

Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. DA-35/88

Date: 9.8.1989

Shri K. K. Sood

.... Applicant

Versus

Union of India & Ors. Respondents

For the Applicant Shri R. Kapur, Advocate

For the Respondents Shri R. S. Aggarwal, Advocate

CORAM: Hon'ble Shri P. K. Kartha, Vice-Chairman (Judl.)
Hon'ble Shri M. M. Mathur, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *no*

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

The applicant, who had worked as Assistant Commissioner of Income Tax, filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

- (i) to quash the disciplinary proceedings initiated under Rule 14 of the C.C.S. (CCA) Rules, 1965 by the impugned memorandum dated 28.11.1986; and
- (ii) to direct the respondents to release the amounts due to the applicant by way of gratuity/leave salary forthwith along with interest at the prevailing market rate.

2. The case of the applicant is that he joined the Income Tax Department in 1954 as an Inspector and by dint of his hard and sincere work, he earned several promotions, the last one being that of Assistant Commissioner of Income Tax in 1983. He attained the age of

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superannuation on 30.11.1986. 29.11.1986 and 30.11.1986 were holidays. On 28.11.1986, which was his last working day in service, the impugned memorandum whereby the President proposed to hold an inquiry for major penalty under Rule 14 of the C.C.S.(CCA) Rules, 1965, was served on him. The charges as contained in the said memorandum were denied by him vide his letter dated 13.1.1987. He made representation to the Chairman, Central Board of Direct Taxes, on 28.1.1987 to which he received a cryptic reply on 16.2.1987 to the effect that the matter was receiving attention. He sent reminders to the Central Board of Direct Taxes on 2.4.1987 and 19.12.1987 to which he has not received any reply. As a result of this action, he has not been paid gratuity amounting to Rs.72,000/- and leave salary amounting to Rs.26,000/-.

3. The applicant has alleged that the action initiated by the respondents is arbitrary and is against the principles of natural justice and thereby infringes Articles 14 and 16 of the Constitution. According to him, Rule 9 of the C.C.S. (Pension) Rules, 1972 permits continuation of inquiry against a Government servant beyond the date of retirement only if the pensioner is guilty of grave misconduct or negligence and pecuniary loss sustained by the Government has been determined and made known to him to help decide the gravity of negligence or misconduct on the part of a Government servant and to afford a fair and reasonable opportunity to the delinquent to put forth his defence. In the case of the applicant, neither the charges of grave misconduct, nor negligence has been included, nor the details of any pecuniary loss have been determined and intimated. He has also called in question the validity

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of the impugned action on the ground of inordinate delay as the charge-sheet issued to him on 28.11.1986 is for the alleged acts of omission committed in the years 1963 and 1970, i.e., after a lapse of more than 16 years.

4. The case of the respondents is that the impugned memorandum is valid and has been properly served on him. The decision in this case was taken on a careful consideration of the facts, evidence and material on record and also after complying with the required procedure. They have contended that the rules do not prescribe a time-limit for initiating action against the officer while in service in respect of misconduct noticed in his case. Action was initiated as soon as the misconduct came to the Government's notice. They have also further stated that though the gratuity has been withheld in view of the provisions of Rule 69 of the C.C.S.(Pension) Rules, the leave salary has been allowed to him by an order issued in December, 1987.

5. We have carefully gone through the records of the case and have heard the learned counsel for both the parties. The only issue to be decided in this case is whether the respondents were within their rights to issue the impugned memorandum dated 28.11.1986 on the last working day of the applicant before his retirement on attaining the age of superannuation. During the hearing, the learned counsel for the respondents stated that the delay in serving the impugned memorandum on the applicant was due to the time taken for the examination of his case by the Government which also included consultation with the Central Vigilance Commission and obtaining of legal

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advice from the authorities concerned.

6. The Articles of Charge accompanying the impugned memorandum dated 28.11.1986 as set out in Annexure-1 of the said memorandum reads as follows:-

"ARTICLE-1

That the said Shri K.K. Sood while functioning as ITO District B-I(1) Delhi during the period 1.11.1963 to 30.6.1966 and while functioning as ITO District III (5) Delhi during the period 1.11.67 to 5.9.70 indulged in malpractice of completing the assessments in the case of M/s. Saral Trading Company for the Asst. Years 1963-64, 1965-66, 1966-67, 1967-68 and 1969-70, without making any worthwhile inquiries in the case and simply accepting several cash credits of large amounts in the capital accounts of partners and others thereby conferring undue benefits on the parties concerned. Further the said Shri K.K. Sood completed the assessment for the Assessment Year 1963-64 in unseemly haste and without following the normal procedures with regard to receiving return through Dak Counter, Service of notice for hearing, etc. & thereby conferred undue favours on the assessee concerned. Apparently by his above acts Shri K.K. Sood contravened provisions of Rules 3(1) (i), 3(1) (ii) and 3(1)(iii) of the C.C.S. (Conduct) Rules, 1964.

ARTICLE-2

As a quid pro qua for Shri Sood's conferring undue favours on the firm by completing its assessments for various years in a highly improper and irregular manner, Shri Sood's son Shri Ajay Chopra, Chartered Accountant, was engaged by the firm to represent its matters in later years before the Income-tax authorities. Shri Sood thereby revealed a conduct highly unbecoming of a Govt. servant."

7. Annexure-2 of the said memorandum deals with the statement of imputations of misconduct or misbehaviour in support of Articles of Charge. Annexure-3 enumerates the list of documents by which the Articles of Charge are proposed to be sustained. These documents pertain to the periods from 1963-64 to 1986. Annexure-4 to the memorandum which is devoted to the list of witnesses, indicates that no witnesses are sought to be produced in support of the case of the prosecution.

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8. The applicant has stated that according to his information, some persons inimical to M/s Saral Trading Company and its partners, had made a complaint against them sometime in November/December, 1984 in which his name too appeared to have been dragged. The respondents did not make any inquiry about his alleged involvement for two years but came forward to issue the impugned memorandum on the last working day before his retirement.

9. The learned counsel for the applicant has relied upon various judicial pronouncements in support of his ^{*}contentions.

10. The question whether disciplinary proceedings can be continued against a Government servant even after his retirement under the C.C.S.(Pension) Rules, or the corresponding provisions of the Railway Pension Rules, even where the officer has not been suspended but allowed to retire during the pendency of such proceedings, and whether such proceedings can be continued or initiated even where there has been no pecuniary loss for the Government by the alleged misconduct of the Government servant on which such proceedings are based, has been

* Cases relied upon by the learned counsel of the Applicant:

Shri K.M. Sharma Vs. Union of India, A.T.R. 1987(1),CAT 307; Girija Kumar Phukan Vs. State of Assam & Others, 1986(1) SLJ 178; R.P. Nair & Another Vs. Kerala State Electricity Board & Others, A.I.R. 1979, Kerala 135; Mohanbhai Dungarbhai Parmar Vs. Y.B. Zala & Others, 1980 (1) SLR 324; M. Nagalinga Reddy Vs. Govt. of Andhra Pradesh & Others, A.T.R. 1987 (2) C.A.T., 429; A.P. Augustine Vs. Supdt. of Post Offices, Alwaye, 1984(2) SLR 163; S.D. Aswatha Narain Vs. Chief Commissioner (Admn.) & Another, 1987 (2) ATLT 392; Ram Gopal Bhattacharyya Vs. State of West Bengal, 1988 (1) ATLT 237; K. Padmanabha Rao Vs. Accountant General, A.P.I. Hyderabad & Others, 1987 (2) ATLT 39; and M. Perumal Vs. Union of India & Others, 1987 (2) ATLT 367.

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considered in detail by a Full Bench of this Tribunal in Amrit Singh Vs. Union of India & Others, 1988 (2) ATLT, C.A.T. 539, The Full Bench of this Tribunal held, on consideration of the case law on the subject, that the disciplinary proceedings could be continued against a Government servant in such circumstances.

11. The further question which arises for consideration is whether after a lapse of nearly 16 years of the alleged misconduct, the disciplinary proceedings could be initiated against a Government servant on the verge of his retirement and continued under the C.C.S.(Pension) Rules.

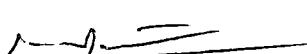
12. The Articles of Charge framed against the applicant pertain to his alleged misconduct during the period from 1963 to 1970, while the disciplinary proceedings were initiated only on 28th November, 1986. The respondents have not given satisfactory explanation for such a long delay in taking a decision to initiate the disciplinary proceedings against the applicant. When the power is conferred on an authority to effectuate a purpose, it has to be exercised in a reasonable manner. Exercise of power in a reasonable manner inheres the concept of its exercise within a reasonable time (vide Mansa Ram Vs. S.P. Pathak, 1984 (1) S.C.C. 125 at 136). Courts have frowned upon undue delay in initiating departmental proceedings, holding that delay by itself constitutes denial of reasonable opportunity and amounts to violation of principles of natural justice. In one case, it was held that a delay ^{of} about $1\frac{1}{2}$ years must be considered fatal from the point of view of affording reasonable opportunity to the employee to show-cause against the charge levelled against him (vide Mohanbai Dungarbai Parmar Vs. Y.B. Zala & Others, 1980 (1) SLR 324; see also M. Nagalinga

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Reddy Vs. Government of Andhra Pradesh & Others, A.T.R. 1987 (2) C.A.T. 429; A.P. Ausustine Vs. Supdt. of Post Offices, Alwaye, 1984 (2) SLR 163; and P.L. Khandelwal Vs. Union of India & Others, A.T.R. 1989(1) CAT 402).

In our opinion, the respondents have not satisfactorily explained the delay in initiating disciplinary proceedings against the applicant in the instant case. We are, therefore, of the opinion that the impugned memorandum dated 28th November, 1986 is not legally sustainable. We, therefore, quash the impugned memorandum dated 28th November, 1986. The respondents are directed to give all the retirement benefits to the applicant as admissible under law within a period of three months from the date of communication of a copy of this order. The parties will bear their own costs.


(M. M. Mathur) 9/8/88
Administrative Member


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(P.K. Kartha)
Vice-Chairman (Judl.)