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Central Administrative Tribunal Lucknow Bench Lucknow

Original Application No: 577 /2006

This, the 10/6 day of September, 2009

**Hon'ble Ms. Sadhna Srivastava, Member (J)
Hon'ble Dr. A. K. Mishra, Member (A)**

Dr. Prem Chandra S/o Late Sri A.C. Srivastava (Retired) Gen. Manager Govt. OPIUM & Alkloid Works, Ghazipur, U.P. R/o 1/80 Vaibhav Khand,(Near Krish Central Academy Gomti Nagar, Lucknow.

Applicant

By Advocate Sri Pankaj Srivastava.

Versus

1. Union of India through the Secretary Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. General Manager (Finance) OPIUM & Alkoloid Factories Saraswati House, 5th Floor 27 Nehru Palace, New Delhi.
3. Chief Controller Govt. OPIUM & Alkoloid Factories Saraswati House, 5th Floor, 27 Nehru Palace, New Delhi.

Respondents

By Advocate Sri Azmal Khan.

ORDER

By Hon'ble Dr. A. K. Mishra, Member (A)

The applicant has challenged the charge sheet of 28.6.2006 which was served on him on 30.6.2006, the date of his superannuation from government service. He has sought for quashing of this charge sheet and also for a direction to the respondent authorities to release his regular pension and other retiral benefits.

2. The applicant was working under the Chief Controller of Government OPIUM ALKALOID Factory (respondent No. 3) and retired as the General Manager of the Factory at District Ghazipur. He discharged the duties of the General Manager for a number of years and had no intimation about any disciplinary

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action being contemplated against him. According to him, he had a very satisfactory service career and had applied for sanction of his pension and other retiral benefits which he hoped would be released in due course soon after his superannuation. But unfortunately for him, the impugned charge sheet was issued on 28.6.2006 and was served on him when he was taking farewell from the employees on the date of his retirement. He has stated that the disciplinary proceeding was an outcome of the allegations made by the president of the Factory Karmchari Sangh, (Trade Union Leader) in the year 1997 and the charge sheet served on him in 2006 was in respect of stale matters. According to him, the charge sheet has been issued with malafide intentions to harass him mentally and financially. In spite of his representations to the authorities, no one has extended a helping hand to him. Hence, he had no alternative but to file this application.

3. The respondents have submitted that the charge sheet was based on many allegations which were received against the applicant during his tenure as General Manager of Gazipur Factory. The serious allegation is about his acquisition of a flat at Kandivali, Mumbai in the year 1997 without giving prior intimation to the competent authority and also in not disclosing the correct purchase price of the flat.

4. As regards, delay in formulating the charge sheet and serving it on the applicant, the respondents have taken the plea that the applicant himself had not co-operated with the valuation authority to ascertain the correct value of the flat purchased by him. He was directed by the Respondent No. 3



as late as 30.7.2003 for getting the flat valued by the valuation authority of the Income Tax Department. The applicant failed to comply with this direction. Therefore, it is claimed by the respondents that it was not a case of inordinate delay in issuing the charge sheet against the applicant; whatever delay was there could not be wholly ascribed to their inaction. They have denied any malafide against the applicant, nor any intention to deliberately harass him after his retirement.

5. The sole question to be adjudicated is whether there was inordinate delay in issuing the charge sheet against the applicant and whether such delay could be ascribed to inaction on the part of the respondent authorities.

6. Articles-I and II relate to the year 1997. Article -III alleges non-compliance with the directions of the competent authority in the matter of getting proper valuation of the flat purchased by the applicant. The statement of imputation relating to this article mentions that the respondent No. 3 had issued a memorandum on 30.7.2003 in which the applicant was expressly given a direction to get the flat valued by the valuation authority. In spite of such specific direction, the applicant failed to comply with the order of the competent authority. Earlier, he was asked to provide assistance to the Assistant Valuation Officer of Income Tax Department Mumbai. Article -4 relating to non-utilization of GPF advance for the purpose for which it was sanctioned related to a period prior to 1997. Except for Article-X which related to the tenders invited by the applicant in the year 1997, other Articles do not specify the dates/orders to which the facts related.



7. The applicant has stated in his rejoinder affidavit that the allegation of acquiring immovable property (the flat at Mumbai) without previous knowledge of the competent authority was false. According to him, he had informed the Respondent No. 3 in his letter dated 9.5.1997 along with which an application for sanction of GPF advance of Rs, 2,50,000/- in the prescribed proforma giving all the details about the property to be acquired was furnished. Thereafter, the respondents vide letter dated 27th June 1997 asked him to send some more details, which were supplied. He again requested on 01.07.97 to sanction the advance amount. The applicant was directed on 21.6.97 by the respondent authorities to repay GPF amount earlier drawn by him to which the applicant gave a detailed reply stating that the advances would also be utilized for the proposed purchase of the flat. He requested again for sanction of the GPF advance of Rs. 2,50,000/- applied for. Thereafter, the respondent authorities issued a memorandum to him on 29.1.99 seeking his explanation about the purchase of the flat to which he filed a detailed reply on 12th February 1999. He submitted 3 more letters on 20.10.2001, 14.5.2002, 17.12.2002 seeking sanction of TA & D.A for his travel to Mumbai for valuation of the flat.

8. According to him he had given full co-operation to the department all along and there were no laches on his part in complying with the direction of the competent authority.

9. According to the conduct rules, prior intimation has to be given in respect of acquisition of an immovable property. It is

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only in the event of acquiring it from someone other than a regular or reputed dealer prior sanction is required. The applicant had given full details of the property he was intending to purchase from a reputed dealer and applied for sanction of GPF advance. There was nothing irregular about it. He denied to have received any letter dated 30.7.2003 from the respondents asking him to get the flat valued by the valuation officer of Income Tax Department. Nevertheless, he had intimated earlier his willingness to go to Mumbai whenever any date about such an inspection by Income Tax authority was fixed and his travel for the purpose was sanctioned by the Government.

10. We find that except for the averments in respect of Articles I, II and III, the counter affidavit does not throw much light on the other articles of charges.

11. Although, the learned counsel for the respondents vehemently denied that the allegations had originated from a complaint of Trade Union Leader, it is seen that the name of Sri Ram Dev Singh, president of OPIUM and ALKALOID Factory Karamchari Sangh Ghazipur has been cited as one of the witnesses in the annexure to the charge sheet. The Articles of charges and the statement of the imputation relating thereto contain some details which are admittedly in respect of facts pertaining to 1997 or earlier period. As regards, Articles I, II and III, the discussion made in the preceding paragraphs would show that the applicant had furnished relevant information about his proposed acquisition of a flat at Mumbai

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to the respondent No. 3 in 1997 itself. He had clarified the points as and when raised by the respondents.

12. Under the circumstances, we are not convinced that the delay in finalizing the charge sheet can be attributed to non-co-operation of the applicant. The respondents have not filed a copy of the letter dated 30.7.2003 in which the applicant was asked to get the valuation of flat assessed by the Income Tax authority. On the other hand, the applicant has filed letter dated 24th February, 2005 of Respondent No.3 calling for his explanation and asking for requisite documents which was replied by the applicant on 22nd March 2005 giving all the particulars relating to purchase of Flat No. 702, Gokul Garden '2' Building, Kandiwali, East, Mumbai. He has filed copies of his letter dated 9th March 1997 along with a copy of the application dated 7.5.1997 for GPF advance in prescribed proforma where he had given full details about proposed acquisition along with details of the GPF advances taken by him earlier which he proposed to utilize for the acquisition. Therefore, it could not be claimed by the respondents that they were in the dark about this transaction of 1997. Similarly, the statement of imputation in respect of Article -X mentions the facts relating to 1997 tender. Article IV again, relates to a period prior to 1997. No details in respect of other articles of charges are forthcoming either from the charge sheet or from the statement of imputation. No dates, nor year of occurrence of the events have been indicated in the charge sheet. From an indistinct copy of a letter dated 12.2.99 in reply to the letter dated 29.1.99, it is seen that the applicant had given explanations in respect of the other charges contained in



Articles V, VI, VII and VIII. It would not be incorrect to hold that these charges also related either to 1997 or 1998. Some of the charges also appear to be very general in nature without specific details to enable the applicant to make an effective representation.

13. The learned counsel for the applicant cited the judgment of Supreme Court in P.V. Mahadevan Vs. MD, T.N. Housing Board reported at (2005) 6 SCC -636 in which it was held that initiation of disciplinary proceeding after a lapse of 10 years in respect of irregularities committed by an employee could not be sustained in the absence of convincing explanation by the respondent employer at that distance of time. It was also held that such a proceeding after lapse of long time would be very prejudicial to the applicant who had suffered for a long time. The Supreme Court had examined the decision in State of Madhya Pradesh Vs. Bani Singh and other reported at 1990(1) LLN 780 and State of Andhra Pradesh Vs. N. Radhakishan reported at 1998 (23) LLN 452 and endorsed the view that though normally disciplinary proceedings should be allowed to take its course as per relevant rules, undue delay in initiating disciplinary proceedings defeated the cause of justice. Such delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay. If there is no proper explanation for the delay in initiating a disciplinary proceeding it would be unfair to permit such a departmental proceeding to continue.

14. We find that all the facts relating to the charge sheet pertain to 1997/1998 or earlier times. The respondent



authorities had full knowledge of these allegations all these years. They have taken the ground of non-cooperation of the applicant only in respect of charge No. 3 which is also not borne out in the face of the evidence adduced by the applicant along with his rejoinder affidavit.

15. We find that the applicant has been made to suffer for a very long time. Except for his provisional pension, his retiral dues have been held up. Therefore, we find that the ratio of the judgment of the Apex Court in P.V. Mahadevan (supra) is applicable in the present case also.

16. In the circumstances, we allow this application and quash the charge sheet issued against the applicant. No costs.


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


(Ms. Sadhna Srivastava)
Member (J)