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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

Regn.No.1760/1989

Date of Decision: 7.7.1989

Shri K.K.Kochhar

... Applicant.

Vs.

Union of India & Ors.

... Respondents.

For the applicant

... Shri K.L.Bhatia,  
Advocate.

For the respondents

... Shri M.L.Verma,  
Advocate.

CORAM: Hon'ble Shri P. Srinivasan, Administrative Member.  
Hon'ble Shri T.S.Oberoi, Judicial Member.

JUDGEMENT (ORAL)

(Judgement of the Bench delivered by Hon'ble  
Shri P. Srinivasan, Administrative Member).

This application has been filed before us in connection with a Misc. petition, MP-1297/89 filed by the applicant. When the matter came up for hearing, we suggested that the original application itself could be heard, upon which counsel for both sides, Shri K.L.Bhatia and Shri M.L. Verma readily agreed to address arguments on the merits of the original application. We have heard Shri Bhatia as well as Shri Verma on the merits of the original application.

2. The applicant, who retired as Assistant Collector of Central Excise, on 31.3.1988 complains in this application that disciplinary proceedings initiated against him without justification on 3.12.1987 on the verge of his retirement in respect of an incident which is said to have occurred in March, 1981, more than six years earlier, had been illegally continued after he was allowed to superannuate. As a consequence, the respondents had withheld his gratuity, commutation of pension, encashment of unavailed leave and the amount due to him under the Group Insurance Scheme. However, during the pendency of this application, the respondents have, in pursuance of an order of this Tribunal on 25th January, 1989, paid the applicant the amount due to him on account of encashment of unavailed leave as well as under

*P. Srinivasan*

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the Group Insurance Scheme. The gratuity due to him is still outstanding and the applicant has not yet been allowed to commute part of his pension.

2. Shri K.L.Bhatia, learned counsel for the applicant submitted that the very delay in initiating departmental proceedings rendered the entire proceedings unfair and illegal. The incident in respect of which the proceedings were initiated is said to have taken place in March, 1981 and the applicant could hardly be expected to remember the details of that event in December, 1987, when the charge-sheet was served on him. He had no inkling prior to December, 1987 ~~and~~ that any preliminary investigation was going on, since he had not been asked to furnish any explanation in regard to the incident. The charge levelled against the applicant narrated that in his capacity as Superintendent of Central Excise at the time, he had, without adequate justification, conducted a raid on the premises of a factory known as Raja Steel Works, Gobindgarh in March, 1981, during which he had seized Iron and Steel flats weighting 11.506 MTs. He had in the course of routine duties exercised his judgement at the time to conduct the raid on the material available with him and could not be expected to remember after over six years how exactly it came about. As it happened, the raid did disclose excess stock with reference to the books maintained by the firm of 47 Kgs. No doubt, this was a negligible discrepancy and the seized stock was released soon after on 1.4.1981 by the then Assistant Collector of Customs but at worst, the applicant could be said to have committed an error of judgement which would not justify initiation of penalty proceedings against him. He had been allowed to retire on attaining the age of superannuation on 31.3.1988 and had been sanctioned final pension, he should not, therefore, have been denied commutation of part of the pension. The respondents could also not withhold payment of gratuity because no amount was found due from him on the date of his retirement. But for the order of this Tribunal, the

P. S. Bhatia

respondents would not have paid the applicant encashment of unavailed earned leave and amount due under Group Insurance Scheme. The entire action of the respondents in initiating penalty proceedings a few months before the date of applicant's superannuation in respect of an incident which occurred more than six years earlier and continuing the proceedings after his superannuation even though there was no allegation of pecuniary loss caused to the Government, and the resultant withholding of payment of various dues to the applicant, clearly showed malice against the applicant and therefore, this Tribunal should quash the charge-sheet and direct the respondents to pay all the retirement dues to the applicant with interest at the rate of 18% per annum.

3. Shri M.L.Verma, learned counsel for the respondents strongly opposed the contentions of Shri Bhatia. No doubt the incident complained against, namely, the raid and the consequent seizure occurred in March, 1981, but the authorities had to make preliminary investigations thereafter and consult various other departments before initiating disciplinary proceedings. The delay in initiating disciplinary proceedings was thus justified. There had been a complaint against the applicant by the owner of the firm whose premises were raided that the applicant had demanded money after effecting the seizure. In the preliminary investigation, it was found that there was not sufficient material with the applicant at the time to justify the raid and the seizure. Therefore, the impugned proceedings were initiated. Under Rule 9(2) of the Pension Rules, Departmental proceedings initiated against a Government servant while in service could be continued after his retirement subject to the conditions stated therein which were duly fulfilled in this case. Under Rule 69 of the Pension Rules, the gratuity due to a Government servant can be withheld during the pendency of disciplinary proceedings against him. Thus, there was nothing illegal in the action of the respondents.

*P. S. Verma*

4. We have carefully considered the matter. The charge levelled against the applicant was that he had conducted a raid and effected seizure without adequate ground. Though, there is a reference in the imputation of charges to the allegation of the owner of the premises of Raja Steels Works that the applicant had demanded money, the charge itself does not make any reference to such a demand. It only speaks of the raid and the seizure having been conducted on insufficient grounds. It goes on to say that the applicant had exercised his powers in making the seizure and thereby caused harassment and financial loss to the party. Obviously, as a result of preliminary investigation, the allegation that the applicant demanded money could not be sustained and, therefore, it was not included in the charge. Thus no moral turpitude was involved but only the correctness of his judgement in deciding to conduct the raid. All other documents listed in the enclosure to the memo of charge bear dates in March, 1981. There is no document which is of a later date. In these circumstances, it is difficult to accept the contention that preliminary investigations had to be conducted for over six years thereafter before deciding to initiate proceedings against the applicant as late as in December, 1987. We must agree with the learned counsel for the applicant that the long delay in initiating disciplinary proceedings in this case where the whole issue centres round the exercise of his judgement-whether it was properly exercised or not-vitiates the proceedings. At least immediately after the seized material was returned to the firm in April, 1981, his explanation should have been called for when his memory of the incident was still fresh. Without doing so, it was indeed unfair to confront him with a charge-sheet more than six years after the event. After all, memory fails with the passage of time and the opportunity of being heard becomes meaningless thereafter. The audi alteram

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partem rule which is an essential component of natural justice thus stood so attenuated in this case as to be non-existent. If the charge alleged that the applicant had asked for or taken illegal gratification, the position would have been different, but , as we have explained earlier, that is not the case here. <sup>In</sup> these circumstances, the long delay in initiating proceedings in this case with nothing to show that any additional material was gathered in the meanwhile to support the charge against the applicant, vitiates the whole proceedings. We have, therefore, no hesitation in quashing the memo of charge addressed <sup>to</sup> the applicant and consequently the disciplinary proceedings initiated against him.

5. There is one more aspect of the case. Sub rule (1) of Rule 9 of the Pension Rules authorises the President to reduce or withdraw the pension of a Government servant or to effect recovery from his pension for any pecuniary loss occasioned by him, the said loss having been determined as a result of departmental proceedings initiated against him. Sub rule (2) of Rule 9 states that such departmental proceedings if instituted against Government servant while in service, may be continued after his retirement.. It is, therefore, under sub-rule 2 of Rule 9 that the Departmental proceedings against a Government servant can be continued after his retirement. The said sub-rule 2 read with sub-rule (1) clearly indicates that only such departmental proceedings initiated against a Government servant while in service can be continued after his retirement which entail pecuniary loss to the Government. There is nothing in the charge levelled against the applicant to show that the authorities felt that pecuniary loss had been occasioned to the Government by the raid conducted by the applicant and the seizure made by him. For this reason, the continuation of the proceedings against the applicant after his retirement from service deserves to be struck down. Another indication that the authorities did not think that any pecuniary loss had been occasioned

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to the Government by the impugned action of the applicant is that his final pension was sanctioned and paid to him immediately on retirement.

6. Having thus arrived at the conclusion that the disciplinary proceedings against the applicant deserve to be quashed, we come to the other reliefs sought by the applicant. As we have already mentioned the payment of the amount due to the applicant on account of encashment of unavailed earned leave and under the Group Insurance Scheme was made to the applicant only after this Tribunal passed the order dated 25.1.1989. The gratuity payable to the applicant has not yet been paid to him nor has he been allowed commutation of pension. We direct the respondents to effect payment to the applicant of all his remaining dues and allow him to commute part of his pension within two months from the date of receipt of this order. They will also pay the applicant interest on the amount of gratuity payable to him at the rate of 7% per annum for the period reckoned from the completion of three months after the date of his superannuation till the end of one year and thereafter at the rate of 10% for the rest of the period till the date of actual payment. Shri Verma, learned counsel for the respondents submits that the interest should start running only from the date of this order. We do not agree with this contention.

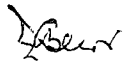
7. In the result, we pass the following orders:


- i) The disciplinary proceedings initiated against the applicant under Memo dated 3.12.1987 are hereby quashed.
- ii) The respondents will effect payment of all remaining retirement dues to the applicant and allow him to commute part of his pension within two months from the date of receipt of this order.
- iii) The respondents will pay the applicant interest on the amount of gratuity due to him at the rate of 7% per annum for the period beginning three months after the date of his superannuation and ending one year after such superannuation

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and at 10% for the period thereafter till the date of actual payment.

8. The application is disposed of on the above terms leaving the parties to bear their own costs.

  
( T.S. Oberoi )  
Member (Judl.)

  
( P. Srinivasan )  
Member (Admn.)