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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

O.A.No. 1827/91

Date of decision: 18.08.1993.

Sh. A.S. Awasthi

....

Applicant

versus

Delhi Admn. & Ors.

....

Respondents

Coram:-

The Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman

The Hon'ble Mr. B.N. Dhoundiyal, Member(A)

For the applicant : Sh. A.K. Behra, counsel

For the respondents : Sh. P.P. Khurana, counsel

JUDGEMENT(ORAL)

(delivered by Hon'ble Mr. Justice S.K. Dhaon, V.C.)

The petitioner a Grade-I officer of Delhi, Andaman and Nicobar Islands (DANI) Civil Service was served with a memorandum dated 25.1.1991 indicating therein that the departmental proceedings have been initiated against him by the President under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. In the said memorandum, a statement of article of charge to be framed against the petitioner was annexed as Annexure-I. It appears that soon thereafter the petitioner approached this Tribunal by means of this O.A. praying therein that the departmental proceedings may be quashed.

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This Tribunal did not pass any interim order. However, for reasons not known to us, final order in the departmental proceedings has not been passed so far. A counter-affidavit has been filed on behalf of the respondents and rejoinder thereto has also been filed. We have heard the learned counsel for the parties for quite some time.

Two charges have been levelled against the petitioner. The first is that while functioning as Joint Director (Industries) Delhi Administration, New Delhi during the period from March, 1980 to June, 1983, he failed to maintain absolute integrity and committed misconduct inasmuch as he got the extension of his official telephone No.667036 at his residence at E-17, Masjid Moth, New Delhi installed at the business premises of his son Sh. Prakash Awasthi and wife Smt. Shanti Awasthi at 6-CSC Market, Masjid Moth, which was used for the said business purposes.

The second charge is that the petitioner while posted as Joint Director (Health Services) Delhi Administration, New Delhi during the period from September, 1986 to December, 1986 acted in a manner unbecoming of a government servant and committed misconduct inasmuch as that, while being on commuted leave on medical grounds during the period from 24.10.1986 to 12.12.1986, he attended the conference of dealers of M/s IBP Co. Ltd. on 13.11.1986 at Chail (Himachal Pradesh) on behalf of M/s Rajokri Oil Company, an IBP retail outlet owned by his wife Smt. Shanti Awasthi to promote the business interest of his wife and son.

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In the counter-affidavit an attempt has been made to explain the delay in initiating departmental proceedings which admittedly commenced for the first time on 25.1.1991 i.e. after the expiry of a period of about 8 years with respect to the charge No.1 and about 5 years with respect to the charge No.2. The explanation is that the matter was under investigated and finally the Central Bureau of investigation submitted its report and thereafter the proceedings were initiated. There appears to be some plausibility in the explanation offered.

The question still remains as to whether the petitioner will get a fair and reasonable opportunity to defend himself in relation to the charges of the year 1983 and year 1986. We may indicate that some correspondence ensued in the department with respect to charge No.1. The final order passed by JDI(A)/D.I was;

"Since the extension has been granted P&T and installed on this telephone there is no need of any permission from the D.I., however, the charges for the extension and trunk call be collected from Sh. Awasthi."

We may also indicate that after the recommendation of the Departmental Promotion Committee which was held under the aegis of the U.P.S.C., the petitioner was promoted on 17.5.1989.

Charges No.1 & 2 will require the production of oral as well as documentary evidence by the petitioner in his defence. Charge No.1 relates to the misuse of the

official telephone by the petitioner. Whether the extension of the phone which had been officially allotted to the petitioner had been used for the business purposes of his wife and his son is the crucial question to be determined. To clinch the matter, the best evidence will be the records of the telephone department. As the matter pertains to the year 1983, it will be difficult, if not impossible, for the petitioner to obtain the record pertaining to the aforesaid period. It should be presumed that during the intervening period, the record must have been weeded out.

Even if the petitioner had gone to Chail, the question still remains as to whether he participated in the conference of the I.B. Company Ltd. with a view to advancing prospects of his wife and his son. Again, the primary and the best evidence would be of those who participated in the conference. Since the matter is very old it may not be possible for the petitioner to procure the persons who participated in the conference. Furthermore, it may be too much to expect the conference to remember as to what role did the petitioner play.

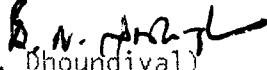
To get over the difficulty, we suggested a via media which was acceptable to the learned counsel for the respondents. We suggested that, while passing final order, we may direct that the burden of proving the charges will be entirely on the department. However, on a deeper consideration we feel that such a direction may not be permissible.

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Having given a thoughtful consideration to the matter, we are of the opinion that public interest will not suffer if departmental proceedings against the petitioner are not allowed to continue as the charges levelled against him are not really grave. We have already indicated that, inspite of that, the petitioner was promoted in the year 1989. We are informed that further promotion of the petitioner is due. If the departmental proceedings are allowed to continue, the fate of the petitioner ~~can~~ <sup>will</sup> remain confined to a sealed cover till the departmental proceedings are over.

Taking into consideration the facts and circumstance of the case, we feel that ~~further~~ disciplinary <sup>continued</sup> proceedings should not be ~~initiated~~ against the petitioner.

The petition succeeds and allowed. The departmental proceedings pending against the petitioner are quashed. There shall be no orders as to costs.

  
(B.N. Dhoundiyal)

Member(A)

  
(S.K. Dhaon)

Vice-Chairman

/vv/