CENTRAL ADMINISTRATIVE TRIBUNAL

CAT

AHMEDABAD BENCH

O.A. NO. 518/93

DATE OF DECISION 14-2-95

Shri S.M. Dube — Petitioner

Shri M.R. Anand — Advocate for the Petitioner (s)

Versus

Union of India and Others — Respondent

Shri M.R. Bhatt — Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. V. Radhakrishnan — Member (A)

The Hon'ble Dr. R.K. Saxena — Member (J)

JUDGMENT

Whether Reporters of Local papers may be allowed to see the Judgment ?

To be referred to the Reporter or not ?

Whether their Lordships wish to see the fair copy of the Judgment ?

Whether it needs to be circulated to other Benches of the Tribunal ?

Yes

Shri S.M. Dube
A-32 Income-tax Co-op.
Housing Society
Bhuyangdev Char Rasta
Memnagar, Ahmedabad. Applicant.

Advocate Mr. M.R. Anand.

Versus

1. Union of India
(Notice to be served
through the Secretary
Ministry of Finance
Secretariat, North Block
New Delhi

Advocate Mr. M.R. Bhatt Respondents

JUDGMENT

In Date: 14-2-95

O.A. 518/ 1993

Per Hon'ble Dr. R.K. Saxena Member (J)

It is the case in which quashment of charge-sheet is sought by the applicant. Briefly stated the facts of the case are that the applicant started his career as Clerk in the year 1962 and reached the position of Assistant Commissioner of Income Tax. While he was posted as Income-Tax Officer, Godhra, from June 1984 to May, 1988, he completed assessment of the firm M/s. Arvind Indravadan & Co., Dahod, for the assessment years 1970-71 to 1976-77 under section

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143 (3) of Income Tax Act. These assessment orders except for the year 1973-74 were upheld by the higher authorities and the Appellate Authorities. The assessment order for the years 1973-74 was no doubt set aside by the Appellate Authority and was assessed on higher income by the sucessor in office but when the assessment order of the suceessor Income Tax Officer was challenged before the Appellate authority, it was set aside and the income which was estimated by the applicant in the earlier assessment order, was restored.

2. It is said that the applicant was given Memorandum dated 13-10-1992 instituting departmental inquiry against him. The Memorandum Annexure A-1 was accompanied with statement of article of charge framed against him and statement of imputation of mis-conduct or mis-behaviour in support of the article of the charge. The list of documents and the witnesses relied upon, was also given. The charge against the applicant was that during the period from June 1984 to May 1988 while he was functioning as Income Tax Officer, Godhra, he completed assessments under section 143 (3) of Income Tax Act for the years 1970-71 to 1976-77, in the case of M/s Arvind Indravadan and Company, Dahod in a careless, ngeligent and dishonest manner. He was also charged to have acted in a manner which showed lack of integrity, lack of devotion to duty and conduct

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unbecoming of a Government Servant, and thus he had violated Rules 3 (1) (i), 3 (1) (ii), 3 (1) (iii) of Central Civil Service (Conduct) Rules 1964. The contention of the applicant is also that his explanation, prior to issuing memorandum, was sought and was replied by the applicant pointing out that no inquiry could be instituted because he had done quasi-judicial work and his orders were upheld by higher and Appellate Authority. The judgment in the case of M.N. Kureshi Vs. Union of India and Others (1989) ATC 500, was also mentioned in his support but without caring for the reply, the authorities decided to proceed with the inquiry and Inquiry Officer as well as the Presenting Officers were appointed on 7-4-1993. The applicant, therefore, approached this Tribunal on the grounds that the charge-sheet served on the applicant is illegal, unconstitutional and in breach of the law declared on the point. The charge levelled against the applicant does not and cannot constitute any mis-conduct or mis-behaviour because whatever was done by the applicant, was done in quasi-judicial capacity and the orders which may be called judicial orders were passed in the light of the evidence led before him. The institution of the inquiry against the applicant is arbitrary, unreasonable and vitiated by non-application of mind. It is also contended that the inquiry should be held within reasonable time and belated inquiries violate principles of natural justice. The charge which is framed against the applicant pertains to the assessment orders passed in the year 1986 while the

Memorandum was dated 30-10-1992. The proposed action was started after 6½ years and such an inordinate delay vitiates the proceedings. The reliance on the case Kundanlal Vs. Delhi Administration, 1976 (1) SLR 133 it is averred that elementary fairness to a public servant would require that the sword of Damocles should not be allowed to hang over him longer than necessary otherwise there is likelihood of degeneration into an engine of oppression. It is also the case of the applicant that malafides of the departmental inquiry are clear from the fact that action is proposed to be taken after such a long period of time and without considering the reply about memorandum the inquiry officer and the presenting officers were appointed. The relief claimed, therefore, is to quash and set aside the impugned order and charge-sheet, Annexure A-1.

3. The respondents contested the case by filing written reply through Shri G.K. Mishra, C.C.I.T., Ahmedabad. It is denied that the orders which were passed by the applicant, were concluded by the higher and Appellate Authorities as correct. It was also denied that the orders passed by the applicant were not prejudicial to the revenue. It is also averred that the assessment orders which were passed for the assessment order 1970-71 to 1976-77 were reviewd and the order for the assessment year 1973-74 was found to have been set aside by Commissioner Income Tax, Baroda under section 263 of Income Tax Act. So far as the assessment orders

with respect to other years are concerned, the Commissioner, Income Tax, did not draw conclusion that they were legally correct. It is also urged that the order passed by Commissioner Income Tax (A) for the assessment year 1973-74 deleting the addition of income of Rs. 2,36,735/-, was dated 2-5-1993, and was subsequent to the issue of the charge-sheet to the applicant. According to the respondents no doubt the income in the year 1973-74 was deleted by the Appellate Authority but it did not confer validity to the assessment, made by the applicant on 29-3-1986. The position that the assessment order passed by the applicant on 29-3-1986 and was reviewed by the Commissioner Income Tax holding the same to be incorrect and having set aside the same, remains there. It is also pointed out that the submission which was made by the applicant in his explanation, was considered before the issue of charge-sheet and only thereafter further steps were taken.

4. The respondents have also come with the case that since inquiry has been ordered in the matter, the applicant should present his case before the inquiry officer because the conduct of inquiry is itself a remedy provided to the applicant to present his case. There is no alternative remedy provided in this regard under law and thus the present O.A. before this Tribunal is premature. It is denied that there was any delay in instituting the inquiry because the decision of institution of inquiry was taken soon after the written submission dated 12-6-1993 of the applicant was received. It is also contended that the immediate steps were taken to appoint the Inquiry officer and the Presenting

officer. Previously Shri P.K. Gopinath, C.D.I. was appointed Inquiry Officer but he was replaced by Shri Bhandey Andrew because Shri P.K. Gopinath had relinquished his charge as C.D.I. It is also averred that the memorandum dated 30-10-1992 for the orders passed by the applicant on 29-3-1986, was given late because lapses on the part of the applicant were detected at a later stage and sometime was consumed in processing the case in accordance with the preseribed procedure.

5. In view of the aforesaid facts it was urged that the application being devoid of merits, be dismissed.

6. The applicant filed rejoinder to the written reply reiterating the facts which were brought out in the O.A. It is however, stressed that no order passed by the applicant was found incorrect. No doubt the order for the assessment year 1973-74 was reversed by the Appellate Authority but when the succeeding Income Tax Officer passed assessment order by making an addition of Rs. 2,36,753/- the same was deleted by the Commissioner Income Tax (A); and thus the order passed by the applicant for the year 1973-74 was impliedly restored.

7. At the stage of admission, we had heard the counsel for the parties and we had directed that question of delay in the institution of the proceedings, shalll be heard and decided on merits and in the meantime

the inquiry may continue till the stage of passing of the final order. Interestingly no steps has been taken in that regard by the respondents. Therefore the inquiry is on the same stage at which it was at the time of admission of the O.A.

8. We have heard the learned counsel for the applicant and the respondents and have gone through the record.

9. In this case certain facts that the applicant was Income Tax Officer, Godhra and had passed assess--ment orders for the years 1970-71 to 1976-77 with respect to M/s Arvind Indravadan and Company, are not in dispute. It is also not in dispute that the assessment orders were reviewed by the higher authori--ties for all these years and except for the year 1973-74, no action was taken. As regards the year 1973-74 the case was remanded after setting aside the assessment order passed by the applicant and consequently the other assessment order was passed by the succeeding Income Tax Officer whereby the income of Rs. 2,36,753/- was added. It is also not in dispute that the assessee had filed an appeal against the said order passed on remand, and the Appellate Authority had deleted the addiontal income

of Rs. 2,36,753/-. The contention of the learned counsel for the applicant Shri Anand is three fold. Firstly, the institution of inquiry is very much belated and therefore it is illegal and violates principles of natural justice. Secondly, his contention is that the charge which has been framed against the applicant, does not constitute any mis-conduct. Thirdly, it is argued that the applicant had exercised quasi-judicial powers and orders of assessment were passed judiciously and they were not found incorrect by the higher autho--rities or the Appellate Authority, on review or appeal being preferred against them. It is therefore contended that neither the charge-sheet could be issued against the applicant nor can any inquiry be started. The contention of the learned counsel for the respondents on the other hand is that this Tribunal has got no jurisdiction to enter into the arena to find out if the agllegations made against the applicant constitute the charge or not. It is also argued that the Government Servant who exercises quasi-judicial powers, are not excluded from being charge-sheeted and the mis-conduct being inquired into. So far as the question of delay is concerned it is pointed out that the matter was inquired into by the Vigilance Cell of the Department and when the report was submitted, the explanation of the applicant was called for and thereafter the process of formulating final

decision and seeking instructions from higher authorities was followed and thus whatever delay was caused it cannot be said to be prejudicial to the applicant or violative of the principles of natural justice. The reliance has been placed by the learned counsel for the respondents Shri M.R. Bhatt on the case Union of India Vs. Upendra Singh AIR 1994 (1) SLR 831 and it is argued that the jurisdiction of the Tribunal has been ousted in such matters. We shall therefore, examine from the material before us as to what is the real position.

10. Before we start to discuss the first point of delayed institution of inquiry raised by the learned counsel for the applicant, we would like to discuss the second and third points. The contention of the learned counsel for the applicant is that the statement of imputation which has been annexed with the memorandum of charges, Annexure A-1, does not indicate any mis--conduct. The learned counsel for the respondents on the other hand contends that this aspect cannot be looked into by the Tribunal at this stage. The sole reliance is made on the decision in the case of Upendra Singh (Supra). Their lordships of Supreme Court have very clearly laid down that the Tribunal exercises the power under Article 226 of the Constitution of India, the limitation of which are well defined. It has held that the original application which is filed before the Tribunal, is like petition for writ of

prohibition and the writ of prohibition is issued only when patent lack of jurisdiction is made out. It is also observed that the Tribunal should not interfere at the interlocutory stage of the inquiry. The detailed discussion was made in the case Union of India and Others Vs. A.N. Saxena, 1992 (3) SCC 124. Their lordships also laid down the law in the case Upendra Singh (Supra) that at the interlocutory stage, the Tribunal has no jurisdiction to go into the correctness or truthfulness of the charges. In the light of these decisions, the second contention of the learned counsel for the applicant that the charge framed against the applicant does not constitute any misconduct, does not hold good. The applicant could take this plea before the Disciplinary Authority. It is revealed from the arguments of the learned counsel for the respondents that the stage of recording of evidence before the Inquiry Officer has not reached. Anyway, we cannot draw any conclusion if the facts as are disclosed, did constitute any misconduct or not because it is not the proper stage for the said conclusion. Accordingly, the second ground of agrument is rejected.

11. The third point which was taken up during the arguments by Shri Anand -- learned counsel for the applicant is that the applicant had exercised quasi-judicial powers by passing assessment orders for the

years 1970-71 to 1976-77 with respect to M/s Arvind Indravadan and Company. Since the orders were passed in a judicial manner and these orders were upheld or not disturbed by the higher authorities/Appellate authorities, no action can be taken against him. As a matter of fact, this argument is very much connected with the second point of argument which has been discussed above. The only additional point in this argument is if the Government Servant who is exercising quasi-judicial powers can be charge-sheeted and departmental action taken. This point has also been clarified by their lordships of Supreme Court in the case Upendra Singh and also referring to the cases of Union of India Vs. K.K. Dhawan 1993 (2) SCC 56, and Union of India Vs. A.N. Saxena (supra) by holding that Disciplinary inquiry could be held even with respect to the conduct of an officer in discharge of his judicial or quasi-judicial duties. Thus there remains no doubt that the applicant though he was discharging quasi judicial duties, could be made to face the Disciplinary proceedings if a case of misconduct is there. To test whether the misconduct is established or not is a stage which is yet to come if the inquiry goes on. The result, therefore, is that this third point of argument also does not hold good and is rejected.

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12. Now we advert to the first point of argument which was so far deferred for consideration and on which much emphasis has been laid by Shri Anand — learned counsel for the applicant. His contention is that the orders of assessment were passed by the applicant on 29-3-1986 whereas the memorandum of charge was prepared on 30-10-1992 and thus there was great delay and the said delay vitiates whole of the inquiry proceed--ings. The respondents tried to explained delay by saying that the matter remained under investigation by the Vigilance Cell of the department and when the report was received of the Vigilance Cell,the explanation of the applicant was called for and thereafter the matter remained pending for instructions from the higher authorities.The respondents, however, submitted chart of chronological events starting from 15-2-1984 and ending to 30-10-1992. According to this chart,the complaint dated 19-10-1983 was received from Central Board Of Direct Taxes vide letter dated 15-2-1984. The report was thereof called from Commissioner Income Tax, Rajkot vide dated 7-4-1984 which was received on 16-8-1984. Since the enclosures were not attached,the correspondence appears to have continued and ultimately the enclosures were received on 27-9-1984. The matter was then referred to D.I.T. Vigilance, New Delhi on 23-10-1984. The D.I.T. vigilance had directed to make inquiry regarding imoveable and immoveable properties of the applicant on 22-4-1985. Consequently letter dated 19-9-1985 was sent to Commissioner Income Tax,

Baroda to make inquiry about the property of the applicant. The Commissioner Income Tax Baroda sent reply on 20-12-1985. The letter about inquiry of moveable assets was received on 1-1-1986. The applicant was then asked vide letter dated 20-4-1986 for filing I.P.R. which was forwarded by the Commissioner Income Tax, Baroda on 14-8-1986. The applicant was directed by letter dated 1-10-1986 to furnish details about his movements (mentioning his incomings and out goings) from 1979-1980 to 1985-1986. The complaint of Shri Arvind Desai who was partner of M/s Arvind Indravadan and Company, was received by the Commissioner Income Tax Baroda on 4-12-1986. The inquiry about shares was made. The Commissioner Income Tax Baroda had directed I.A.C.Baroda to carry out vigilance inspection in the case of M/s Arvind Indravadan and Company on 29-12-1986. Simultaneously, further inform--ation was also called for from the applicant on 29-12-1986 and the reply given by the applicant, was forwarded to the Chief Commissioner Income Tax on 17-2-1987. The vigilance inspection report was sent to Commissioner Income Tax, Baroda on 4-6-1987. The said report along with the reply of the applicant was sent by the Commissioner Income Tax to the Chief Commissioner, Income Tax on 3-8-1987. Consequently D.I.T. Vigilance, New Delhi was informed about vigilance inspection on 15-9-1987. The applicant was issued personal hearing letter about some clarification on 15-9-1987. However, the explanation of the applicant about inspection report made by the Vigilance, was sent to

the Commissioner, Income Tax on 2-3-1988. The remedial action regarding the case of Shri Arvind Indravadan and Co. were sought and ultimately action under section 263 of the Income Tax Act was taken by the Commissioner of Income Tax Baroda on 3-3-1988. The case of M/s Arvind Indravadan and Co. remained pending for either assessment or in appeal in the year 1990. However, the interim report along with the comment of Chief Commissioner of Income Tax was sent to D.T.T. Vigilance on 2-4-1991. The final report was sent on 30-1-1992. Then draft charge-sheet was prepared and sent to D.I.T. Vigilance on 22-7-1992, in response to the letter dated 12-5-1992 of D.T.T. Vigilance asking for draft charge-sheet. The charge-sheet was however, received from D.T.T, Vigilance on 30-10-1992 and was then served on the applicant. The applicant controverted this chart of chronological events and submitted his own chart starting from 4-12-1986 when the complaint of one of the partners of M/s Arvind Indravadan and Company was received by the Commissioner Income Tax, Baroda. He took 15 days in directing I.A.C. Baroda, to carry out Vigilance Inspection. It is then pointed out that the I.A.C. Baroda, took 156 days in carrying out the Inspec-tion which could otherwise have been done in a week and submitted his report on 4-6-1987. The Commissioner, Income Tax, Baroda, then again took 23 days in directing the I.A.C. to see the feasibility of any action under section 263 or 147 of Income Tax Act. The Chief Commissioner Income Tax,

took 50 days in sending the report to the D.I.T. Vigilance about the inspection carried out in the case of M/s Arvind Indravadan and Company. It was, however, sent on 15-9-1987. The explanation of the applicant was called on 2-3-1988 after about 140 days. Then action under section 263 of Income Tax Act was ordered on 30-3-1988. The letter to the Commissioner Income Tax, Baroda, for obtaining information about the outcome of the assessment / appeal in the said case was sent by the Chief Commissoner Income Tax, on 12-6-1990, after about more than two years. When the information was received, the Chief Commisioner, Income Tax sent interim report to D.I.T. Vigilance, New Delhi on 2-4-1991 i.e. after 267 days; and final report was sent on 30-1-1992 after a delay of about 263 days. The draft charge-sheet was called after 102 days on 12-5-1992 and was submitted to D.I.T. Vigilance on 22-7-1992 after 70 days and the final charge-sheet was then prepared on 30-10-1992 after 100 days.

13. The chronological information about events given by the respondents as well as the applicant establishes that there had been sufficient delay in finally framing the charge-sheet against the applicant. The question, however, arises whether there is sufficient explanation about delay. We have already pointed out the grounds which were taken

in the written reply of the reppondents to explain the dealy. The main ground is that the matter was investigated by the Vigilance Cell of the department and when the report was submitted, the time was consumed to seek the instructions of the hihger authorities in the matter. As a matter of fact, it cannot be said to be a sufficient explanation. The reason is that the assessment orders were passed as early as on 29-3-1986 and the Vigilance inspection report was sent to the Commissioner, Income Tax Baroda on 4-6-1987. According to the chart given by the respondents themselves, the Commissioner, Income Tax Baroda no doubt received the Vigilance Inspection report on 4-6-1987 but the interim report was sent by the Chief Commissioner of Income Tax only on 2-4-1991. It is not understandable as to why about four years were taken to report the matter to D.I.T. Vigilance, New Delhi when the said report was received on 4-6-1987. Even thereafter the final report was sent on 30-1-1992. There is again no explanation of the same.

14. The explanation of delay is necessary to be given by the department when there is inordinate delay in framing the charge-sheet against the employee. This view was taken by their Lordships of Supreme Court in the case State of Madhya Pradesh Vs. Bani Singh, AIR 1989 SC 1308. The main contention that the matter remained pending with the Vigilance Cell, will not explain the delay caused thereof. Their

Lordships of Supreme Court in another case Registrar of Co-operative Societies Vs. F.X. Fernando, 1994 SCC (L&S) 756 held that if the Directorate of Vigilance and Anti-Corruption was not prompt in taking action, the delay was not a material point. In the present case this dictum is not applicable because according to the contention of the respondents the Vigilance cell ofcourse had conducted inquiry but had submitted its report as early as 4-6-1987. The authorities took four years in sending the said interim report to D.I.T. Vigilance on 2-4-1991. In such a situation, the law laid down in the Registrar of Co-operative Socities (supra) may explain the delay caused only prior to submission of the report of Vigilance Cell but it will not be helpful in explaining the subsequent delay.

15. Before finally arriving at the conclusion as to whether delay has resulted or not in the prejudice of the applicant, we would like to find out the origin of the concept of speedy disposal of judicial, quasi-judicial or administrative matters. The process of enlarging the scope of Article 21 of the Constitution of India started conspicuously from the decision in the case of Maneka Gandhi Vs. Union of India, AIR 1978 SC 597 in which their lordships gave interpretation of the expression :

> "No person shall be depreived of his life or liberty except in accordince with the procedure established by law".

The dictum is that it is not enough that there should be semblance of procedure provided by law but the procedure by which a person may be deprived of his life or liberty, should be reasonable, fair and just. When the case of Hussainara Khatoon Vs. Home Secretary, State of Bihar, Air 1979 SC 1369 ~~their lordships~~ came for consideration, it was observed that it was absolutely essential that persons accused of offences should be speedily tried so that the accused persons have not to remain in jail than is absolutely necessary. Thus we find that the speedy trial, though it is not specifically enumerated, is a fundamental right had its impli-cation in the broad sweep and contents of Article 21. The reason of this interpretation is that if a person is deprived of his life under a procedure which is not reasonable, fair and just, such deprivation would be violative of - his funda-mental right. The reasons for speedy trial could very well be traced from the judgment in the case Richard M. Smith Vs. Rred M. Hooey (1969) 21 Law Ed 2d 607 : 393 US 374. It would be proper to quote the portion of the judgement in original words:

> "Suffice it to remember that this constitutional guarantee has universally been thought essential to protect atleast three basic demands of criminal justice in the Anglo-American legal system:
>
> 1. to prevent undue and oppressive incarceration prior to trial;
> 2. to minimize anxiety and concern accompanying public accusation, and ;
> 3. to limit the possibilities that long delay will impair the ability of an accused to defend himself."

16. It shows that the speedy trial in criminal cases and speedy action in service matters (which we may discuss later on) is based on a principle of universal recognition and when this has been imported in Article 21 of our constitution, it cannot be ignored. In the speedy trial,it is not that the interest of the accused is only violated but the societal interest does also suffers. Expanding the principle of speedy trial even to the stage of investigation is the view of the Full Bench of Patna High Court in Madheshwardhari Singh Vs. State of Bihar AIR 1986 Patna 324 in which their lordships very clearly held its applicability right from the date of institution of criminal charge to the date of final judgment by the Court. It reads:

> " On principle I am clearly of the opinion that in the majestic sweep of the fundamental right of a speedy trial in the context of a criminal prosecution initiated at the State's instance, it necessarily connotes all the period from the date of the levelling of the criminal charge to the date of the rendering of the judgment in the Court."

It was further observed ;

> " Herein it appears to me that in a criminal prosecu-tion launched by the State,the preceding investiga-tion and the trial are a closely interwined integral whole, which is not to be hypertechnically bifurcated."

It is also observed :

> " An accused does not lose his right to a speedy trial by silence or inaction that Government delay that might reasonably have been avoided is unjusti--fiable and that prejudice ceases to be an issue in speedy trial cases once the delay has been sufficiently long to raise a probability of substantial prejudice."

It is, therefore, clear from the dictum given by the Full Bench in Madheshwardhari Singh's case (supra) that speedy trial is a fundamental right and it does not remain confined to prosecution of the accused only but is extended to the stage of investigation by the Police. Their Lordships went a step further by holding that the entire period starting from the FIR being lodged to the final judgment, should not be more than seven years even in the cases involving capital punishment.

17. We have referred to this dictum of Patna High Court for the simple reason that the Disciplinary proceedings to some extent may be equated with the trial procedure in a criminal case. This view was taken by their Lordships of Supreme Court in the case Board of Trustees, Port of Bombay, Vs. Dilipkumar Raghavendranath Nadkarni and others, 1983 SCC (L&S) 61. Their lordships defined the scope of Article 21 and held that the same principle was applicable in departmental inquiries also. It may be quoted below :

" And this view was taken as flowing from Article 21 which mandates that no one shall be deprived of his life or liberty except in accor--dance with the procedure prescribed by law. The expression 'life' does not merely connote animal existence or a continued drudgery through life. The expression 'life' has a much wider meaning. Where therefore the outcome of the departmental inquiry is likely to adversely affect reputation or livelihood of a person some of the finer graces of human civilization which make life worth living would be jeopardised and the same can be put in jeopardy only by law which inheres fair procedures. In this context one can recall the famous words of Chapter II of Bhagwad-Gita;

'Sambhavitasya Cha Kirti Marnadati Richyate'."

18. It is thus clear that speedy trial flows from Article 21 of the Constitution of India. The speedy trial does not mean a trial in Court only but it includes the stage of investigation also. As is already observed the dictum in Board of Trustees of the Port of Bombay's case (supra) equated the Disciplinary action to that of criminal in service matters also. trial, the principle of speedy disposal is clearly applicable. Like criminal trial which is divided into two parts investigation and trial, the departmental inquiry can also be divided into pre-charge stage and post charge stage. The authorities concerned cannot be at liberty to proceed with the pre-charge inquiry for any period of time than absolutely necessary. When the facts of this case are

taken through this principle as discussed above, we come to the conclusion that the authorities in pre-charge stage had taken very very long period for no satisfactory explanation and the three principles which were laid down in the case Richard M. Smith Vs. Fred M. Hooey (supra), are cleary made applicable in this case. The damocles sword had been hanging on the head of the applicant for all these years. The delay itself is a ground of prejudice to the applicant and thus the procedure which was adopted by the authorities cannot be said to be fair. It violates the fundamental right under Article 21 of the Constitution of India and the principles of natural justice. Therefore the proceedings cannot be allowed to continue.

19. On the consideration of the facts and circumstances of the case and discussions made above, we come to the conclusion that there had been inordinate delay in framing the charge-sheet against the applicant. This delay has caused prejudice to the applicant and has violated the mandate not only of Article 21 of the Constitution of India but also the principles of natural justice. We, therefore, quash the charge.sheet. The application is disposed of accordingly. No order as to costs.

(Dr. R.K. Saxena)
Member (J)

(V. Radhakrishnan)
Member (A)

*AS]