Central Administrative Tribunal, Principal Bench

O.A. No. 496/2004

New Delhi this the 8th day of April, 2005

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. S.K. Malhotra, Member (A)

Mohan Prasad Lal, PRT
Kendriya Vidyalaya,
BSF, Chhawla Camp,
New Delhi. ...Applicant

By Advocate: Shri Anil Srivastava.

Versus

Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Delhi Region,
JNU Campus,
New Mehrauli Road,
New Delhi-110 067. ...Respondent

By Advocate: Shri S. Rajappa.

Order

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

The applicant seeks quashing of the Memorandum of Charge dated 2.1.2004 served for holding disciplinary proceedings against him for major penalty in accordance with Rule 14 of CCS (CCA) Rules, 1965 (Rules 1965) for committing misconduct in violation of Rule 3(1)(i) and (iii) of CCS (Conduct) Rules, 1964. The applicant was appointed as a Primary Teacher in the Sangathan on 7.11.1986 and was posted at Imphal, Manipur. A criminal case was registered against him by the CBI on 31.5.1998 for offences under Section 420, 468 and 478 IPC for submitting fake and forged mark sheets of B.Sc./B.Ed. examination and using them as genuine for gaining employment in the

Kendriya Vidyalaya Sangathan (Sangathan). After investigation, a charge-sheet was submitted in the court of Chief Judicial Magistrate, Imphal. After protracted trial, the criminal court acquitted the applicant on 26.10.2001 giving him benefit of doubt to the charge under Section 471 IPC, i.e., knowingly using the forged document as genuine. The charge under Section 468, i.e., forging a document was not proved. Thereafter the respondent – Assistant Commissioner (disciplinary authority) of the respondents Sangathan vide memo dated 2.1.2004, served the Article of Charge, Annexure-I to the OA. The applicant is aggrieved and has challenged the initiation of the disciplinary proceeding against him mainly on the ground that the Memorandum of Charge has been served 12 years after the alleged misconduct was committed. He has filed this OA for quashing Memorandum of Charge and the proceedings.

2. The respondents contested the OA and have justified initiation of the proceedings after the criminal trial was over. It was stated that the respondents came to know about the misconduct committed by the applicant only after the criminal court gave its verdict, therefore, there was no delay in starting the disciplinary proceedings against the applicant.

3. We have heard the learned counsel for the parties and we have gone through the records of the case.

4. The short question that arise for decision is as to whether initiation of the disciplinary proceedings against the applicant by service of Memorandum of Charge Annexure A-1 about 12 years after the alleged misconduct was committed by the applicant may be sustained. The facts are short and simple. The applicant applied for his appointment as a Primary Teacher in Kendriya Vidyalaya Sangathan on 27.1.1986. Along

with his application, he submitted the mark sheets of B.Sc. and B.Ed examination. It is alleged that the mark sheet of B.Sc examination of Magadh University was forged and fabricated document used by the applicant as much as he had secured 36% marks in aggregate but the mark sheet was filed depicting 56% of the total marks as secured by him in the examination. A criminal case was registered against him in May, 1988 for forging the mark sheet of B.Sc. and B.Ed. Examinations and also for using them as a genuine document. After protracted criminal trial which lasted over 11 years, the Chief Judicial Magistrate, Imphal held that the charge of forging the mark sheet was not proved and that the prosecution has failed to prove the charge of using forged document, i.e., the mark sheet as genuine against the applicant. He accordingly, by his order dated 26.10.2001 (Annexure-2), acquitted the applicant of both the charges under Section 468 and 471 IPC. The portion of the judgment, relevant for the present proceeding, is extracted as below:-

> "19. In the result, in my opinion, the statement of prosecution witnesses are not worth relying to give conviction of the accused and the production has miserably failed to prove that the accused Mohan Prasad Lall forged the mark sheet of B.Sc. and B.Ed. Examination. Further, the prosecution has also failed to prove that the accused know or had reason to believe that the mark sheets were forged document and the same were used as genuine.
>
> 20. Since, the CBI has miserably failed to establish the guilt of the accused, I do not find any ground for convicting the accused u/s 468/471 or under any other section of the Indian Penal code.
>
> Hence, under my hand and the seal of the court, I hereby acquit the accused from the liability of the case, his bonds cancelled and he is set at his liberty".

5. It is clear from the above judgment of the Chief Judicial Magistrate, Imphal the prosecution had failed to prove that the applicant had forged the mark sheets of B.Sc. and B.Ed. Examination and had further failed to prove that the accused knew or had reason to

believe that the mark sheets were forged document and same were used as genuine. The court has recorded the finding that none of the charges framed, have been proved against the applicant for holding him guilty for offences under Section 468 or 471 or any of the section of the IPC.

6. The Article of Charge and the Statement of Imputation of Misconduct in support of the Article of Charge are Annexure-I and Annexure-II to the OA. Being relevant, they are reproduced as below:-

"

Article-I

"That the said Shri Mohan Prasad Lall, PRT, KV, BSF, Chhawla has submitted a false declaration and fake and forged marks certificate of B.Sc. Exmination 1980 of Magadh University, Bodh Gaya (Bihar) in his application form for appointment to the post of PRT in response to the advertisement issued by the KVS vide letter No.F.6-121/85-KVS (PR-II) dated 14.11.1985 for securing employment in KVS. Thus he had committed misconduct as per rule 3(1)(i)(iii) of CCS(Conduct) Rules, 1964 as applicable to the employees of Kendriya Vidyalaya Sangathan".

"

Article –I

The Kendriya Vidyalaya Sangathan vide its advertisement No.F.6-121/85-KVS (RP-II) dated 14.11.1985 invited applications for the post of Primary Teacher, Trained Graduate Teacher and Post Graduate Teachers (in various subjects). In response to the said advertisement Shri Mohan Prasad Lall applied for the post of PRT in the prescribed form bearing No.63232 (year 1986) vide dated 27.1.1986 and the particulars filled by him regarding his B.Sc. Examination mentioning the percentage of marks as 56% and as well as the marks certificate submitted thereon. Whereas on verification from the Magadh University, Bodh Gaya (Bihar) it is confirmed that he has obtained only 36% of marks at the said examination.

Thus this act of furnishing of fake and forged information in the application form and submission of marks certificate of Graduation level (B.Sc.), Shri Mohan Prasad Lal had committed misconduct under Rule 3(1)(i) and (iii) of CCS (Conduct) Rules, 1964 as applicable to the employees of the Sangathan".

7. The moot question is whether the Memorandum of Charge and pending disciplinary proceedings can be quashed at the threshold on account of delay of 12 years. The Hon'ble Supreme Court in **State of Madhya Pradesh Vs. Bani Singh, AIR 1990 SC 1308** has held as follows:

> "4. The appeal against the order dated16.12.1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned counsel. The irregularities which were the subject-matter of the enquiry is said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April, 1977 there was no doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no ground to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

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

> "In considering whether delay has vitiated the disciplinary proceedings, the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained, prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path, he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

9. In **S.C. Chadha Vs. U.O.I. 2002 (1) AD (Delhi) 197,** a Division Bench of the Hon'ble High Court of Delhi has held that "inordinate delay in initiating disciplinary proceedings against a delinquent employee cast a cloud on such proceedings and takes its own toll where such delay goes unexplained. It renders the charge stale, dries up the source of proof, catches the employee off guard and makes it difficult for him to set up and organize his defence and even causes undue hardship and harassment to him, some times depriving him of his claim to promotion and other service benefits in the process. The delay in such circumstances strikes at the very root of the disciplinary proceedings It is not that such delay becomes fatal because of the infringement of any service rules but because it renders the action unfair of the very fact of it". It was further observed that "where, however, such delay is explained and justified by the disciplinary authority, it takes the sting out of it and saves the proceedings but when it conversely goes unexplained it becomes fatal".

10. The principles of law which have been considered in all the above cases, may be summarized to state that inordinate delay in initiation of disciplinary proceedings is not fatal to the proceedings if the delay is sufficiently and adequately explained by cogent reasons. Otherwise, the long and inordinate delay would cause prejudice to the delinquent employee in his defence and would be fatal to the proceedings.

11. The applicant is challenging the service of charge-sheet on the ground that it has been served on the applicant almost 12 years after the incident had taken pace. The reason for inordinate delay in the service of the charge memo on the applicant and the

initiation of disciplinary proceedings against him, as given in the counter by the respondents, is that the misconduct committed by the applicant came to the notice of the respondents only after he was acquitted in the criminal proceedings.

12. The explanation given by the respondents for 12 years delay in serving the charge-memo and initiation of the disciplinary proceedings seems plausible. From the judgment of criminal court at Annexure-2, it is noticed that the Inquiry Officer had collected certain documents from the Administrative Officer, KVS, Silchar Branch and also from Controller of Examination, Magadh University in 1988. In so far as Assistant Commissioner, KVS, Silchar is concerned, CBI collected the personal file and service book of the applicant in April,1988. It will not be correct to expect that based on collection of certain documents by the CBI, the Assistant Commissioner who was an Education Officer at that time, could have initiated disciplinary proceedings against the applicant. The fact of the matter is that no Inquiry Officer of CBI is expected to even intimate to the officers of the respondent Department as to what for these documents are required. This Assistant Commissioner later in October, 2001 deposed in the court of Chief Judicial Magistrate that the applicant had secured 40 marks in the interview and was found eligible for the post of primary teacher. He had no other role to play, as is evident from the judgment of the criminal court. From these facts, it will not be possible to reach a definite conclusion that the respondents had known about the misconduct of the applicant in 1988 itself, based on which a charge-sheet could have been issued to him. The judgment by the criminal court is dated 26.10.2001. The contention of the respondents that they came to know of the

mis-conduct of the applicant only after he was acquitted by the criminal court, therefore, cannot be disturbed at this stage. They must have inquired into the matter thereafter and issued the charge-sheet to the applicant on 2.1.2004. This delay of about 2 years and 3 months in issuing the charge sheet after the criminal court's verdict cannot be termed as inordinate delay. The applicant cannot, therefore, be given any advantage of the judgment in case of Bani Singh (supra) in which case no satisfactory explanation was available for the inordinate delay of 12 years in issuing the charge memo.

13 Hon'ble Apex Court in the case of N.Radhakrishan (supra) in which it has been observed as under:-

> "19. It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that 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 facts 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, when the delay is abnormal and there is no explanation for the delay."

14 In another case of State of Punjab Vs. Chaman Lal Goyal (1995 (2) SCC 570), the Apex Court made the following observations:

> "But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Whenever such a plea is raised, the Court has to weigh the facts appearing for and against the said pleas and take a decision on the totality of circumstances. **In other words, the court has to indulge in a process of balancing.**"

15. In the above judgment reference was also made to the judgment of a Constitution Bench in the case of A.R. Antulay vs. R.S. Nayak in which it was **observed that quashing of charges is not the only course open to the court in such cases**. The nature of offence and other circumstances may be such that quashing of the proceedings may not be in the interest of justice. In such cases, it is open to the court to make such other appropriate order as it finds just and equitable in the circumstances of the case.

16. It can thus be concluded that there has not been any inordinate delay in issuing the charge sheet to the applicant. No prejudice is also likely to be caused to the applicant, as the case is very simple and straight. The respondents have only to prove whether the mark sheets and certificates produced by the applicant at the time of his appointment showed correct marks obtained by him as revealed by the Magadh University or not. He has been presenting himself before the Criminal Court only about 3 years back and it should not be difficult for him to defend him even in the departmental enquiry. The charges against the applicant are very grave. Even if it is presumed for the sake of argument that there has been some delay, we have to apply the balancing process, as suggested by the Hon'ble Supreme Court in the case of N. Radhakrishnan and Chaman Lal Goyal (supra).

17. The Hon'ble Supreme Court in the case of Food Corporation of India Vs. V.P. Bhatia (JT 1998 (8) SC 16) held that the High Court was not justified in quashing the proceedings on account of undue delay. In yet another judgement in the case of Secretary to Govt. Prohibition and Excise Deptt. vs. L. Srivastava

(ATJ 1996 (1) page 617), the Hon'ble Supreme Court had reprimanded the Administrative Tribunal for setting aside the departmental enquiry and quashing the charge sheet on the ground of delay in initiation of disciplinary proceedings, by observing as under:

> "xxxxx 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 appears (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."

18. It is also a well-settled law that in disciplinary proceedings, Tribunal should not intervene at an interlocutory stage. (See Union of India & Oths Vs. A.N. Saxena JT 1992(2) SC 532 and in the case of Union of India & Oths. Vs. Upendra Singh JT 1994(1) SC 658).

19. As regards the second ground that the criminal charges and the charges in the charge-sheet in the departmental enquiry are the same, the law is well settled that ~~criminal~~ acquittal in a criminal case cannot be held to be a bar to hold departmental enquiry for the same ~~offence~~. In this connection reliance is placed on the judgement of the Hon'ble Supreme Court in the case of State of Karnataka and Anr. Vs. I.T. Venkataramanippa [(1996) (6) SCC 455] and another case of Sr. Suptd. Of Post Offices vs. A. Gopalan [1997(11) SCC 239]. In the Criminal Court the standard of proof is different and the case is to be proved beyond reasonable doubt but it is not so in the departmental proceedings in

which the standard of proof for proving the charge is preponderance of probabilities.

20. In **Government of A.P. Vs. C. Muralidhar (1997) 6 SCC 594,** ~~a criminal this case~~ a criminal case was filed against the delinquent official under the Prevention of Corruption Act for holding assets disproportionate to his known sources of income. Simultaneously disciplinary proceedings were also initiated. Some of these charges related to the charges of holdings of assets disproportionate to his known sources of income. The charged official filed an objection before the State Tribunal assailing the legality and validity of the disciplinary proceedings during the pendency of the criminal case. During the pendency of the said petition, the charged employee was acquitted in the criminal case, but this fact was not brought to the notice of the Tribunal. The Tribunal in the absence of information about the fact of the criminal proceedings held that the inquiry would not be held for the very same charge for holding assets disproportionate to his know sources of income, but allowed the department to proceed with the proceedings so far as they related to the charge that the delinquent had acquired assets without the permission of the department which was not the subject mater of the criminal trial. Thereafter a fresh charge-memo was issued for acquiring and disposing of the property without taking permission from the Government. The charged employee again filed an application before the State Tribunal which was allowed by the Tribunal holding that after the disciplinary action was dropped by the State on account of acquittal in the criminal case, it was not open to initiate disciplinary action. On being challenged, the Hon'ble Supreme Court observed that disciplinary action in acquiring assets disproportionate to the known sources of income on account of acquittal in the criminal

case was dropped and not on account of the charge that the properties were acquired without the due permission of the Government.

21. In the cited case the disciplinary proceedings were initiated simultaneously with criminal proceedings. The proceedings in respect of the part of the charges were dropped. In view of the acquittal of the delinquent in the criminal proceedings, the proceedings were allowed to continue in respect of the other charge which was different from the criminal charge.

22. In **B.C. Chaturvedi Vs. U.O.I. & Others (1995) 6 SCC 749**. The facts were that the delinquent was an Income-tax officer. CBI investigated a case against him and the evidence collected during investigation had disclosed that he had assets disproportionate to his known source of income but the evidence was not strong enough to lay prosecution under Prevention of Corruption Act. It was suggested that the competent authority might proceed against the delinquent in the departmental enquiry. The delinquent was then served with a charge-sheet alleging misconduct of being in possession of property disproportionate to his known sources of income. The inquiry was held and the Inquiry Officer submitted his report holding that the charges against the delinquent have been proved. Finally the charged official was dismissed from service. The delinquent challenged this order before the Tribunal, which dismissed the OA but upheld the charges as having been proved and converted the order of dismissal to one of compulsory retirement. The delinquent filed an appeal challenging the same on merit and the Government filed an appeal challenging the jurisdiction of the Tribunal to interfere with the punishment imposed by it. The appeal of the Government was allowed and the appeal filed by the delinquent official was dismissed. The Hon'ble Apex Court held that

judicial review was not an appeal from a revision but a review of the manner in which the decision is made and the power of judicial review is meant to ensure that the individual receives a fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court.

23. The Memorandum of Charge and the Statement of Imputation, Annexures A-1 and A-II have also been produced in the foregoing paragraph. The criminal charge under Section 471 IPC was quite similar to the misconduct imputed to the applicant vide Article of Charge, Annexure A-1 and the Statement of Imputation, Annexure A-II. The charge was that he had submitted false declaration and fake and forged mark sheets/certificates of B.Sc. and B.Ed. examination of Magadh University for securing appointment to the post of Primary Teacher in the respondents organization, which amounted to a misconduct under Rule 3 (1)(i) and (iii) of CCS (Conduct) Rules, 1964. The learned counsel for the respondent has argued that the criminal charge and the memorandum of charge are different because in the memo of charge the allegation was that the applicant had made "false declaration " in the application form submitted for appointment. We will not like to go deeper into this question else it may cause prejudice or embarrassment to any of the parties.

24. The evidence and the material which are required to be produced to substantiate the Memorandum of Charge are mentioned in Annexure A-III. There is slight variation in documents which form part of the material evidence collected during the investigation of the criminal case and were produced before the trial court and the oral and documentary evidence which is sought to be produced before the Inquiry Officer. The Hon'ble Supreme Court in **Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. And**

Another, JT 1999 (2) SC 456 on the question whether disciplinary proceedings should be allowed to continue after the acquittal of the accused in the criminal proceeding, made the following observation:-

> "13. As we shall presently see, there is a consensus of judicial opinion amongst the High Courts whose decisions we do not intend to refer in this case, and the various pronouncements of this Court, which shall be copiously referred to, on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little exception. As we understand, the basic for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the Disciplinary Authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in the those proceedings is also different than that required in a criminal case. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubts. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance."
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> 34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, 'the raid conducted at the appellant's residence and recovery of incriminating articles therefrom.' The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch Witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was the thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recover" at the residence of the appellant were not proved, it would be

unjust, unfair and rather oppressive to allow the findings recorded at the *ex- parte* departmental proceedings to stand.

35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden and burden of proof, would not be applicable to the instant case."

25. In **Corporation of the City of Nagpur Civil Lines, Nagpur and Another Vs. Ramachandra G. Modak and Others, AIR 1984 SC 636**, the Apex Court has held as under:-

"6. The other question that remains is if the respondents are acquitted in the criminal case whether or not the departmental inquiry pending against the respondents would have to continue. This is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its direction (discretion) in any way fettered. However, as quite some time has elapsed since the departmental inquiry had started the authority concerned will take into consideration this factor in coming to the conclusion if it is really worthwhile to continue the departmental inquiry in the event of the acquittal of the respondents. If, however, the authority feels that there is sufficient evidence and good grounds to proceed with the inquiry, it can certainly do so."

26. It is clear from the above cited judgments, that there is no bar to the disciplinary proceedings being conducted after the acquittal of the delinquent by a criminal court. The discretion to initiate disciplinary proceedings clearly vests in the disciplinary authority, which in this case has decided to hold disciplinary proceedings by serving memo of

charge on the applicant. Keeping in view the case law cited in the foregoing paragraphs, we are of the view that the action of the respondents does not call for interference at this stage.

27. A criminal charge has to be proved by evidence beyond all reasonable doubt whereas the disciplinary evidence has to be decided on preponderance of probabilities.

28. For the reasons stated above, we are of the view that disciplinary proceedings cannot be scuttled at the threshold.

29. As a result, we do not find merit in the OA. It is dismissed with no costs.

30. We clarify that none of the observations made in this order shall be construed to be an expression of the views on merit of any of the question that arise for decision in the disciplinary proceedings.

(S.K. Malhotra)
Member (A)

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

Rakesh