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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.210/2004

New Delhi, this the 12th day of March, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI R.K.UPADHYAYA, MEMBER (A)

J. Bhagat
Surveyor of Works (Civil)
CCW : All India Radio
9th Floor, Soochna Bhawan
CGO Complex, Lodi Road
New Delhi - 03.

... Applicant

(Applicant in person)

Versus

1. Union of India
through The Secretary
Ministry of Information and Broadcasting
6th Floor, A-Wing, Shastri Bhawan
New Delhi - 110 001.

2. Director General
All India Radio
Akashwani Bhawan
Sansad Marg
New Delhi - 110 001.

3. Chief Engineer (Civil)-1
Civil Construction Wing
All India Radio
6th Floor, Soochna Bhawan
CGO Complex, Lodi Road
New Delhi - 03.

... Respondents

(By Advocate: Sh. S.K.Pabbi)

O R D E R (Oral)

Justice V.S. Aggarwal:-

The applicant was posted as Assistant Engineer at Calcutta during the period 31.12.1986 to 1.5.1989. He was relieved of his duties of Assistant Engineer on 1.5.1989 to join at Patna as Assistant Surveyor of Works. The quality control inspection was effected in the month of November, 1989.

2. It appears that there were certain difficulties/deficiencies that were noted. The

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explanation of the applicant was called by the Superintendent Engineer, Calcutta for the alleged lapses. The applicant had submitted his explanation. The dispute between the Contractor and the Union of India was referred to the Arbitrator. The grievance of the applicant is that Under Secretary (Vigilance), Ministry of Information and Broadcasting on 16.11.1999 submitted a chargesheet to the applicant regarding work of explanation referred to above during the year 1988-89.

3. By virtue of the present application, the applicant seeks quashing of the chargesheet referred to above and setting aside the order of 18.8.2003 whereby it had been decided to proceed with the departmental action against.

4. The main contention raised by the applicant is that departmental proceedings have been initiated after ten years of the alleged incident and during this period, he even had been promoted on one occasion.

5. The application has been contested. It has been pointed that delay in initiation of the disciplinary proceedings is procedural and unintentional.

6. During the course of the submissions, the applicant reiterated the above said ground that after such an inordinate delay the departmental proceedings



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could not be initiated because according to the applicant, who appeared in person, prejudice is caused to him in this regard and he could not contest the departmental proceedings after such a long time.

7. The question pertaining to delay has always drawn the attention of the courts. In the case of **State of Madhya Pradesh v. Bani Singh & another**, 1990 (Supp) SCC 738, the Supreme Court took strong objection to the initiation of departmental proceedings after 12 years. It was held that it would be unfair to permit the departmental enquiry to proceed at that stage. In para 4 of the judgement, the Supreme Court held :-

"4. The appeal against the order dated December 16, 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 1975-77. 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 April 1977 there was doubt about the involvement of the officer in the said 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 no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

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8. Few years later, in the case of **B.C.Chaturvedi v. Union of India and Ors.**, JT 1995 (8) S.C. 65, the Supreme Court was concerned with the same question. Therein the Central Bureau of Investigation had investigated and recommended that evidence was not strong enough for successful prosecution but disciplinary proceedings may be initiated. The Supreme Court held that each case depends on its own facts and delay by itself will not violate Article 14 or 21 of the Constitution. The findings of the Apex Court in this regard reads:-

"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 tedious 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 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."

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Identical was the view expressed by the Apex Court, in the case of **Secretary to Government, Prohibition & Excise Department v. L.Srinivasan**, 1996(1) ATJ 617. The Supreme Court had expressed its view that when it takes long time to detect such charges, the proceedings as a result of delay need not be quashed. The order passed by the Central Administrative Tribunal on the contrary had been set aside.

9. Lastly we take advantage in referring to a decision of the Supreme Court in the case of **Food Corporation of India v. V.P.Bhatia**, JT 1998 (8) SC 16. In that matter also, disciplinary proceedings had been initiated after a long time. On the said ground, the delinquent had preferred a petition in the High Court. The High Court had quashed the proceedings because of inordinate delay. The Supreme Court had set aside the order of the High Court holding that undue delay in initiation of disciplinary proceedings may cause prejudice to the employee and, therefore, the courts have been insisting that the disciplinary proceedings should be initiated with promptitude and expeditiously. The facts of each case cannot be lost sight of. Since earlier Central Bureau of Investigation was looking into the matter and thereafter it had been referred to the Central Vigilance Commission, it was held that the proceedings need not have been quashed.

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10. From the aforesaid, we can conveniently draw a conclusion that delay as such in initiation of departmental proceedings should be discouraged and if it causes prejudice, necessarily the same can be quashed. However, if delay is explained, the proceedings need not be quashed. Facts of each case necessarily have to be looked into.

11. In the present case, it was pointed by the applicant that even he was promoted during this period.

12. As referred to above and rementioned at the risk of repetition, the incident pertains to the year 1988-89. The charge sheet served was after ten years of the same. The delay had occurred.

13. Respondents' learned counsel contended that the matter was before the Central Vigilance Commission but he fairly told us that the Central Vigilance Commission was dealing with the matter for only couple of months. It is not the case where the respondents were not aware of the alleged action. It came to their notice in the year 1990 when even the explanation was called. It is not a case where some investigation was pending and therefore departmental proceedings were delayed. In that backdrop, we hold that the applicant is justified when he contends that after 10 years, prejudice is caused and he is not in a position to


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defend the departmental proceedings effectively and that in the facts of the present case, the delay is not at all explained.

14. Keeping in view the aforesaid, we allow the present application and quash the chargesheet that has been served and the disciplinary proceedings.


(R.K. Upadhyaya)
Member (A)


(V.S. Aggarwal)
Chairman

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