

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 1557 of 2001

Allahabad this the 26<sup>th</sup> day of April 2002

Hon'ble Mr.C.S. Chadha, Member (A)  
Hon'ble Mr.A.K. Bhatnagar, Member (J)

Upendra Kumar Jain, Son of Late Sri Mahabir Prasad Jain, resident of Raipur Road, DEAL Main Gate, Adhoiwala, Dehradun.

Applicant

By Advocate Shri C.S. Singh

Versus

1. Union of India through Secretary, Ministry of Defence, DHQPO, New Delhi-110011.
2. Secretary, Department of Defence Production and Supply, Ministry of Defence, New Delhi-110011.
3. Director General Quality Assurance (D.G.Q.A.) Ministry of Defence, New Delhi-110011.
4. Principal Controller of Defence Account (P) Draupadi Ghat, Allahabad.
5. Controller, Controllerate of Quality Assurance (Instrument) Raipur, Dehradun.

Respondents

By Advocate Shri Satish Chaturvedi

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*Chaturvedi*

O R D E R ( Oral )

By Hon'ble Mr.C.S.Chadha, Member IAI

The facts of the case are that the applicant was serving as Joint Controller CQ A(I) Dehradun and superannuated from the said post on 31.12.2001. The applicant was served with two chargesheets, the first dated 03.12.2001 (received by him on 14.12.2001) and the second dated 19.12.01 (served on him on 20.12.2001). Both these charge sheets relate to his alleged misdemeanours in 1994 and 1997, regarding forwarding inspection reports of allegedly faulty equipment, received from his subordinates, to his superiors, without any adverse report, leading to the alleged acceptance by the higher authority of such faulty equipment. Before these charge sheets were served, on 03.05.2001 the applicant was given <sup>the a</sup> Vigilance Clearance, by a certificate that mentioned that no disciplinary proceedings were pending against the applicant and no such proceeding was even contemplated against him. As a result of non-pendency and non-contemplation of disciplinary proceedings against the applicant a P.P.O. was issued in his favour authorising his final pension on 28.9.2001 vide annexure A-7. However, it is quite quaint to notice that on 08.08.2001, that is, about a month and half before authorising the P.P.O., the Accounts Officer, Ordnance Factory, Dehradun wrote to the Principal Controller of Defence...pg.3/-

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Accounts, Civil Pension, Allahabad that he had been intimated that "Major Penalty proceedings have been ordered to be initiated against the above named officer and charge-sheet is being issued." After these words the typed words were "Kindly take necessary step against the officer" part of which was scored out and it later read as "Kindly take necessary action as may be deemed fit". Be that as it may, as a result of the charge sheets served on the applicant on 14.12.2001 and 20.12.2001, on 31.12.2001, i.e., the date of his retirement, he was informed that a revised P.P.O. had been issued on 24.12.2001 because of the disciplinary proceedings initiated against him as a result of which his gratuity was withheld. Aggrieved by the issuance of the two charge sheets and the revised P.P.O. dated 24.12.01 communicated to him on the day of his retirement he has filed this O.A. seeking to get the impugned charge sheets and the revised P.P.O. quashed on the ground that the whole proceeding was malafide, with a view to harass him as he had already received Vigilance Clearance on 3/5/2001 and even while issuing his P.P.O. on 28.9.2001 the authorities did not consider that there was any disciplinary proceeding either pending or contemplated against him. His argument is that had any such serious matter been pending against him the concerned

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officers would not have taken the liberty of issuing a P.P.O. in his favour on 28.09.01.

2. The applicant has also produced documentary evidence (Annexures no.3, 4 and 5) to indicate that some sort of preliminary investigation/enquiry was conducted and his explanation was called in January, 1999. Since nothing further was done in the matter (according to the knowledge of the applicant) and since on 3.5.2001, nearly two and half years after the so-called preliminary enquiry the applicant received a Vigilance Certificate, as mentioned above, it can safely be presumed that the explanations submitted by the applicant and other investigations in this regard did not reveal anything serious against him and that the matter had been closed. For, if this was not the case, and further, if investigations were in fact proceeding in a direction which may lead to serious charges being found against him, the Vigilance clearance of 3.5.2001 would not have been issued nor his P.P.O. cleared on 28.9.2001 by the concerned authorities. It is the accepted practice that before authorising the P.P.O. the Pensionary Authority takes a certificate from the Heads of Department that no disciplinary proceedings are either pending or contemplated against the concerned person. Therefore, it would be a very safe presumption that upto 28.9.2001 nothing serious enough to warrant giving the applicant only a provisional pension or stoppage of his retiral benefits, was

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noticed. As mentioned above perhaps ground was being prepared in June, 2001, even after the Vigilance Clearance of 3.5.2001 to justify the chargesheets to be delivered just before retirement and deprive the applicant of his retiral benefits in full and to make it appear that the charge sheets were indeed not all of a sudden thrust on the applicant on the eve of his retirement. Because, if the outcome of the preliminary investigation/enquiry begun in 1997 and continued till January, 1999 <sup>or</sup> was really proceeding in a direction pointing to the serious guilt of the applicant the two events of 3.5.2001 and 28.9.2001 would not have taken place in the normal course of events. Unless otherwise shown that progress was being made in this direction after January, 1999, outlining the various milestones in the enquiry after that date till December, 2001, culminating in the charge sheets served on the applicant on 14.12.2001 and 20.12.2001, it can be inferred that the matter lay dead and dormant and was revived at the last minute with the sole objective of harassing the applicant by withholding his pension. In their averments in the counter-affidavit, the respondents have not given any chronological sequence of events which led to the delay in filing the charge sheets as was done in the case of 'G.R. Murthy Vs. The Union of India and Others(1990(4) S.L.R.Page 331' cited by the respondents in their favour and differentiated from the present case later in this Judgment. On the other hand in para-3 of the counter-affidavit the respondents have averred;—

"In this case the original P.P.O, in respect of See pg.6/-

of the applicant was issued by the Principal Controller of Defence Accounts (Pension), Allahabad on 28.9.2001 to be payable with effect from 1.1.2002. In the meantime as the applicant was found to be prima-facie involved in acceptance of defective stores ..... the disciplinary proceedings were initiated against the applicant by the President of India and accordingly the Disciplinary Authority issued major penalty charge sheet dated 3.12.2001 to the applicant .....

A reading of the above leads to the conclusion that the existence of a prima-facie case (likely to lead to a major penalty) was indeed discovered after 28.9.2001 and before 3.12.2001

3. It is quite strange that it dawned on the department that the applicant was prima facie guilty only after 28.9.2001 when in fact there is documentary evidence to show that such a prima facie case was thought of prior to January, 1999 when the applicant's explanation was called. Since the respondents have not indicated what steps were taken after the explanation of the applicant was received in January, 1999, which firmed up their mind that the applicant was indeed guilty of serious misdemeanour it can be presumed that there was nothing against him but this matter was suddenly pulled out of a hat, so to speak, just prior to his retirement to harass him. It is hard to believe, in the absence of any specific averment in the C.A., that <sup>to that effect</sup> some new and strong evidence was revealed to them between 28.9.2001 and

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3.12.2001, i.e., in about two months and five days, leading to sudden reversal of their earlier stand leading to the Vigilance clearance of 3.5.2001 and the consequent issuance of P.P.O. on 28.9.2001.

4. There are two matters challenged in the O.A., firstly the issuance of two chargesheets to the applicant and secondly the 'consequent' amendment to the P.P.O. by issuance of a corrigendum to the P.P.O. on 24.12.2001, served on the applicant on 31.12.2001. Although much has been argued before us about the legality or otherwise of 'amending' the P.P.O. issued on 28.9.2001 just before retirement, by both sides, this issue would lose all significance if the first issue were to be decided in the favour of the applicant. For, even for the sake of argument, if it is accepted that the P.P.O. once issued on 28.9.2001 could be amended adversely affecting the applicant on the strength of the disciplinary proceedings initiated against him, the whole action would become null and void if it is proved that the disciplinary proceeding initiated in December, 2001 was itself not sustainable under law. Therefore it would in the fitness of things to first examine whether the initiation of the disciplinary proceedings by serving two charge sheets on the applicant on 14.12.2001 and 20.12.2001 could be sustained as valid action under law.

5. The learned counsel for the applicant has cited the important Judgment of the Apex Court

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in Bani Singh Vs. The State of M.P. and another  
A.T.R. 1990(1) S.C.pg.581, which was also relied  
upon in a Judgement of the Madras Bench of the  
Tribunal in O.A. No.642 of 1991 decided on 13.12.91.  
In the latter case, the Madras Bench held:-

"..... it is admitted that the applicant  
was to retire on 31.10.1990 and the charge memo  
was issued to him on 26.9.1990, about a month  
prior to his retirement regarding incidents that  
took place in 1983....., the respondents  
have not chosen to give any reason in reply for  
the long delay in issuing charge memo. Hence  
we find no option but to set aside the charge  
memo dated 26.9.90, and accordingly we will have  
to allow the application and quash the charge  
memo dated 26.9.1990."

6. The circumstances of the case are almost  
identical. In this case chargesheets were issued  
17 and 11 days before retirement as against 35 days  
in the case cited above. <sup>9n that case for</sup> and in this case as well, the  
alleged misdemeanour related to nearly 7 years before  
retirement, and in this case too the respondents  
have chosen not to give any reasons for the delay  
in filing the charge sheet. In fact this case is  
further strongly in favour of the applicant because,  
leave aside not giving reasons for delay, even as  
late as 28.9.2001 (when the P.P.O. was issued) the  
pensionary authority had received, alongwith the  
pension papers, a certificate to the effect that no  
disciplinary proceeding was pending against the  
applicant.

*S. G. Venkatesh*

7. In view of these facts we have no hesitation in coming to the conclusion that the law laid down ~~by~~ the Apex Court in Bani Singh's case and the Madras Bench in the above case can be squarely relied upon to quash the two charge sheets served on the applicant but we would be failing to deliver justice if we were not to cogently differentiate between the citations mentioned above and the several relied upon by the respondents in this regard, each of which is discussed below.

8. The learned counsel for the respondents argued that the charge sheets cannot be quashed as the initial stages because of ~~the~~ ruling discussed below. In D.I.G. of Police Vs. K.S. Swaminathan decided by the Apex Court [1997(1)S.L.R. 176] it was held that the Tribunal could not quash the charge sheet at the initial stage because the same had been held to be vague and not disclosing any misconduct, without waiting for the enquiry to even start. The essential difference between that case and this one is that in the cited case the charge sheet was quashed on merits whereas in this case the initiation of disciplinary proceeding as such, just on the verge of retirement, for incidents of seven years prior to that date without assigning any reasons for delay, is itself challenged. We feel that Bani Singh's case and the case of the Madras Bench are more appropriate precedents for this case as we have been neither approached nor do we propose

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to quash the charge sheets on merits because of their contents. In the case of Union of India Vs. Ashok Kacker [1995 Supp(1)S.C.C. pg. 182] the Apex Court held that an application impugning the charge sheet before the Tribunal without replying to the charge sheet and waiting for the decision of the disciplinary authority thereon was premature. However careful reading of the Judgment reveals that in that case too the Tribunal was held to have wrongly quashed the charge sheet on merits, namely that in the same matter the Department had closed the case after full examination. As mentioned in respect to the first citation above this Tribunal is not looking to the merits of the charge sheet at all and therefore this citation does not help the case of the respondents.

9. In (1997)11S.C.C.368, State of Punjab and Others Vs. Ajit Singh, cited by the respondents in an effort to shew that this Tribunal cannot quash the charge sheet, it was held that a charge sheet cannot be quashed on merits by the High Court before evidence is adduced in enquiry on the charges. This is exactly similar to the earlier two citations and is therefore not applicable in the instant case for the same reasons, i.e., this Tribunal <sup>for</sup> does not consider it necessary to go into the merits of the charge sheet or quash the charges on merits.

*6th Dec 2008*

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10 The learned counsel for the respondents has cited the Judgment of the Supreme Court 'J.T. 1996(3)S.C.202' in effort to show that delay in filing the charge sheet cannot be sufficient reason to quash the charge sheet. We are afraid that this Judgment also does not apply in the present case because in the cited case the charges related to embezzlement and fabrication of false records and it was held by the Hon'ble Supreme Court that it takes a long time to detect embezzlement and fabrication of false records, which should be done in secrecy. Therefore, it held the delay as justified. The order of the Tribunal in that case was therefore struck down, more so because trial of the offences was pending. In this case there is no such justification for the delay, as any investigation has not been shown to have been in progress all the while, which could have led to the delay. On the other hand after the initial enquiry the matter seems to have come to a dead end after the seeking of the explanation of the applicant in January, 1999. Not only was the matter lying dead and ~~dermant~~ <sup>for</sup> after January, 1999, but just 2 months before his <sup>also</sup> ~~retirement~~ the P.P.O. of the applicant was ~~issued~~ based on a 'no-enquiry' certificate. The two cases have therefore no similarity whatsoever.

11 The next citation relied upon by the learned counsel for the respondents is B.C. Chaturvedi Vs. U.O.I. & Others 1996 E.L.J.(1) 1231. In that case it was observed that the C.B.I. had investigated

*B.C. Chaturvedi* ....pg. 12/-

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and recommended that evidence was not strong enough for successful prosecution of the applicant 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, *it was held that by* the delay by itself cannot be regarded to have violated Articles 14 or 21 of the Constitution.

12 It is quite evident that in that case the Hon'ble Supreme Court had found the delay to be justified because first a criminal case was contemplated and later due to dim chances of a successful prosecution, departmental proceedings were recommended. Therefore delay was inherent. However in the present case no such logical reason for delay exists. On the other hand apparently a matter which was not considered fit enough to pursue, (because the no-enquiry certificate of 3.5.2001 mentioned that no enquiry was either pending or contemplated), was revived just before the applicant's retirement, apparently with the sole purpose of denying the applicant his full retiral benefits. Therefore, this ruling <sup>also</sup> does apply in the present case.

13 In the next case cited by the learned counsel for the respondents 1996 L.L.J. (1) page 1231 Ajit Singh and another Vs. F.C.I. and Others, the High Cout of Punjab & Haryana held that

".....mere delay in the issuance of chargesheet

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or concluding the disciplinary proceedings would not by itself be sufficient ground to quash the disciplinary proceedings. However, if the delinquent official can establish that delay has caused him prejudice, the disciplinary proceedings would be liable to be quashed" *Re*

*Re* is *l*  
14. This Judgment is squarely applicable to *l* and the instant case *l* would help the applicant instead because he has clearly claimed that the delay has caused him severe prejudice. His alleged misdemeanour of 1994 and 1997 was asked to be explained in January, 1999 and thereafter, as mentioned above he was apparently absolved of all charges by the No-enquiry certificate of 3.5.2001, and further relied upon while issuing his P.P.O. on 28.9.2001. Since no new evidence has been claimed to have been found between 28.9.2001 and 3.12.2001 (when the first charge sheet was issued), regarding the same old incidents of 1994, the applicant would have peacefully retired and after retirement a Presidential sanction would have been required to institute a departmental proceeding. Such a sanction would not have been issued because the matter outlined in the charge sheet pertained to seven years prior to his retirement. It is quite apparent that in order to circumvent the provision of the requirement of a Presidential sanction, the charge sheets were deliberately issued on the verge of retirement after obviously clearing him as late as on 28.9.01. The Hon'ble Punjab & Haryana High Court in fact

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relied on the Bani Singh case which was also followed in the same court in B.D. Mathur Vs.

The State of Punjab & Others 1992(4) S.L.R. 510.

In that case "It was contended on behalf of the petitioner and accepted by a learned Single Judge that by mere lapse of time the true sequence of events had been forgotten and it was not possible for the petitioner to defend himself effectively."

15. We feel that the Bani Singh case and the above mentioned case of B.D. Mathur Vs. The State of Punjab & Others is squarely applicable to the applicant's case, as in the year 2002 he cannot effectively defend himself of charges relating to events of 1994 and 1997 specially because he was told as late as in May, 2001 that no disciplinary proceeding is pending against him nor contemplated against him. Even if he had preserved any papers of the relevant events, after complete exoneration the applicant would normally not keep them any further. A man of common prudence, who hears nothing about the allegations, levelled against him for events of 1994, after January 1999, would not have kept proper records or memory of the old events, good enough to enable him to defend himself effectively in 2002. <sup>after receiving a no-enquiry clearance on 3.5.01</sup> Therefore, this delay has not only caused prejudice to his defence but smacks of malafide as well.

16. Lastly, in an effort to show that delay does not vitiate the proceedings, the learned counsel for the respondents has cited the ruling of the

Hyderabad Bench of C.A.T. G.R.Murthy Vs. U.O.I. and Others 1990 (4) S.L.R.page 331', in which the Tribunal had held that "mere delay does not vitiate a charge where delay was explained satisfactorily." In that case the chronological sequence of events, showing milestones of the enquiry were cited. Sixteen events beginning from 19.03.83 to 28.9.88 were shown culminating in the charge sheet on 28.9.88. The enquiring authority had quite clearly established in that case that the prosecution agency was zealously pursuing the matter, and that some of the delay was due to the delinquent officer himself who either did not participate in the enquiry or refused to be examined etc. In the present case no such zealous pursuit of the investigation/preliminary enquiry has been shown against the applicant, in the counter affidavit, which on the other hand, surprisingly states that after 28.9.2001 a prima-facie <sup>for</sup> case appeared to have been made out against the applicant, without making any specific disclosure as to what this new fact was after even closing the matter and issuing a no-enquiry certificate.

17 From the above discussion we come to the conclusion that the applicant who was issued a No-Enquiry certificate on 3.5.2001 and issued a P.P.O. on 28.9.2001, is being deliberately harassed with malafides to stop his retiral benefits, by issuing charge sheets to him just few days before retirement for incidents relating to 1994 and 1997

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which were, at least on record, not pursued after

January, 1999. Relying on Bani Singh's case

A.I.R. 1990 S.C. 1308 and the related cases of

C. Govindraj Vs. The Govt. of India A.T.R. 1992

(1) C.A.T. 600, and B.D. Mathur's case (1992(4)S.L.R.

510 we conclude that the disciplinary proceedings

initiated as a result of the charge sheets issued

on the verge of retirement for incidents of 1994

and 1997 without explaining the reasons for delay,

specially after certifying <sup>Re</sup> that no disciplinary

proceedings were contemplated against the applicant

till 28.9.2001 and issuing a P.P.O., are certainly

malafide and smack of wilful harassment of the applicant

with ulterior motives, and deserve to be

quashed. We therefore quash the disciplinary pro-

ceedings initiated against the applicant, by serving

charge sheets dated 3.12.2001 and 19.12.2001 (received

by the applicant) on 14.12.2001 and 20.12.2001 res-

pectively) without going into the merits of the charges

levelled against him.

18 Much has been argued before us about the validity or otherwise of the 'corrigendum' issued to the P.P.O. reducing the retiral benefits authorised by the P.P.O. of 28.9.2001. Without going into the merits of those arguments, even if it is agreed, for arguments sake, that the P.P.O. could be amended without any Presidential sanction, the main basis for such reduction in retiral benefits is only the initiation of disciplinary proceedings, and since the disciplinary proceeding itself is totally quashed

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by us the very foundation for further action based on the enquiry goes. Since there is no valid disciplinary proceeding pending against the applicant, in view of our orders above, no action whatsoever can be taken to reduce the retiral benefits of the applicant, and any such consequential action also deserves to be quashed.

19. Here, it would not be out of place to mention that the malafides of the respondents are also evident from their behaviour even after the filing of this O.A. On 3.1.2002 the applicant requested for interim orders which were granted <sup>an</sup> ~~by~~ A Division Bench of this Tribunal gave ~~an~~ interim order that the respondents should pay the applicant in accordance with the P.P.O. of 28.9.2001. Despite no stay orders from a higher court, or amendment of the interim order of 3.1.2002, and despite filing of ~~an~~ <sup>by</sup> against them, a contempt petition ~~an~~ the respondents have not even bothered to inform the pension-paying Bank of the interim orders of the Tribunal, what to speak of complying with the orders of the Tribunal.

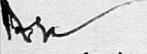
20. We, therefore, allow the O.A., quash the disciplinary proceedings initiated against the applicant by issuance of charge sheets against him on 3.12.2001 and 19.12.2001, and also quash the corrigendum to the P.P.O. issued on 24.12.2001 informed to the applicant by a letter on his retirement day, i.e. 31.12.2001, and further direct that all pensionary benefits as authorised by the P.P.O. of 28.9.2001 be paid to the applicant within 15 days of receipt of this order....ph.18/.

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It is also directed that interest at the rate of 12% p.a. be paid for the delay in payment as the delay is malafide and unjustified (more so after the interim orders of the Tribunal of 3.1.2002.).

21. This is also a fit case to award costs as from the entire chain of events it appears that the higher authorities who took such belated action, by keeping it up their sleeves till just before retirement, have shown that they had an axe to grind against the applicant. The applicant is therefore awarded token costs of Rs.1000/- for the malafide action of the respondents and for dragging him into unnecessary litigation.

  
Member (J)

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Member (A)