), the allegations were denied. He was, thereafter, promoted to the post of Superintendent by order dated 13.2.1990 with retrospective effect from 7.2.1990 under the administrative control of the 2nd respondent and posted in Government Girls Senior Secondary School No.2, Janakpuri, B-Block, New Delhi. When he was about to retire on 31.5.1994, the impugned charge-sheet dated 30.5.1994

JK

was tried to be personally served on the applicant, but could not be so served till the date of his retirement, or at any time thereafter till the date of the present application. Accordingly the present application was filed for the said reliefs.

3. After hearing the learned counsel for the applicant and perusing the record, we are of the view that the disciplinary proceedings were initiated against the applicant before the date of his retirement and, therefore, he could not avoid the proceedings on the ground that the charge-sheet was not served on him at any time before the date of his retirement. The disciplinary proceedings are deemed to have commenced on the date of framing of the charges. In the present case, the charges were admittedly framed before the date of retirement of the applicant. Secondly, when the applicant was found to be avoiding personal service of the impugned charge-sheet, substituted method of service was adopted by the respondents by affixture of the charge-sheet on the main gate of his residence as stated in paragraphs 1 and 4 (g) of the counter filed on behalf of the respondents. This was sufficient service and, therefore, on the ground that the charge-sheet was not served on him before the date of his retirement, he could not or cannot avoid the disciplinary proceedings against him.

4. Unfortunately, a copy of the impugned charge-sheet has not been filed either by the applicant or by the respondents. However, it appears from paragraph 4(e) of the counter that the imputation against the applicant for the disciplinary proceedings was the same as was communicated to him by Memo dated 9.4.1987, (Annexure A), by the Dy. Commissioner (Vig.), Sales Tax, New Delhi. Paragraph 4 (e) of the counter reads as follows:

"As regards para 4(e) it is submitted that reply submitted by applicant to memo No.F 4(20)85/V/CST/Part V/81 dt. 9.4.87 was not found satisfactory and this was communicated to respondent No.2 in 1991 itself."

Now on the basis of the said fact, it was argued that if after the knowledge of misconduct committed by the applicant, he was promoted as Superintendent in 1990, it would be presumed that the respondents had condoned the misconduct alleged against the applicant and accordingly no disciplinary proceedings

*Yours*

could be initiated subsequently in respect of such misconduct which was earlier to the date of promotion. In Support of this contention, reliance was placed on a decision of the Madhya Pradesh High Court in **LAL AUDHRAJ SINGH Vs. STATE**, AIR 1967 Madhya Pradesh 284.

5. The argument cannot be accepted. In **STATE OF M.P. & ORS. Vs. R.N. MISHRA & ANR**, JT 1997 (8) S.C. 162, the Supreme Court distinguished the decision of the Madhya Pradesh High Court in Lal Audhraj Singh's case and held that it was not applicable to the case before it as in Madhya Pradesh's case the employer had a choice to inflict punishment on the employee but the employer did not choose to punish the employee and in that context, it was held by the High Court that the misconduct attributable to the employee was condoned. We are of the view that the facts of the present case are similar to those in the case before the Supreme Court, where it was held:

"The substance of the decisions cited above is that under ordinary law of Master and Servant once an employer has condoned any misconduct attributed to an employee, which (would) have otherwise justified his dismissal or punishment, the employer cannot after such condonation go back upon his election to condone and assert a right to punish the servant. But, the question that arises for consideration in the instant case is, whether the doctrine of condonation of misconduct under ordinary law of master and servant can be pressed into service where an employee is governed by statutory rules, and under law the employer is required to consider the case of an employee for promotion against whom a preliminary enquiry is pending. To begin with when there is an offer and acceptance of an appointment, the relationship between the employee and Government may be contractual, but once an employee is appointed, he acquires a status, as his conditions of service are regulated by statutory rules or provisions of an Act. Under law, government is not justified in excluding an employee from the field of consideration for promotion merely on the ground that certain disciplinary proceedings are contemplated or some preliminary inquiry to inquire into the misconduct attributed to that employee are pending."

Accordingly the aforesaid contention is rejected.

6. It was next argued that there was inordinate delay in initiating disciplinary proceedings against the applicant. It was submitted that the misconduct was of 1984. In 1987, show cause notice was issued during preliminary

inquiry. On 14.3.1989, the reply was submitted and thereafter, by order dated 13.2.1990, the applicant was promoted. Till at any time before 30.5.1994, no charges were framed against the applicant. When the applicant was about to retire on 31.5.1994, the charge-sheet was prepared on 30.5.1994 and tried to be served, or served on 31.5.1994. Accordingly, it was urged that on the ground of inordinate delay in initiating disciplinary proceedings, those proceedings were liable to be quashed.

7. Though we find that the applicant himself made a delay of about two years in replying the show cause notice dated 9.4.1987 and further delayed the inquiry proceedings by not appearing before the Inquiry Officer or responding to the charge-sheet, we find substance in the contention that there was inordinate delay in initiating the inquiry proceedings. The misconduct of 1984 admittedly came into light in 1987, before issuance of the show cause notice dated 9.4.1987. Though the reply was submitted by the applicant after about two years from the date of issue of show cause notice dated 9.4.1987, there was no justification for the respondents to wait till 30.5.1994 for initiating the D.E. proceedings against the applicant. Accordingly we are of the view that on the ground of laches, the impugned charge-sheet dated 30.5.1994 deserves to be quashed.

8. In so far as the consequential relief for settlement and payment of various post retirement benefits are concerned, we find from the respondents' reply to paragraphs 4(h) to 4(l) of the application that the applicant was given provisional pensionary benefits as per Rule 9 to the CCS Pension Rules. In so far as final settlement was concerned, it was stated that a decision in that regard could be taken only after the disposal of vigilance case against him as per charge-sheet dated 30.5.1994. The applicant has also not denied that he was paid the provisional pension etc. as stated by the respondents in their counter. Now, therefore, the applicant would be entitled to other pensionary benefits after settlement of his claims for final post retirement benefits. That may now be directed to be settled and paid within a reasonable time. However, the applicant cannot be held entitled to claim any interest, because he himself was guilty of delaying the disciplinary proceedings.

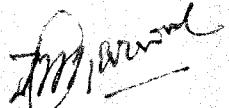
Pursuant to the charge-sheet dated 30.5.1994, he ought to have appeared

31

before the disciplinary authority or the inquiry officer and raised such objections against initiation of the proceedings as were available to him, or as urged by him before this Tribunal. That having not been done, we are of the view that the applicant himself was responsible for the delay in settling his post retirement benefits. Accordingly he cannot claim or be allowed any interest on the delayed payment of post retirement benefits.

9. In the result, this application succeeds and it is hereby allowed. The impugned charge-sheet dated 30.5.1994 is quashed and as a necessary consequence thereof, the respondents are directed to finalise and pay the applicant's claim for his post retirement benefits within a period of four months from the date of receipt of a copy of this order. If the final payments are not made within four months from the date of receipt of a copy of this order, the applicant shall be entitled to interest @ 12 per cent per annum after expiry of a period of four months from the date of receipt of a copy of this order to the date of actual payment.

10. In the circumstances of the case, we direct the parties to bear their own costs as incurred.

  
(K.M. AGARWAL)  
CHAIRMAN

  
(S.P. BISWAS)  
MEMBER (A)