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**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 506 of 2006

_____ day, this the 18 day of May 2007

**Hon'ble Mr. Justice Khem Karan, V.C.
Hon'ble Mr. K.S. Menon, Member (A)**

Yughpal Srivastava, aged about 46 years, Son of Late Chotey Lal Srivastava, resident of 117/L/376, Naveen Nagar, Kakadeo, Kanpur Nagar, presently posted as Tax Assistant in the Office of the Commissioner of Income Tax (Computer Operations), Kanpur Nagar.

Applicant

By Advocate Sri Shyamal Narain

Versus

1. The Union of India through the Secretary, Department of Revenue, Ministry of Finance and Research, Government of India, New Delhi.
2. The Chairman, Central Board of Direct Taxes, New Delhi.
3. The Chief Commissioner of Income Tax (Cadre Controlling Authority) 16/69, Aaykar Bhawan, Civil Lines, Kanpur Nagar.
4. The Commissioner of Income Tax, (Computer Operations), 16/69, Aaykar Bhawan, Civil Lines, Kanpur Nagar.
5. The Joint Commissioner of Income Tax (Computer Operations), 16/69, Aaykar Bhawan, Civil Lines, Kanpur Nagar.

Respondents

By Advocate Sri Saumitra Singh

O R D E R

By K.S. Menon, Member (A)

We have heard Shri Shyamal Narain, Counsel for the applicant and Shri Saumitra Singh, Counsel for the respondents.

2. The present O.A. has been filed with the prayer for quashing the charge memorandum dated 26.06.2002 issued by the respondents.
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3. The brief facts of the case are that the applicant joined the Income Tax Department on 14.11.1979 as Upper Division Clerk. He was to cross the efficiency bar w.e.f. 01.11.1985 at the stage when his pay was Rs.380/- (pre revised scale) but his increments were stopped at that stage. Subsequently, on account of pay revision, his pay was wrongly fixed at Rs.1290/- instead of Rs.1320/- (in the scale of Rs.1200-2040/- w.e.f. 01.01.1986. Thereafter, also his annual increment was denied. Again w.e.f. 01.11.1992 when his pay was Rs.1470/- further increments were stopped. Finally, he was allowed to cross the efficiency bar at Rs.1560/- w.e.f. 01.11.1986. He was subsequently promoted to the post of Head Clerk in the scale of Rs.5000-8000/- but he could not avail of it because promotion in the junior scale was not given to him. Later, he was promoted to the post of Office Superintendent in the scale of Rs.5500-9000 but the order was put in sealed cover though no disciplinary proceedings were pending against the applicant. The applicant says that he was due for promotion to the post of Inspector in the scale of Rs.5500-9000/- w.e.f. 27.04.2002 but the same was also denied to him and so he is continuing to languish on the post of Tax Assistant in the scale of Rs.4500-7000. According to the applicant, the charge memo dated 26.06.2002 was issued to him mainly with a view to harass him. It is against this charge memo, that he has filed the present O.A.

4. The main arguments put forward by the applicant in this case are that the charge memo relates to alleged incidents dating back variously to the years 1982, 1986, 1987 and 1988 and has been issued solely for the purpose of keeping the applicant under cloud and to stop him ^{from} ~~for~~ getting promotion. He says that the charges are mutually disparate and unconnected and have been strung together without any coherence. Though he replied to the charge memo vide letter dated 15.07.2002 denying all the charges, no Inquiry Officer was appointed till March 2004 vide his letter dated 24.03.2004 by which Shri R.R. Agarwal has informed that he has been appointed as Inquiry Officer, vide Order dated 28.01.2004. The

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Inquiry Officer fixed preliminary hearing on 31.03.2004. In all, 8 hearings have taken place and thereafter Inquiry Officer was transferred to Dehradun and the proceedings came to a halt. Thereafter, nothing happened except that a letter dated 20.01.2005 was issued for appointment of Inquiry Officer. Vide letter 07.04.2005, Shri A.H. Ansari, Income Tax Officer and Sri R.P. Awasthi, Income Tax Officer were appointed as Inquiry Officer and Presenting Officer respectively. The applicant moved a note before the Disciplinary Authority, protesting against the breach of the Circular dated 03.02.2005 for completion of inquiry within 6 months and till today no progress has been made due to no fault of the applicant. Sri A.H. Ansari, Income Tax Officer, who was appointed as an Inquiry Officer retired on 31.01.2006 and no one has yet been appointed as Inquiry Officer. According to the Counsel for the applicant, the charge memo dated 26.06.2002 is very stale and no meaningful inquiry into the same is possible, given the fact that most of the witnesses mentioned therein have either expired or retired or have been transferred to distant places. He, therefore, pleads for quashing the charge memo dated 26.06.2002.

5. The learned counsel for the applicant has cited decisions of Apex Court in the case of P.V. Mahadevan Vs. T.N. Housing Board (2005) 6 SCC 636, as also the case of State of A.P. Vs. N. Radha Krishnan (1998) 4 SCC 154 and the case of State of M.P. Vs. Bani Singh reported in 1990 Supp SCC 738 to press the point that the disciplinary proceedings imposed after such a long delay should be set aside.

6. Resisting the above pleadings of the Counsel for the applicant, Counsel for the respondents has stated that it is not true that the applicant has had unblemished service record and in fact he was given adverse remarks in the ACR for the year 1982-83, 1986-87 and 1987-88 and on account of this, he was considered 'not fit' for crossing the Efficiency Bar by the D.P.C. as on 01.11.1985. Since there were serious charges of misconduct against the applicant, a charge sheet dated 26.06.2002 was issued to the applicant. He has further stated

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that all actions taken by the respondents are strictly in conformity with the Rules and Regulations in this regard. It is further stated that the applicant was supposed to cross the Efficiency Bar with effect from 01.11.1985 at the stage of basic pay of Rs.380/- in the scale of Rs.330-560/- but due to adverse remarks the DPC considered him 'not fit'. A review DPC was held on 18.01.1996 w.e.f. 01.11.1996 but the findings were kept in sealed cover on account of contemplated disciplinary proceedings as a result of which charge sheet has been issued. It is further stated that it is not correct, as alleged by the applicant, that his pay was wrongly fixed as Rs.1290/- as on 01.01.1986 instead of Rs.1320/- in the revised scale of Rs.1200-2040. Since he was drawing the basic pay at the time of revision, his pay could not be fixed at Rs.1320/- as he was not allowed to cross the Efficiency Bar. It is also not correct that he was allowed annual increments w.e.f. 01.01.1986 to 01.11.1992. On the contrary, on examination of his service book it is revealed that his basic pay was fixed on 01.01.1986 as Rs.1290/- on implementation of recommendations of IVth Pay Commission with the date of next increments on 01.11.1986, which continue to be granted upto 01.11.1992. The applicant was not granted increments for the financial year 1993-94. Similarly, he was given annual increments on the pay of Rs.1500/- instead of Rs.1680/- as on 01.01.1996. The Counsel further says that the applicant was never allowed to cross the Efficiency Bar after 01.11.1986 and the proceedings are only in sealed cover pending adjudication of the disciplinary case against him. The respondents have denied that he was eligible for promotion of Tax Assistant in the scale of Rs.4500-7000/- w.e.f. 25.01.1996 since there is nothing on record in this regard. He was only promoted as Head Clerk in the pay scale of Rs.5000-8000/- and posted at Agra but the applicant opted to forego the promotion since he was already in the pay scale of Rs.4500-7000/-, therefore, there was no question of demotion, as alleged by him. Further they have pointed out that the letter regarding disciplinary proceedings was written to Deputy Commissioner of Income Tax (Vigilance) on 12.08.2002 and not on 18.08.2003, as alleged by the applicant.

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7. The Counsel for the respondents raised a preliminary point on limitation that the O.A. itself is miserably time barred because the alleged memorandum of charge is dated 26.06.2002 and received by the applicant on 01.07.2002 whereas the O.A. has been filed only on 03.05.2006. Therefore, the O.A. is not maintainable as time barred.

8. The Counsel for the respondents also raised a point that no O.A. will lie against the charge sheet, since it is not an order but only a proposal to hold an inquiry. In other words by the charge memo, the applicant has not been punished and only after the charge memo is inquired into and enquiry report submitted by the Inquiry Officer after giving the applicant an opportunity to defend himself, the disciplinary authority will take a decision whether to punish the applicant or not. He, therefore, submitted that the O.A. is not maintainable on this score also.

9. With regard to preliminary objection raised by counsel for the respondents regarding time bar of the present O.A., learned counsel for the applicant stated during the hearing that since it is a continuous process from the date of issue of charge sheet and hearings have been held, no limitation will apply. In his view, since the charge sheet itself is not maintainable, the question of limitation would not arise.

10. Regarding the second point made by learned counsel for the respondents, the argument of counsel for the applicant is that since the charge sheet is not maintainable and malicious and the applicant has reasons to believe that respondents have acted ~~not~~ in bonafide manner, applicant has knocked at the doors of the Tribunal and hence the O.A. is maintainable on this score also.

11. We have given our anxious consideration to all the pleadings made by the rival sides. We have also taken notice of the arguments made during hearing. The main plank of the applicant's case is that charge memo is miserably time barred

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having been issued about 14 years after the event, listed in the charge memo and in the light of citation, it is not maintainable. On the other hand, the respondents have made a preliminary objection that O.A. itself is time barred having been filed after 4 years from the date of charge memo and that no O.A. is maintainable against a charge memo.

12. In so far as the plea of limitation is concerned, it deserves to be rejected for the following reasons; one, no such plea has been taken in the reply, so filed by the respondents. Second, the O.A. is against the continuing departmental proceedings also. Proceedings initiated in June, 2002, in regard to the events of 1985-88, were being kept pending for more than 4 years, inspite of cooperation of applicant. So, the plea that the O.A. is time barred, is rejected.

13. Relying on Union of India Vs. Ashok Kacker 1995 Supp. (1) SCC 180, Shri Saumitra Singh, the learned Senior Standing Counsel, has argued that O.A. against pending disciplinary proceedings is not maintainable. But Shri Shyamal Narain, says that it was in the peculiar facts and circumstances of that case, that their Lordships said that the employee should have waited for result of enquiry and should not have rushed to the Tribunal, when he had opportunity to meet the charges. According to Shri Narain, in view of preponderance of various decisions of the Apex Court, action for quashing the charge sheet on the ground that it has been issued after unexplained inordinate delay, and for quashing the pending proceeding, on the ground that these are pending for unduly long period, is always maintainable in a Court of law or before the Tribunal. He says each case has to be examined in the light of its own facts and circumstances so as to see how much delay, is undue delay.

14. Hon'ble Apex Court observed in Food Corporation of India Vs. V.P. Bhatia (1998) 9 SCC 131, that undue delay in initiation of disciplinary proceedings may cause prejudice to the employee in defending himself and therefore Courts insist that such proceedings should be initiated with promptitude

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and should be completed expeditiously. Their Lordships went on to say, how much delay will vitiate the enquiry, ought to be decided in the light of the facts of a particular case. To the same effect were the views of Three Judges Bench, in S.C. Chaturvedi Vs. U.O.I. 1996 SCC (L & S) page 80; in State of Punjab and others vs. Chamman Lal Goel (1995) 2 SCC page 570, the Apex Court has ruled, if delay is too long and is unexplained, the Court may interfere and quash the charges. It has been said that in examining the question as to how much delay will be sufficient to quash the charge sheet, the Court has to weigh the factors appearing for and against such plea. In Dy. Registrar Cooperative Societies, Faizabad Vs. Sachindra Nath Pandey and another (1995) 3 SCC page 134, their Lordships took the view, if the charges are serious the matter cannot be closed on the ground of delay alone.

15. What we want to say is that it is difficult to say, without examining the facts and circumstances of the case in hand, that the O.A. for quashing the proceedings is not maintainable.

16. Coming to the main relief sought in this O.A. i.e. setting aside the disciplinary proceedings on the basis of the charge memo issued on 26.06.2002 and quashing of the said charge memo itself. The learned counsel for the applicant argues that the charge sheet issued on 26.06.2002 contains 10 charges which pertain to events that are unconnected and took place in the years 1982 to 1988 i.e. almost 14 to 20 years back. The charges on the face of it appears to be frivolous, petty and appears to have been dug out purely to keep the applicant under a cloud of disciplinary proceedings and thereby deny him promotions under the sealed cover procedure. The learned counsel for the applicant says that no meaningful enquiry is possible or feasible at this stage as most of the witnesses mentioned in the charge memo have retired, expired or transferred to different places. The applicant can also not be expected to meaningfully defend his case after a lapse of two decades depending for the most part on his memory and little else.

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17. Countering the above arguments, the learned counsel for the respondents say that there are no cogent grounds for filing this O.A. as the averments made in the O.A. are surmises and conjectures and needs to be dismissed on grounds of concealment of evidence. The learned counsel for the respondents has argued that the charges are serious in nature and hence the charge sheet was issued. The chronological information about events given by the respondents as well as the applicant establishes that there had been sufficient delay in framing the charge sheet against the applicant. The question however arises whether there is sufficient explanation about the delay. There is nothing on record in the counter affidavit and supplementary counter affidavit, giving any justification as to why the charge sheet has been issued after almost two decades. If the charges are serious as made out by the respondents, there appears to be no reason why they could not initiate disciplinary proceedings against the applicant when the incidents took place, especially when complaints/letters in respect of most of the charges had been sent to the appropriate authorities. We cannot help but get the feeling that a series of stray incidents have been strung along as a charge sheet without any link. The respondents do not appear to be in any hurry to complete the proceedings as two Inquiry Officers had been changed and at present no Inquiry Officer has been appointed, as learnt from the learned counsel for the applicant.

18. In this case it is very clear that Damocles sword ~~has~~ had been hanging on the head of the applicant for all these years and the authorities have not been fair in the procedure adopted by them. Unexplained inordinate delay of the 15 years in framing the charge sheet is found to prejudice the applicant in defending himself. Moreover, the charges, in general, do not appear to be serious.

19. We are, therefore, of the opinion that the charge sheet dated 26.06.2002 is perverse and not maintainable and quash the charge sheet and the entire disciplinary proceedings against the applicant. The respondents are further directed to

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consider the applicant for promotions as per rules. The O.A. is accordingly disposed of with no order as to costs.

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Member (A)

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Vice Chairman

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