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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 1820/2004

New Delhi this the 11 day of March, 2005

Hon'ble Mrs. Meera Chhibber, Member (J)
Hon'ble Mr. S.K. Malhotra, Memebr (A).

J.K. Sharma .... **Applicant.**

(By Advocate Shri V.P.S. Tyagi)

Versus

Union of India & Ors. .... **Respondents.**

(By Advocate Shri R.N. Singh)

1. **To be referred to the Reporters or not? Yes**

2. **To be circulated to other Benches of the Tribunal or not? No.**

(S.K. MALHOTRA)
MEMBER (A)

(MRS. MEERA CHHIBBER)
MEMBER (j)

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Hon'ble Mrs. Meera Chhibber, Member (J)
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J.K. Sharma, Sr. Auditor (Retd.),
S/o late Shri Kailash Chand Sharma,
R/o C-91, Sarojini Nagar, New Delhi. .... Applicant.

(By Advocate Shri V.P.S. Tyagi)

Versus

1. Union of India (through Secretary),
Ministry of Defence, South Block,
New Delhi.

2. The Controller General of Defence Accounts,
West Block-V, R.K. Puram,
New Delhi.

3. The C.D.A. (A.F.),
West Block-V, R.K. Puram,
New Delhi.

4. The C.D.A. (Army),
Belvadier Complex,
Meerut Cantt.

5. Shri D.K. Gauba, A.C.D.A.,
Inquiry Officer, office of the CDA (A),
Meerut Cantt. ... Respondents.

(By Advocate Shri R.N. Singh)

O R D E R

Hon'ble Mrs. Meera Chhibber, Member (J).

By this O.A. applicant has sought quashing of the Memorandum dated 26.12.2003 i.e. charge-sheet, order dated 23.3.2004 whereby the inquiring authority was appointed by the ACDA and the order dated 23.3.2004 whereby the presenting officer was appointed by the ACDA. Applicant has sought a further direction to the respondents to release his pensionary benefits, including DCRG and capitalized value of pension, which are withheld under the garb of the disciplinary proceedings allowed to be continued after his superannuation @ 18% per month interest till the date it is paid.

2. Applicant has challenged the charge-sheet, on the ground that it has been issued after inordinate delay and it has been issued with mala fide intention just few days before his retirement. He has further submitted that the orders whereby the inquiring authority and presenting officer were appointed have been issued by an officer, who has no jurisdiction in law to issue the said orders and that the respondents could not have amended the charge-sheet or appointed the inquiry officer or presenting officer after his retirement without taking the permission of the President.

3. It is submitted by the applicant that he was appointed as an Auditor prior to 1967 i.e. on 19.2.1964. He retired as Senior Auditor on 31.12.2003 and was served with a charge-sheet dated 26.12.2003 just three days before his retirement on 29.12.2003 for the lapse of a period relating to 1990-93, which is not permissible in law and his case is fully covered by the judgments of the Hon'ble Supreme Court in State of M.P. Vs. Bani Singh (JT 1990 (2) SC 54), State of Andhra Pradesh Vs. N. Radha Krishan (1995 (1) SCSLJ 233) and R.S. Sagar Vs. Union of India & Ors. (2002 (1) AISLJ 32) and also the judgment given by this Tribunal in the case of Uttam Chand Vs. Govt. of NCT of Delhi and Ors. (2003 2) Administrative Total Judgments 656).

4. It is submitted by the applicant that ACDA is lower in rank than the CGDA and Principal Controller of Accounts. He has no jurisdiction to issue the order of appointment of the inquiry officer or presenting officer. Therefore, these orders are liable to be quashed and set aside. He further submitted that if the respondents had waited for 13 years, they could easily have waited for another three days so that at least applicant would have become eligible to get the pensionary benefits. The very fact that they have initiated departmental proceedings three days before his retirement shows mala fide intention on the part of the respondents to deprive him all his retrial benefits. He also relied on the judgment given by this Tribunal in the case of H.P. Sharma Vs. Union of India & Ors. (O.A. No. 183/2002), decided on 21.10.2002, holding therein that so far as the pre-1967 entrants are concerned, the major penalty can only be imposed by the Controller General of Defence Accounts when he was the appointing

authority. The Deputy Controller General of Defence Accounts did not have this power to initiate the disciplinary proceedings against the officers who joined before 1967. Therefore, the Deputy Controller General of Defence Accounts could not have initiated the disciplinary proceedings. The charge-sheet accordingly was quashed. However, the Controller General of Defence Accounts or such authority was given liberty to initiate disciplinary proceedings, if deemed appropriate. Similarly, in the case of Uttam Chand (supra), the charge-sheet was quashed on the delay of 18 years in initiating the departmental proceedings.

5. The O.A. has been contested by the respondents. They have submitted that the officer who has issued the orders dated 23.3.2004 was working as Assistant Controller of Defence Accounts but was holding the charge of administration in the main office of the CDA (Army), Meerut. Hence, in terms of Part II (Gp `C') of item 3 of Presidential Notification vide SRO No. 43 dated 31.3.2001, the said officer was competent to impose any of the penalties from (i) to (iv) prescribed under Rule 11 of the CCS (CCA) Rules, 1965. Hence, the said officer was competent disciplinary authority in terms of Rule 2 (g) of the CCS (CCA) Rules, 1965. However, notwithstanding the above, fresh orders appointing the inquiry officer as well as the presenting officer have since been issued against the signature of same competent disciplinary authority under whose signature the impugned memorandum dated 26.12.2003 was issued (vide orders dated 3.9.2004 - Annexures R-3 and R-4).

6. As far as the question of delay is concerned, they have explained that the charge-sheet dated 26.12.2003 is a fall out of the investigation carried out by the CBI in the matter of fraudulent payment of medical claims. Based on the investigation carried out by the CBI authorities, the CBI had recommended prosecution of certain individuals in the court of law and recommended regular departmental action against others. It was during the course of the departmental inquiry against another officer B that it came to notice that certain bills earlier included in the charge-sheet of one individual were actually found to have been processed for fraudulent payment by the applicant. Hence, it was under this extraordinary situation that

the Memorandum of charges could be issued only in December, 2003. Mere delay in initiation of the disciplinary proceedings is not fatal but, in fact, there is no delay in the present case as explained above. Moreover, the lapse of time is in no manner likely to prejudice the defence of the applicant. Therefore, the judgments relied upon by the applicant are not applicable in the facts and circumstances of the present case. The charges are yet to be probed on the basis of material and collateral evidence. Applicant has not pointed out how he can claim prejudice has been caused to him because neither any documents have been denied to him nor he has shown that he is not in a position to produce the witnesses to defend his case.

7. As far as the rejection of his representation is concerned, they have explained that the signatory of the impugned order dated 15.7.2004 has only communicated the decision of the authority to whom the applicant had addressed his representation. Therefore, it is wrong to say that he was having no jurisdiction to pass the order. They have further explained that the charge-sheet was served on the applicant when he was still a Government servant and after his retirement the inquiry is deemed to have continued. Therefore, there was no need to take permission of the President as is stated by the counsel for the applicant. As far as the amendment in the charge-sheet is concerned, they have explained that the date of cheque No. AX 070672 was inadvertently shown as 14.4.1992 instead of 14.9.1992 but when it was pointed out by the applicant himself in his letter dated 30.5.2003, they have only issued a corrigendum for correcting the typographical error in regard to the date of the cheque. Copy of the paid bill bearing endorsement of the entry concerning the said cheque number and date has been provided to the applicant along with other documents. Therefore, it does not change the charge-sheet in substance but only there is a correction of the typographical error. It is, therefore, wrong to say that respondents have amended the charge-sheet after his retirement.

8. Counsel for the respondents submitted that it is still at the threshold and applicant cannot come to the court questioning each and every action of the respondents and he can keep all these points with him for challenging the final

orders as and when they are passed if he is aggrieved. At the stage of initiation of charge-sheet, courts should not interfere as has been held by the Hon'ble Supreme court in the cases of Bhupinder Bakshi and A.N. Saxena. The applicant would have full opportunity to defend his case in the inquiry. Therefore, no case has been made out for interference at this stage. They have further submitted that proceedings are yet to be concluded but applicant is not co-operating, that is why it is getting further delayed. As far as the final orders are concerned, they have submitted that it will be done by the appointing authority in accordance with law. They have thus prayed that the O.A. may be dismissed.

9. We have heard both the counsel and perused the pleadings as well.

10. It is seen that the respondents have issued order dated 3.9.2004 whereby the Controller of Defence Accounts (Army) has issued the order to appoint Shri D.K. Gauba, Asstt. CDA as inquiring authority to inquire into the charges framed against Shri J.K. Sharma, Senior Auditor whereas earlier the inquiring authority was appointed by the Assistant CDA (Admn.), the lower disciplinary authority. Similarly, the order of same date has been issued for appointing the presenting officer also in case of applicant by the Controller of Defence Accounts (Army). As per SRO 43 of 2001, it is made clear in the note that a major penalty of a person appointed by the CGDA can only be imposed by him. The above limitation does not preclude the Principal Controller of Accounts (Factories)/ Controller of Finance and Accounts (Factories) and Principal Controller of Defence Accounts/Controller of Defence Accounts for initiating and processing the disciplinary proceedings for major penalties in respect of such personnel, including appointment of inquiry officer and consideration of inquiry report meaning thereby that as per SRO 43 of 31.3.2001, Controller of Defence Accounts can very well initiate and process the disciplinary proceedings for major penalties. Now that respondents have already corrected and have issued fresh orders for the appointment of inquiring authority as well as presenting officer through one of the authorized officers as per SRO 43 of 2001, the ground taken by the applicant does not subsist any longer. This can at best be termed as an irregularity which could always be corrected by the respondents. By carrying out

such correction, no prejudice can be said to have been caused to the applicant. Therefore, applicant cannot raise any objection if the order has been issued by the competent authority for appointing the inquiry officer as well as the presenting officer.

11. As far as the contention of applicant's counsel that respondents could not have amended the charge-sheet after his retirement is concerned, perusal of Annexure R-5 filed by the respondents clearly shows that it was only a corrigendum to carry out the typographical error in the Article of Charges. This has not changed the nature of the main charge but has only carried out a correction in the cheque number and date. Once again this correction also had to be carried out because it was pointed out by the applicant himself in his explanation. A typographical error can always be rectified. Since copy of the paid bill R bearing endorsement of the entry concerning cheque number and date has already been served on the applicant, no prejudice can be said to have been caused to the applicant by carrying out a correction in the charge-sheet for correcting the typographical error in writing the date. Therefore, this contention is also R rejected.

12. Counsel for the applicant further submitted that respondents ought to have taken permission of the President before appointing the inquiry officer or presenting officer as they were not appointed before his retirement. The contention is absolutely misconceived in view of the fact that Rule 9 (6) of the CCS (Pension) Rules makes it abundantly clear that departmental proceedings shall be deemed to be instituted on the date when the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date. Sub-rule (2) of Rule 9 further clarifies that the departmental proceedings referred to in sub-rule (1) if instituted while the Government servant was in service whether before his retirement or during his re-employment shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the government servant had continued in service meaning

thereby that by fiction of law the disciplinary proceedings started while the Government servant was still in service shall be continued and concluded as if the Government servant had continued in service. Therefore, there was no need to take permission of the President because in this case admittedly charge-sheet was served on the applicant on 29.12.2003 while he had retired on attaining superannuation on 31.12.2003. It can thus safely be concluded that the disciplinary proceedings had already been instituted against the applicant before his retirement. Applicant's counsel has not been able to show us any rule which requires that even if disciplinary proceedings are initiated against a person while he was still in service, the presenting officer or inquiry officer could not have been appointed by the same disciplinary authority without taking permission of the President. Therefore, this contention is also rejected.

13. Coming to the question of inordinate delay, counsel for the applicant has relied on the judgment given in the case of Bani Singh (supra), in which Hon'ble Supreme Court observed as follows:

> "....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. It that is so, it is unreasonable to think they would have taken more than 12 years to initiate the disciplinaryl proceedings....".

It was in those circumstances that the explanation for the delay offered by the Department for 12 years was found to be unsatisfactory. Accordingly, the Tribunal's order quashing the charge-sheet and the departmental inquiry was upheld whereas in the instant case applicant has nowhere stated that the respondents were aware about the irregularities committed by him from an earlier date. On the contrary, from his own averments, we have seen that he was called upon to give explanation only on 7.5.2003 and the charge-sheet, issued on 26.12.2003, was served on applicant on 29.12.2003. The delay has been explained by the respondents because they say that it was only when another inquiry was being conducted against one Shri Surendra Prakash, Sr. Auditor for fraudulently processing of certain medical bills, it came to the notice of the

Department that one medical bill for Rs.11070/- included in the charge-sheet of Shri Surender Prakash was actually fraudulently processed for payment by the applicant. Therefore, immediately after noticing that the facts were verified and on finding the correct facts, explanation was called from the applicant. Since his reply was not found satisfactory, therefore, a charge-sheet was issued in the same year to the applicant. It clearly shows that the fraudulent act on the part of the applicant itself came to the notice of the Department only when another disciplinary proceeding was being looked into. Therefore, it is not a case where the respondents were aware about the irregularities committed by the applicant in 1993 itself and yet they had issued the charge-sheet in 2003. In this background, the judgment in the case of Bani Singh (supra) will not be applicable in the present facts of the case. In State of Punjab Vs. Chaman Lal (JT 1995 (2) SC 570), the view taken by the Hon'ble Supreme Court was that if the delay in serving the charge-sheet and concluding the inquiry is too long, the court can interfere and quash the charges but in that case also the court has to weigh factors for and against the plea of delay and take a decision on the totality of the case. Similarly in the case of N. Radha Krishnan (supra), it was held by the Hon'ble Supreme Court as follows:

> "...It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the 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 their 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 the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations".

A perusal of the judgment thus shows that even in this case Hon'ble Supreme Court observed that charge-sheet should be quashed only if there is inordinate delay in issuing the charge-sheet. The said delay is not explained and the delay has caused some prejudice to the person concerned. No straight jacket formula has been laid down by any of the judgments which says that in every case where there is delay in issuance of charge-sheet, it should be quashed on that ground alone. Now if the present facts are seen in the background and the principles as enunciated by the Hon'ble Supreme Court, we find that though the incident relates to 1990-93 and the charge-sheet was issued only in 2003 but the reason for issuing the charge-sheet in 2003 has been fully explained by the respondents, namely, that the irregularity was not in their notice earlier and it came to be noted only when a disciplinary proceeding was being looked into in case of another officer relating to the processing of medical bills for fraudulent payment for which one of the bills applicant was actually responsible. It was rather a serious matter. Therefore, when the Department came to know about it, they verified the facts and after verifying they issued show cause notice to the applicant and since his reply was not found satisfactory, in the same year charge-sheet was issued to the applicant. Therefore, in these circumstances, it cannot be said that there was inordinate unexplained delay in issuance of the charge-sheet. Moreover, applicant has not been able to show us what prejudice has been caused to him. It is not even the case of applicant that he has not been able to get the documents for defending his case or that he is not able to produce the witnesses to defend himself nor applicant can say that his promotion would be affected because here is a case where applicant has already retired. Therefore, he has not been able to show us as to how he can be said to have been prejudiced by the issuance of charge sheet dated 26.12.2003. Since both these tests as laid down by the Hon'ble Supreme Court in the case of N. Radha Krishan have not been found to be in the affirmative, therefore, applicant has not made out any case for

quashing of the charge-sheet. At this stage, we would like to quote the judgment of the Hon'ble Supreme Court in the case of Food Corporation of India Vs. V.P. Bhatia (JT 1998 (8) SC 16). In the said case charge-sheet was challenged on the ground of undue delay. The CBI was investigating and submitted its report on 30.12.1988. Thereafter, the matter was referred to the Vigilance Commission which recommended for initiation of disciplinary proceedings on 22.5.1089, charge-sheet was served in September, 1990. In this case, Hon'ble Supreme Court held as follows:

> "Undue delay in initiation of disciplinary proceedings may cause prejudice to the employee concerned in defending himself and, therefore, the courts insist that disciplinary proceedings should be initiated with promptitude and should be completed expeditiously. The question as to whether there is undue delay in initiation of disciplinary proceedings or whether they are being unnecessarily prolonged has to be considered in the light of the facts of the particular case.
>
> In view of the direction contained in the Vigilance Manual no fault can be found with the appellant-Corporation in waiting for the investigation report of the CBI and the High Court was in error in holding that the appellant-Corporation need not have waited for the report of the CBI and should have started the disciplinary proceedings straightaway. It cannot be said that there was undue delay on the part of the appellant-Corporation in initiating disciplinary proceedings against the respondents or in conducting the said proceedings after serving of the charge-memos. In the circumstances the High Court was not justified in quashing the charge-memos against the respondents on the ground of delay".

14. Similarly in the case of Secretary to the Government, Prohibition and Excise Departent Vs. L. Srinivasan (1996 (1) ATJ 617), Tribunal had quashed the departmental inquiry on the ground of delay even though the charge was of embezzlement and fabrication of false records. Hon'ble Supreme Court held as follows:

> "....Departmental inquiry is in process. We are informed that charge-sheet was laid for prosecution for the offences of embezzlement and fabrication of false records etc. and that the offences and the trial of the case is pending. 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 levelled 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 opinion 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...."

Similarly in the case of B.C. Chaturvedi Vs. Union of India & Ors. (JT 1995 (8) SC 65), it was held as follows:

"....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. He may hold himself or through somebody on his behalf property or pecuniary resources. To connect the officer with the resources or assets is a tortuous 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 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 enquiry. Exercise of care and dexterity are necessary. Therefore, delay in itself is not fatal in this type of cases. CBI had investigated and recommended that the evidence was not strong enough for successful prosecution under the Prevention of Corruption Act, 1988 but 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 as violative of Article 14 or 21 of the Constitution".

15. In view of the above discussion and the finding recorded by us that the delay can neither be said to be unexplained nor any prejudice was caused to the applicant, we find no merit in the contentions raised by the counsel for the applicant. The same is accordingly rejected.

16. Before we part with this case, it would be relevant to observe that we have noticed from the reply given by the respondents that applicant himself is delaying the proceedings after the issuance of charge sheet as he is not co-operating. Counsel for the applicant, however, submitted that applicant has had a fracture, therefore, he has sent medical certificate to the authorities concerned, meaning thereby that after the issuance of the charge-sheet, the delay cannot be said to be on the part of the respondents. Respondents have on the contrary stated that they want to finish the inquiry expeditiously. Since applicant has already retired and some of his retiral benefits are held up because of the inquiry, we think it would be appropriate to direct the respondents to complete the inquiry expeditiously, preferably within a period of six months from the date of receipt of a copy of this order in the interest of justice so that ultimately if applicant is exonerated of the charge, he may get his retrial dues and in case he is found

guilty, he may be given the punishment in accordance with law. Applicant is also directed to cooperate for completion of the inquiry within the stipulated period.

17. Since applicant has challenged the charge-sheet itself and the correctness of charges has yet to be gone into by the Inquiry Officer where applicant would get full opportunity in accordance with rules to defend himself, we think it is in his own interest to participate in the inquiry and defend himself by producing the relevant evidence.

18. In view of the above discussion, we find no merit in the O.A. at this stage. Of course, if applicant is aggrieved by the final orders passed by the respondents, he can always challenge the same by contending all the legal pleas which are available to him in accordance with law.

19. The O.A. is accordingly disposed of in view of the directions as given in para 16 above. No order as to costs.

11/3/05.

(S.K. MALHOTRA)
MEMBER (A)

(MRS. MEERA CHHIBBER)
MEMBER (j)

`SRD'