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**CENTTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH : LUCKNOW**

Original Application No. 252 of 2005.

Lucknow, this the 19th day of May, 2006.

Hon'ble Mr. Justice Khem Karan, Vice-Chairman
Hon'ble Mr. A.K. Singh, Member (A)

R.D. Srivastava, aged about 44 years,
Son of late Sri Hari Mohan,
Resident of Ja-68, Aashiyana Colony,
Lucknow.

....Applicant.

(By Advocate : Shri D.K. Upadhyaya)

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Engineer-in-Chief, Army Headquarters, Kashmir House, DHQ Post, New Delhi.
3. Chief Engineer, Headquarters, Central Command, Lucknow.

....Respondents.

(By Advocate : Shri P. Kumar)

O R D E R

By Hon'ble Mr. A.K. Singh, A.M.

O.A. bearing No.252 of 2005 has been filed by the applicant, R.D. Srivastava (of the address given in the notice) against chargesheet, issued to him, by the respondents vide memo dated 27.4.2005. Applicant vide this O.A., has challenged the validity of the aforesaid memorandum of charges.

[Signature]

2. Brief facts of the case are that the applicant after joining Military Engineering Services was posted as Garrison Engineer (Electrical and Mechanical, Kheria Agra Air Force Station in September 1998. Applicant was granted selection grade to the post of Executive Engineer in the year 2001. A memorandum of charge was issued to him on 27.4.2005 under Rule 16 of the C.C.S (C.C.A) Rules 1965. The charges levelled in the memorandum relate to supply order issued to M/s Krishna Engineering Works, Agra Cantt, Agra and M/s S.M. Construction, Agra Cantt, Agra. It is alleged therein that orders for purchase of Ball Bearings were placed with the aforesaid firms on freakishly high rates. It has also been alleged therein that in June 1999, an amount of Rs.4237 was refunded by M/s Krishna Engineering Works and similarly another amount of Rs.7864 was also paid back by M/s S.M. Construction Agra Cantt., which was paid to them in excess of the prevailing prices of the ball bearings in question.

3. The applicant submits that as soon as the facts came to his knowledge he immediately directed the abovementioned firms to refund the excess amount paid to them as per the supply orders, in question. In view of this, there was no loss to Government. Applicant also submits that there is also a delay on six years in initiating the disciplinary proceedings, against him after the incident which is against the settled principles of law enunciated by the Apex Court. The applicant relies on the Supreme Court judgement in State of Punjab and Others Vs. Chaman Lal Goyal [Reported in 1995 (2) SCC 570] and State of Andhra Pradesh Vs. Radha Krishan [AIR 1998 SC 1833].

4. In brief, the applicant assails the memorandum of charges on the following important grounds:-

(i) That there has been an inordinately in issuing the aforesaid memorandum of charges to the

applicant and there is no plausible explanation for the same.

- (ii) That no case of misconduct is also made out against him.
- (iii) That the applicant did whatever he could, in discharge of his official duties.
- (iv) That amount paid in excess, was recovered and hence there is no loss to Government on this account.
- (v) That the impugned action of respondents in issuing a chargesheet to him cannot be justified on the touchstone of reasonableness and fairness and accordingly cannot be sustained in law.

5. On the basis of the above, applicant seeks the following reliefs in the O.A.

- (i) To set aside the impugned chargesheet dated 27.4.2005 issued by respondent NO.1 (as per Annexure (1) to the O.A.).
- (ii) To issue an appropriate direction to the respondents to stop further proceedings in pursuance of the chargesheet in question dated 27.4.2005.
- (iii) To issue any other relief which this Hon'ble Tribunal may deem just and proper in the circumstances of the case.

And,

- (iv) To allow the O.A. in question with all costs in favour of the applicant.

6. The respondents, on their part, have contested the O.A. on the following grounds.

- (i) That the O.A. in question is premature as the applicant has a right to defend himself in the

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disciplinary proceedings initiated by the department. Tribunal is not competent to interfere with the disciplinary proceedings at this interlocutory stage.

- (ii) That Rule 16, does not provide any limitation for issuance of chargesheets and there is no inordinate delay in issue of chargesheet in question.
- (iii) That applicant has also failed to produce any cogent evidence or any concrete proof of any malice or bias on the part respondent NO.1, in the issue of chargesheet in question.

7. On the basis of the above, the respondents submit that O.A. in question is devoid of any merits and deserves to be dismissed.

8. The applicant and the respondents were also heard in person on 20.4.2006 through their respective counsels. In their oral submission, the learned counsels reiterated their arguments, as above.

9. We have given our thoughtful consideration to the submissions made by the learned counsels on behalf of the applicant as well as the respondents and have also perused the records.

10. We find that the main objection raised by the applicant in chargesheet under reference is that no case of misconduct has been made out against him as the applicant has done whatever he would, do under the circumstances of this case. As soon as it came to his knowledge that supply orders for purchase of ball bearings, in question, with the two firms were placed at higher prices, he directed the aforesaid firms to refund the excess amount paid to them which was immediately complied with by them and in pursuance of it an excess amount of Rs.4237 was refunded by



M/s Krishna Engineering Works Agra Cantt and another excess amount of Rs.7864 was paid back by M/s S.M. Construction, Agra Cantt. We are unable to agree with this contention of the applicant, in as much as proper scrutiny in relation to prices was not done before placing orders the supply orders for purchase of ball bearings in question with the two firms. Even if we accept the submission of the applicant that reasonability of the supply order was certified by a Board of Officers comprising two Assistant Engineers, nonetheless it was also his responsibility to check, verify and to ensure that prices at which the orders for supply of ball bearings were being made were reasonable and not at freakishly high rates as the order in question were placed with the abovementioned firms his approval. There is also an element of dereliction of duty on the part of all concerned including the applicant and it is for the disciplinary authority and the inquiry officer to so into this aspect as this interlocutory stage as the relevant statute authorises them to do so. It is not proper for us to go into this aspect at this interlocutory stage.

11. In the case of Shri Parma Nanda Vs. State of Haryana and others [1989 (2) Supreme Court Cases 177], Hon'ble Supreme Court has held that Tribunal could exercise only such powers 'which the Civil Courts or the High Courts could have exercised by way of judicial review'. The Apex Court further observed that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with appellate jurisdiction. Tribunal cannot interfere with the findings of the Inquiry officer or the competent authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the Competent Authority either by way of an Act of legislature or rules made under proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice, what

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punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the Competent Authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the Authority.

12. In the case of State Bank of India Vs. Samarendra Kishore Endow [1994 (1) SLR 516], the Apex Court reiterated the same principles that a High Court or Tribunal has no power to substitute its discretion for that of the Authority. In the aforesaid judgments the Apex Court also held that Tribunal cannot interfere with the findings either of the Inquiry officer that of the Disciplinary Authority where the same are not arbitrary or perverse. The Apex Court has also held that adequacy of penalty unless it is malafide is certainly not a matter for the Tribunal to concern itself with.

13. We find that there is no finding of the Inquiry Officer or any decision of the Disciplinary Authority before us to decide the question whether the same is hit by any malafide or is arbitrary or perverse in nature. Hence Tribunal obviously cannot interfere with the proceedings at this interlocutory stage. In the case of Union of India Vs. Upendra Singh [Reported in JT 1994 (1) SC 658], Apex Court, held as under:-

"In the case of the charges framed in a Disciplinary Proceeding Tribunal or Court can interfere only if the charges framed with the imputation of particulars of the charges, if any, of misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the Tribunal has no jurisdiction to go into the correctness or truth of the charges. The Tribunal cannot take over the functions of the Disciplinary Authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into".

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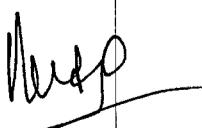
14. The Apex Court has reiterated the same principles in the case of Union of India Vs. A.N. Saxena [Reported in JT 1992 (2) SC 532].

15. Moreover, this Administrative Tribunal has been created under the Administrative Tribunals Act 1985 and hence cannot overlook the provisions of section 20 of the Administrative Tribunals Act 1985, which reads as under:-

"20. Applications not to be admitted unless other remedies exhausted- (1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service Rules as to redressal of grievances.

- (2) For the purposes of sub section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances.
 - (a) If a final order has been made by the Government or other authority, or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance, or.
 - (b) Where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.
- (3) For the purpose of sub-section (1) & (2), any remedy available to applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial".

16. It is clear on the face of the O.A. in question that the applicant has not availed of all the remedies available to him under the CCS (CCA) Rules 1965. There is no finding of the Inquiry Officer, on the conclusion of inquiry proceedings nor there is any decision of the Disciplinary



Authority thereon, before us. The applicant can raise the aspect of delay in issue of chargesheet etc. before the Inquiry Officer during the aforesaid proceedings. Unless there is a specific finding of the Inquiry Officer or that of the Disciplinary Authority/Appellate/ or Revisional Authority over the issue, this Tribunal cannot interfere with the matter at this stage. Tribunal cannot record any original finding or decision in the matter but can only conduct a judicial review of the same under the law. Tribunal cannot substitute its discretion for that of the authority as well.

17. Moreover with heavy load of responsibilities, Ministries under the Central Government are a little slow-moving in the normal course. Before issue of a chargesheet, to a Group 'A' officer, the Ministries/Departments have to consult Central Vigilance Commission and obtain their first stage advice in the matter. They have to fully satisfy the Commission, in regard to charges being levelled against the officer vis-à-vis the evidences available in support of the same. This naturally takes sometimes.

18. Even though it has to be specifically looked into as to whether a delay in the disciplinary proceeding has caused any prejudice to the applicant, nonetheless as held by the Apex Court in the case of State of Punjab and others Vs. Chaman Lal Goyal [JT 1995 (2) SC 18].

"At the sometime it has been observed that it is not the only course open to the Court and in a given case, the nature of offence and other circumstances may be such that quashing of the proceedings may not be in the interest of justice. In such a case, it has been observed, it is open to the Court to make such other appropriate order as it finds just and equitable in the circumstances of the case.

Applying the balancing process, we are of the opinion that the quashing of charges and of the order appointing the Inquiry Officer was not warranted in the facts and circumstances of the case. It is more appropriate and in the interest of justice as well as in the interest of

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administration that the enquiry which had proceeded to a large extent be allowed to be completed".

19. In the case of B.C. Chaturvedi Vs. Union of India [Reported in JT 1995 (8) SC 65], Apex Court held that delay in initiation of disciplinary proceedings in itself does not offend Article 14 or 21 of the Constitution as "each case depends upon its own facts". In this case, the delay in investigation by the CBI against delinquent employee was commented upon by the Apex Court as under

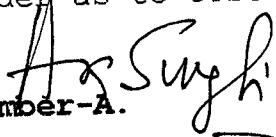
"Therefore, the delay in itself is not fatal in this type of cases. CBI had investigated and recommended that evidence was not strong enough for successful prosecution under the Prevention of Corruption Act 1988 but recommended to take disciplinary action. No doubt much time elapsed in taking necessary decisions at different levels. So the delay by itself cannot be regarded as violative of Article 14 or 21 of the Constitution."

The Apex Court enunciated the same principles in Secretary to Government. Prohibition and Excise Department Vs. L. Srinivasan [Reported in 1996 (1) ATJ 617 SC] and in Food Corporation of India Vs. V.P. Bhatia [Reported in JT 1998 (8) SC 16].

20. On the basis of the above, we have come to the conclusion, that the applicant has not been able to make out even a *prima facie* case, in his favour so as to warrant an interference by this Tribunal. Moreover, the O.A. filed at this interlocutory stage of the proceedings, is clearly premature and cannot be entertained at this stage, in view of the facts of the case as well as the provisions of law, as discussed above in detail.

21. Accordingly, O.A. in question deserves to be dismissed as premature. We order accordingly.

No order as to costs.


Member-A.

Vice-Chairman.

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