CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 382 of 2004

Monday....., this the 30th day of October, 2006

C O R A M :

HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

M. Koya,
S/o. Pookoya,
Assistant Engineer (Electrical),
Electrical Sub-Division,
Amini, Union Territory of Lakshadweep,
Residing at : Government Quarters,
Amini, Union Territory of Lakshadweep. ... Applicant.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India represented by
The Secretary to the Govt. Of India,
Ministry of Home Affairs, New Delhi.

2. Administrator,
Administration of the Union
Territory of Lakshadweep,
Kavaratti.

3. The Executive Engineer,
Electricity Department,
Union Territory of Lakshadweep,
Kavaratti.

4. Shri G. Sudhakar,
Settlement Officer, Collectorate,
Union Territory of Lakshadweep,
Kavaratti. ... Respondents.

(By Advocate Mr. T.P.M. Ibrahim Khan, SCGSC for R-1 and
Mr. S. Radhakrishnan for R-2 and 3)

The Original Application having been heard on 13.10.06, this Tribunal on 30.10.06...delivered the following:

ORDER
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

The applicant had been issued with a charge memo vide F No. 58/2/2000-Ele/3078 dated 20-09-2003 and the same reads as under:-

"That Shri M. Koya while functioning as Asst. Engineer, Electricity Department, Kiltan Island, U.T. Of Lakshadweep during 1993 committed serious misconduct in not conducting inspection of stores during the period from 19-02-1993 to 28-02-1993 when he was deputed for the purpose at Kadmat, with dishonest intention to protect the interest of Shri P.P. Sayed Ismail Koya than to protect the interest of his own Department. He also failed to conduct annual inspection during 1993. He also did not inform his return journey without conducting inspection and did not get permission for the same from the Assistant Executive Engineer.

By the above acts, Shri M. Koya failed to maintain absolute integrity and devotion to duty and thereby violated Rule 3(1) of CCS (Conduct) Rules, 1964."

2. The list of documents by which the aforesaid article of charge against the applicant was sought to be proved contained a lone document, viz Inspection report of the applicant. There were five witnesses on the side of the prosecution.

3. The applicant had denied each and every charge by letter dated 31.10.2003 and in addition he had stated that the alleged incident related to a period of more than a decade and as such the applicant would not be able

to face and defend his case effectively and efficiently. Reasons for delay in issuing charge sheet on that matter was not directly attributable to him. All that he could remember was that with a view to disbursing the salary to the staff attached to Electrical Sections Bitra, Chetlat, Kiltan and the staff attached to Electrical Sub Division Office Kiltan he was forced to reach Kiltan on or before 28-02-1993 and this was on account of the fact that no alternate arrangement was made by the authority to draw the salaries of the staff. Annexure A-2 refers.

4. By three orders all dated 20-04-2004 (Annexure A-4, A-3 and A-5) common proceedings were initiated against the applicant and three more and an Inquiry officer and a Presenting Officer were appointed to inquire into the charges framed against each such officer.

5. The applicant has challenged the aforesaid Annexure A-1 Charge Memo dated 20th September, 2003. In his OA the applicant has furnished certain details. The CBI initiated a criminal case against one Shri P.P. Sayed Ismail Koya and one I.Koyamn (since deceased) who were working as Junior Engineers at Kadmat at the material point of time and in that case the applicant was shown as a witness. Misappropriation of a huge quantity of diesel oil and 59 empty barrels was the charge against such individuals. The Sessions Court acquitted the said P.P. Sayed Ismail Koya holding that I. Koyamon, accused No. 2 was mainly responsible for the loss of diesel oil.

However, the said individual had, during pendency of the Trial expired. The judgment of the Sessions Court was rendered as early as 23-10-1999. As even after the conclusion of the criminal case no proceedings were initiated within a reasonable time and it was only five years after the judgment in the criminal case was pronounced that such a proceeding has been initiated, in this OA, the applicant has challenged the Charge Memo mainly on the ground that such inordinate delay in initiating disciplinary action which, according to the applicant had vitiated the very charge sheet and to substantiate the same the applicant has relied upon the decision of the Apex Court in the case of **State of Andhra Pradesh vs N. Radha Krishnan**.[1] Malafide and estoppel have also been pleaded as the grounds of challenge.

6. By an interim order dated 28-05-2004 the impugned order was kept in abeyance.

7. Respondents have contested the O.A. According to them, while submitting the report vide letter dated 30-11-1994, the CBI had recommended initiation of Regular Disciplinary Action against the accused and certain witnesses (including the applicant) and it was also suggested that initiation of the said action could be made only after recording their evidences in the criminal case. The original documents seized by the CBI in connection with the Criminal case had to be returned and the same were received only in

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[1] AIR 1998 SC 1833

November, 2001. Correspondence had to be transacted to ascertain whether there was a proposal by the CBI for making appeal in the Criminal case and also whether a common proceeding under the Rules could be conducted. It was after getting a nod from the CBI vide their letter dated 25-11-2002 and 22-08-2003 that the charge sheet was issued. Thus, the delay was not unreasonable or unexplained.

8. The applicant had filed his rejoinder in which he had stated that the issue involved is whether the proceedings initiated are justified at this distance of time and whether prejudice would be caused to the applicant in defending the case effectively. If the CBI suggestion was to initiate proceedings after recording the evidence in the criminal case, the evidence on the part of the applicant being already over in 1999, proceedings ought to have been initiated then and there. It took five more years after recording of the evidence to initiate the proceedings, which meant that the Disciplinary authority did not come to a bona fide conclusion during the said five years to proceed against the applicant. It has also been contended that there has been no independent application of mind by the Disciplinary authority which acted only at the instruction of the CBI and the long period of delay has prejudiced the applicant.

10. Counsel for the applicant has argued that the lone document relied upon was the report of the applicant himself and it would not have been

impossible to proceed immediately after the alleged misconduct was detected in 1993 itself. If the evidences in the criminal proceedings were first to be recorded, as stated to have been suggested by the CBI, even then, as early as in 1999 the proceedings could have been initiated. Consultation with the CBI for each and every item, one for initiation, second for common proceedings etc., goes to prove that the authority has not acted of his own which is the requirement under Rule 14(2) of the CCS (CC&A) Rules 1965. A catena of decisions support the case of the applicant that inordinate and unexplained delay in initiating the proceedings has vitiated the very proceedings. This Tribunal had taken the same view in its decision dated 15.01.2003 in OA No. 514/2002.

11. Counsel for the respondents has, in his argument, submitted that since for conducting the proceedings, original documents were essential, and as these documents were already seized by the CBI in connection with the criminal case, the case could not be initiated till the return of the documents from the CBI, which too could return only after a decision not to file appeal against the judgment of the Sessions Court had been arrived at. Again, it was felt advisable to consult the CBI regarding holding of common proceedings. As such, the delay is fully explained. In support of the arguments, the counsel for the respondents has relied upon the following decisions:

(a) Food Corpn. of India v. George Varghese[2]:
(b) Bharat Coking Coal Ltd. v. Bibhuti Kumar Singh[3],

12. Arguments were heard and documents perused. The admitted fact is that the alleged incident was of 1993 and proceedings were initiated only in 2003. The advice of the CBI was to initiate action after recording of the evidence in the Criminal case, which was over as early as 1999. The counsel for the applicant was right in arguing that seeking the advice of CBI is not mandatory and that referring the matter at each and every level to the CBI confirms that there has been no independent application of mind and thus, Rule 14(2) of the CCS (CC&A) Rules is violated. Even if the disciplinary authority was well within his right to consult the CBI, such a consultation should be within a reasonable time as delay in initiation of proceedings would greatly prejudice the applicant. And in fact, the inordinate delay has greatly prejudiced the applicant. The counsel referred to certain decisions in support of his case wherein the decision was that delay in initiating the proceedings vitiates the very proceedings and that this Tribunal has also held the same view in its decision dated 15-01-2003 in OA 514/02.

13. Reference to the decisions in this regard would be appropriate at this juncture. First, as regards the reliance placed by the counsel for the respondents, in the case of Food Corporation of India, the facts of that case are that between March 14, 1974 and March 20, 1976 the respondent

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[2]1991 Supp (2) SCC 143
[3]1994 Supp (3) SCC 628

employee certified certain bills which enabled the Contractor to claim an excess amount of Rs 19,180/- from the appellant. Before the disciplinary proceedings could be initiated it appears that first information report was lodged on June 23, 1975 and as a result thereof the appellant stayed its hands so far as the disciplinary proceedings were concerned. The Special Judge convicted the respondent vide order dated January 25, 1978. The respondent preferred an appeal which was allowed, as he was given the benefit of doubt, and was acquitted vide the High Court's order dated October 23, 1979. The respondent who was earlier dismissed on conviction and then reinstated after acquittal, was served with the charge-sheet Thereupon he filed a writ petition in the High Court which was allowed by the learned Single Judge. The appellant filed a letters patent appeal challenging the order of the learned Single Judge. While the Division Bench agreed with the ultimate conclusion of learned Single Judge, it differed with him on the question of law but refused to interfere with the ultimate order on the ground of delay. FCI filed appeal and the Apex Court has held, ***"We do not think that the Division Bench was justified in refusing to interfere only on the ground of delay because the delay was not occasioned on account of inaction on the part of the appellant. The appellant acted fairly by staying its hands as soon as the prosecution was initiated. It did not proceed with the departmental enquiry lest it may be said that it was trying to overreach the judicial proceedings. If it had insisted on proceeding with the departmental inquiry, the***

respondent would have been constrained to file his reply which could have been used against him in the criminal proceedings. That may have been branded as unfair. It is true that between setting aside the order of dismissal and the service of the charge-sheet, there was a time gap of about eight months but we do not think that that can prove fatal."

14. In the above case, it was the very accused who was to face the disciplinary proceedings while in the instant case, the applicant was only a prosecution witness. Thus, the ratio in the said judgment cannot apply to the facts of this case.

15. In so far as the case of Bharat Coking Coal Limited, that was a case where proceedings were initiated on time but could not be concluded and the High Court refused to grant further time. The Apex Court has, therefore, after considering the facts of the case held, "***having regard to the serious nature of the charges levelled against Respondent 1 and the justifiable reasons canvassed by it for not being able to complete the enquiry within the time stipulated, the High Court should have allowed its prayer for extension of time to conclude the enquiry.***".

Thus, this decision is also not of any assistance to the respondents.

16. Coming to the decision relied upon by the counsel for the applicant, in

the case of Radhakrishnan (Supra) the Apex Court has held as under:-

> *The essence of the matter is that the court has to take into consideration all the relevant factors 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 particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the 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 their 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 the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.*

17. In a comparatively recent case of P.V. Mahadevan vs M.D. Tamil Nadu Housing Board[4],. the charge memo had been issued in the year 2000 for the irregularity in issuing a sale deed in 1990 to an employee of the Housing Board and was to superannuate shortly. Though the records were very much available with the respondent, no action has been taken against the appellant since 1990 for about 10 years; no explanation whatsoever was

4 2005(6) SCC 686

offered by the Housing Board for the inordinate delay in initiating the disciplinary action against the appellant. and reliance on the two decisions of the Apex Court in (*i*) *State of M.P.* v. *Bani Singh*[5] and (*ii*) *State of A.P.* v. *N. Radhakishan*[6] was placed in support of the appellant therein. The Apex Court has considered the aforesaid two judgments first as under:-

> **"4.** In the first case of *Bani Singh*, an OA was filed by the officer concerned against initiation of departmental enquiry proceedings and issue of charge-sheet on 22-4-1987 in respect of certain incidents that happened in 1975-76.... this Court observed as follows:
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> > "The irregularities which were the subject-matter of the enquiry are 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 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 grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."
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> **5.** In the second case of *N. Radhakishan* ..... till 31-7-1995 the articles of charges had not been served on the respondent. The Tribunal, however, held that the memo dated 31-7-1995 related to incidents that happened ten years or more prior to the date of the memo and that there was absolutely no explanation by the Government for this inordinate delay in framing the charges and conducting the enquiry against the respondent and that

5(1990)Supp SCC 738

6(1998) 4 SCC 154

there was no justification on the part of the State now conducting the enquiry against the respondent in respect of the incidents at this late stage. This Court, in para 19, has observed as follows:

> "*19. .....* The essence of the matter is that the court has to take into consideration all the relevant factors 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 particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the 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 their 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 the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations." (Emphasis supplied)

This Court held that there was hardly any explanation worth consideration as to why the delay occurred. In the circumstances, this Court held that the Tribunal was justified in quashing the charge memo dated 31-7-1995 .

After discussing the aforesaid decisions, the Apex Court further observed as under:-

> It is stated in the counter-affidavit for the first time that the irregularity during the year 1990, for which disciplinary action had been initiated against the appellant in the year 2000, came to light in the audit report for the second half of 1994-95. ..... The stand now taken by the respondent in this Court in the counter-affidavit is not convincing and is only an afterthought to give some explanation for the delay.
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> **Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. .....The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer."** (Emphasis supplied)

18. Disciplinary proceedings may be deferred when a criminal proceedings are pending. But that forms an exception, since, as held in the case of *Hindustan Petroleum Corpn. Ltd. v. Sarvesh Berry*,[7], *"It is a fairly well-settled position in law that on basic principles, proceedings in criminal case and departmental proceedings can go on simultaneously, except in some cases where departmental proceedings and criminal case are based on the same set of facts and the evidence in both the proceedings is common. It is*

7(2005) 10 SCC 471

in these cases, the court has to decide, taking into account the special features of the case, whether simultaneous continuance of both would be proper." Again, the requirement is that the accused in the criminal proceedings and the charged employee in the disciplinary proceedings should be one and the same even if the proceedings are to be deferred. That is not the case here. The applicant was only a prosecution witness It is also not the case that there shall be only a common proceedings in which event, as one of the charged officers is also an accused, proceedings were to wait. When the CBI initially recommended the initiation of proceedings, it did not suggest that such proceedings should be common proceedings. It was only when the respondents approached to seek their opinion as late as in 2002 that the CBI said that it had no objection. In fact, there is the least role of the CBI to play in the Departmental Proceedings. . Thus, there is absolutely no convincing explanation for the delay. The applicant has, thus, made out his case.

19. In view of the above discussion, the OA succeeds. The impugned order dated 20-09-2003 (Annexure A-1) is quashed and set aside. If the applicant is entitled to any consequential benefits in view of the quashing and setting aside of the charge sheet (for eg., if his case for promotion has either not been considered because of the proceedings or the decision of DPC has been kept in sealed cover), necessary action to make available such consequent benefits shall also be taken.

20. No costs.

(Dated, the 30th October, 2006)

N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

K B S RAJAN
JUDICIAL MEMBER

cvr.