CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1758/2004

New Delhi, this the 6th day of **January, 2005**

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

V.K.Dhingra
R/o Flat No.144, Kewal Kunj Apartment
Sector 13, Rohini
New Delhi. ... Applicant

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

Versus

Union of India & Ors through

1. The Secretary
   Ministry of Health and Family Welfare
   Nirman Bhawan
   New Delhi.

2. The Secretary
   Union Public Service Commission
   Shahjahan Road
   New Delhi.

3. Director General
   Health Services
   Directorate General of Health Services
   Nirman Bhawan
   New Delhi.

4. Director
   Food Research & Standardization
   Laboratory, Gaziabad. .. Respondents

(By Advocate: Sh. Rahul Kumar proxy of Sh. A.C.Aggarwal)

O R D E R

By Mr. Justice V.S.Aggarwal:

By virtue of the present application, applicant seeks quashing/setting aside of the Memorandum of 19.6.2002 whereby departmental proceedings, invoking Rule 16 of the Central Civil Service (Classification, Control & Appeal) Rules, 1965, had been initiated against him.

2. Some of the relevant facts are that in the year 1997, the respondents had constituted a Committee comprising of Dr. B.M.Dass and two members to enquire into the allegations against the applicant.

The said Inquiry Committee had looked into the facts and examined various employees. The findings returned were that allegations regarding alteration of Chemical Analysis Reports cannot be established. There were no irregularities in the selection of the daily wagers. The report had been submitted in order to defeat the just claim of the applicant. The Memorandum had been issued in the year 2000. The applicant had submitted the reply.

3. Thereafter, no action was taken. In August, 2000, Union Public Service Commission published an advertisement for selection to the post of Director in the Food Research and Standardisation Laboratory. The applicant had applied and was selected by the Union Public Service Commission. Before the appointment letter could be issued, the present Memorandum had been served. The applicant's grievance further is that the chargesheet/Memorandum could not have been issued after an inordinate delay and in any case, it has been so done to defeat his just claim for being selected as Director.

4. The application is being contested. Plea has been raised that the Principal Bench has no territorial jurisdiction to entertain the application. Furthermore, according to the respondents, the averments made at the time of hearing that the applicant was exonerated by the Committee in December, 1997, is not a fact. The report of the Inquiry Committee which went into the allegations had stated that only partial inquiry had been conducted. There were complaints received and a second Committee was again set up in 1999 to go into the complaints once again as earlier Committee had not examined all the complaints. A Memorandum dated 10.3.2000 had been issued to the applicant with a view to seek his explanation on the allegations made. Disciplinary proceedings were contemplated against the applicant by the Vigilance Wing of the Ministry. Both the actions had been initiated independently. According to the respondents, there is no ground thus to allow the application.

10

5. The plea of the respondents that this Tribunal does not have the territorial jurisdiction, in the peculiar facts, it cannot be accepted for the reason that the impugned Memorandum had been served by the Ministry of Health and Family Welfare, New Delhi. Moreover, Rule 6 of the Central Administrative Tribunal (Procedure) Rules, 1987 reads as under:

> "6. **Place of filing applications.**- (1) An application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction-
>
> (i) the applicant is posted for the time being, or
>
> (ii) the cause of action, wholly or in part, has arisen:
>
> Provided that with the leave of the Chairman the application may be filed with the Registrar of the Principal Bench and subject to the orders under section 25, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter.
>
> (2) Notwithstanding anything contained in sub-rule (1) persons who have ceased to be in service by reasons of retirement, dismissal or termination of service may at his option file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application."

Perusal of the same clearly shows that two options have been given to the concerned person to file the application, namely, where he is posted and secondly where cause of action wholly or partly arises. Herein, as already mentioned above, the orders have been passed by the M/o Health and Family Welfare, New Delhi and therefore, some part of the cause of action can easily be taken to have arisen at New Delhi.

6. The Full Bench of this Tribunal in the case of **SHRI ALOK KUMAR SINGH & ANOTHER** v. **UNION OF INDIA & ANOTHER,** in O.A.No.458/1990, decided on 8.1.1991 had also taken the same view. Keeping in view the aforesaid, this Tribunal has territorial jurisdiction to entertain the present application. Thus, the said plea of territorial jurisdiction must fail.

7. The main argument advanced was that there was an inordinate delay in regard to the initiation of the departmental proceedings and, therefore, the proceedings can be quashed.

8. 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.

9. 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."

10. 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."

11. 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 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.

12. One can conveniently revert back to the facts of the present case.

13. As already referred to above, a Committee had been set up to inquire into the following allegations:

> "1. A sample of Cotton seed oil (sample code No.9) was received on 14.1.1994 for chemical analysis. Dr. Dinhgra, CTO, CFL conducted the chemical analysis and report was prepared on 25.1.94. It is alleged that after receiving money from the concerned party he changed his findings and submitted another report on 10.2.1994. The report was altered by changing Halphene's test from negative to positive.
>
> 2. Similarly a Sakkar (Sugar) sample (code No.422) was examined by him and the moisture content of the sample was changed without examining the sample on receiving monetary benefit from the concerned party.
>
> 3. A sample of Protinex sample of Pfizer Company was sent for chemical analysis to this laboratory. It is alleged that Dr. S.R.Gupta was approached by one Mr. Patel from Bombay in this regard alongwith a FAX letter. The visitor's name can be traced from the records in the reception. The report was submitted after receiving monetary benefit from the representative of the company.
>
> 4. A sample of double toned milk were received from Madhya Pradesh for chemical analysis. It is alleged that Shri A.M.Pandey, Deputy Manager, Indore Milk Society contacted Dr. P.N. Verma, Director, CFL to ensure that the report should be in their favour. Earlier, the same milk sample had not received approval of the Food Analysis Laboratory, M.P. After receiving money, CFL, Ghaziabad approved the sample.

14. The record reveals that subsequently another Committee had been constituted and the said Committee submitted a report copy of which is at Annexure R-4. Pertaining to the same controversy, now the Review Committee was required to inquire. This time the Committee recorded:

(1) A sample of Cotton seed oil (sample code No.9) was received in the FRSL, Ghaziabad on 14.01.1994 for chemical analysis. Dr. Dhingra, CTO, conducted the chemical analysis and a report was prepared on 25.01.94. After receiving some money from the concerned party he changed his findings and submitted an another report on 10.02.94. The report was altered by changing Halphene's test from negative to positive.

(2) A sample of Sakkar (sugar) (code No.422) was examined by Dr. Dhingra and the moisture content of the sample was changed without examining the sample on receiving some monetary benefit from the concerned party.

(3) A sample of Protinex of Pfizer Company was received for chemical analysis to the Laboratory in February 1994. Dr. Gupta and Dr. Dhingra demanded bribe from the company for passing the sample. A person namely Mr. Patel from Bombay approached Dr. S.R.Gupta alongwith a FAX letter. Dr. Dhingra/Dr. Gupta gave a report which was submitted after receiving monetary benefit from the representative of the company.

(4) A sample of double toned milk was received from Murena, Madhya Pradesh for chemical analysis. Shri A.N.Pandey, Deputy Manager, Indore Milk Society contacted Dr. P.N.Verma, Director, H.P.L., Ghaziabad who contacted Dr. Gupta in the matter. The sample was passed by the Laboratory for monetary consideration. It is understood that a sample of the same milk had not been passed by the Food Analysis Laboratory, M.P."

15. Otherwise also, one cannot ignore the fact that pertaining to the same assertions, a new Committee had been appointed. Our attention has not been drawn to any order passed whereby the report of the earlier Committee was rejected. Repeated Committees without rejecting the earlier report are not called for. This does not work well for administration. As is apparent from the Memo that has been issued pertaining to action contemplated under Rule 16 of CCS (CCA) Rules, 1965, the assertions once again are same. The said assertions are:

"STATEMENT OF IMPUTATION OF MISCONDUCT AGAINST DR. V.K.DHINGRA, SCTO, FRSL, GHAZIABAD.

That Dr. V.K.Dhingra, while working as Sr. Chief Technical Officer in the FRSL

16

Ghaziabad has tested a sample of cottonseed oil in Jan. 1994 in the report of which he had indicated the result of Halphene's test as negative and later after 16 days checked and changed it to positive which was sent to the Court after the deadline for providing the information was over.

Further, in the analysis of a sample of 'Sakkar' in Jan., 1994, Dr. Dhingra is reported to have miscalculated the moisture content resulting in indication of a higher percentage of sucrose, by a wrong method.

Further, in the analysis of a sample of protinex, after completion of preliminary analysis within the statutory period of one month in Jan. 1994, a decision was taken to examine the nitrogen content on 23.2.94 by Dr. Dhingra. This was referred to the Director, FRSL on 26.4.94 for advice as the method of estimating the protein hydrolysate from nitrogen factor was not known to Dr. Dhingra. The final report was sent on 4.4.95 indicating only the nitrogen factor. The delay in sending the report without fulfilling the purpose for which it was held back would have benefited the vendor/manufacturer from whom the sample was seized.

By the aforesaid acts Dr. V.K.Dhingra exhibited negligence and lack to devotion to duty and acted in a manner of a unbecoming of a public servant and thereby contravened rule 3.1(I) to (iii) of CCS (Conduct Rules 1964."

16. It is in this backdrop that the learned counsel for the applicant alleged that the earlier report of the Committee is of the year 1997. It pertains to certain acts of 1994. At this stage, therefore, the inquiry is highly belated. In the preceding Paragraphs, we have referred to the position in law. In accordance with the same, we only reiterate the view that has been expressed by the Apex Court that there should not be inordinate delay in departmental proceedings. They should be initiated at the earliest. If there is delay, it should be explained. It goes with the facts and circumstances of each case.

17. At the risk of repetition, we may mention that alleged misconduct pertains to the year 1994 and the applicant was exonerated by the order of 1997. But without valid reasons, another Committee was set up. The earlier report was not set aside by any other competent

authority to do so. Therefore, there is an inordinate delay and the prejudice alleged would be obvious because after so many years, it is difficult for a person to contest the matter particularly when it is not a matter of embezzlement or investigation which takes time to detect.

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

(S.A.Singh)
Member (A)
/NSN/

(V.S.Aggarwal)
Chairman