

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 1019/98

Date of Decision: 22.1.1999

Shri U. Paulchamy Petitioner/s

Shri M.S. Ramamurthy Advocate for the
Petitioner/s.

v/s.

Union of India and others Respondent/s

Shri R.R. Shetty Advocate for the
Respondent/s

CORAM:

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

Hon'ble Shri D.S. Bawej, 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
(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. 1019/98.

Friday the 22nd day of January 1999.

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

U. Paulchamy
Deputy Controller of
Accounts, Bhabha Atomic
Research Centre,
Central Complex,
Trombay, Mumbai.

... Applicant.

By Advocate Shri M.S. Ramamurthy.

V/s.

Union of India through
The Secretary,
Department of Atomic Energy
Government of India,
Anushakti Bhavan,
Chhatrapati Shivaji Marg.,
Near Gateway of India
Mumbai.

The Additional Secretary
Department of Atomic Energy
Government of India
Anushakti Bhavan,
Chhatrapati Shivaji Marg.
Mumbai.

Shri U.C. Gupta
Deputy Chief Executive,
Nuclear Fuel Complex,
ECIL Post, Hyderabad.

... Respondents.

By Advocate Shri R.R.Shetty.

O R D E R (ORAL)

(Per Shri Justice R.G.Vaidyanatha, Vice Chairman)

This is an application filed by the applicant challenging the charge-sheet dated 27.11.1997 issued by the respondents. The respondents have filed reply opposing the application. We have heard both counsels regarding admission and interim relief.

2. The applicant has been charge-sheeted for departmental enquiry by charge-sheet dated 27.11.1997 alleging certain procedural irregularities, conspiracy with other officials, mis-appropriation

of certain amount. For the same charges the applicant was prosecuted in criminal case R.C. No. 5(A) of 1991 on the file of Special Judge at Hyderabad. The applicant was acquitted by the Criminal Court by judgement dated 29.4.1994. Therefore the applicant's contention is that the charge-sheet cannot be issued for holding departmental enquiry on the same set of facts which were subject matter of the Criminal case. The applicant has also challenged the charge-sheet on the grounds of delay and also challenged the charge-sheet on merits stating that he has not committed any mis-conduct and the allegation in the charge-sheet is false.

3. The respondents have filed reply opposing the application while admitting that the applicant has been acquitted by the Criminal Court. They have stated that there is no bar in initiating the departmental enquiry.

4. In case a departmental enquiry is ordered to be held it is well settled that the Court or Tribunal cannot decide the correctness of the allegations in the charge-sheet at the threshold. The allegation has to be proved during the departmental enquiry and then only the Court can go into the merits of the case; even then, the judicial review is limited. Therefore, we do not want to go into the merits of the case alleged in the application and pressed at the time of argument.

5. The learned counsel for the applicant argued that the allegation in the Criminal case and the allegation in the charge-sheet are identical and therefore on acquittal by the Criminal Court the

departmental enquiry cannot be proceeded on the same set of allegation.

We have perused the allegations in the charge-sheet and also the judgement of the Criminal Court. There was a charge against the applicant regarding the mis-appropriation of amount and conspiracy with other officials. The Criminal Court has acquitted the applicant. Therefore, in the departmental enquiry the applicant cannot be given charge-sheet for the same offence of mis-appropriation and conspiracy.

6. Then there is allegation on the part of the applicant in procedural lapses in the dis-charge of the duties. The learned counsel for the respondents contended that there is no bar for the administration to enquire into the question of procedural lapses of the applicant in dis-charge of his duties. The learned counsel for the applicant contended that no rules have been produced to show as to what where the duties. It is for the department to see what are the duties of the applicant and in what manner he failed in discharging the duties and whether it leads to mis-conduct within the meaning of CCS(CCA) Rules. Since the question is on merits, we do not want to express any opinion. It is open to the applicant to defend his case to show that he had done his duties properly and there was no lapses on his part.

7. No doubt, the applicant was given two promotions and after acquittal from Criminal case, the respondents have issued charge.sheet. The respondents were bound to give promotion when no criminal case was pending and no disciplinary enquiry pending. No doubt, there is a delay in issuing the

charge-sheet about three years and odd after the Criminal case. They have given proper explanation in the reply. The learned counsel for the respondents on instruction submitted that there is some delay as the records were with the CBI. In the facts and circumstances of the case we find that it is not a fit case to quash the charge-sheet only on the ground of delay. The learned counsel for the applicant invited our attention to the judgement dated 30.10.1998 in OA 545/98. No doubt, the Tribunal had quashed the charge-sheet on the ground of delay. But that is again a question of fact to be decided in the peculiar facts and circumstances of the case. In that case, among other things, we have noticed delay of three years and odd in issuing the charge-sheet, and the charge-sheet was issued just one day prior to the retirement of the official. In those circumstances, we held that the delay was fatal in the peculiar facts and circumstances of that case.

8. As pointed out by the Supreme Court in 1995(2) SLJ 126, that in a given case only on the ground of delay the charge-sheet may be quashed on the facts and circumstances of each cases. In the light of the arguments advanced before us, we are inclined to say that this is not a fit case to quash the charge-sheet only on the ground of delay.

9. We also notice that the charge-sheet was issued on 27.11.1997. The applicant has approached this Tribunal about one year later. He filed reply in January 1998 and he has approached this Tribunal

about 10 months later. In the facts and circumstances it is not a fit case for the Tribunal to interfere in the issuance of the charge-sheet for holding a departmental enquiry.

10. In the result, the O.A. is disposed of at the admission stage. However, we direct the Disciplinary Authority and Enquiry Officer not to go into the question of mis-appropriation and the question of conspiracy between the applicant and other officials. But the Departmental Enquiry should be confined only to the question of irregularities of the applicant in the matter of procedural lapses on his part and dispose of the enquiry case according to law. Since this is an incident pertaining to ¹⁹⁸⁷ ~~1998~~, the Disciplinary Authority and Enquiry Officer to expedite the disposal of the enquiry case as expeditiously as possible.

(S. Agarwal)
(D.S. Baweja)
Member (A)

R. Vaidyanatha
(R.G. Vaidyanatha)
Vice Chairman

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