CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1254/2004

New Delhi, this the 19th day of **January, 2005**

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K.Naik, Member (A)

DL Trehan
Executive Engineer (Civil-1)
MTNL Paschim Vihar
New Delhi. .... Applicant

(By Advocate: Sh. M.K.Bhardwaj)

Versus

Union of India & Ors. through:

1. The Secretary
   Min. of Communication & Information Tech.,
   Department of Telecommunications
   New Delhi.

2. Director General
   Department of Telecommunication
   West Block-1, Wing No.2
   RK Puram,
   New Delhi.

3. The CMD
   Mahanagar Telephone Nigam Limited
   Delhi. ... Respondents

(By Advocate: Sh. Satish Kumar proxy for M/s Sikri & Co.)

O R D E R

By Mr. Justice V.S.Aggarwal:

Applicant (D.L.Trehan) is working as Executive Engineer (Civil). In 1991, he was sent on deputation to All India Radio,

New Delhi. By virtue of the present application, he seeks quashing of the memo. of charge dated 10.3.2004. The Article of Charge reads:

"Article:

That the said Shri D.L.Trehan while functioning as Executive Engineer (Civil), Civil Construction Wing, Division No.III, All India Radio, New Delhi, in the year 1991 to 1992 awarded the work of provisioning of false ceiling in Control Room and labs at Reception Centre, Todapur, New Delhi vide Agt. No.47/EE(C)/DCD III/91-92 to M/s. Ahden Brothers, RA-59 Inderpuri, New Delhi and failed to execute the said work as per the specifications mentioned in the agreement no.47/EE(C)/DCD III/91-92 thereby resulting into pecuniary loss to the tune of Rs.39,829.00 to the government and corresponding gain to the contractor.

2. That Shri D.L.Trehan while functioning as aforesaid, failed to point out that the false ceiling tiles provided at Reception Centre Todarpur, New Delhi were semi perforated particle board of "Décor Unique" brand of lighter density instead of "Anchor/Novapan" make as specified in the agreement, resulting in financial loss to the government and thereby violated the codal provision of CPWD Manual Volume II Para 25.2 and CPWD Manual Volume I Para 4 Page 11.

3. Thus, by the aforesaid act Shri D.L.Trehan EE (C), committed grave misconduct, failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a government servant thereby violating Rule

3(1) (i), (ii) and (iii) of CCS (Conduct) Rules, 1964.

By order and in the name of the President."

2. The sole plea alleged to seek quashing of the same is that the incident pertains to the year 1991-92. The chargesheet had been served after 12 years of the same. There is an inordinate delay in this regard and, therefore, prejudice is caused to the applicant. Consequently, it has been asserted that the chargesheet may be quashed.

3. The application is being contested.

4. Respondents plead that scope of judicial review in application challenging the chargesheet is limited. This Tribunal would not like to interfere at this stage. As regards the delay that has been caused, it has been pleaded that the applicant vide his letter of 28.3.2001 has requested for the first time to inspect the related documents. He submitted his reply on 2.7.2001. After the memorandum was served on 25.4.1996, no reply had been received and thus according to the respondents, there is no delay in this regard.

5. The above said facts clearly show that the short question which seeks answer is that if the proceedings are liable to be quashed on this short ground or not.

6. 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."

Similarly in the case of **REGISTRAR OF COOPERATIVE SOCIETIES MADRAS AND ANOTHER** v. **F.X. FERNANDO,** (1994) 2 SCC, there was delay in initiation of the departmental proceedings. The delay had taken place because Directorate of Vigilance and Anti-Corruption was not prompt. It was held in the facts and circumstances of that case that the Registrar of Cooperative Societies cannot be faulted and, therefore, it was not held appropriate to quash the proceedings.

7. 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

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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."

8. 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:

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"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."

9. 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 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

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> 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."

From the aforesaid, conclusions can easily be drawn that departmental proceedings should be initiated at the earliest. However, it depends upon the facts and circumstances of each case as to whether any prejudice is caused to the applicant and whether the delay is explained or not. If the fact comes to the notice of the authorities lately, only from that point of time the delay should ordinarily be counted.

10. It is in this backdrop that we revert back to the facts of the present case.

11. The departmental proceedings as referred to above must be initiated at the earliest. It is certainly not a life time litigation.

12. In the present case before us, the alleged incident of dereliction of duty pertains to the year 1991-92. The initial memorandum was served only in 1996. The applicant asked for certain documents and once again, according to the applicant, the same was received only after five years. To contend that the applicant asked for the documents only in the year 2001, would not help the respondents because it is not understandable as to why in the first instance, no memorandum was served for over four and half years of the alleged incident of dereliction of duty and thereafter, even if for the sake of argument it is admitted that the applicant did not submit his reply, there was no occasion to permit five years in this regard and still after the reply was received, again there has been a long wait of more than three years.

13. Though attempt is made but it must be held that delay is unexplained. It must be, therefore, held that prejudice is writ large on the face of it. The applicant rightly contends that prejudice is caused to him in deciding the matter. When the concerned person/In-charge of the duty did not perform it within time, necessarily, he is deviated from the path giving a cause to the applicant that delay is causing prejudice to him.

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14. We are of the considered opinion that delay is not at all explained.

15. For these reasons, we allow the present application and quash the impugned order.

(S.K.Naik)
Member (A)

(V.S.Aggarwal)
Chairman

/NSN/