

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. No.2071 OF 2004

New Delhi this the 10th day of August, 2005

Hon'ble Mrs. Meera Chhibber, Member (J).
Hon'ble Mr. S.K. Malhotra, Member (A).

Shri V.P. Verma,
S/o late Shri Jai Singh,
R/o DG 819, Sarojini Nagar,
New Delhi-110023.

... Applicant.

(By Advocate: Smt. Jyoti Singh)

Versus

1. Union of India,
through Secretary,
Ministry of Defence,
South Block, New Delhi.

2. The Chief Administrative Officer,
E-Block, Dalhousi Road,
New Delhi.

... Respondents.

(By Advocate : Mrs. Meenu Mainee)

ORDER

Hon'ble Mrs. Meera Chhibber, Member (J).

By this O.A., applicant has sought the following relief (s):-

- (i) Allow this application and quash the suspension order dated 14.5.1992 as well as quash the subsequent order dated 2.6.2004 reviewing the suspension.
- (ii) Quash the memo of charges dated 9.7.2004 as being a delayed charge sheet in view of the well settled law on delayed charge sheets.
- (iii) Direct the respondents to revoke the suspension order or in the alternative to quash the same and also direct reinstatement of the applicant with all consequential benefits.
- (iv) And this Hon'ble Tribunal may be pleased to pass such other and further orders as deemed fit and proper in the circumstances of the case to meet the ends of justice".

2. However, counsel for the applicant restricted her arguments only on the question of quashing of chargesheet dated 9.7.2004 (page-25) on the ground that as it pertains to the period from 1983 to 1986 i.e. about 18 years old; it is vitiated due to delay and even otherwise on same set of facts, a

criminal case is also pending, therefore, at this stage disciplinary inquiry cannot be held as his defence would be disclosed in the criminal case. She relied on the following judgments:

- (1) AIR 1999 SC 1416 Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Anr.
- (2) 2004 (7) SCC 27 State Bank of India & Ors. Vs. R.B. Sharma.
- (3) 2003 (58) Delhi Reporter Judgment 56 M.L. Tahiliani Vs. D.D.A.

Counsel for applicant stated categorically that she is not pressing the question of suspension.

3. Respondents on the other hand have opposed this OA by submitting that an incident of fraudulent recruitment of 19 Group 'D' employees during the period 1983 to 1986 came to notice of department in the year 1992. They were neither working as casual labourers nor sponsored by Employment Exchange. Their names were not present in the recruitment roster for the relevant period. The Government examiner of questioned document has declared the appointment orders, posting orders and character verifications in respect of those employees to be forged documents. The employees who secured employment by fraudulent means have also admitted as such before the disciplinary authority and CBI to whom the case was handed over for investigation.

4. The handwriting expert opined that the forged documents had been prepared by the applicant. Even applicant gave his statement on 5.5.1992 that he posted about 11 candidates who were not appointed as per due procedure (Annexure R-1). Accordingly, applicant was suspended vide order dated 14.5.1992 which was reviewed from time to time but keeping in view the contemplation of departmental enquiry, pendency of criminal case and serious nature of allegations against the applicant which emanate from his assigned charter of duties, the competent authority decided not to revoke his suspension.

5. Thereafter, an enquiry was ordered against the 17 employees who were recruited without following established procedure. Charges against



them were proved. They were, therefore, dismissed in May, 2002. It was thereafter that competent authority decided to proceed against the applicant. Documents were obtained from CBI and charge-sheet was issued on 9.7.2004. They have thus submitted that this O.A. calls for no interference. The same may accordingly be dismissed. Counsel for respondents also relied on Capt. M. Paul Anthony's judgment to state that simultaneous Departmental Enquiry, can be initiated. She further relied on JT 1994 (11) SC 658 Union of India Vs. Upendra Singh to say that Tribunal should not interfere at the stage of charge-sheet and the judgment given by this Tribunal in the case of S.S. Malik where Tribunal refused to quash the charge-sheet on the ground of delay alone.

6. We have heard both the counsel and perused the pleadings. Charge-sheet is challenged on two grounds viz inordinate delay and that disciplinary inquiry cannot be proceeded at this stage as criminal case is already pending and if disciplinary inquiry is continued applicant's defence in criminal case will be disclosed. The question whether charge-sheet can be quashed on the ground of inordinate delay has to be decided in the given facts of each case as a duty is cast on the courts to see whether delay is inordinate and unexplained. The charge-sheet cannot be quashed merely on the ground of inordinate delay only, so long the delay is explained, therefore, reliance on the judgment of S.S. Malik is of no consequence because we have to see the facts of each case.

7. In the present case, though charge-sheet relates to misconduct committed by applicant during 1983-86 but the fact that irregular appointments have been made, itself came into notice in 1992. It was then to be ascertained as to who were the persons involved in it. It could have been done only after seeing various files and examining the same. Respondents have explained that after the clear picture emerged to the Govt. Examiner for examining the handwriting expert who gave a clear report that appointment orders, posting orders and character verifications in respect of 19 Gr. 'D' employees were forged documents. The matter was thus referred



to CBI for further investigation who registered case in 1993 against the applicant for proving the fraudulent recruitment of Group 'D' staff in C.A.O's office. At that stage, since case was registered by CBI, it was thought proper to await the final report from CBI. The perusal of file shows that original records were summoned by CBI in June, 1994 for further verification. Accordingly, original documents were handed over to CBI. It goes without saying that once such irregularities come to light, it takes time to unearth the racket to identify the culprits specially when it is an old matter so naturally involvement of individuals could not have been found out immediately. Moreover, in 1994, CBI had taken the original documents for further investigations, so naturally department was awaiting the final report from CBI. Records further show that matter was pursued by the Department for finalization of investigation by CBI but it was only in end of 1995 that CBI recommended prosecution of Shri V.P. Verma for cheating and forgery. However, before prosecuting the applicant, it was opined, sanction of competent authority would be required. Accordingly, file of applicant was put up for approval, to launch prosecution against applicant. After approval was accorded charge-sheet was filed on 23.4.1996 in criminal case. The original records were thus with CBI.

8. In the meantime, inquiry was initiated against those Group 'D' employees, who were appointed by fraudulent means. The charges were proved against them, therefore, they were dismissed in May, 2002. It was at this stage decided by competent authority to initiate action against applicant as well, as there was sufficient evidence on record, including applicant's admission specially after the dismissal of those employees, so CBI was requested to return the original documents so that inquiry may be initiated against applicant, who was found to be responsible for those irregular appointments. There is prolonged correspondence on this point with CBI for return of documents as is seen from the records but they took their own time. After obtaining the documents, charge memo was prepared and issued on 09.07.2004.

9. The above explanation which is proved from the original records, clearly shows that delay cannot be said to be unexplained at all. In these kind of cases it does take time to identify and pin point the persons who are involved.

10. It is rather a serious matter as the charge against applicant is that he fraudulently appointed as many as 19 Group 'D' employees. In the case of State of Andhra Pradesh Vs. N. Radhakishan reported in JT 1998 (3) SC 123 Hon'ble Supreme Court dealt with the question whether charge-sheet can be quashed on the ground of inordinate delay. After considering all the contentions, it was held by the Hon'ble Supreme Court that it is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated, each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. It was also held that courts while considering this aspect should also see whether any prejudice has been caused to the person concerned or not. Therefore, while considering such matters courts have to see whether there is inordinate and unexplained delay or the delay has been explained by the department and whether any prejudice has been caused to the person concerned or not vis-à-vis the clean administration of the department. In the instant case, though there is delay but it has been fully explained, therefore, it cannot be said to be a case of inordinate and unexplained delay.

11. In the case of Secretary to Government, Prohibition & Excise Department Vs. L. Srinivasan (1996 (3) SCC 157) where the departmental inquiry was quashed by the Tribunal on the ground of delay, Hon'ble Supreme Court has held that when there is charge of embezzlement and



fabrication of false records, naturally it would take long time to detect such charges which should be done in secrecy. Therefore, the Tribunal has committed grossest error in its exercise of the judicial review. It was further held that the member of the Administrative Tribunal appears to have no knowledge of the jurisprudence of the service law and exercised powers as if he is an appellate forum de hors the limitation of judicial review. The order passed by the Tribunal was quashed and set aside. Apart from it, applicant has not even demonstrated how he has been prejudiced due to the delay. We are, therefore, satisfied that the charge-sheet cannot be quashed on the ground of delay. This contention is accordingly rejected.

12. Coming to the next question whether parallel inquiry can be held or not is also decided by Hon'ble Supreme Court as it has been held that parallel inquiry can be held but in case charges are grave and serious involving complicated questions of law and fact, it is desirable to stay the departmental proceedings till the conclusion of criminal case in case the departmental proceedings and the criminal case are based on identical and similar set of facts. The Hon'ble Supreme Court in Capt. M. Paul Anthony's case has further held as follows:

(i) to (ii) x x x x x

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) x x x x x

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest.

13. In the instant case, it is seen that the charge against the applicant in D.E. is rather a serious matter as far as clean administration is concerned because if such misconduct is proved, such a person cannot be allowed to continue in service as he would pollute the whole system. On the other

hand if he is able to prove his innocence, he would be able to continue in service with dignity and without any stigma so it is in his own interest to co-operate in the inquiry. In the case of State of Rajasthan Vs. B.K. Meena and Others reported in 1996 (6) SCC 417, it was held that in disciplinary proceedings, the question is, whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code if any) are established and, if established, what sentence is to be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. It was thus, observed that staying of disciplinary proceedings pending criminal proceedings should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration, if the criminal case gets unduly delayed.


14. Even in Capt. M. Paul Anthony's case, Hon'ble Supreme Court has held that disciplinary proceedings and criminal case can proceed simultaneously. It has further been held that if criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date so that if employee is not found guilty, his honour may be vindicated and in case he is found guilty administration may get rid of him at the earliest. In these circumstances, we are of the view that there is nothing wrong if department has issued charge memo in the department on the same set of facts.

15. We, however, find some force in the second limb of counsel's argument that applicant cannot be made to disclose his defence at this stage on crucial question of his admission. Admittedly, department is relying on applicant's admission given in writing on 5.5.1992 as well as the report of CFSL/handwriting expert to prove that applicant cheated the Govt. by making



fake appointments. Applicant has disputed his handwriting. The criminal case filed against applicant is also for cheating and forgery and as per applicant's counsel, in criminal case, handwriting expert is already being examined. If at this stage, applicant is forced to cross examine the handwriting expert in DE, it would definitely disclose his defence in the criminal case. We, therefore, feel that to this effect applicant needs to be protected. Accordingly, respondents are directed not to force the applicant to cross examine the handwriting expert in the D.E. as it would disclose his defence in the criminal case. It would be open to the department to record the statement and cross examination of other P.Ws but as far as handwriting expert's evidence is concerned, he shall be examined in D.E. only after his evidence is completed in the criminal case so that applicant is not prejudiced in the criminal case.

16. With the above directions, this O.A. stands disposed of. No order as to costs.


(S.K. MALHOTRA)
MEMEBR (A)


(MRS. MEERA CHHIBBER)
MEMBER (J)

'SRD'