

Central Administrative Tribunal Lucknow Bench Lucknow.

O.A. No. 427/2006

This, the 16th day of October, 2008.

**Hon'ble Mr. M. Kanthaiah, Member(J)
Hon'ble Dr. A. K. Mishra, Member (A)**

Jhabbar Yadav aged about 58 years son of late Sri Ram Roop Yadav, Residen of Mohalla Bishunpurwa , Gandhi Nagar Basti (presently working as Senior Tax Assistant in the Income Tax Office, Basti),..

Applicant

By Advocate: Sri R.C.Singh

Versus

1. Union of India through the Secretary, Ministry of Finance, New Dehi- 110001.
2. Commissioner of Income Tax, Faizabad.
3. Additional Commissioner of Income Tax, Gonda Ranga, District- Gonda.
4. Income Tax Officer, Basti.
5. Shri O.P. Sachan, Commissioner of Income Tax, Faizabad.
6. Sri Mohammad Naeem, Inspector of Income Tax, Gonad.

Respondents

By Advocate : Sri Veer Raghav Chaubey for Sri Sunil Sharma.

ORDER

By Hon'ble Shri M. Kanthaiah, Member (J)

The applicant has filed the Original Application with a prayer to set aside the disciplinary proceedings instituted against him in pursuance of the impugned memorandum of charge sheet dated 18.8.2006 (Annexure No.A-1) issued by the respondents No. 3 on the following grounds:-

- i) The departmental proceedings initiated on the basis of the impugned charge sheet is wholly illegal, unjust , unfair , unreasonable, arbitrary and violative of Article 14 and 16 of the Constitution of India.
- ii) The impugned charge sheet dated 18.8.2006 has been issued after inordinate delay which is violative of principles of natural justice and fair play and is bad in the eyes of law.

- iii) When once the applicant has been promoted to the post of Senior Tax Assistant in the year 2001, the alleged misconduct or charges relating the earlier stood wiped out and no proceedings can be initiated against the basis of old and stale charges.
- iv) The charges have been levelled at belated stage due to malice and prejudice.

2. The respondents No.1 to 4 have filed counter affidavit denying the claim of the applicant stating that the O.A. is pre-mature, devoid of merit and as such is liable for dismissal.

3. Though the applicant has filed this O.A. against respondents No. 5 and 6 but did not press it against them and as such no notices have been issued to them and O.A. is dismissed against them as not pressed.

4. The applicant has filed Rejoinder reply denying the stand taken by the respondents and also reiterated the pleas taken in the Original Application.

5. Heard both sides.

6. The point for consideration is whether the applicant is entitled for relief as prayed for.

7. The admitted facts of the case are that the applicant was initially appointed as Lower Division Clerk (LDC) in the month of November 1969 and posted to the Income Tax Office, Bulandsahar (U.P.) and thereafter, he was promoted to the post of Upper Division Clerk (UDC) in the year 1988 while posted at Gorakhpur. He was transferred to Income Tax Office Basti in 1989 and thereafter, transferred to Azamgarh in 1993 and from there to Gonda in September, 1994. During the month of July, 2001, restructuring of Income Tax Department took place and the applicant was promoted to the restructured cadre of Senior Tax Assistant vide order dated 26.7.2001 (Ann.A-3).

Consequent upon restructuring of the Income Tax Department, a range was created at Gonda and a charge at Faizabad. The office of the Income Tax Officer, Basti came under the administrative control of Additional Commissioner of Income Tax Gonda Range Gonda and Commissioner of Income Tax, Faizabad charge, Faizabad. During the year 2003, the applicant was transferred from the Income Tax Basti to the office of the Behraich by the Joint Commissioner of Income Tax, Gonda Division, Gonda vide order dated 4.7.2003, upon which when he made request for cancellation of his transfer; the authorities have cancelled the same vide order dated 18.8.2003 (Ann. A-4). Thereafter, when the applicant was transferred from Income Tax Office Basti, to the Tax Recovery Office, Gonda vide order dated 17.10.2003 (Ann- A-5), he made a request for cancellation of such transfer and when there was no response, he filed O.A. No. 1331/2003 and thereafter another O.A. 423/2004 on the file of CAT, Allahabad Bench.

8. During the years 2004-05 and 2005-06, there were promotions to various posts including that of Office Superintendent and the persons junior to the applicant were promoted to the post of Office Superintendent but the applicant has been left out without any reason and when the applicant approached the Chief Commissioner of Income Tax, Lucknow seeking justice in respect of his promotion to the Post of Office Superintendent, the impugned charge sheet has been issued vide Memorandum dated 18.8.006 (Ann- A-1), levelling the charges against him, proposing to hold an enquiry under Rule 14 of the Central Civil Services (Classification Control and Appeal) Rules, 1965 (Ann.1) along with the Article of Charges which are as follows:-

- i) That Shri Jhabbar Yadav has two wives. Thus, he has violated Rule 21 of the CCS (Conduct Rules), 1964;
- ii) That Shri Jhabbar Yadav brought political and outside influence to bear upon his superior authority to further his interests in respect of his service under Govt. Thus, he has violated Rule 20 of the CCS (Conduct Rules), 1964.

iii) That Shri Jhabbar Yadav, while functioning as UDC at Gorakhpur, flouted financial norms and misused LTC advance taken on 2.5.1989. This, was an act of unbecoming of a Govt. servant and he violated Rule 3 of the CCS (Conduct Rules) 1964.

9. Now, the applicant has filed this O.A. to set aside the disciplinary proceedings instituted against him and challenged the impugned memorandum of charge sheet dated 18.8.2006 mainly on the ground of inordinate delay. He also attributed malafides and bias against the respondents No.5 and 6 stating that they are instrumental for his continuous harassment and for issuance of impugned charge sheet but subsequently, he did not press the claim against them and as such going into the merits of allegations of malafides and bias made against the said respondents does not require any further discussion and also finding. Thus the claim of the applicant is mainly based on the ground of inordinate delay in issuance of charge sheet for initiating disciplinary proceedings which, according to him, is illegal and against the Principle of natural justice and the same is required for consideration for deciding the dispute in this matter.

10. As per the charge sheet (Ann. 1), charge No. 1 is in respect of the applicant, having two wives which is in violation of Rule 21 of CCS (Conduct Rules), related to the year 1994, whereas second charge that he brought political and outside influence in respect of his transfer, which is the violation of Rule 20 of the CCS (Conduct) Rules relating to the period of 1994-95 and the third charge under Rule 3 of the CCS (Conduct) Rules is in respect of floated financial norms and misused LTC advance taken by the applicant on 2.5.1989.

11. Admittedly charges 1 and 2 are pertaining to the period of more than 10 to 12 years whereas the charge No., 3 relates back to 18 years. For conducting any enquiry against the applicant in respect of all these

charges, it does not require much time and also there is no time consuming factors for verification of records and for initiating action. There is no explanation from the respondent for causing such delay to call for explanation or for initiating disciplinary proceedings against the applicant.

12. Without taking any action or initiating any proceedings for more than 10 years, authorities maintained silence and also promoted the applicant to the post of Senior Tax Assistant in the year 2001. But when he reached to the next promotion for the post of Office Superintendent, they did not consider him and later issued impugned charge sheet (Ann. 1) for initiating departmental enquiry against the applicant under Rule 14 of the CCS (CCA) Rules, 1965.

13. The learned counsel for the applicant argued that the respondent have issued the impugned charge sheet date 18.8.2006, for the events of more than 10 years with a view to create impediment for his promotion to the post of Office Superintendent and to initiate disciplinary proceedings basing on such delayed charge sheet causes prejudice to the applicant and such delay also defects justice and in support of it, he relied on the following decisions:-

(1) 2005 SCC (L&S) 861 P.V.Mahadevan Vs. M.D. Tamil Nadu Housing Board; it has been held that :-

"A. *Departmental enquiry- Delay in initiation of – Effect- Inordinate delay of 10 years in initiating departmental enquiry against appellant- No convincing explanation given by respondent employer in respect of- In the circumstances of the case, held , allowing respondent to proceed further with the departmental proceedings at this distance of time would be very prejudicial to appellant- Appellant already suffered enough and more on account of the disciplinary proceedings- Hence, the charge memo issued against him quashed- Departmental enquiry*



put to an end- Appellant entitled to all retiral benefits- T.N.State Housing Board Act, 1961 (17 of 1961) Ss. 118 and 119.

B. Departmental Enquiry- Enquiry procedure- Delay- Protracted disciplinary enquiry- Duty to avoid- Considering mental agony and suffering caused to the employee concerned due to protracted enquiry, held , protraction should be avoided not only in the interests of the Government employee but in public interest and also in the interests of inspiring confidence in the minds of government employees."

(2) 2006 (3) ATJ page 77 **Kailash Naik Vs. Union of India and others**; it has been held that:-

"Central Civil Services (Classification , Control and Appeal) Rules, 1965- Rule 11- Disciplinary proceedings, Delay- Delay of more than 11 years in initiating disciplinary proceedings- No satisfactory explanation were given for delay-- On facts disciplinary authority was not serious enough in pursuing the charges against the applicant. Impugned show cause notice under Section 11 of the CCS (CCA) Rules and charge sheet held quashed."

14. In the case of **P.V. Mahadeval (Supra)**, there was inordinate delay of 10 years in initiating departmental enquiry against delinquent officer and further there was no convincing explanation from the authorities for causing such delay and on that ground the Hon'ble Apex Court quashed the impugned charge sheet and thus put to an end to the Departmental enquiry proceedings.

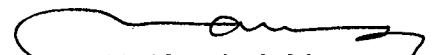
15. Similarly, there was delay of more than 11 years in initiating the disciplinary proceedings in the case of **Kailash Naik Vs. Union of India and others**, and on the ground of inordinate delay , the impugned charge sheet was quashed.

16. Admittedly, in the instant case also, there was inordinate delay of more than 10 years in issuing charge sheet for initiating disciplinary proceedings and further there was no proper explanation from the respondent authorities for causing such inordinate delay and in view of the above circumstances, the decisions relied upon by the applicant clearly supports the case of the applicant. Under the above circumstances, the applicant is justified in challenging the impugned charge sheet and the departmental proceedings.

17. In the result, the O.A. is allowed, quashing the impugned memorandum of charge sheet dated 18.8.2006 (Ann.A-1) and consequential disciplinary proceedings initiated against the applicant. No costs.


(Dr. A.K. Mishra)
Member (A)

HLS/-


(M. Kanthaiah)

Member (J)

16-10-2008