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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA 2720/2004

New Delhi this the 27th day of June, 2005

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

S.S. Malik,  
PGT (Physics),  
Kendriya Vidyalaya,  
JNU Campus.

..Applicant

(By Advocate Shri M.K.Bhardwaj )

VERSUS

Union of India through:

1. The Commissioner,  
Kendriya Vidyalaya Sangathan,  
18, Institutional Area, SJS Marg,  
New Delhi-110016
2. Deputy Commissioner (Admn.),  
Kendriya Vidyalaya Sangathan,  
18, Institutional Area, SJS Marg,  
New Delhi-110016
3. S. Modawal,  
Assistant Commissioner.  
Kendriya Vidyalaya Sangathan,  
JNU Campus, New Delhi.

..Respondents

(By Advocate Shri S.Rajappa )

O R D E R

This OA has been referred to me as third Member as there were conflicting views expressed by the Hon'ble Members of the Division Bench on the question,



whether charge sheet could be quashed on the ground of inordinate and unexplained delay causing prejudice in the facts of the case.

2. The view expressed by Hon'ble Member (J) is that enquiry should be dropped as inordinate and unexplained delay causing prejudice to the applicant vitiates the charge sheet. While Hon'ble Member (A) has observed that though there is delay in concluding the enquiry but it cannot be said to be totally unexplained and as such applicant cannot be allowed to take advantage of this situation. Moreover, the applicant has not been able to prove as to what prejudice will be caused to him due to this delay. Thus it will neither be in the interest of justice nor in the interest of good administration to drop the enquiry. Hon'ble Member (A) has further observed that justice demands that the enquiry should be allowed to proceed in accordance with law where the applicant will get the opportunity to defend himself and prove his innocence. It would, therefore, not be appropriate to intervene at this stage. However, direction has been given to the respondents to complete the enquiry proceedings expeditiously and take a final view within a period of six months from the date of receipt of a copy of the order, subject to the fullest cooperation of the applicant.

3. The facts have already been narrated by the Hon'ble Members. Therefore, it is not necessary to give all the facts yet it would be necessary to give the relevant dates before I give my views on the issue raised in the petition. The charge sheet was issued to the applicant on 8/15.11.1996 on the ground that during 1996 he had contested the Haryana State Assembly Election as an independent candidate illegally, i.e., without prior approval of the competent authority, which is in contravention of Article 55 (5) Code of Conduct for the teachers of Kendriya Vidyalaya. Further while under



suspension w.e.f. 26.9.1996, he left the station ( Hq.) i.e., New Delhi without prior permission of the competent authority unauthorisedly which is in contravention to the condition laid down in his suspension order dated 26.9.1996.

4. In the statement of imputations all the details were given that he had contested Haryana Legislative Election in 1996 as is evident from No. 2 (ख) or 7 (क) Rule 10 (1) from Gohana Constituency wherein his name was given at serial No. 29 – Sukhbir Singh Malik Address: Village Bahaswalaan Bawala, Tehsil Gohana and allotted symbol Rail Ka Engine ( pages 25 to 27 ).

5. Applicant had taken an objection that there was a mistake in the narration of name but did not deny the allegation made in the charge sheet. Accordingly, respondents issued corrigendum for rectifying the mistake and repeatedly sent it to his house but the same could not be served as applicant's house was locked on various occasions which is evident from original records. Ultimately, corrigendum was received by the applicant which is evident from his own letter dated 7.2.1997 found on the record. But even in that letter, applicant has not denied the allegation made against him, even though he has taken some other points. It would be further relevant to mention here that at no stage did the applicant deny the allegation nor he has denied the allegation even in the original application now filed before the court.

6. From the narration of above facts it clearly emerges out that there was no delay in initiating the disciplinary proceedings because he contested the elections in 1996 and same year he was chargesheeted also and the allegations have not been denied by him at all specifically at any point of time.



7. The Enquiry officer as well as Presenting Officer were appointed in October, 1997 but due to some reason the Presenting Officer and the Enquiry Officer returned the file after keeping the same with them for considerable period on the ground that they were too busy in other work or the persons who were appointed as Enquiry Officer or Presenting Officer had been either transferred or promoted and sent to a far off place, namely, at Chennai etc. For example, Shri L.R. Nagpal who was appointed as Presenting Officer gave in writing that he was already over burdened and had to conduct other enquiries. Therefore, it will not be possible for him to act as the Presenting Officer in the case of applicant as informed vide letter dated 30.12.1997. Similarly, Shri Kartar Singh, Enquiry Officer gave in writing on 4.6.1998 that he was transferred to Gandhi Nagar on 11.11.1997 and came back on transfer to Delhi Region on 9.3.1998, when he came to know that Presenting Officer has expressed his inability to serve as Presenting Officer, he therefore, requested that new Presenting Officer should be appointed immediately so that enquiry may be concluded. Accordingly Shri M.L.Sharma, Principal, KVS, Gole Market was appointed as Presenting Officer vide order dated 25.6.1998 but in the meantime Shri Kartar Singh himself who was appointed as Enquiry Officer was transferred to Dehradun on 9.10.1998 on promotion as Assistant Commissioner, KVS, Dehradun. Moreover, he was also retiring on 31.1.1999. Therefore, he also requested in writing vide his letter dated 1.1.1999 to appoint some other Enquiry Officer in his place. Accordingly, Dr. S. Kant, Education Officer was appointed as Enquiry Officer vide his letter dated 15.1.1999.

8. All this while applicant did not raise any objection nor did he say that he was being prejudiced. He wrote a letter only on 27.12.2003 for withdrawing the charge



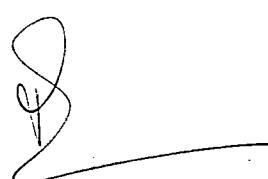
sheet on the ground of unexplained delay by stating that he had applied for further appointment elsewhere in Kendriya Vidyalaya Samiti. The file further shows that the Assistant Commissioner had requested Dr. S. Kant, Education Officer to complete the enquiry vide his letter dated 12.8.2004 followed by reminder dated 13.9.2004 and he was indeed asked to explain as to why enquiry is not being completed and in any case if he has some difficulty, it may be intimated so that necessary steps may be taken in that regard. These letters clearly show that at no stage the disciplinary authority wanted enquiry to be stalled or dropped. On the contrary, they have been issuing orders from time to time to appoint Presenting Officer/ Enquiry Officer. Therefore, it cannot be held that there was no will to complete the enquiry or that they were not serious about the enquiry and took it seriously only after applicant gave complaints against the senior officers as alleged by him. On the contrary, from the above details it is clear that delay after issuance of chargesheet has been caused due to non cooperation from either the Presenting Officer or the Enquiry Officer who were appointed one after another. Even from the letter of Dr. S. Kant dated 15.10.2004, it is revealed that in 2004 also, the Presenting Officer, in the meantime, was posted in Kendriya Vidyalaya, Moscow (Russia) and Dr. S. Kant, Education Officer, Enquiry Officer himself was also promoted as Assistant Commissioner and transferred to Kendriya Vidyalaya Samiti Regional Office, Chennai. Moreover, he also stated in the above said letter that he is over burdened with some other enquiries concerning higher authorities as well as dealing with the onerous job of admissions. Therefore, it would not be possible for him to continue as Enquiry Officer. He thus requested the authorities to appoint some other Enquiry Officer in his place. Finally vide letter dated 25.10.2004 Shri Rajeev Lochan,



Principal, Kendriya Vidyalaya, INA Colony was appointed as Presenting Officer in place of Shri M. L Sharma and Shri M. M. Lal, Assistant Commissioner ( Retd.) was appointed as Enquiry Officer in place of Dr. S. Kant to enquire into the charges framed against the applicant. Thereafter it took some time by the earlier Enquiry Officer Dr. S. Kant to send the files to the new Enquiry Officer who has started the enquiry vide his order dated 27.10.2004. The enquiry had started but in view of the directions of this Tribunal to produce the records, the Enquiry officer had to stop the enquiry once again as all records were produced before the Tribunal.

9. The above facts have been narrated to show that at no point of time the disciplinary authority can be said to be not interested in completing the enquiry but the enquiry could not be concluded because of inability shown by different officers for completing the enquiry on the grounds of being over burdened /transfer or promotion etc., from time to time. Therefore, the question arises can the chargesheet be quashed in these circumstances on the ground of unexplained delay.

10. While deciding the above question it is also to be kept in mind that Kendriya Vidyalaya is an organization which is having schools all over India and, therefore, officers have All India Transfer Liability. Naturally, a person who had been transferred to Chennai, cannot be expected to come to Delhi very frequently to complete the enquiry specially when Presenting Officer is from a different place and he I.O. also had the onerous responsibility of looking after admission in the school which is itself a full time job at the start of session. In these circumstances, by no stretch of imagination, can it be said that the delay is unexplained. I would hasten to add here that though the delay is very much there but so long the delay is explained by the respondents, delay



alone cannot be the ground to quash the charge sheet specially when from the representations given by the applicant which are on record or in the OA, no averment has been made to show what prejudice has been caused to the applicant. It is neither the case of the applicant that he was due for promotion nor he has shown for which post he had applied. He has merely made a bald statement that he wanted to apply. Neither any advertisement was shown against which the applicant wanted to give his application in Kendriya Vidyalaya nor any details of the same were given. In these circumstances it cannot even be said that any prejudice has been caused to the applicant on account of delay in completing the enquiry. All these years applicant did not come to the Court to get the enquiry expedited, probably because it suited him. He has filed the present OA only after the enquiry Officer had started the enquiry which itself shows that applicant wants to avoid facing the enquiry and was watching the progress of enquiry by sitting at the fence. Therefore, it is not open to him now to challenge the chargesheet itself when enquiry is in progress.

11. It was contended by the counsel for applicant that with the passage of time, applicant's memory would have faded which itself would cause prejudice to the applicant as he would not be in a position to defend himself after such a long gap of time. Even this contention cannot be sustained because the allegation made against the applicant is not of very complex nature for which one requires to refer to documents or to remember many things for denying the allegations. After all elections are not contested by everyone. It is few, who contest the election and whether a person contested the election or not is a matter of fact which no body can forget. The charge sheet against the applicant was very simple and specific that he had contested the



election in 1996 even his election symbol was narrated after confirming the same from the District Election Officer, District Sonepat, Haryana. Therefore, all that was required of applicant was to either admit or deny the said allegation. Such an event is not an easy thing to forget nor it can be said that the memory would have faded or he was not able to recollect such an event. Therefore, even if looked from this angle, it cannot be said that any prejudice has been caused to the applicant or he would be deprived of his right to defend.

12. In this background, let us now examine the relevant judgments as referred to by the parties. It is settled by now that delay can be at two stages. Firstly at the time of initiation of the charge sheet itself i.e. when charge sheet is issued for an incident which had taken place at much earlier point of time. We are not concerned with this delay as in the instant case, applicant had allegedly contested the election in 1996 and in the same year charge sheet was issued to him. Therefore, the judgments which deal with the point of delay in initiating the departmental enquiry would not at all be attracted in the present case. For example **State of M.P. Vs. Bani Singh and another** reported in 1990 (supp) SCC 738 ; OA 1254/2004- D.L.Trehan Vs. UOI and Ors and **Registrar of Cooperative Societies Madras and another Vs. F.X. Fernando** reported in 1994 (2) SCC. All these judgements relate to the cases where there was delay in initiation of the departmental proceedings itself. Counsel for the applicant, however, has relied on a number of other judgements, namely, **State of Punjab Vs. Chaman Lal Goyal** reported in 1995 (2) SCC 570; **State of Andhra Pradesh Vs. N. Radhakishan** reported in 1998 (4) SCC 154 ; **P.V. Mahashabdey Vs. DDA and Ors.** reported in 103 (1003) DLT 88 ; **R.S. Sagar Vs. UOI** reported in 2002 (2) ATJHC 367 and OA



1758/2004 V.K.Dhingra Vs. UOI & Ors decided by the Principal Bench of CAT on 6.1.2005.

13. I would start from the last decision relied upon by the counsel for the applicant. In V.K.Dhingra's case ( *supra* ) applicant was already selected for the post of Director by the UPSC when charge sheet was issued to him. Moreover, the earlier committee held in 1997 had also exonerated the applicant which report was never rejected but yet another committee was constituted to look into his conduct. It was in those circumstances that the Hon'ble Tribunal held that prejudice was writ large on the facts of the case which is not the case here. Therefore, this judgment is distinguishable. In the case of P.V. Mahashabdey Vs. DDA and Ors, the delay was caused for not supplying the relied upon documents and the respondents had taken about 11 years in supplying the listed documents. It was in those circumstances that it was held, the delay on the part of respondents is not only inordinate but also culpable and as such, the Hon'ble High Court quashed the charge sheet, whereas in the instant case, it is not at all the case of applicant that he had demanded any documents or the same were not given to him. On the contrary delay was due to change of Inquiry Officer or Presenting Officers for reasons as explained above. Therefore, this judgment is also distinguishable.

14. In the case of R.S. Sagar Vs. UOI reported in 2002 (2) ATJHC 367 it was again one of those cases where respondents had taken 7 years in issuing the charge sheet itself. Therefore, even that judgment would not be applicable in the present case because in the case of the applicant the charge sheet was issued in the same year when he is alleged to have committed the misconduct.





15. Coming to the judgment of Hon'ble Supreme Court in the case of State of Andhra Pradesh Vs. N. Radhakishan reported in 1998 (34) SCC 154 ). This is the most important judgment on the question of inordinate and unexplained delay in concluding the enquiry after the charge sheet is issued. But even in this case it has not been held by the Hon'ble Supreme Court that in every case if there is delay, the charge sheet should be quashed automatically. On the contrary it has been held that there cannot be straight jacket formula in such cases. In fact a duty is cast on the courts to balance and weigh the relevant factors for coming to the conclusion. In this case also the Hon'ble Supreme Court held as follows:

" that it is not possible to lay down any predetermined 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 the relevant factors and 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 the delay is abnormal and there is no explanation for the delay. It was held in considering whether delay has vitiated the disciplinary proceedings, the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained, prejudice to the delinquent employee is writ large on the fact of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employees. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeat justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary

loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings".

From the perusal of the above it is clear that even Hon'ble Supreme Court was of the view that even though the employee has a right that disciplinary proceedings against him should be concluded expeditiously but then in case there is delay the court has to see why the said delay has taken place. If the delay is unexplained, prejudice to the delinquent employee is writ large on the face of it. But if the respondents are able to explain the delay, the enquiry should be allowed to continue. It was also emphasized that while deciding these cases the courts also have to take into consideration all the relevant factors and balance whether disciplinary proceedings should be allowed to terminate on the ground of delay or it should be allowed to continue in the interest of clean administration. Therefore, most important things which the court would be required to see is,

- (I ) Whether there is inordinate delay
- (ii ) Whether delay has been explained to the satisfaction of the court or not
- (iii ) and whether any prejudice has been caused to the officer on account of the delay.

16. In the case of Radhakishan also facts were different in as much as charge was framed against the respondents merely on the report of Director General, Anti Corruption Bureau along with 10 other persons all in verbatim and without particularising the role played by each of the officers charged. Out of the four charges against the respondent, he was not even concerned with three of them. The explanation given by respondent to 4 charge was not even examined by the authorities and even thereafter they did not appoint any Enquiry Officer. Therefore, it was in those



circumstances the Hon'ble Supreme Court held that the delay was unexplained and the charges were not relating to the respondents thereunder and without particularizing their role. Thus they were vague and therefore, the charge sheet was rightly held to be quashed and set aside.

17. In this background if we examine the present facts of the case, it is seen that

( a). Charge sheet issued in November, 1996 framed against the applicant was absolutely specific as he was informed in clear terms that applicant had contested the election as an independent candidate for Haryana State Assembly illegally i.e. without prior approval of the competent authority which is in contravention of Article 55 (5) of Code of Conduct for the teachers of KVS and that he had left the station (Hqrs.), New Delhi while under suspension w.e.f. 26.9.1996 without prior permission of the competent authority unauthorisedly in contravention of his suspension order.

(b). The applicant has not denied the allegations at all.

( c). The disciplinary authority had appointed the enquiry officer as well as Presenting Officer and when they showed inability fresh orders were passed to change the Presenting Officer as well as Enquiry Officer and also wrote letters to the Enquiry Officer to complete the enquiry at the earliest which clearly shows that as far as disciplinary authority is concerned they wanted enquiry to be concluded right from day one.

(d). The delay has been explained by the respondents.

(e). Applicant has not been able to demonstrate how he has been prejudiced in this case.



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(f). The fact that applicant had contested the State Assembly election has been confirmed by the District Election Officer, District Sonepat, Haryana.

18. Apart from the above, it would also be relevant to quote few judgements of the Hon'ble Supreme Court wherein Hon'ble High Court or Tribunal had quashed the chargesheet on the ground of delay but the same was reversed by the Hon'ble Supreme Court by observing as follows:-

In the case of **Food Corporation of India Vs. V.P. Bhatia** reported in 1998 (8) SC 16) it was held by the Hon'ble Supreme Court that the High Court was not justified in quashing the proceedings on account of undue delay. Similarly, in the case of **Secretary to Government, Prohibition and Excise Department Vs. L Srinivasan** reported in 1996 (1) ATJ 617, the Hon'ble Supreme Court observed as follows:

"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".

In **Registrar of Cooperative Societies Madras and Another Vs. F.X. Fernando** reported in 1994 (2) SCC 747, it was held by Hon'ble Supreme Court that the delay had taken place because Directorate of Vigilance and Anti- Corruption was not prompt, therefore, Registrar of Cooperative Societies cannot be faulted. It was, therefore, held not appropriate to quash the proceedings on the ground of delay. Even in the case of **B.C.Chaturvedi Vs. Union of India and others** reported in 1995 (6) SCC 749, it was



held since the matter was before the Central Bureau of Investigation wherein it was found that evidence was not strong enough for successful prosecution, but CBI recommended to take disciplinary action. It was held by Hon'ble Supreme Court that delay in such case would not be fatal.

The conclusions of these judgments, therefore, are that if delay is explained by the department it would neither vitiate the disciplinary proceedings nor the chargesheet can be quashed on such circumstances on the ground of delay.

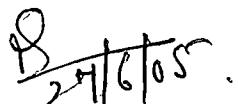
19. In view of the above judgments read with the findings recorded in para 17 above, with due regard to Hon'ble Member (J) I would agree with the views expressed by Hon'ble Member (A) in this case that chargesheet cannot be quashed on the ground of delay in the facts of the present case. I would, however, like to make it clear and add that such an explanation for delay should not be made a routine excuse by the KVS in all the enquiries because after all the purpose of holding enquiry is to see whether misconduct has been committed or not. Therefore, it should be ensured that inquiries are completed within a reasonable period in future. In case their own officers are not able to conduct the enquiry or act as Presenting officer on the ground that they are overburdened/promoted or transferred to far off places frequently, KVS should evolve some other mechanism so that once an enquiry is initiated, it is taken to a logical conclusion within a reasonable period, for example, they can have special cell for holding the enquiries or find some other alternative within their means so that in case an officer is found guilty he may be punished accordingly but in case he is not found guilty of the charges at least he may serve peacefully without ~~any~~ <sup>any</sup> fear and with dignity.



This would also reduce unnecessary litigation. Respondents are, therefore, directed to take proper steps in this regard.

20. I would also agree with Hon'ble Member (A) that respondents should complete the enquiry and take final decision within 6 months from the date of receipt of a copy of this order. Applicant is also directed to cooperate as it would be in his own interest.

21. With the above directions, OA is disposed of.

  
29/6/05

(Mrs. Meera Chhibber)  
Member (J)

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