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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 1174/2004

This the ¹² day of ~~April~~ ^{August}, 2005

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

Sh. V.P.Singh
Flat No.725, Guru Apartments,
Sector-14, Rohini, Delhi-85.

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

Versus

1. Govt. of NCT of Delhi
through its Chief Secretary,
Delhi Secretariat, Player's Building,
I.P.Estate, New Delhi.
2. Union of India through
the Joint Secretary (U.T.)
Ministry of Home Affairs,
North Block, Central Secretariat,
New Delhi.

(By Advocate: Sh. Ashwani Bhardwaj proxy for
Sh. Rajan Sharma)

ORDER

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

Applicant seeks quashing of the charge sheet and the disciplinary proceedings started against him. He also seeks direction for release of his pension and other retirement benefits with 15% interest.

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2. Briefly stated the facts are that the applicant was appointed to a Group 'B' Gazetted post of Delhi Administration Subordinate Service on 28.6.1980. He was working as Assistant Sales Tax Officer in the Sales Tax Department of Delhi Administration. He was promoted to a duty post of DANI Civil Service on ad hoc basis by order dated 22.1.1990. His ad hoc service was regularized in Grade-II of DANICS ib 21.8.2001. Thereafter he was granted higher scalé in DANICS w.e.f. 21.8.2001. Earlier thereto on 30.5.1996 he was served with a memo calling upon him to explain the issuance of Sales Tax forms to M/s. Pilco Systems and M/s. Krishna Stores in 1987 while working as an Assistant Sales Tax Officer in the Sales Tax Department of the Government. He gave reply to the memo on 10.6.1996. He was due to retire on attaining the age of superannuation on 31.12.2002. Barely 17 days before the date of his retirement, i.e. 31.12.2002, he was served with a memo of charge for initiating disciplinary proceedings for major penalty against him under Rule 14 of CCS (CCA) Rules, 1965. His pension and other retirement benefits like leave encashment, gratuity, etc. were withheld. Applicant is aggrieved and has filed the present OA for aforementioned relief.

3. The grounds on which he challenges the disciplinary enquiry initiated by serving the Article of Charge on him, briefly are:

- (i) The charge sheet was served on the eve of his retirement in respect of certain lapses and incident which had taken place about 14-15 years back with mala fide intention and the charge sheet and

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the disciplinary proceedings deserved to be quashed for the reason of inordinate delay.

- (ii) The respondent is estopped from serving the charge sheet since the applicant had been granted two promotions by them with full knowledge of the alleged lapses prior to these promotions and their having issued a memo to the applicant and considered the reply of the applicant thereto.
- (iii) No disciplinary action can be taken in respect of quasi-judicial function.
- (iv) The disciplinary proceedings are discriminatory since no other officer/official such as R.P.Meena, the then STO who had issued such forms to the same dealers had been chargesheeted as such the action against the applicant is actuated by malice, whims and arbitrariness.
- (v) The charge sheet is not bases on any evidence.
- (vi) Omissions and commissions are to be judged in the context of the situation and in the circumstances when these are done and not by unenvisageable occurrences in the distant future since subsequent events could not be determinative as to how a judicial discretion should have been exercises earlier.
- (vii) Charge sheet does not cite any rule or statutory provision of Delhi Sales Tax Rules/Act which prohibited issuance of forms to the dealers at that time and in those circumstances and in that manner

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or verification of transactions by the Sales Tax Inspectors, the lower field functionary, before issuance of Forms.

- (viii) Delay of 15 years in issuing the charge sheet has caused grave prejudice to the applicant and lastly
- (ix) Rule 9 of Pension Rules whereunder these proceedings are deemed to continue is not applicable to leave encashment and as such the same could not be withheld or withdrawn.

4. The respondents contested the OA and in the reply justified the disciplinary proceedings against the applicant. It was alleged that the applicant committed serious lapses while functioning as Assistant Sales Tax Officer in Ward-23 (old), new Ward-54. He issued statutory forms in large number to the dealers viz. M/s. Pilco Systems and M/s Krishna Stores on various occasions without having a check over the nefarious activities of the said dealers. He also failed to invoke provision of Section 18 of Delhi Sales Tax Act, 1976 by enhancing the sureties of both the dealers in view of huge purchases indicated in ST-II accounts furnished by the dealers. Loss of revenue caused to the Sales Tax Department by M/s. Pilco Systems and M/s. Krishna Stores are to the tune of Rs.30 crores and Rs.29 crores respectively. Applicant had filed OA-1768/2003, which was disposed of by this Tribunal by order dated 11.11.2003 with the direction to the applicant to file a representation to the concerned authority. Review Application No.32/2004, filed against the order of the Tribunal passed in the OA, was dismissed by the Tribunal on 6.2.2004. Applicant accordingly submitted representation dated 3.3.2004, which has been dismissed

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by the Chief Secretary by an order dated 23.6.2004. The charge sheet was issued under Rule 13(2) of CCS (CCA) Rules, 1965 by the Chief Secretary who is competent to do that as per Item 28 of part-II of Schedule appended to the aforesaid Rules and impose minor penalty on DANICS Grade-II Officers. There is no time limit for initiating disciplinary action under CCS (CCA) Rules, 1965 in the case of a serving Government servant for his past misconduct. Moreover, after the detection of any irregularities/lapses committed by the delinquent, processing of the cases takes time, due to the involvement of various departments. Documents are collected, version of the delinquent is obtained and examined by the Department concerned and advice of Chief Vigilant Commissioner is taken before the charge sheet is served. The charges against the applicant are grave and serious. He gave dealers liberty to use the forms at their sweet will which caused heavy revenue loss to the Government. The promotion/regularization on the post of Grade-II/DANIC of the applicant was much prior to the issued of charge sheet and the same has no relevance to the present case. A disciplinary action could be taken against the Government servant even with regard to exercise of quasi-judicial powers when the officer has acted in a manner which would reflect on his reputation, integrity or good faith or devotion to duty, if he has acted in order to unduly favour a party and indulge in corrupt practice etc. as in the present case.

5. In the rejoinder applicant has reiterated his own case and has controverted the allegations made in the counter.

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6. We were given serious consideration to the decision made at the bar and have carefully perused the record.

7. The statement of Article of Charge framed against the applicant for holding the disciplinary enquiry against him for violation of CCS (Conduct) Rules, 1964 filed as Annexure-1 to the OA reads as under:-

"While functioning as ASTO in old ward-23 (new ward-54), Shri V.P.Singh committed misconduct in as much as he had issued 260 ST-I and 40 ST-35 forms to M/s. Pilco Systems, and 25 ST-1 and 40 ST-35 to M/s. Krishna Stores in quick succession. He failed to keep a check over the nefarious activities of both the dealers by getting the transactions of the dealers (as shown in ST-II A/cs) verified through lower functionaries. Sh. Singh also failed to invoke provisions of Sec 18 of DST Act, 1976 by enhancing the sureties of both the dealers in view of huge purchases indicated in ST-II A/cs furnished by them. Loss of revenue caused to the Sales Tax Department by M/s Pilco Systems & M/s Krishna Stores are to the tune of Rs.30 crores and Rs.29 crores respectively."

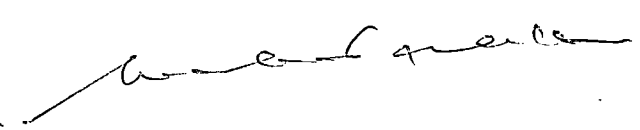
8. It was served on the applicant on 13.12.2002 exactly 17 days before the applicant retired from service on 31.12.2002. The incident of issuance of the Sales Tax form had taken place in 1987 when the applicant was posted as Assistant Sales Tax Officer in the Sales Tax Department. We are told that forms ST-1 and ST-35 enabled a registered dealer to make purchases from other dealers without having been required to pay the Sales Tax due on the transaction. The respondent decided to take the disciplinary action against the applicant after 15 years of the alleged misconduct which had allegedly resulted in revenue loss of over Rs.29-30 crores to the State Government exchequer and the violated^{ed} of Rule 3 of CCS (Conduct) Rules, 1964. Prior to the service of Article of Charge on the applicant by memorandum dated 13.12.2002 (Annexure

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A-1) the respondent had issued a memorandum to the applicant on 30.5.96 calling upon him to explain the issuance of the Sales Tax Forms to the dealers M/s Pilco Systems and M/s Krishna Stores. Applicant sent his explanation to the memorandum on 10.6.96.

9. Foremost and the crucial question that arise for the adjudication is whether the service of charge sheet and the disciplinary action for a lapse or misconduct which occurred 15 years prior to the initiation of the disciplinary proceedings is liable to be quashed for the reason of inordinate delay of 15 years. The applicant had filed OA No.1768/2003 for grant of relief similar to the one which has been claimed in the present OA. The question of inordinate delay in initiating disciplinary proceedings was raised and it was considered in detail by the Tribunal. After considering the judgment of the Hon'ble Supreme court in State of Madhya Pradesh vs. Bani Singh AIR 1990 SC 1308, Registrar of Cooperative Societies Madras and another vs. F.X.Fernando (1994) 2 SCC 746, Union of India and others vs. Raj Kishor Parija 1995 Supp (4) SCC 235. B.C.Chaturvedi vs. Union of India and others (1995) 6 SCC 749, Secretary to Government, Priibition & Excise Department vs. L.Srinivasan 1996 (1) ATJ 617 and State Government of Andhra Pradesh vs. N.Radhkishnan JT 1998 (3) SC 123, this Tribunal held that the proceedings could be quashed if the delay is not appropriately and satisfactorily explained and inference that inordinate delay will cuase prejudice to the delinquent officials may also be drawn. We are in respectful agreement with the view taken by the learned Bench in that case.





10. Applicant had also cited the judgments of the Hon'ble Supreme Court and this Tribunal in support of his argument that inordinate delay in disciplinary proceedings is a ground for quashing the proceedings at the threshold. He cited State of Madhya Pradesh vs. Bani Singh and another (supra) wherein the Supreme court held as under:-

"4. The appeal against the order dt. 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 1975-77. 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 no 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 ground to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

A similar view has been taken by the Hon'ble Supreme Court in State of A.P. vs. N.Radhakishan (1998) 4 SCC 154 wherein it was observed:

"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 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 when there is proper explanation for the delay in conducting disciplinary



proceedings. Ultimately, the court is to balance these two diverse considerations.”

11. He also referred to a decision of a Bench of this Tribunal in Ashok Kapoor vs. Union of India and others reported in 2002 (3) ATJ 138 wherein the disciplinary proceedings were started in respect of incident which had happened 12 years back. This Bench relied upon the judgment of Hon'ble Supreme Court in State of Madhya Pradesh vs. Bani Singh (supra) and holding that there is no explanation for the inordinate delay of 12 years in starting the disciplinary proceedings quashed and set aside the charge sheet and the disciplinary proceedings against the delinquent official, He next referred to another judgment of this Tribunal in Arun Kumar Basu vs. Union of India reported in 1992(2) ATJ 578 wherein also there was an inordinate delay in initiation of departmental enquiry against the delinquent employee and following the judgment of the Hon'ble Supreme Court in State of Madhya Pradesh vs. Bani Singh (supra) the proceedings were quashed.

12. Decisions of this Tribunal cited on behalf of the applicant are based on the principles of law laid down by the Hon'ble Supreme court in State of Madhya Pradesh vs. Bani Singh (supra). Consequently what is to be borne in mind in the case of complaint of inordinate delay in initiation of departmental proceedings against a delinquent official, is the explanation which is forthcoming from the disciplinary authority for the delay. If the delay is explained to the satisfaction of the Court the longevity of the delay would become immaterial. The explanation for delay is to be considered in the light of the facts and circumstances of each

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case and no hard and fast rule or a yardstick could be applied for deciding whether the disciplinary proceeding should or should not continue.

13. The crux of the matter, therefore, is that what reasons have been given by the respondents for not taking action against the applicant under CCS (CCA) Rules for about 15 years. In the counter respondents submitted that after detection of the irregularities/lapses committed by the delinquent, processing of the cases took time, due to the involvement of various departments. For this purpose documents were collected, version of the delinquent was obtained and examined by the concerned Department and advice of CVC was taken before the charge sheet was issued. At the time of hearing on 24.8.2004, counsel for respondents took time to file a detailed affidavit indicating as to when the respondents had detected the misconduct on the part of the applicant and also specifically explain as to how the delay had occurred thereafter.

14. On 17.9.2004 the learned counsel for respondents submitted that a disciplinary enquiry was held against Sh. P.R.Meena which was ultimately dropped but during the enquiry the involvement of Sh. Tarsem Kumar, a Sales Tax Officer and the applicant came to light. Accordingly, the disciplinary proceedings were started against Sh. Tarsem Kumar in the Ministry of Home Affairs. The charges against both Sh. Tarsem Kumar and the applicant were similar, i.e., the issuance of Sales Tax Forms to the dealers M/s. Pilco Systems and M/s. Krishna Stores and the relevant record was required for holding a disciplinary enquiry against Sh. Tarsem Kumar. The said record was not available for initiating the disciplinary proceedings which caused delay. At the

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hearing it was noticed that the affidavit filed on behalf of the applicant did not disclose^{ed} as to how much time was taken in holding enquiry against Sh. Tarsem Kumar and when did the department take decision for holding enquiry against the applicant too. The respondents were, accordingly, directed to file a further additional affidavit to explain the delay on this aspect also. Additional affidavit has since been filed.

15. In the first additional affidavit dated 17.9.2004 filed by Sh. I.C.Bhardwaj, Sales Tax Officer on behalf of the respondents the facts disclosed were that Sh. Tarsem Kumar and the applicant Sh. V.P.Singh were issued memos on 30.5.96 and the reply were received. The allegation was that both these officers had issued forms to M/s Pilco Systems and M/s Krishna Stores. The original documents of Sh. Tarsem Kumar were sent to the Ministry of Home Affairs of the Government of India by letter dated 7.10.99, since that Ministry happened to be the disciplinary authority in the case of Sh. Tarsem Kumar. The Ministry processed the case and desired to see the files of the dealers wherein the irregularities were committed in the issuance of Sales Tax Forms. The matter with regard to the applicant was not taken up further since file was with the Ministry of Home Affairs. Then it was noticed that action is required to be taken on reply of the applicant. The then Commissioner of Sales Tax recommended for initiating disciplinary proceedings for major penalty and accordingly, the enquiry officer was appointed for holding enquiry into the charges and the charge sheet was served on the applicant. The record of M/s Pilco systems and M/s Krishna Stores has since been returned by the Ministry of Home Affairs only on

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21.4.2004. The case of Sh. Tarsem Kumar is still pending as he has filed an OA before Port Blair Bench of this Tribunal.

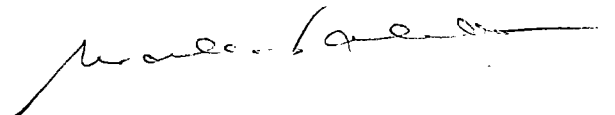
16. In the subsequent additional affidavit also, which is filed by Sh. I.C.Bhardwaj, a Sales Tax Officer on 7.10.2004, certain facts were disclosed which allegedly caused delay in initiation of the disciplinary action against the applicant.

17. There is no rebuttal to the additional affidavits from the side of the applicant. The fact stated in the affidavit, therefore, may be taken as true. The question that remained to be decided is whether the facts stated in these affidavits noted above are sufficient to explain 15 years delay in the initiation of disciplinary action against the applicant.

18. In para 2 of the additional affidavit dated 16.9.2004 Sh. I.C.Bhardwaj, Sales Tax Officer (Vigilance) has stated as under:-

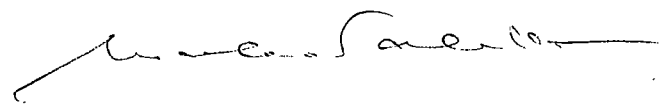
"That the date-wise details of the case of V.P.Singh, applicant herein is given here-below for the kind perusal of this Hon'ble Tribunal.

Date	Details
24.5.96	Enquiry against Sh. P.R.Meena, the then STO dropped & CST approved the issuance of memo to Sh. Tarsem Kumar, the then STO & Sh. V.P.Singh, the then A.S.T.O.
30.5.96	Memo issue to Sh. Tarsem Kumar.
30.5.96	Memo issued to Sh. V.P.Singh.
10.6.96	Reply of Sh. V.P.Singh received.
17.6.96	Dealing assistant informed that reply received from STO & ASTO.
17.6.96	A.O. (V) reported that Sh. Tarsem Kumar asked for copies of documents.
19.6.96	Reply sent to Sh. Tarsem Kumar that he can inspect the documents.
10.7.96	Letter received from Sh. Tarsem Kumar for inspection of records.
22.8.96	Sh. Tarsem Kumar was asked to inspect the file.
18.9.96	It was submitted that no reply was received.
25.10.96	Approval for fresh memo to be issued to Sh. Tarsem Kumar.
19.11.96	No reply received, the matter was brought to the notice of AC (Vig.).



- 6.12.96 A.O.(V) informed that he could not contact Sh. Tarsem Kumar, as desired by AC (Vig.).
- 6.1.97 CST approved charge sheet of Sh. Tarsem Kumar.
- 28.1.97 Bio-data etc. of Sh. Tarsem Kumar, was asked by DOV.
- 10.3.98 Information asked by DOV were given by ASTO(V) personally.
- 5.3.99 CST desired that copies be given to MHA.
- 10.3.99 Accordingly copies were sent.
- 14.9.99 DOV asked for original records in respect of Sh. Tarsem Kumar.
- 7.10.99 Original documents sent to DOV.
- 3.10.2001 On a reference from D.O.V. filed submitted by the dealing assistant for Sh. Tarsem Kumar.
- 17.4.2002 STO Ward-54 asked to produce the record to MHA.
- 16.5.2002 STO, Ward-54 filed reply along with some record to MHA as desired by them.
- 13.5.2002 While examining the record, it came to light that the reply of Sh. V.P.Singh, the then ASTO was to be examined.
- 30.5.2002 CST desired that the matter regarding Sh. V.P.Singh be taken up further from where it had stopped.
- 31.5.2002 That matter put for seeking approval for initiating action under Rule 14.
- 7.6.2002 Draft charge sheet against Sh. Singh were put up.
- 18.6.2002 CST approved charge sheet.
- 4.7.2002 The matter regarding the availability of certified copies by STO, Ward-54 was put to CST.
- 11.7.2002 A reply sent to DOV regarding the case of Sh. Tarsem Kumar.
- 22.7.2002 Charge sheet in respect of Sh. V.P.Singh was sent with approval of CST."

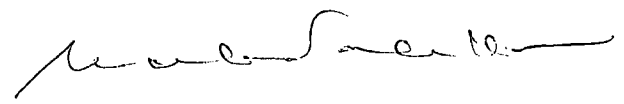
19. Alleged misconduct for which the applicant is facing disciplinary enquiry, was committed in the year 1987 and 1988. Involvement of Sh. Tarsem Kumar, the then STO and the applicant herein in the irregularity in the issuance of statutory ST forms came to the light sometimes in May 1996. Soon thereafter in May 1996 itself memos were issued to both Sh. Tarsem Kumar and applicant Sh. V.P.Singh. While the applicant was prompt in filing the reply, Sh. Tarsem



Kumar took time in giving the explanation. Ultimately, the Commissioner of Sales Tax approved the charge sheet in 1997 to be served on Tarsem Kumar for holding the disciplinary proceeding. Certain other information and documents were asked for by him for examination. The matter was then reported to Ministry of Home Affairs, which was the competent disciplinary authority in respect of Sh. Tarsem Kumar. The Ministry called for copies of certain documents and the original record relating to Sh. Tarsem Kumar. The exchange of correspondence in this regard continued up to October 1999 when the file of Sh. Tarsem Kumar was sent. The disciplinary authority of Sh. Tarsem Kumar was Ministry of Home Affairs. The correspondence was exchanged with the Ministry which asked for certain information, copies of documents and the original documents. Desired information and documents were then sent to Ministry of Home Affairs. During the examination of the record at that time it transpired that the reply which the applicant Sh. V.P.Singh had submitted in June, 1996 in response to the memo had not been processed. Thereafter under the order of the Commissioner of Sales Tax process started and the draft of the charge sheet prepared was approved by the Commissioner Sales Tax and later by the Chief Secretary.

20. The counsel for applicant has argued that there was no application of mind by the Chief Secretary while approving the Article of Charge since it had already been approved by the Commissioner, Sales Tax. To our view, the argument has no force. Applicant was an officer in the Sales Tax Office working under the Commissioner of Sales Tax. Therefore, the examination of the charge sheet or even preparation and approval of its draft by the Commissioner of Sales Tax, which was subsequently approved by the competent authority Chief Secretary an authority superior to the Commissioner of Sales Tax, does not mean that that there was no application of mind by the Chief Secretary. It will not bring any legal infirmity in the charge sheet itself.

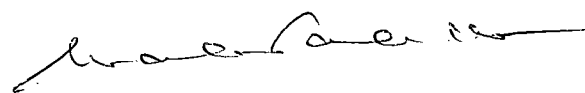
21. Anyhow it is evident from the contents of the additional affidavit that the proceedings were first started against Sh. Tarsem Kumar, the then Sales Tax Officer against whom the disciplinary action was to be taken by the Ministry of Home Affairs. The authorities while pursuing the case against Sh. Tarsem



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Kumar with Ministry of Home Affairs overlooked the memo dated 30.5.96 served on the applicant and his reply thereto dated 10.6.96 for taking further action in the matter. It is stated in the affidavit and at the Bar on behalf of the respondents that the file containing original documents and the material which was to form the basis of the Articles of Charge against the applicant, on being requisitioned, was sent to the Ministry of Home Affairs. These very documents were to be used in processing the explanation of the applicant submitted in response to the memo and for taking decision for holding disciplinary enquiry. It is also averred in the affidavit, which we have no reason to disbelieve, that the authorities discovered only in May 2002 about the service of the memo dated 30.5.96 and reply dated 10.6.96 thereof submitted by the applicant and then a decision was taken by the Commissioner Sales Tax for starting the departmental action under Rule 14 of the CCS (CCA) Rules against the applicant which was lying dormant. Thereafter there was no delay in processing the case except which was unavoidable in view of the involvement of of authorities at different levels. The incident for which the applicant is facing enquiry took place in 1987-88 but the alleged misconduct on the part of the applicant was first discovered in 1996 during an enquiry held against another officer. The chargesheet was served on the applicant in December 2002. The respondent, as such, is to give explanation only for the delay which occurred after the receipt of the reply of the applicant to the memo in June 1996.

22. Indeed, there is no limitation prescribed by rules for taking disciplinary action against a serving employee. But as held by the Hon'ble Supreme Court in State of MP vs. Bani Singh (supra) and State of A.P. vs. N.Radhakrishnan (supra), in case there was an inordinate delay in initiating the proceeding, the disciplinary authority has to give some explanation and the reasons which caused such delay since, the delay may cause prejudice to the charged officer. The authorities, of course, are not to give explanation for each days delay. Even in a case, where statutory limitation is prescribed for an action explanation of each days delay is not required. If cogent and good reasons have been given



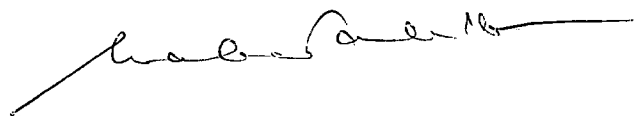
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which occasioned the delay in taking action to the satisfaction of the Court, longevity of the delay becomes immaterial.

23. Counsel for the applicant has strongly argued that the incident which had taken place in 1987 and 1988 great prejudice would be caused to the applicant in his defence since the applicant would not be able to produce the documentary evidence and call other witnesses and officers to prove the practice which was prevalent in the office or about oral instructions received by him from his superiors in the matter as many of the officials, who would have come to his rescue might not be available either because of retirement, death, or failing memory. The Article of Charge, copy of which has been enclosed with the OA disclosed that the allegation against the applicant was regarding issue of statutory ST forms to two dealers without observing the requirement of the statutory provision, which caused huge revenue loss and also reflected on the integrity of the applicant. May be certain documents and witnesses are not available but it is difficult to hold at this stage that very holding of enquiry will be an exercise in futility or that the applicant would be handicapped in defending it. The Article of Charge and the disciplinary proceeding could be quashed at this stage only if there is inordinate unexplained delay. A reading of the additional affidavits submitted on behalf of the respondents, to our considered view, has sufficiently explained the reason which has caused the delay in holding the enquiry. It is now well-settled that the Tribunal will not ordinarily interfere with the Article of Charges and the disciplinary proceeding at its initial stage of the proceeding except on the grounds which have been laid down by the Hon'ble Supreme Court in the above cited cases.

24. In the totality of the facts and circumstances of the case, we are unable to agree with the arguments of the learned counsel for the applicant that there is inordinate unexplained delay in taking disciplinary proceedings against the applicant and for this reason Article of Charges and the enquiry proceeding should be quashed and set aside at this initial stage of the proceedings.

25. The next argument of the learned counsel for applicant is that the applicant was exercising quasi judicial powers under Section 18 of the Sales Tax



Act while issuing the statutory Sales Tax Forms so disciplinary action against him is unwarranted and it should not be allowed to continue. It is argued that the allegation against the applicant is that he had not got the transactions of the two dealers, to whom the forms were issued, verified through subordinate officials and he had also failed to invoke the provision of Section 18 of Delhi Sales Tax Act and enhance the security to be formulated by the dealers in order to safeguard the revenue interest, as such, he actively connived with dealers in their nefarious activities which resulted into the revenue loss of Rs.29 crores and Rs.30 crores. The question is whether the power which the applicant was to exercise in issuing the ST Forms was of quasi judicial nature. Before deciding this question it will be apt to reproduce Section 18 of the Sales Tax Act which provided as under:-

"Security from certain class of dealers – (1) The Commissioner may, if it appears to him to be necessary so to do for the proper realization of the tax, composition money or other dues payable under this Act or for the proper custody and use of the forms referred to in the second proviso to clause (a) of sub-section (2) of section 4, or the first proviso to section 5, as the case may be, impose, for reasons to be recorded in writing as a condition of the grant of the certificate of regularisation under section 14, section 15 or section 17 to a dealer or of the continuance in effect of such certificate granted to any dealer, a requirement that the dealer shall furnish in the prescribed manner and within such time as may be specified in the order such security or, as the case may be, such additional security as may be so specified, for all or any of the aforesaid purposes.

(2) No dealer shall be required to furnish any security or additional security under sub-section (1) unless he has been given an opportunity of being heard and the amount of security or additional security that may be required to be furnished, shall, -

- (a) in the case of a dealer liable to pay tax under sub-section (2) of section 3 who has applied for the grant of a certificate of regularisation under section 14, be such amount as the Commissioner may, having regard to the nature and size of the business of such dealer, determine for the payment of the tax for which the dealer may be or become liable under this Act.
- (b) in a case where security is to be given for the proper custody and use of the forms referred to in sub-section (1), be the amount of tax determined by the Commissioner which is likely to be saved by a dealer by the issue of such forms;
- (c) in any other case, not exceed the tax payable, in accordance with the estimate of the Commissioner on the taxable turnover of the dealer,

for the year in which such security or additional security is required to be furnished.

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(3) Where the security or additional security furnished by a dealer is in the form of a surety bond and the surety dies or becomes insolvent, the dealer shall, within thirty days of the occurrence of such event, inform the authority granting the certificate of registration and shall, within ninety days of such occurrence, execute a fresh surety bond.

(4) The Commissioner may by order, for good and sufficient cause, and after giving the dealer an opportunity of being heard, forfeit the whole or any part of the security furnished by a dealer.

(5) Where, by reason of an order under sub-section (4), the security furnished by any dealer is forfeited in whole or is rendered insufficient, he shall furnish a fresh security of the requisite amount or, as the case may be, shall make up the deficiency in such manner and within such period as may be specified in the order."

26. The above provision vested in the Commissioner of Sales Tax powers for the reasons to be recorded, to impose as a condition of the grant of certificate of Registration or its continuation a requirement of furnishing security or additional security with a view to securitize the revenue and for proper custody and use of certain statutory forms. The power given by this provision is to be exercised after providing an opportunity of hearing to the dealer. Ex-facie it appears that the power which was exercisable under Section 18 above was a quasi judicial power and the Commissioner was acting as a quasi judicial authority while exercising such powers. What is quasi judicial function is the next question? A quasi judicial function differs from a purely judicial function.

27. A quasi judicial authority has some of the job of the Court but not all of them and nevertheless there is an obligation to act judicially as held in *Bharat Bank Ltd. vs. Employees of Bharat Bank Ltd.* AIR 1950 SC 138. Lis between the two rival parties may have essential characteristics of a judicial function but it may not be true of a quasi judicial function as held in *Board of High School vs. Ghanshyam* AIR 1962 SC 1110. While a judicial authority is bound by rules of evidence and procedure, the quasi judicial authority is to observe principles of natural justice and fair play, as held in *State of Orissa vs. Murlidhar* AIR 1963 SC 404 and *State of Mysore vs. Shivabasappa* AIR 1963 SC 375. The administrative authority exercising quasi judicial powers like Income Tax Officer may be party to the dispute which arise before him for adjudication but a Court cannot be a judge in its own cause with exceptions of the contempt proceeding, as held in *Board of High School (supra)*. It is difficult to give exhaustive definition of the executive functions but ordinarily the executive power connotes the

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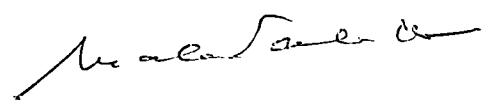


residue of the Government function that remains after legislative and judicial functions are taken away as held in Ram Jawaya vs. State of Punjab AIR 1955 SC 549. In A.K.Kraipak vs. Union of India AIR 1970 SC 150 it was observed that the dividing line between an administrative power and quasi judicial power was quite thin and was being gradually obliterated, and that in the recent years concept of quasi judicial powers has been considered as an administrative power some years back, is now being considered as a quasi judicial power. Broadly, speaking the test which would distinguish a quasi judicial act from an administrative authority is the duty to act judicially. There may be express statutory provision in this regard. In Dwarka Nath vs. I.T.O. AIR 1966 SC 81, the Hon'ble Supreme Court observed as under:

"The provision of a statute may enjoin on an administrative authority to act administratively. If the statute expressly imposes a duty on the administrative body to act judicially, it is a clear case of judicial act but the duty to act judicially may not be expressly conferred but may be inferred from the provisions of the statute. It may be gathered from cumulative effect of the nature of the rights affected, the manner of the disposal provided, the objective criterion to be adopted, the phraseology used, the nature of the power conferred, of the duty imposed on the authority and other indicia afforded by the statute. In short, a duty to act judicially may arise in widely difference circumstances and it is not possible or advisable to lay down a hard and fast rule or an inflexible rule of guidance.

28. A similar view was taken in State of Orissa vs. Binpani, AIR 1967 SC 1269 where it was observed "duty to act judicially would, therefore, arise from the very nature of the function intended to be performed: it need not be shown to be super added".

29. Section 18 of the Sales Tax Act does require determination of a question whether a condition of furnishing security may be imposed on a dealer for grant of a Registration Certificate or its continuation with a view to secure the revenue or for proper custody or use of forms issued to a dealer. Since it would affect the right of the dealer such determination could be done by the Sales Tax authorities after providing a hearing to the effected party and after recording reason therefor. Purpose is to safeguard the Tax Revenue or proper custody or use of the statutory forms. The dealer may be required to furnish security as a condition for issue of registration certificate or extension thereof. This function will squarely fall within the domain of a quasi judicial function of the Sale Tax authorities. But



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issuance of statutory Sales Tax forms is not part of quasi judicial function. The quasi judicial function begins when the Sales Tax authority considers the question of imposing condition of security or its enhancement for grant of Registration Certificate or its continuation. Here the allegation is that the applicant had failed to get the transaction of the dealer verified so that, if need be, provision of Section 18 of Sales Tax Act was invoked by appropriate authority for securing the Tax revenue and custody and use of the statutory forms issued to him. Invocation of power given by Section 18 was not a condition precedent to the issue of Sales Tax forms. The accusation against the applicant is about not discharging duty while issuing ST forms and not that while exercising powers under Section 18 he had misconducted himself. Therefore, the argument of the learned counsel for the applicant that the applicant was discharging the quasi judicial function while issuing ST forms which cannot be called in question in a departmental proceeding, does not have any merit. Counsel for respondents has argued that even a quasi judicial function, if it had reflection on the reputation of the employees integrity may be a misconduct for which disciplinary proceeding are not barred. Anyway the argument of the learned counsel for the applicant on this point is not tenable and it is repelled.

30. Learned counsel for applicant has also argued that after the service of the memo in 1996, applicant was given two promotions, firstly, he was regularised in the grade DANICS in August, 2001 and he was also granted higher scale of DANICS in November, 2001 therefore the respondent should be deemed to have condoned the misconduct of the applicant. Reference has been made to *Audhraj Singh vs. State of MP*, AIR 1967 MP 284 wherein it was observed, "if the lapses or misconduct is one which is known to the party before the person is promoted and not one which comes to light subsequent to the promotion, and if the authority concerned knowing of this lapse or misconduct promotes the civil servant without any reservation, then it must be taken that the lapse or misconduct has been condoned". He also referred to *Mrinal vs. State of West Bengal* reported in 1993 SC SLR 1 which laid down that departmental proceedings could not be initiated on account of misconduct which had taken


Mrinal vs. State of West Bengal

place prior to the grant of promotion and if the promotion had been given after the consideration of the service record it would amount to giving a clean chit estopping the disciplinary authority to serve charge sheet and hold disciplinary proceeding subsequent thereto.

31. To our view, it is premature to decide upon this question at this stage. We refrain from delving into the question any further at this stage lest it cause prejudice to any of the parties. We leave it open to the applicant to raise it during the disciplinary proceeding and if necessary before the higher authorities and the Tribunal later. Similarly, other ground like arbitrariness of the disciplinary action or that the charge sheet is not based on evidence or that the conduct has to be adjudged in the context of the situation and the circumstances or that the charge sheet did not point out to any rule or statutory provision barring issuance of forms to the dealers etc. legitimate defence available to the applicant in respect of each of these and other available pleas may be urged in the proceeding at appropriate stage.

32. The result of the above discussion is that we do not find any ground to interfere with the Article of Charge and pending disciplinary proceeding against the applicant at this stage. OA does not have merit and it is dismissed but without cost.


(S.A. SINGH)
Member (A)


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

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