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In the Central Administratvie Tribunal

Principal Bench: New Delhi

Regn. No.OA 1778/1990

Date of decision:15.04.1993

Shri S.K. Jain

...Applicant

Versu

Union of India through Secretary
Government of India, Ministry of
Defence, New Delhi.

...Respondents

For the Applicant

..Shri Shyam Moorjani, Counsel

For the Respondents

..Shri M.L. Verma, Counsel

CORAM:-

**THE HON'BLE MR. JUSTICE S.K. DHAON, VICE-CHAIRMAN
THE HON'BLE MR. I.K. RASGOTRA, ADMINISTRATIVE MEMBER**

1. To be referred to the Reporters or not? *Y*

JUDGEMENT(ORAL)
**(of the Bench delivered by Hon'ble Mr.
Justice S.K. Dhaon, Vice-Chairman)**

On 21.03.1986, the President by means of a Memorandum, in the purported exercise of powers under Rule 14 of the CCS(Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as 'the Rules'), initiated disciplinary proceedings against the petitioner. He was given a statement of Article of Charges. An Enquiry Officer was appointed. It appears that a common enquiry was held against six officers, including the petitioner. It is to be noted that on the relevant date, the petitioner was functioning as an Executive Engineer GE(F) AF Srinagar. He worked in that capacity from 19.12.1979 to 06.12.1991. The Inquiry Officer has made a recommendation. No decision has been taken by the President so far. However, the petitioner has chosen to approach this Tribunal by means of this application.

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2. In main, two prayers have been made. The first is that the charge memo may be quashed and the second is that the enquiry proceedings too may be quashed.

3. Article I of the Charge, inter alia, was that between 19.12.1979 and 06.12.1981, the petitioner committed gross misconduct as he failed to exercise proper check on issue of Schedule 'B' stores resulting in over issue of 2277 bags of cement and 2718 kgs of steel of different sections. Article II contained the Charge that the petitioner while functioning as GE(P) AF Srinagar during the aforesaid period, committed gross misconduct as he failed to exercise proper check on account of payment of RARs pertaining to certain transaction resulting in over payment of Rs.95,000/-.

4. The Enquiry Officer has recorded his opinion that the second charge has not been brought home to the petitioner. In respect to the first charge, he has made certain observations in paragraph 5.14, the relevant portion of which runs as under:-

"....Even though the actual quantity of the over issued cement and steel due to the acceptance of the defected works have not been quantified by the prosecution on the basis of detailed calculations, nevertheless CO was also responsible for the avoidable consumption of cement and steel in such defective item of works. This charge is thus held as partly proved".

5. The burden of the argument of the petitioner is that on account of inordinate delay between 1981 and 1986, the charge memo itself stands vitiated. The argument, in substance, is that delay in itself will, in the facts and circumstances of the case, tantamount to denial of reasonable opportunity to the petitioner.

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The other side of the coin is that protracted disciplinary proceedings from 1986 onwards will also prejudice the petitioner and the same should be quashed.

6. A counter-affidavit has been filed on behalf of the respondents. In it, details have been given as to what transpired from 11.05.1982 onwards. It would be expedient to extract the contents of the reply in so far as they relate to delay:

(a) 11 May, 1982 GE(P) AT I Wing Airforce intimated that 1200 bags of cement have been over issued to the contract vide their No.800/1037/E8 dated 11.05.1982.

(b) 14 June, 1982 Over issue of 1200 bags of cement in contract was intimated to CE Zone vide this office letter No.80017/250/E8 dated 14.6.82.

(c) 09 Sep. 1982 Chief Engineer Zone directed } to issue show cause notice vide their No.C-14040/36/EIC dated 9.9.82.

(d) 20 Sep. 1982 Show cause notice forwarded to Chief Engineer Zone vide our No.C-12024/54/EIC dated 20.12.1982.

(e) 04 Jan. 1983 Chief Engineer Zone
asked for complete statement of case along with Draft charge-sheet vide their No.C-14040/59/EIC dated 04.01.1983.

(f) 08 Feb. 1983 complete State of case along with Draft charge-sheet forwarded to Chief Engineer Zone vide our No.C-12024/57/EIC dated 8.2.83.

(g) 27 May. 1983 Documents returned by Chief Engineer Zone vide their letter No.C-14040/95/EIC dated 27.5.83 for resubmission with Board Proceedings and CWE's rcommendations.

(h) 30 June 1983 documents resubmitted to Chief Engineer Zone duly rectified vide our No.C-12024/79/EIC dated 30.06.1983.

(j) 29 Nov. 1983 Chief Engineer Zone
asked to ascertain the over issue of Schedule 'B' Stores and to pinpoint the responsibility for the same vide their letter No.C-14046/27/EIC dated 29 November, 1983.

(k) 06 Dec. 1983 Convening order issued vide our No.C-12024/83/EI dated 6.12.83 to ascertain the over issue of Schedule 'B' Stores.

(l) 20. Jan 1984 Court of Inquiry Proceeding alongwith the opinion of CWE forwarded to Chief Engineer Zone vide our letter No.C-12024/86/EIC dated 20.1.84.

(m) 28 March 1984 Chief Engineer Zone asked for the investigation and explanation for overpayment of responsible persons alongwith comments/recommendation of CWE vide their letter No.C014046/47/EIC dated 28.03.84.

(n) 18 May 1984 One man Inquiry Report along with recommendations of CWE forwarded to Chief Engineer Zone vide our C-12024/4/EIC dated 18.5.84.

(o) 06 Aug. 1984 Draft charge-sheet along with Annexures I, II, III and IV under Rules 14 of CCS(CCA) Rules 1965 fwd to Chief Engineer Zone vide our C-12024/14/EIC dated 6.8.84.

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(p) 09 Jan 1985 Engineer-in-Chief's
Branch Army Headquarters
returned the documents
with an observations
for rectification
vide their letter
No.78650/393/83/EID
dated 15.1.1985 received
vide Chief Engineer
Zone letter No.C-14046/
118/EIC dated 9.1.85.

(q) 27 March 1985 Service particulars
in respect of delinquent
officials forwarded
to Chief Engineer
Zone vide our C-12024/39/
EIC dated 27.3.85.

(r) 27 March 1985 Parawise replies to
Engineer-in-Chief's
Branch Letter No.78650/
393/EID dated 15.1.85
forwarded to Chief
Engineer Zone vide
our No.C012024/40/EIC
dated 27.3.85.

(s) 21 March 1986 Charge-sheet issued
to Shri S.K. Jain
vide Govt. of India
Ministry of Defence
Memorandum No.C-13011/11/
Vig/85 dated 21.3.86.

(t) 23 June 1985

• 7.

The Disciplinary authority appointed Shri S.C. Mittal as Presiding Officer and Smt. Tapti Neogi, CDI as Inquiry Officer vide Government Order No.C-13011/11/Vig/85/dated 23.6.1986.

(u) 1 August, 1986

Shri K.G. Sharma appointed Presiding Officer in place of Shri S.C. Mittal vide Govt.order No.C-13011/11/Vig./85 dated 1.6.1986.

(v) 3 Nov. 1987

The disciplinary authority charged the Inquiry Officer vide Government Order No.C-13011/11/Vig/85 dated 3.11.87 and appointed Shri R.S. Goel, CDI in place of Smt. Tapti Neogi, CDI.

(w) 23 Sep. 1988

Shri S.K. Jain appointed Presiding Officer in place of Shri K.G. Sharma vide Goverment Order No.C-13011/11/Vig/85 dated 23.9.1988.

(x) 5 Sep. 1989 Shri Avtar Singh appointed Presiding Officer in place of Shri S.K. Jain vide Govt. Order No.C-13011/11/Vig/ 85 dated 5.9.89.

(y) 22 Oct. 1990 Application alongwith connected documents received in the office from Chief Engineer Zone.

(z) 27 Oct. 1990 GE(P) 8 FBSU asked to prepare the documents to defend the case vide our C-12024/D/2/EIC dated 27.10.1990.

(aa) 5 Jan. 1991 GE(P) 8 FBSU (AF) sent documents to Engineer-in-chief's Branch special courier.

(ab) 20 Feb. 1991 Letter draft written statement received back by hand through Sub.Maj Yadav Maintained forwarded vide Engineer-in-Chief's Branch Army Headquarter Letter No.79263/437/91/EID dated 8.2.1991 with the following documents:- "The draft written statement appears to formally in order. However, correctness of the facts as stated in the DWS may please

7. Having perused the detailed reply, we are convinced that satisfactory explanation has been offered by the respondents to explain the delay in initiation of the disciplinary proceedings as well as the delay which has occurred during the course of the disciplinary proceedings before the Inquiry Officer.

8. Reliance is placed by the counsel for the petitioner on the following decisions:

(1) The state of Madhya Pradesh Vs. Bani Singh & Another, 1990(2) Judgment Today (JT) page 54. This was a case where certain irregularities had taken place in 1975-77. According to the Department, even in the year 1977, there was a doubt about the involvement of officer concerned in the said irregularities and the investigation was going on since then. Their Lordship of the Supreme Court observed that there being no satisfactory explanation for the delay of more than 12 years in the initiation of the disciplinary proceedings, the Madhya Pradesh Bench of the Tribunal rightly quashed the charge memo. Here, according to us, a satisfactory explanation has been offered by the respondents for the delay.

(2) Virendra Prasad Vs. Union of India & Others, 1986(4) SLR 471. In this case too, it was held that in the absence of sufficient evidence before the court to justify initiation of disciplinary proceedings in the year 1985 as against the offence said to have been committed in the year 1978-79, disciplinary proceedings should be quashed on the ground of delay.

(3) E.S. Athithyaraman Vs. The Commissioner, Hindu Religious and Charitable Endowments (Administration) Department, Madras, 1971 SLR 41(Madras High Court).
This was a case where disciplinary proceedings had

commenced. The delinquent official replied to the show cause notice. There was complete inaction for a period of $3\frac{1}{2}$ years on the part of the respondents after the receipt of the reply. The High Court held that in such a circumstance it should be presumed that the disciplinary proceedings had been dropped. This case is, therefore, distinguishable on facts.

(4) Kundan Lal Vs. Delhi Administration, 1976(1)

page 133 at 142. In this case a Sub-Inspector of Police was charge-sheeted under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947. He was acquitted on 21.01.1971. He was reinstated with effect from 20.02.1971. On 25.05.1973 he was served with a summary of allegations signed by a Police Officer based on the very facts on which the criminal prosecution had been launched against him. A learned Judge of the Delhi High court observed that there was no explanation as to why disciplinary proceedings were ~~not~~ initiated after a lapse of 2 years after the acquittal. In that context, it was held that the delay in taking departmental proceedings after acquittal by a criminal court was not justified. This case is not apposite.

(5) Mohanbhai Dungarbhai Parmar Vs. Y.B. Zala &

Others, 1980(1) SLR 324. That was a case which turned on its own facts. There the charge against the police constable was that he remained absent in the morning parade when the roll call was taken. Disciplinary proceedings after a lapse of about $1\frac{1}{2}$ years took place. In that context, a learned Judge of the Gujarat High Court observed that it was difficult for the Government servant to disclose the reason which compelled him to reach late. This case too is distinguishable on facts.

9. We have already indicated that more or less the Inquiry Officer has already exonerated the petitioner.

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.12.

The part of the charge, which according to the Enquiry Officer has been brought home the petitioner, does not, in our opinion, require looking into the old record which may have been disappeared on account of delay. We are, therefore, satisfied that, at this stage, it cannot be said that delay, if any, will cause prejudice to the petitioner while defending the surviving charge.

10. It is stated at the Bar that the petitioner sought voluntary retirement and his request has been accepted. He has, therefore, retired from Government service. Disciplinary proceedings will now continue in the light of Rule 9 of the Pension Rules. It is for the Department to consider whether it would like to continue with the disciplinary proceedings. Even if the proceedings are continued, some order has to be passed by the disciplinary authority. The UPSC has to be consulted. All this will take some time. We, therefore, direct that the disciplinary proceedings against the petitioner shall be completed within a period of 6 months from today. However, we repeat, that it will be desirable for the President to reconsider the case of the petitioner in the light of the facts that this is an old matter and he has retired from service.

11. With these observations, this application is dismissed. There shall be no order as to costs.

Subhash
(I.K. RASGOTRA)
MEMBER (A)
15.04.1993

S.K.
(S.K. DHAON)
VICE CHAIRMAN
15.04.1993

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