

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 2787/2004

This the 24th day of August, 2005

HON'BLE MR. JUSTICE M.A.KHAN, VICE CHAIRMAN (J)
HON'BLE MR. S.A.SINGH, MEMBER (A)

Shri Raj Kumar
WZ 84/D/1, Meenakshi Garden,
New Delhi-110018.

(By Advocate: Sh. O.P.Gehlaut)

Versus

1. Zonal Joint Director General
of Foreign Trade, Central Licensing Area,
B.K.Roy Court 6-7, Asaf Ali Road,
New Delhi-110002.
2. Union of India
through the Secretary,
Ministry of Commerce,
Govt. of India,
Udyog Bhawan, New Delhi.

(By Advocate: Sh. Rakesh Chahar)

ORDER (ORAL)

By Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

Applicant has assailed the memorandum dated 29.1.2002 (Annexure A-1) whereby articles of charge, statement of imputation etc. are served on the applicant for conducting disciplinary proceeding under Rule 14 of CCS (CCA) Rules, 1965 (Rules, 1965) for major penalty. After hearing the parties at length, we had dismissed this OA and had observed that reasons would follow. We are recording the reasons.

2. Briefly the allegations are that the applicant was working as Licensing Assistant. He superannuated on 31.1.2002. A day before on 30.1.2002 he was served with memorandum Annexure A-1 whereby the articles of charges were served on him for holding disciplinary proceeding for major penalty. He has challenged these proceedings on the ground that the incident, which is a subject matter of the disciplinary proceeding, had taken place 9 years before the service of the memorandum and the long delay has vitiated the disciplinary proceeding. He also challenges in the ground that withholding

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his amount of leave encashment is violative of Rule 9 of CCS (Pension) Rules, 1972. He also stated that some documents were asked for but have not been supplied to him yet.

3. The respondent in their counter reply have contested the claim of the applicant.

It is stated that the allegations against the applicant were grave and serious. The CBI enquired into the matter and had submitted its report on which CVC's advice was sought and the CVC has advised initiation of departmental action against the applicant and other officials. The matter related to the grant of wrong issue of licences in contravention of relevant rules, instructions and the policy of the Government causing huge pecuniary loss to the Government exchequer. The witnesses have to be examined thoroughly. Some gazetted and non-gazetted officers were involved and all this caused some delay in the proceeding for which the proceedings are not vitiated. As regards the amount of leave encashment it was stated that FRSR Leave Rules 39 (3) authorize the authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. Accordingly, orders of withholding the amount of leave encashment is in conformity with the rules. It was also stated that amount of Rs. 5,23,267/- towards GPF balance and a sum of Rs.15,524/- against CGEGIS has already been paid vide cheques dated 30.1.2002 and 16.5.2002 respectively. Other allegations have been denied. As regards documents asked for, it is submitted that that will be supplied at the appropriate time.

4. We have heard the learned counsel for the parties and have perused the record.

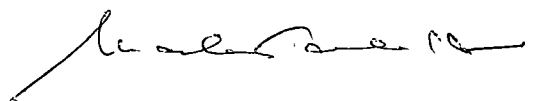
5. The main contention of the applicant is that service of the memorandum with article of charges on the applicant a day before he has retired from service is motivated and malafide action. It is further submitted that the alleged occurrences regarding which the proceedings are initiated had occurred 9 years before, therefore, there is a gross and inordinate delay in starting the disciplinary proceeding which had vitiated the proceedings. It is further submitted that the CBI had concluded the enquiry in 1995. Since by that time the applicant had not been served with memorandum of charge, he had been promoted on 10.1.1997. It is also argued that as per the allegations made in the



counter reply the article of charges were served and the proceedings initiated against the applicant under the direction of the Headquarter which suggested that there had been any application of mind by competent disciplinary authority in deciding about the holding of the enquiry, and for this reason also the enquiry proceedings are illegal and infirm. It is also contended that the enquiry officer was appointed on 27.12.2004, i.e., after 2 years. He has referred to the guide-line of the CVC for completing the enquiry proceedings within 6 months. According to him, copies of some documents were asked for which have not been supplied as yet. As regards the amount of leave encashment it is submitted that no presidential order under Rule 9 of Pension Rules has been obtained for withholding this amount.

6. Conversely, the argument of the learned counsel for respondent is that in view of the nature of the allegations made against the applicant an enquiry was conducted by the CBI and thereafter advice of the CVC was obtained for initiating the disciplinary proceeding and after the advice was received, the large number of documents and evidences was examined. He further stated that since a number of gazetted and non-gazetted officers were involved, so the matter was thoroughly considered and when the enquiry report was received from the CBI, the head office gave a direction for initiation of disciplinary proceeding and the disciplinary proceedings were started by the competent authority. It is further stated that Rule 39 (3) of FRSR (Leave) Rules empowers the authority competent to grant leave to withhold the amount of leave encashment if there was possibility of some money becoming recoverable from the government employee after his retirement, as a consequence of the pending disciplinary and criminal proceeding etc. He, therefore, submitted that the order of withholding the leave was justified. As regards the supply of documents are concerned, it is stated by the respondents ^{That} those documents will be supplied to the applicant at appropriate stage of enquiry.

7. We have given consideration to the submissions made on behalf of the applicant. The first contention is that there is gross and inordinate delay in holding of the disciplinary proceeding. It is submitted that the alleged occurrences which is the subject matter of the departmental proceedings has taken place 9 years before the service of charge memo in January, 2002. It is now well settled proposition of law that disciplinary



proceeding may be interfered with by the Tribunal at its initial stage of service of articles of charge only when the delay in issuing the charge-memo has not been properly explained (See State of M.P. Vs. Bani Singh, AIR 1990 SC 1308 and State of A.P. Vs. N. Radhakishan (1998) 4 SCC 154). It has been held that the delay would cause prejudice to the charged officer unless it could be shown that he was also to be blamed for delay and when there was proper explanation for the delay in conducting the disciplinary proceedings and the court has to balance these two diverse considerations. The Hon'ble Supreme Court in the case of N. Radhakishan (Supra) has observed as under:-

"19. 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 or not 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 facts 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, when the delay is abnormal and there is no explanation for the delay."

8. In another case of State of Punjab Vs. Chaman Lal Goyal (1995 (2) SCC 570), the Apex Court made the following observations:

"But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Whenever such a plea is raised, the Court has to weigh the facts appearing for and against the said pleas and take a decision on the totality of circumstances. **In other words, the court has to indulge in a process of balancing.**"

9. In the above judgments reference has also been made to the judgment of Constitutional Bench in the case of A.R. Antulay Vs. R.S. Nayak AIR 1988 SC 1531 in which it was observed that quashing of charges was not the only course open to the court in such cases. The nature of offence and other circumstances may be such that quashing of the proceedings may not be in the interest of justice.

10. Hon'ble Supreme Court in Food Corporation of India Vs. V.P. Bhatia, JT 1998 (8) SC 16 held that the High Court was not justified in quashing the proceedings on account of undue delay. In yet another judgment in the case of Secretary to Government Prohibition and Excise Department Vs. L. Srivastava ATJ 1996 (1) 617, the Hon'ble Supreme Court had reprimanded the Administrative Tribunal for setting aside the

departmental enquiry and quashing the charge sheet on the ground of delay in initiation of disciplinary proceedings, by observing as under:-

“xxxxx 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 appears (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.”

11. It is also a well-settled law that in disciplinary proceedings, Tribunal should not intervene at an interlocutory stage. (See Union of India & Oths Vs. A.N. Saxena JT 1992(2) SC 532 and in the case of Union of India & Oths. Vs. Upendra Singh JT 1994(1) SC 658).

12. It has also now been a settled law that the Tribunal in exercise of its power of judicial review reviews the matter in which the decision has been arrived at and does not review the decision itself (See B.C. Chaturvedi Vs. U.O.I. & Others (1995) 6 SCC 749).

13. The facts of the present case may be now decided on the touchstone of the law laid down of the above cited judgment by the Hon'ble Supreme Court.

14. In the present case there is allegation that the applicant in collusion with others facilitated the fraudulent payment of premium claims which caused loss of Rs.75,35,359/- and Rs.36,08,147/- and Rs.17,26,423/- etc. to the government exchequer which amounted to the misconduct under CCS (Conduct) Rules, 1964 for which disciplinary proceeding were initiated against him. The allegations against the applicant are pretty serious. In the counter reply it is submitted that the matter was enquired into by the CBI which had submitted its report on which the advice of the CVC was also sought and the CVC advised for initiating departmental proceedings against the applicant and that other gazetted and non-gazetted officers were involved. The case was accordingly examined in detail in the light of the documentary and oral evidence, the report of the CBI and the advice of the CVC and all this caused a delay. It was submitted that a huge pecuniary loss was caused to the government by grant of wrong issue of license in contravention with the rules, instructions and policy of the government. It is no doubt true that there is no limitation provided for holding a disciplinary proceeding

19
during the continuation of the service of the delinquent but a 4 years limitation is provided if the delinquent has retired from service. In the present case considering the nature of the allegations against the applicant and the time consumed by the CBI in investigation and submitting the report, the consideration of the matter by the appropriate authority and CVC etc. is definitely going to cause delay in taking the official decision for holding or not holding the departmental proceedings against the applicant particularly when some gazetted and non-gazetted officials were involved.

15. In the totality of the facts and circumstances and also the law laid down by the Supreme Court referred to above, we do not find that it will be proper for the Tribunal to quash the disciplinary proceeding on account of inordinate delay as there is satisfactory explanation for 8/9 years delay in issue of the charge-memo to the applicant.


16. As regards the contention of the applicant that the competent disciplinary authority has taken the decision for starting the disciplinary proceeding against the applicant on the dictate of the headquarter without application of mind to our view has no substance. The comparison of decision of a disciplinary authority in disciplinary proceeding with a statutory requirement of sanction for initiating a criminal proceeding under the provision of certain criminal law or a quasi judicial authority seeking directions of superior authority for deciding quasi judicial proceeding pending before it has no relevance. The disciplinary authority is part of the administrative machinery which included a superior officer sitting in the headquarter of the department, therefore, if superior officers have applied their mind and have taken a decision and asked the disciplinary authority to proceed departmentally against a delinquent official and the disciplinary authority acts upon such instructions that would in no case bring legal infirmity in the proceeding.


17. As regards argument that the amount of leave encashment has illegally been withheld by the department as no presidential order has been obtained in accordance with Rule 9 of CCS (CCA) Rules, to our view, is devoid of any merit. Rule 9 of CCS (Pension) Rules empowers the President to withhold the pension and the amount of gratuity and not the leave encashment. Conversely FRSR (Leave) Rules, No.39 (3) has empowered the authority competent to grant leave to withhold whole or part of cash equivalent of Earned Leave in the case of a government servant who retires from service

10/2

on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. This Rule is independent of Rule 9 of the Pension Rules. The competent authority has exercised its power in withholding the leave encashment with which the Tribunal need not interfere at this stage of the disciplinary proceeding. This contention also does not have any merit. None of the arguments of the applicant have any force at this stage.

18. Accordingly, the OA fails. It is dismissed leaving the parties to bear their own costs.


(S.A. SINGH)
Member (A)


(M.A.KHAN)
Vice Chairman (J)

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