CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2386/2004

New Delhi, this the 15 day of **July, 2005**

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.Singh, Member (A)

Shri B.S. Yadav
S/o Late Shri Roop Chand
Superintendent
Central Jail, Delhi.
Formerly S.T.O.,
Under Dy. Inspector General (Prisons)
Janakpuri, New Delhi.

R/o Village Khera Debar
P.O. Ujawa, New Delhi. ... Applicant
(By Advocate: Sh. B.S. Mainee)

Versus

1. Lt. Governor
Government of National Capital
Territory of Delhi
Sham Nath Marg
Delhi.

2. The Secretary to the
Govt. of National Capital Territory of Delhi
Delhi Secretariat
I.P. Estate
New Delhi.

3. The Deputy Inspector General (Prisons)
Office of the Director General (Prisons)
Prison Headquarters
Near Lajwanti Garden Chowk
Janakpuri
New Delhi – 64. .. Respondents

(By Advocate: Sh. Om Prakash)

O R D E R

By Mr. Justice V.S.Aggarwal:

Applicant (B.S.Yadav), by virtue of the present application, seeks quashing of the order by virtue of which disciplinary proceedings are being initiated against him. The statements of

Articles of Charge indicates alleged misconduct and irregularity in assessing the dealer M/s New Friends & Co. (Private) Limited. The relevant imputations of misconduct imputed to the applicant are:

> "Shri B.S.Yadav, the then Sales Tax Officer, assessed the dealer, M/s New Friend & Co. (P) Ltd., 5, Bhama Shah Marg, Delhi for the assessment years 1986-87 to 1989-90. The assessment orders framed by Shri B.S.Yadav reveal that during all these years, the dealer revised the sales tax returns at the time of assessment regularly which is in violation of section 21 (4) of DST Act, 1975 which reads as under:-
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> > "if any registered dealer discovers any mistake or error in any return, furnished by him, he may at any time, before the expiry of three months next following the last date prescribed for furnishing of the return, furnish a revised return and if the revised return shows a higher amount of tax to be due than was shown in the original return, it shall be accompanied by a receipt showing payment in the manner provided in sub-section (3) of the excess amount."
>
> From the revised returns, it has been revealed that the dealer has reduced sales to registered dealers and enhanced the taxable sale (Central Sales) at the time of assessment and by doing so, the dealer has deprived the Sales Tax Department of its revenue which could have come at the time of filing the returns. Thus, the government has been deprived of timely revenue. Shri B.S.Yadav as Assessing Authority failed to detect the modus operandi adopted by the dealer in utilizing the tax so collected for his business activities as the dealer was in pursuance of revising returns only at the time of assessment. He had not doubted the genuineness of accounts books produced by the dealer before him and assessed the dealer on the basis of accounts books which should have actually been rejected by him.

The details of assessment orders framed by Shri B.S.Yadav as Assessing Authority for the years 1986-87 to 1989-90 are as follows:-

Assessment year 1986-87

The assessment for the year 1986-87 was framed by Shri B.S.Yadav on 27.3.91. The dealer revised the returns later for which he imposed penalty of Rs.400/- whereas he had recorded in the order sheet that a penalty of Rs.400/- per quarter is to be imposed. The unsigned revised returns filed by the dealer were accepted by him. The audit of Sales Tax Department has observed variations in returns which are as under:-

	Original returns	Revised returns	Difference
GTO	81.59 lakhs	181.02 lakhs	(+) 99.43 lakhs
RD Sales	81.59 lakhs	36.44 lakhs	(-) 45.15 lakhs
TTO 10%	Nil	36.88 lakhs	(+) 36.88 lakhs
TTO 4%	Nil	107.60 lakhs	(+)107.60 lakhs

The re-assessment of the dealer for this year could not be made as the same was time barred by limitation.

Assessment Year 1987-88

The dealer was assessed for the year 1987-88 on 30.3.92 by Shri B.S.Yadav. The assessment order was passed one day in advance on 30.3.92 by taxing non-verified statutory forms though he recorded these facts on order sheet on 31.3.92. The audit of Sales Tax Department has observed variations in returns which are as under:-

	Original returns	Revised returns	Difference
GTO	196.50 lakhs	196.65 lakhs	(+) 0.15 lakhs
RD Sales	146.39 lakhs	18.62 lakhs	(-) 127.77 lakhs

TTO 10%	10.12 lakhs	42.20 lakhs	(+) 32.08 lakhs
TTO 4%	40.08 lakhs	135.57 lakhs	(+)95.49 lakhs

The re-assessment for this year also could not be done as time bared by limitation.

Assessment Year 1988-89

The dealer was assessed for the year 1988-89 on 26.2.93 by Shri B.S.Yadav. It has been noticed that while framing assessment, statutory forms of value above Rs.1 lakh were not verified. The audit of Sales Tax Department has observed variations in returns which are as under:-

	Original returns	Revised returns	Difference
GTO	311.33 lakhs	311.21 lakhs	(+) 0.12 lakhs
RD Sales	222.70 lakhs	24.07 lakhs	(-) 198.63 lakhs
TTO 10%	6.10 lakhs	53.25 lakhs	(+) 47.15 lakhs
TTO 4%	82.52 lakhs	233.29 lakhs	(+)150.77 lakhs

The assessment order was revised by the then Assistant Commissiner (Enf.), Sales Tax Department on 23.2.98 and directed the STO to reframe the assessment of the dealer. Accordingly, reassessment was made by the other Assessing Authority who noticed that sale of fixed assets as Rs.1,80,876.70 was not taxed and therefore, taxed that sale but the reassessment order was quashed by Additional Commissioner (Sales Tax) as he observed that it is time barred by limitation and refund to the dealer was created as per order of Hon'ble High Court.

Assessment Year 1989-90

The assessment for the year 1989-90 was framed by Shri B.S.Yadav o 7.5.93. The unsigned revised returns filed by the dealer were accepted by him. The audit of Sales Tax

Department has observed variations in returns which are as under:-

	Original returns	Revised returns	Difference
GTO	339.07 lakhs	243.29 lakhs	(-) 95.78 lakhs
RD Sales	339.07lakhs	79.55 lakhs	(-) 259.52 lakhs
TTO 10%	Nil	40.64 lakhs	(+) 40.64 lakhs
TTO 4%	Nil	123.05 lakhs	(+)123.05 lakhs

The reassessment of the dealer was done by another Assessing Authority on 6.1.99 but the reassessment was quashed by Additional Commissioner (Sales Tax) on 8.3.99 as barred by limitation and refund was created as per order of Hon'ble High Court.

Thus, Shri B.S.Yadav, former Sales Tax Officer had shown negligence and dereliction to duty and worked with malafide intention and ulterior motive. He acted in a manner unbecoming of a government servant and in violation of provisions of rule 3 of the CCS (Conduct) Rules, 1964."

2. The grievance of the applicant is that the charge sheet has been issued with heavy delay without any explanation for such delay because the alleged irregularity on behalf of the applicant pertains to assessment years 1986-87, 19987-88, 1988-89 and 1989-90 and certain acts which are attributed to him are of 1991-92 and 1992-93.

3. Respondents have contested the application. It is pleaded that the applicant committed misconduct and irregularities in assessing the dealer M/s New Friends & Co. (Private) Limited for

the Assessment Years referred to above. He failed to safeguard the government revenue by allowing the dealer to revise the returns at the time of assessment, each year by reducing the sales to registered dealers shown at the time of original returns and by enhancing central taxable sale at the time of assessment. He worked with malafide intention. The facts of the case were placed before the Commissioner of Sales Tax and after taking into consideration all the facts and circumstances, he forwarded it to the Directorate of Vigilance for initiating major penalty proceedings. On the advice of the Central Vigilance Commissioner, the applicant has been charge-sheeted. As regards the delay, the respondents pleaded that there is no time limit for initiating disciplinary proceedings. It is submitted that after detection of any irregularities/lapses committed by the delinquent, processing of the case takes some time. Documents are collected and version of the delinquent is obtained. Advice of the Central Vigilance Commission is taken before issuing the chargesheet and thus, according to the respondents, this was the reason which was explained.

4. As already pointed above, the sole submission made at this stage was as to whether the delay in initiation of the disciplinary proceedings would be fatal or not. We hasten to add that pertaining to the merits of the matter, no opinion needs to be expressed. The learned counsel for the applicant had contended that chargesheet has been served after 12 years of the alleged acts

of the applicant. There has been an inordinate delay which is not explained:

5. The Supreme Court had considered this fact in the case of **STATE OF MADHYA PRADESH** v. **BANI SINGH AND ANOTHER,** 1990 (2) SLR 798 where there was a delay in initiation of the departmental proceedings. In that matter also, a delay of 12 years occurred to initiate the departmental proceedings. The Supreme Court deprecated the said practice of initiation of departmental proceedings after so many years. The findings of the Supreme Court are:

> "4. The appeal against the order dated 16.12.1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned counsel. The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-1977. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in irregularities, and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case, there are not grounds to interfere with the Tribunal's orders and accordingly we dismiss the appeal."

6. At this stage, it may be worthwhile to mention the case of **B.C.CHATURVEDI** v. **UNION OF INDIA AND OTHERS,** (1995) 6

SCC 749. In that case also, there was a delay in initiation of departmental proceedings. The matter was before the Central Bureau of Investigation. It had opined that the evidence was not strong enough for successful prosecution, but recommended to take disciplinary action. In that backdrop, the Supreme Court held that the delay would not be fatal. The findings read:

> "11. The next question is whether the delay in initiating disciplinary proceedings is an unfair procedure depriving the livelihood of a public servant offending Article 14 or 21 of the Constitution. Each case depends upon its own facts. In a case of the type on hand, it is difficult to have evidence of disproportionate pecuniary resources or assets or property. The public servant, during his tenure, may not be known to be in possession of disproportionate assets or pecuniary resources. He may hold either himself or through somebody on his behalf, property or pecuniary resources. To connect the officer with the resources or assets is a tardious journey, as the Government has to do a lot to collect necessary material in this regard. In normal circumstances, an investigation would be undertaken by the police under the Code of Criminal Procedure, 1973 to collect and collate the entire evidence establishing the essential links between the public servant and the property or pecuniary resources. Snap of any link may prove fatal to the whole exercise. Care and dexterity are necessary. Delay thereby necessarily entails. Therefore, delay by itself is not fatal in this type of cases. It is seen that the C.B.I. had investigated and recommended that the evidence was not strong enough for successful prosecution of the appellant under Section 5(1)(e) of the Act. It had, however, recommended to take disciplinary action. No doubt, much time elapsed in taking necessary decisions at different levels. So, the delay by itself cannot be regarded to have violated Article 14 or 21 of the Constitution."

7. In cases where there is controversy pertaining to the embezzlement and fabrication of false records and if they are

detected after sometime, the Supreme Court held that the same should not be profiled. To that effect, we refer the decision in the case of **SECRETARY TO GOVERNMENT, PROHIBITION & EXCISE DEPARTMENT** v. **L. SRINIVASAN,** 1996 (1) ATJ 617, where the Supreme Court held:

> "The Tribunal had set aside the departmental enquiry and quashed the charge on the ground of delay in initiation of disciplinary proceedings. In the nature of the charges, it would take long time to detect embezzlement and fabrication of false records which should be done in secrecy. It is not necessary to go into the merits and record any finding on the charge leveled against the charged officer since any finding recorded by this Court would gravely prejudice the case of the parties at the enquiry and also at the trial. Therefore, we desist from expressing any conclusion on merit or recording any of the contentions raised by the counsel on either side. Suffice it to state that the Administrative Tribunal has committed grossest error in its exercise of the judicial review. The member of the Administrative Tribunal appear (sic) to have no knowledge of the jurisprudence of the service law and exercised power as if he is an appellate forum de hors the limitation of judicial review. This is one such instance where a member had exceeded his power of judicial review in quashing the suspension order and charges even at the threshold. We are coming across frequently such orders putting heavy pressure on this Court to examine each case in detail. It is high time that it is remedied."

8. In the case entitled **STATE OF ANDHRA PRADESH** v. **N. RADHAKISHAN,** JT 1998 (3) SC 123, the Supreme Court held that if delay is unexplained, prejudice would be caused and if it is explained, it will not be a ground to quash the proceedings. The Supreme Court findings are:

> "If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or where there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the Court is to balance these two diverse considerations."

9. From the aforesaid, we can conveniently draw the necessary conclusions. They are that the departmental proceedings should be initiated at the earliest. It depends upon the facts and circumstances of each case. If the delay is inordinate, the same should be explained. If the delay is explained, the proceedings need not be quashed but if it is not explained and it causes prejudice to the case of the applicant, in that event, departmental proceedings can well be quashed.

10. It is based on the settled principle that the delinquent against whom departmental proceedings are initiated has to be given a reasonable opportunity to contest the proceedings. Reasonable opportunity necessarily would imply a fair opportunity. If there is an inordinate delay, in that event, it would be a cause for prejudice.

11. The learned counsel for the respondents tried to explain the delay by contending that it takes time to detect the default. Thereafter, explanation has to be called. The file has to be sent to Central Vigilance Commission and therefore, there is a reasonable explanation for delay.

12. The decision of the Supreme Court in the case of **FOOD CORPORATION OF INDIA** v. **V.P. BHATIA**, JT 1998 (8) SC 16, which was relied upon by the learned counsel for the respondents, must be held to be distinguishable. In that case, the Central Bureau of Investigation had taken up the investigation and submitted a report in 1988. The matter was referred to the Central Vigilance Commission in 1989 and a chargesheet had been served in September, 1990. The Supreme Court set aside the order of the High Court and held that in the peculiar facts, there was no undue delay. In the present case, the same has not at all been explained and thus, the respondents cannot take advantage of it.

13. We do not dispute that if it is a case of alleged detection, like that the Central Bureau of Investigation or an investigating agency was looking into the matter and that they found only after inordinate delay of the acts, it would be a different matter. But, in the present case, there is no such indication in the written statement as to when the same was detected. It is not explained certainly when it was detected and as to why it took years to do the needful. Acts of the applicant pertains to 1991-92 and the proceedings are being initiated after 12 years of the same. He is

therefore, justified in complaining that his claim is prejudiced because after such a long time, it is difficult for him to contest the matter. Not only that the respondents themselves had not tried to explain as to how the delay occurred and at what stage it occurred. Accordingly, merely stating that after detection the Central Vigilance Commission had to be consulted, will not be a good explanation. We are of the considered opinion that in the peculiar facts, delay has not at all been explained. After 12 years of the alleged misconduct, it would be improper for us to allow the departmental proceedings to continue.

14. Resultantly, we allow the present application and quash the impugned memorandums.

(S.A.Singh)
Member (A)

(V.S.Aggarwal)
Chairman

/NSN/