CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2841/2004

New Delhi, this the 7th day of **February, 2006**

Hon'ble Mr. Justice B. Panigrahi, Chairman
Hon'ble Mr. N.D.Dayal, Member (A)

Sh. Narain Singh
Sales Tax Officer (Retd.)
/SREO
under Govt. of N.C.T. of Delhi
r/o KU-26 Pitampura
Delhi – 110 088.

(By Advocate: Sh. B.S. Mainee)

Versus

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

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

.. Respondents

(By Advocate: Sh. Om Prakash)

ORDER

By Justice B. Panigrahi, Chairman:

Applicant (Sh. Narain Singh), 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 Articles of Charge framed against the applicant are:

Article I

While functioning as Sales Tax Officer in ward No.69, Shri Narain Singh committed misconduct and irregularities in assessing the dealer, M/s New Friend & Co. (P) Ltd., 5, Bhama Shah Marg, Delhi for the assessment years 1990-91 to 1993-94, in as much as 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 and by enhancing taxable sale at the time of assessment, in violation of section 21(4) of DST Act, 1975.

Article II

Shri Narain Singh framed the assessment order with malafide intention and ulterior motive for the year 1992-93, as he failed to take cognizance of rate of tax revised from 10% to 12% w.e.f. 9.2.93 on watches. The dealer was re-assessed by another Assessing Authority and a demand of Rs.1,34,434/- under DST Act was created.

Article III

Shri Narain Singh prescribed a surety of Rs.1 lac under each Act on 21.11.96 and compliance was to be made by 3.12.96. Showcause notices under section 18 of DST Act were also issued to the dealer but no timely action was taken by him to get the surety or cancel the Registration Certificate of the dealer. Lateron the dealer filed surety dated 1.9.97 and after accepting the surety, he issued statutory forms to the dealer.

Thus, Shri Narain Singh, 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 abnormal delay without any explanation for such delay because the alleged irregularity on behalf of the applicant pertains to

assessment years from 1990-91 to 1993-94 and certain acts which are attributed to him are of 1996.

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. In nutshell, Shri Om Prakash, the learned counsel appearing on behalf of the respondents, has submitted that the matter of drawal of disciplinary proceedings had to move from table to table from the Commissioner of Sales Tax to that of Vigilance Department which resulted in some delay in this case 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 7 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. It is worthwhile to mention here that in a recent Judgement in the case of **P.V.MAHADEVAN** v. **M.D., TAMIL NADU HOUSING BOARD**, 2005(2) SCSLJ 186, the Hon'ble Supreme Court, on the basis of the previous Judgements in the case of **State of Madhya Pradesh v. Banni Singh and Another,** 1990 Suppl. SCC 738 and **State of A.P. v. N. Radhakishan,** 1998 (4) SCC 154, held as under:

> "16. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher Government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a Government employee should, therefore, be avoided not only in the interests of the Government employee but in public interest and also in the interests in inspiring to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and suffering of the appellant due to the protracted disciplinary proceedings would be much more than punishment. For the mistakes committed by the department in the procedure for

initiating the disciplinary proceedings, the appellant should not be made to suffer.

17. We, therefore, have no hesitation to quash the charge memo issued against the appellant. The appeal is allowed. The appellant will be entitled to all the retrial benefits in accordance with law. The retrial benefits shall be disbursed within three months from this date. No costs."

14. 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 for the periods from 1991 to 1994 and 1996 and the chargesheet has been issued in the year 2004. 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 7 years of the alleged misconduct, it would be improper for us to allow the departmental proceedings to continue.

15. At this stage, the learned counsel for the applicant has relied on the Judgement passed by this Tribunal in OA No.2386/2004 (**Sh. B.S.Yadav v. Lt. Governor, Govt. of NCT of Delhi & Others)** where an identical explanation had been offered by the respondents to condone the

delay in initiation of the disciplinary proceedings and the same was rejected. We respectfully agree with the view taken by the learned Division Bench and are of the considered opinion that the present case is squarely covered by the said decision by a recent decision of the Hon'ble Supreme Court in the case of **P.V.Mahadevan (supra).**

16. Resultantly, we allow the present application and quash the impugned memorandum.

(N.D.Dayal)
Member (A)

(B. Panigrahi)
Chairman

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