

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 545/98

Date of Decision: 30.10.98

Raghunath Ramachandra Howale Petitioner/s

Shri S.P. Inamdar. Advocate for the
Petitioner/s.

v/s.

Union of India and others. Respondent/s

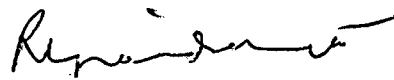
Shri S.S.Karkera, for Advocate for the
Shri P.M.Pradhan. Respondent/s

CORAM:

Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri D.S.Baweja, Member(A)

- (1) To be referred to the Reporter or not? *no*
(2) Whether it needs to be circulated to *no*
other Benches of the Tribunal?


(R.G. Vaidyanatha)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, BOMBAY:1

Original Application No. 545/98

Friday the 30th day October 1998.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S. Baweja, Member (A)

Raghunath Ramchandra Howale
Residing at
Subhash Tekadi
Ambedkar Chowk,
Opp. Block No. A 387,
Ulhasnagar.

... Applicant.

By Advocate Shri S.P. Inamdar.

V/s.

Union of India through
The Director General
Department of Posts
Dak Bhavan,
New Delhi.

Director Postal Services
Mumbai Region, Mumbai
Office of P.M.G. Mumbai.

Sr. Superintendent of Post
Offices, Mumbai South Division
Mumbai, Indian Globe Chamber,
2nd floor, 142, Walchand Hirachand
Marg. Mumbai.

... Respondents.

By Advocate Shri S.S.Karkera for Shri P.M.Pradhan.

ORDER (ORAL)

¶ Per Shri Justice R.G.Vaidyanatha, Vice Chairman.

This is an application filed by the applicant challenging the issuance of charge sheet against him by the respondents. The respondents have filed reply opposing the application. Since the point involved is short, we are disposing of the O.A. at the admission stage after hearing both the counsels.

2. The applicant who was working as clerk in postal department said to have committed mis-conduct on 29.12.1989. A cash of Rs. 66,564.90 was found missing. The accounts were not written properly.

On that basis a complaint was lodged with the Police. The Police investigated and charge sheet was filed against the applicant. After regular trial the applicant was acquitted on 20.10.1994. No appeal has been filed against the judgement. In the meanwhile the applicant was promoted by order dated 9.12.1995. Then the respondents have issued a charge sheet against the applicant on 27.8.1997 for the mis-conduct of 29.12.1989, which is on the eve of the retirement of the applicant on 30.8.1997. Being aggrieved by issue of the charge sheet the applicant has approached this Tribunal for challenging the same on the ground of delay and on the ground of acquittal in the criminal case on the same or similar grounds.

3. The respondents have filed reply justifying the issuance of charge sheet. They say that the applicant has committed grave mis-conduct and therefore it is found necessary to issue the charge sheet and to continue the same even after the retirement of the applicant. It is admitted that there was delay in issuance of the charge sheet but it is stated that it was due to administrative delay and delay should not come in the way of issuance of charge sheet which was in view of grave mis-conduct of the applicant.

4. The applicant has filed M.P. 641/98 for amendment of the O.A. and to implead one additional respondent. In our view there is no merit in the M.P. Therefore it is liable to be rejected.



5. We have already seen that the allegation against the applicant is that on 29.12.1989 a cash of Rs. 66,564.90 was missing and on the same ground a charge sheet was filed by Police alleging that the applicant has mis-appropriated the said amount. After trial the applicant has been acquitted. Now the question is whether on the same ground and same material a departmental enquiry should be allowed to continue. It is true that there is no legal bar for departmental enquiry to be conducted even though the official has been acquitted for criminal case. It is well settled that if the allegations are same and then conducting the departmental enquiry after acquittal in the criminal case should not normally be permitted. But the learned counsel for the respondents submitted that the charge-sheet issued in the departmental enquiry is for mis-conduct under service rule and not for mis-appropriation as alleged in the criminal case. As far as the ground of charge that there was shortage of cash and the applicant did not account for the same, it is common to both the criminal charge sheet and the departmental charge sheet.

6. We find that there is inordinate delay in the issue of the charge sheet for an incident of 29.12.1989. The present charge sheet was issued by the department in August 1997. That means the delay of nearly 8 years in issue of charge sheet. There was no bar to issue the charge sheet earlier by the department. The applicant was acquitted in October 1994, even then the department has taken three years in issuing the charge sheet.

7. The delay may be due to so many reasons. In the present case the respondents have not explained for the delay of 3 years in issuance of the charge-sheet after acquittal in the criminal case. Except stating that there was some administrative delay no reasons are given in the written statement as to how and why the delay has occurred. In the facts and circumstances of the present case, particularly in view of the acquittal of the applicant in criminal case and in view of his retirement, the issue of charge-sheet which is on the eve of retirement we find the delay is fatal.

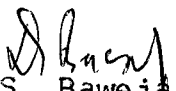
8. The learned counsel for the applicant invited our attention to some decisions touching the question of delay. In (1998(1) ATJ 560) State of Andhra Pradesh V/s. N. Radhakrishnan the Supreme Court had observed that even if the charge sheet is issued in time and there is a delay in disposal of the same, it may be a case for quashing the departmental enquiry depending upon the facts and circumstances of the case and the explanation for the delay. The learned counsel for the applicant has also relied on (1989(4) SLJ 495 (K.K. Sood V/s. Union of India and others) and 1998(1) SLJ 383 (K.C. Brahmachary V/s. The Chief Secretary and others). It is pointed out that the charge sheet is issued after delay and that too on the eve of retirement of the official and it was held to be colourable exercise of the power and no such delay can be condoned.

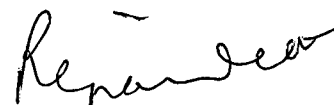
9. In the present case we find that delay of three years in issue of charge sheet after the disposal of the criminal case. Then we find that the charge sheet is issued on the eve of the

retirement namely on 27.8.1997. The applicant retired from service on 31.8.1997. Further we find that the loss of an amount of Rs. 66,564.90 has been made good by the applicant's wife and deposited the same in the department. It is also seen that after the disposal of the criminal case the applicant has been promoted. In the peculiar circumstances of the case we hold that the charge sheet issued on the eve of the retirement of the applicant after undue delay should be quashed.

10. In the result the application is allowed. In the peculiar facts and circumstances of the case, the charge sheet dated 27.8.1997 issued by the respondents is hereby quashed. The respondents are directed not to proceed with the departmental enquiry on the basis of the said charge sheet. M.P. 641/98 is rejected. In view of this all the pensionary benefits to which the applicant is entitled should be released. Prayer for interest is rejected.

In the circumstances of the case there will be no order as to costs.


(D.S. Baweja)
Member (A)


(R.G. Vaidyantha)
Vice Chairman

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