

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No.
T/A/No.

1083/92

199

X
VDATE OF DECISION 26.9.1994

Shri D.P. Bijawat

Petitioner

Shri R.P. Oberoi

Advocate for the Petitioner(s)

Versus

G.O.I. & Ors.

Respondent

Shri K.C. Sharma

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. B.N. Dhoundiyal, Member (A)

The Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

B.N. Dhoundiyal
(B.N. Dhoundiyal)
Member (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI



O.A.No. 1083/92.

Date of decision. 26-9-94.

Hon'ble Shri B.N. Dhoundiyal, Member (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Shri D.P. Bijawat,
S/o Shri S.R. Bijawat,
Attached Officer,
Directorate of Defence Estates,
Headquarters,
Central Command,
LUCKNOW CANTONMENT.

.. Applicant

(By Advocate Shri R.P. Oberoi)

versus:

1. Union of India through
The Secretary,
Ministry of Defence,
South Block,
New Delhi-110 011.
2. The Director General,
Defence Estates,
Ministry of Defence,
R.K. Puram,
New Delhi.
3. Shri V.I. Velayudhan,
Commissioner for Departmental Enquiries,
Central Vigilance Commission,
Block 10, Jamnagar House,
Akbar Road, New Delhi. .. Respondents

(By Advocate Shri K.C. Sharma)

O_R_D_E_R

Hon'ble Smt. Lakshmi Swaminathan, Member (Judicial)

The applicant, Shri D.P. Bijawat, has filed this application under Section 19 of the Administrative Tribunals Act, 1985 for quashing the memorandum dated 3.1.1991 issued by the respondents by which an enquiry under rule 14 of the Central Civil Service (Classification

Control & Appeal) Rules, 1965 had been initiated and
to direct the respondents to close the disciplinary
proceedings being conducted against him in pursuance
of the impugned memorandum and drop the charges against
the applicant.

2. The charge against the applicant was that while
he was posted and functioning as Cantonment Executive
Officer, Jammu Cantt., Jammu during the period from
17.12.1974 to 23.6.1976, he failed to maintain absolute
integrity and devotion to duty inasmuch as he was re-
sponsible in entertaining the application dated 10.3.75
signed by Shri Sohan Lal Sharma, the then Vice-President,
Cantonment Board, Jammu for permission of trade licence
for running Dhaba in shop No. 23/A, Saddar Bazar, Jammu
which stood allotted in favour of Sudershan Kumar, un-
authorisedly transferring the tenancy of said shop from
Sudershan Kumar allottee, to Sohan Lal Sharma w.e.f.
10.5.75 and incorporating enhanced dimensions of shop
No.23/A i.e. 33.3'x9' instead of 13'x9' as per record of
the Measurement Book, in the agreement dated 28.8.75,
covering the unauthorised structure raised by Sh. Sohan
Lal in the rear of said shop, and not enhancing the rent
of the said shop No.23/A. Immediately on receipt of the

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memo. of 3.1.1991, the charged official requested permission for inspection of the documents listed in the Annexure to the charge and extension of time upto 15.3.1991 for submission of the written statement for his defence. After inspection of the relevant documents, the applicant submitted a statement of defence on 26.7.1991 (Annexure A-4). Thereafter, he seems to have filed this O.A. in April, 1992 in which he has alleged, inter-alia, that the impugned memo. dated 3.1.1991 containing articles of charge after a lapse of more than 15 years from the date of occurrence of the alleged event has seriously handicapped his defence and prejudiced him, apart from his defence on the merits of the case. The learned counsel for the applicant, Shri R. Oberoi relying on State of Madhya Pradesh v. Bani Singh and Another [1990 Supp SCC 738] 7, Union of India v. M.B. Patnaik [AIR 1981 SC 858] 7, Sushil Kumar Dutta v. UOI & Ors. [1993(3) CAT (Guwahati Bench) 133] 7 and the decision in Jaswant Singh v. UOI & Ors. O.A.No. 840/85 CAT (PB) dated 4.2.1992 submits that since there has been an inordinate delay of more than 15 years in conducting the departmental enquiry, there is justification for dropping the charges and quashing the impugned memo. dated 3.1.1991.

3. Shri K.C. Sharma, learned counsel for the respondents, however, had vehemently opposed the above plea on the ground

that the respondents have initiated the disciplinary proceedings against the applicant after due consideration of the CBI report dated 30.12.1989. The respondents have also stated, in their reply that this application is premature and the enquiry is already under progress. They have stated in para 4.9 of the reply that the case was investigated by the CBI Authority for a long time and was registered on 31.8.1989 only and the charge-sheet for major penalty was issued to Shri Bijawat on 3.1.1991. It is also noted from the CBI's report (Annexure I) that the CBI's investigations have been registered on the basis of a source information collected by the CBI and not, therefore, initiated on a complaint made by the respondents. They have submitted that since there is a prima facie case established against the applicant on the basis of the CBI report and as recommended in the report, disciplinary proceedings have been initiated against the applicant which is already under progress. In the circumstances, they have submitted that the enquiry should be allowed to be finalised and they have also stated that the Enquiry Officer has been requested to expedite the finalisation of the enquiry.

4. We have heard the learned counsel for both the parties and perused the record of the case. In this case the

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enquiry has been instituted against the applicant well before his date of superannuation in June 1992. He has also participated in the enquiry and has also been allowed to inspect the relevant documents on the basis of which he had also submitted his defence statement. If in the course of the enquiry, the respondents fail to furnish him the copies of relevant documents or afford him inspection of the documents or any other reasonable opportunity to enable him to present his defence, the applicant would be entitled to impugn such action in accordance with law. His allegation that the statement of imputation does not justify the initiation of disciplinary proceedings after a lapse of 15 years from the date of occurrence of the alleged incident is not tenable. It is for the respondents to prove the charges and if they fail to do so, the applicant can then have a grievance as provided under ^{the} CCS(CCA) Rules. As mentioned above, he has already participated in the enquiry. It is also not the case of the applicant that the respondents were well aware of the fact pertaining to the statement of charge at a much earlier point of time than December, 1989 when the CBI report was received by them.

In State of Madhya Pradesh v. Bani Singh (supra), the

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Supreme Court referred to the fact that it is not the case of the department that they were not aware of the said irregularities, if any, which occurred between the years 1975-1977 and came to know of it only in 1987 and thereafter the chargesheet was issued in that year itself after a lapse of more than 12 years.

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The Supreme Court held in that case/since there is no satisfactory explanation for the inordinate delay for issuing the charge memo, they did not find it necessary to interfere with the Tribunal's order quashing the charge memo. on the ground of delay in initiating the departmental proceedings. In UOI v. M.B. Patnaik (Supra), the court held "that it would be a mockery of justice if after the lapse of so many years (15 years) the enquiry should commence again on the same charge." These cases are, therefore, clearly distinguishable from the present case because the charge itself has been initiated only in 1991 and the delay, if any, in initiating the charge has been satisfactorily explained by the respondents. In Sushil Kr. Dutta v. UOI case the Tribunal had followed the decision of the Supreme Court in State of Madhya Pradesh v. Bani Singh wherein also the reasons for the inordinate delay of 14 years

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for initiating charges had not been given by the respondents. The last case relied upon by the (supra) applicant, namely, Jaswant Singh v. UOI/turned upon the particular facts of the case wherein it was observed that the petitioner had retired long back and is about 75 years old. Even the Enquiry Officer had not been appointed and the enquiry had not made any progress because of the interim direction of the High Court staying the proceedings in the proposed disciplinary enquiry. In the circumstances, the Tribunal gave a direction to the respondents not to proceed with the disciplinary enquiry initiated against the petitioner in 1979.

5. As is evident, none of the cases relied upon by the applicant will be of assistance in the facts and circumstances of this case.

6. As submitted by the learned counsel for the respondents if the departmental proceedings are quashed at this stage, it would mean that the investigation conducted by another arm of the Government, namely, the CBI would be nullified. Therefore, we feel that there is no justification for quashing the impugned memorandum dated 3.1.1991 at this stage. The learned counsel for the applicant also tried to show that the

allegations in the charge do not justify initiation of the disciplinary proceeding after a lapse of 15 years. As held by the Supreme Court in VOI & Ors. v. Unendra Singh [1994 (2) ATC 200], this Tribunal cannot examine the correctness of the charges at the stage of framing charges and may "interfere only if on the charges framed (read with imputation of particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out if 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." We do not find any such ground for justifying interference with the memorandum of charge at this stage.

7. Therefore, in the result, the application is dismissed. However, as also submitted by the respondents, the respondents should expedite the finalisation of the enquiry and in any case pass necessary orders on it within a period of four months from the date of receipt of this order. There will be no order as to costs.

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)
MEMBER (J)

B.N. Dhoundiyal
(B.N. DHOUNDIYAL)
MEMBER (A)