(19)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.395/2004

New Delhi, this the ~~5th~~ 6th day of **January**, 2005

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

Dr. V.T. Prabhakaran
S/o Late Shri T. Sankara Menon
Working as Principal Scientist & Acting Head (Biometrics)
Indian Agricultural Statistics Research Institute
New Delhi – 110 012. ... Applicant

(By Advocate: Sh. Prashant Bhushan, Sr. Counsel with Sh. B.P.Singh)

Versus

(i) The Union of India
Through the Secretary
Department of Agricultural Research & Education
Krishi Bhawan,
New Delhi – 110 001.

(ii) The Indian Council of Agricultural Research
Through its Secretary
Krishi Bhawan, New Delhi – 110 001.

(iii) The President
Indian Council of Agricultural Research
Krishi Bhawan
New Delhi – 110 001.

(iv) Dr. S.D.Sharma,
Currently, Director
Indian Agricultural Statistics Research Institute
PUSA, New Delhi – 110 012. ... Respondents

(By Advocate: Sh. V.K.Rao)

O R D E R

By Mr. Justice V.S.Aggarwal:

Applicant (**Dr. V.T.Prabhakaran**) has been working as Principal Scientist and acting as Head of the Division of Biometrics at the Indian Agricultural Statistics Research Institute (for short IASRI). He is a candidate for the post of Director, IASRI advertised by the respondents. The interviews were to be held on 18.12.2003.

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The same were cancelled stating that for administrative reasons, they are being withdrawn.

2. The applicant was served a chargesheet vide Memorandum dated 16.12.2003 leveling certain assertions. By virtue of the present application, he seeks quashing of the chargesheet referred to above contending that the action of the respondents is violative of the principles of natural justice. It is actuated and motivated by malafide intention. According to the applicant, there is an inordinate delay in instituting the proceedings. It has caused substantial prejudice to him. Otherwise also, according to the applicant, the charges are vague, indefinite and non-specific and, therefore, they deserve to be quashed.

3. Another plea raised was that the chargesheet has been served by an authority not competent to do so.

4. Respondents filed a joint reply. The allegations made are denied. Plea has been raised that when only the chargesheet has been served, the interference of the Court is only required in exceptional cases. It is denied that there is any malice in doing so or that the charges are vague.

5. On earlier occasion, this Tribunal had dismissed the application on 16.02.2004. The applicant had filed Civil Writ Petition No.7278/2004. The Delhi High Court held that the triable issues had been raised by the applicant which required examination and determination. Parties had been directed to appear before the Tribunal on 19.7.2004. It is, in this backdrop that the matter has been reheard.

Ms Ag—e

6. We know from the decision of the Supreme Court in the case of **SHRI CHANAN SINGH** v. **REGISTRAR, CO-OPERATIVE SOCIETIES, PUNJAB AND OTHERS,** AIR 1976 SC 1821 that when a show-cause notice is served, the petition challenging the same ordinarily would be premature. In the cited case, the disciplinary proceedings were dropped by the inquiry officer who was not competent to impose the punishment. The same were revised by the competent authority and a fresh show cause notice was issued. It was held that such a show cause notice could not be challenged. The petition was dismissed as premature. The Supreme Court held:

> "5. Other obstacles in the way of granting the appellant relief were also urged before the High Court and before us, but we are not inclined to investigate them for the short reason that the writ petition was in any case premature. No punitive action has yet been taken. It is difficult to state, apart from speculation, what the outcome of the proceedings will be. In case the appellant is punished, it is certainly open to him either to file an appeal as provided in the relevant rules or to take other action that he may be advised to resort to. It is not for us, at the moment, to consider whether a writ petition will lie or whether an industrial dispute should be raised or whether an appeal to the competent authority under the rules is the proper remedy, although these are issues which merit serious consideration.
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> 6. We, are satisfied that, enough unto the day being the evil thereof, we need not dwell on problems which do not arise in the light of the view we take that there is no present grievance of punitive action which can be ventilated in court. After all, even the question of jurisdiction to re-open what is claimed to be a closed enquiry will, and must, be considered by the Managing Director. On this score, we dismiss the appeal but, in the circumstances, without costs."

7. Similarly in the case of **STATE OF UTTAR PRADESH** v. **SHRI BRAHM DATT SHARMA AND ANOTHER,** AIR 1987 SC 943,

a show cause notice had been served to a Government servant called upon to show cause. The same was challenged and the Supreme Court held that the purpose of issuing the show-cause notice is to afford an opportunity of hearing and thereafter a final decision has to be taken. Interference, at this stage, by the Court was held to be not called for and petition was stated to be premature. The Supreme Court held:

> "9. The High Court was not justified in quashing the show cause notice. When a show cause notice is issued to a Govt. servant under a statutory provision calling upon him to show cause, ordinarily the Govt. servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. The purpose of issuing show cause notice is to afford opportunity of hearing to the Govt. servant and once cause is shown it is open to the Govt. to consider the matter in the light of the facts and submissions placed by the Govt. servant and only thereafter a final decision in the matter could be taken. Interference by the Court before that stage would be premature. The High Court in our opinion ought not to have interfered with the show cause notice."

8. The same principle was carried forward in the case of **UNION OF INDIA & ORS.** v. **UPENDRA SINGH,** 1994 (2) SLJ 77. The Supreme Court held that the inquiry has to be held by the disciplinary authority and granting relief at the initial stage is not permissible and to that effect, therefore, the petition would be premature. The Tribunal should not interfere with the truth or correctness of the charges. The findings recorded were:

> "6. In the case of charges framed in a disciplinary inquiry the Tribunal or Court can interference only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged

can be said to have been made out or the charges framed are contrary to any law. At this stage, the Tribunal has no jurisdiction to go into the correctness or truth of the charges. The Tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to Court or Tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the Court/Tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal & Ors. v. M/s Gopi Nath & Sons and Ors. (1992 Supp.(2) S.C.C. 312). The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus:

> "Judicial review, it is trite, is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

> 7. Now, if a Court cannot interfere with the truth or correctness of the charges even in a proceeding against the final order, it is un-understandable how can that be done by the Tribunal at the stage of framing of charges? In this case, the Tribunal has held that the charges are not sustainable (the finding that no culpability is alleged and no corrupt motive attributed), not on the basis of the articles of charges and the statement of imputations but mainly on the basis of the material produced by the respondent before it, as we shall presently indicate."

9. No different was the view expressed in the case of **THE EXECUTIVE ENGINEER, BIHAR STATE HOUSING BOARD** v. **RAMESH KUMAR SINGH & ORS.**, JT 1995 (8) SC 331. In the cited case, a show cause notice had been issued. The High Court had entertained the Petition. The Supreme Court held that it would be premature because there was no attack on the vires of the statute nor there was any fundamental rights violated. The findings of the Supreme Court are reproduced for the sake of facility.

> "10.We are concerned in this case, with the entertainment of the Writ Petition against a show cause notice issued by a competent statutory authority. It should be borne in mind that there is no attack against the vires of the statutory provisions governing the matter. No question of infringement of any fundamental right guaranteed by the Constitution is alleged or proved. It cannot be said that Ext. P-4 notice is ex facie a "nullity" or totally "without jurisdiction" in the traditional sense of that expression – that is to say, that even the commencement or initiation of the proceedings, on the face of it and without anything more, is totally unauthorized. In such a case, for entertaining a Writ Petition under Article 226 of the Constitution of India against a show-cause notice, at that stage, it should be shown that the authority has no power or jurisdiction, to enter upon the enquiry in question. In all other cases, it is only appropriate that the party should avail of the alternate remedy and show cause against the same before the authority concerned and

> take up the objection regarding jurisdiction also, then. In the event of an adverse decision, it will certainly be open to him, to assail the same either in appeal or revision, as the case may be, or in appropriate cases, by invoking the jurisdiction under Article 226 of the Constitution of India."

10. Similarly in the case of **UNION OF INDIA AND ANOTHER** v. **ASHOK KACKER**, 1995 SCC (L&S) 374, the charge-sheet was being impugned without waiting the decision of the disciplinary authority. The Supreme Court held that it is premature. The findings of the Supreme Court are:

> "4. Admittedly, the respondent has not yet submitted his reply to the charge-sheet and the respondent rushed to the Central Administrative Tribunal merely on the information that a charge-sheet to this effect was to be issued to him. The Tribunal entertained the respondent's application at that premature stage and quashed the charge-sheet issued during the pendency of the matter before the Tribunal on a ground which even the learned counsel for the respondent made no attempt to support. The respondent has the full opportunity to reply to the charge-sheet and to raise all the points available to him including those which are now urged on his behalf by learned counsel for the respondent. In our opinion, this was not the stage at which the Tribunal ought to have entertained such an application for quashing the charge-sheet and the appropriate course for the respondent to adopt is to file his reply to the charge-sheet and invite the decision of the disciplinary authority thereon. This being the stage at which the respondent had refused to the Tribunal, we do not consider it necessary to require the tribunal at this stage to examine any other point which may be available to the respondent or which may have been raised by him."

11. In the case of **MANAGING DIRECTOR, MADRAS METROPOLITAN WATER SUPPLY AND SEWERAGE BOARD AND ANOTHER** v. **R. RAJAN AND OTHERS,** (1996) 1 SCC 338, the Supreme Court held that no interference was called for at an

interlocutory stage of the disciplinary proceedings. The findings of the Supreme Court are:

> "7. As rightly held by the learned Single Judge and the Division Bench, no interference was called for at an interlocutory stage of the disciplinary proceedings. The enquiry was no doubt over but the competent authority was yet to decide whether the charges against the respondents are established either wholly or partly and what punishment, if any, is called for. At this stage of proceedings, it was wholly unnecessary to go into the question as to who is competent to impose which punishment upon the respondents. Such an exercise is purely academic at this stage of this disciplinary proceedings. So far as the learned Single Judge is concerned, he did not examine the regulations nor did he record any finding as to the powers of the General Manager, the Board or the Government, as the case may be. He merely directed that in view of the statement made by the learned counsel for the Board, the punishment of dismissal shall not be imposed upon the respondents even if the charges against them are established. When the respondents filed writ appeals, the Division Bench was also of the opinion that this was not the stage to interfere under Article 226 of the Constitution nor was it a stage at which one should speculate as to the punishment that may be imposed. But it appears that the Board insisted upon a decision on the question of power. It is because of the assertion on the part of the appellants (that the Managing Director has the power to impose the penalty of compulsory retirement) that the Division Bench examined the question of power on merits. The said assertion of the Managing Director that he has the power to impose the punishment of compulsory retirement probably created an impression in the mind of the Court that the Board has already decided to impose the said punishment upon the respondents and probably it is for the said reason that they examined the said question on merits. (Insofar as the respondents are concerned, it was their refrain throughout that the Board had already decided to impose the punishment of dismissal/compulsory retirement upon them and that the enquiry and all the other proceedings were merely an eye-wash).

Same was the view expressed by the Supreme Court in the case of **STATE OF PUNJAB AND OTHERS** v. **AJIT SINGH,** (1997) 11 SCC 368 and in the case of **AIR INDIA LTD.** v. **M. YOGESHWAR RAJ,** 2000 SCC (L&S) 710.

12. From the aforesaid, it is clear that at the initial stage, there is a limited scope for interference. Interference would only be called if the charges framed draw no misconduct or irregularities or that there is a bias and malafide in this regard.

13. In fact, the learned counsel for the applicant fairly conceded and confined his arguments to the question on malafide, stated that on the basis of the charges that have been framed, it cannot be stated that there is any misconduct committed by the applicant.

14. Learned counsel for the applicant argued that the applicant is a candidate for the post of the Director. Two days before the interview, the charges were served and when the Delhi High Court directed that interview may be held, the respondents had cancelled the same. According to the learned counsel, this shows that the entire act is malafide to deprive the applicant the right of consideration and instead, the chargesheet was served a few days before it.

15. We know from the decision of the Supreme Court in the case of **MANAK LAL** v. **DR. PREM CHAND SINGHVI AND OTHERS,** AIR 1957 SC 425 that test always is and must be whether a litigant could reasonably apprehend that bias is attributable to the concerned person. The Supreme Court held:

> "(4) .... In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias

attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done."

16. Similarly, in the case of **S. PARTHASARATHI** v. **STATE OF ANDHRA PRADESH**, (1974) 3 SCC 459, the same principle was reiterated that there should be a "real likelihood" of bias. The Supreme Court held:

> "13. .... We are of the opinion that the cumulative effect of the circumstances stated above was sufficient to create in the mind of a reasonable man the impression that there was a real likelihood of bias in the inquiring officer. There must be a "real likelihood" of bias and that means there must be a substantial possibility of bias. The Court will have to judge of the matter as a reasonable man would judge of any matter in the conduct of his own business [see R. v. Sunderland, (1901) 2 KB 357 at 373.].
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> 14. The test of likelihood of bias which has been applied in a number of cases is on the "reasonable apprehension" of a reasonable man fully cognizant of the facts. The Courts have quashed decisions on the strength of the reasonable suspicion of the party aggrieved without having made any finding that a real likelihood of bias in fact existed (see R. v. Huggins [(1895) 1 QB 563]; R. v. Sussex, JJ, ex. P. McCarthy [(1924) 1 KB 256]; Cottle v. Cottle [(1939) 2 All ER 535]; R.v. Abingdon, JJ. Ex. P. Cousins [(1964) 108 SJ 840]. But in R. v. Camborne, JJ ex. p Pearce [(1955) 1 QB 41 at 51 the Court, after a review of the relevant cases held that real likelihood of bias was the proper test and that a real likelihood of bias had to be made to appear not only from the materials in fact ascertained by the party complaining, but from such further facts as he might readily have ascertained and easily verified in the course of his inquiries."

17. More recently in the case of **STATE OF PUNJAB** v. **V.K. KHANNA AND OTHERS**, AIR 2001 SC 343, the Supreme Court reiterated the precedents on the subject and finally concluded that real test is as to whether there is a mere apprehension of bias or

there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion would be drawn therefrom. The Supreme Court held:

> "8. The test, therefore, is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In that event, however, the conclusion is otherwise that there is existing a real danger of bias administrative action cannot be sustained. If on the other hand allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefore would not arise."

18. The learned counsel for the respondents on the contrary made available to us the file of the Indian Council for Agricultural Research where such a decision had been taken. Perusal of the record clearly revelas that the Minister-Incharge has taken such a decision on 18.9.2003. Thereafter, there has been some delay in furnishing the matter because the charge had to be drawn and in that view of the matter, it cannot be termed that if the same had been served few days before the interview, the entire matter is tainted with bias and malafides. Furthermore, in fact, no malafides have been attributed or alleged against the Minister-Incharge. When that is the situation, the entire **edifice** so built and eloquently put forward looses its thrust.

19. A similar controversy had arisen before the Division Bench of Madras High court in the case of **DR. R. LOURDRAJ JOHN DE BRITTO** v. **CENTRAL ADMINISTRATIVE TRIBUNAL, MADRAS BENCH,** in Writ Petition No.23273/2004, decided on

24.9.2004. Somewhat a similar argument had been advanced. The Court first recorded:

> "10. The submission of the learned counsel for the petitioner, that the transfer order of the petitioner is tainted with malafide, is not acceptable to us also, as rightly submitted by the learned counsel for the respondents, since no malafide has been attributed against the transferring authority viz., the second respondent/Director General of Indian Council of Medical Research. In the original application No.5 64/2004, some accusations were made only against the third respondent therein, who is the Director of NIE, Chennai. The Director General of ICMR is not under the control of the Director of NIE, whereas the third respondent is under the control of the second respondent. Therefore, the allegations in the original application that the third respondent had prevailed upon the second respondent, to issue the order of transfer, to a place where there is no post of Assistant Director, is not acceptable to us. If any allegations have been made attributing malafide to the second respondent, who had issued transfer order, then only it could be considered effectively, so as to test the legality of the transfer order, regarding its validity. The allegations that the fourth respondent herein had developed animosity against the applicant and some how he wanted to victimize him, appear to us, as the inventions of the petitioner, to challenge the transfer order and we find no merit acceptable in nature."

and thereafter gave the finding:

> "11. .... In the absence of any allegations against the second respondent, we are unable to persuade ourselves, to accept the contention of the learned counsel for the petitioner, that the order of transfer is tainted with malafide, warranting our interference, to quash the order of the transfer."

20. Almost identical is the position in the present case. On parity of reasoning, therefore, it must be held that the said argument is without any merit and it cannot be termed that there is any bias or malafide taking note of the totality of the facts and circumstances.

21. Reverting back to the other argument that on the basis of the allegations, no misconduct can be attributed to the applicant. We take liberty in reproducing the Articles of Charge framed against the applicant:

"ARTICLE OF CHARGE I

While working as Principal Scientist at Indian Agricultural Statistics Research Institute (IASRI), New Delhi Dr. V.T.Prabhakaran has not been maintaining decorum in the meeting and his behaviour and conduct with his superiors and other staff members in the meetings has generally been found wanting.

By his above act, Dr. V.T.Prabhakaran has exhibited a conduct unbecoming of an ICAR Officer and has thus contravened the provisions of Rule 3 (1) (ii) & (iii) of the CCS (Conduct) Rules, 1964 as extended to ICAR employees.

ARTICLE OF CHARGE II

While working as Principal Scientist at Indian Agricultural Statistics Research Institute Dr. V.T.Prabhakaran has not been maintaining punctuality and coming late to the office.

By his above act, Dr. V.T.Prabhakaran has exhibited a conduct unbecoming of an ICAR Officer and has thus contravened the provisions of Rule 3(1) (ii) & (iii) of the CCS (Conduct) Rules, 1964 as extended to ICAR employees.

ARTICLE OF CHARGE III

While working as Principal Scientist at IASRI, Dr. V.T. Prabhakaran was found avoiding taking up Research projects as a Principal Investigator. He also avoided to give his options for teaching courses and refused to sign the circular in this regard.

By his above act, Dr. V.T. Prabhakaran has exhibited a conduct unbecoming of an ICAR Officer and has thus contravened the provisions of Rule 3 (1) (ii) & (iii) of the CCS (Conduct) Rules, 1964 as extended to ICAR employees.

ARTICLE OF CHRGE IV

While working as Principal Scientist at IASRI, Dr. V.T.Prabhakaran has misused the

internet system by displaying objectionable materials on the electronic board and E-Mail and made derogatory and disrespectful remarks against his superior officers by publishing undesirable material on Public Notice Board for IASRI internet system and tried to instigate other officer by the above act.

By his above act, Dr. V.T.Prabhakaran has exhibited a conduct unbecoming of an ICAR Officer and has thus contravened the provisions of Rule 3 (1) (ii) & (iii) of the CCS (Conduct) Rules, 1964 as extended to ICAR employees.

ARTICLE OF CHRGE V

While working as Principal Scientist at IASRI, Dr. V.T. Prabhakaran has been making false and baseless allegation against the Director and other officers of IASRI. He has also been making representations directly to the higher officers in the Council and bringing outside/political pressure in furtherance of his service matters.

By his above act, Dr. V.T.Prabhakaran has exhibited a conduct unbecoming of an ICAR officer and has thus contravened the provisions of Rule 3(1) (ii) & (iii) of the CCS (Conduct) Rules, 1964 as extended to ICAR employees."

22. Each of the Articles of Charge was read to us to bring home the argument. We therefore take up the plea individually with respect to each charge.

23. So far as the Ist Charge is concerned, the allegations are that while the applicant was working as Principal Scientist, he did not maintain decorum in the meetings and his behaviour and conduct with his superiors and other staff members was found wanting. The details had been given in the statement of imputation about the said alleged misconduct.

24. Record reveals that with respect to the said incident, a complaint had been made in September,1999. The Director of the Institute had already warned the applicant in this regard by making endorsement **"Please advice Dr. V.T.Prabhakaran**

according to `A' and `B' above. The warning may be recorded". It is obvious that recordable warning had already been given thus a fresh departmental action on that ground could not be taken.

25. The Article of charge No.II pertains to the applicant that he has not been maintaining punctuality and coming late to office. The details have been given in the statement of imputation. They all pertain to the periods from 1.3.1999 to 31.3.1999. It has been urged that in accordance with the instructions, first a notice had to be given but no such notice had been issued and in any case, there is an inordinate delay in this regard.

26. The position in law pertaining to the delayed actions is well settled.

27. 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."

28. 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."

29. 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."

30. 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 is

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, the conclusions are obvious that the departmental proceedings should be initiated at the earliest. Delay may be fatal but if prejudice is not caused, it may not be fatal to the proceedings.

31.The present case is not of misconduct which requires long time to detect and to come to the conclusion that inquiry is to be held, but here it was a simple case of coming late to the office and there was no occasion thus to delay the matter in this regard unnecessarily. It was rightly pointed that after such a long time, the applicant would not be in a position to remember each fact. Keeping in view the ratio deci dendi of the decisions referred to above, in our considered opinion in the peculiar facts that it was a matter pertaining to some late coming to the office and when action is not taken for more than four years, it should have not been so initiated at that stage.

32. The **IIIrd Article of Charge** refers to the fact that while the applicant was working as Principal Scientist, he had been avoiding taking up any research project as Principal Investigator in spite of repeated advice. He had also avoided to give his options for teaching courses during the academic session 2001-02 and he refused to sign the circular in this regard. The learned counsel for the applicant on the contrary had drawn our attention to the letter of appreciation recorded by the Dean and Joint Director (Edn.) of the Indian Agricultural Research Institute addressed to the applicant appreciating his work during the period 1998-2003. The applicant was again informed by the Registrar of the Post Graduate School that based on his contribution to teaching at IARI, he had been short-listed by the P.G.School for consideration for the Best Teacher Award-2003. It is not only that, at best the charge further would reveal that the applicant had represented when the Board of Studies (Agriculture Statistics) allotted a course to him stating that he may be allotted the Course AS 166 rather than AS 305. A representation by itself is not a misconduct particularly when it is only against the decision and addressed to the authority. Taking sum and substance of the whole matter, therefore, we find that on the basis of the material, it cannot be stated that any misconduct is attributed to the applicant.

33. However, pertaining to Articles of Charges IV and V the position is different. We have already reproduced above the Article of Charge No.IV. It is alleged that applicant misused the Internet System by displaying objectionable materials on the electronic board and E-Mail. The details are available in the imputation of misconduct. This question has to be considered whether applicant

had done the same or not. If it has been so done, prima-facie we must hold for the present purpose that whatever may be, misconduct is not uncalled for.

34. Similarly, Article of Charge No.V pertains to the fact that he had been making false and baseless allegations against the Director and other officers of IASRI. It is also alleged that he has been sending the complaints regarding certain service matters through some Hon'ble Members of Parliament, which was not permissible. Warning was issued but despite the same, he did not refrain himself from writing those letters to various authorities. We do not intend to dwell in detail as that would be an adjudication of fact but if the allegations are true, it cannot be stated that on the face of it, they require to be quashed at this stage and the matter can be really probed in as referred to above.

35. No other arguments have been advanced.

36. For these reasons, we partly allow the present application. We quash the Articles of Charge Nos.I to III but direct that pertaining to the Articles of Charge Nos.IV and V, the departmental proceedings can continue in accordance with law.

(S.A.Singh)
Member (A)

(V.S.Aggarwal)
Chairman

/NSN/