

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH, AT HYDERABAD.

O.A. NO.783 OF 1997.

Dated Hyderabad the 21st July, 1997.

BETWEEN :

Dr. C. Uma Malleswara Rao,
aged about 51 years,
Son of C. Lakshmi Narasimham,
Working as Joint Secretary,
Revenue Department,
Government of A.P.
Secretariat, Hyderabad. Applicant.

A n d.

1. The State of Andhra Pradesh,
represented by its Chief Secretary,
Secretariat, Hyderabad.
2. The Government of India,
represented by its Secretary,
Ministry of Personnel, Public Grievances &
Pension, Department of Personnel & Training,
New Delhi. Respondents.

Counsel for the Applicant :- Mr. P.V.S.S.S. Rama Rao.

Counsel for the Respondents :- Mr. N.R. Devaraj, Sr. CGSC.
Mr. P. Naveen Rao, for R-2.

CORAM :

THE HON'BLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

THE HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER (JUDL.)

O R D E R.

(As per Hon. Mr. B.S. Jai Parameshwar, Member (J)).

Heard Mr. P.V.S.S.S. Rama Rao, learned
counsel for the applicant, Mr. N.R. Devaraj, learned
Senior Standing Counsel for the respondent No.1 and
Mr. P. Naveen Rao, learned counsel for the respondent
No.2.

2. This is an application under Section 19
of the Administrative Tribunals Act. The application
was filed on 24.6.1997.

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3. The facts giving raise to this O.A. may, in brief, be stated thus :-

(a) During 1978 the applicant was selected and appointed as Deputy Collector, Grade I through the A.P.P.S.C. Between 5.4.80 and 27.7.83 the applicant was working as the Revenue Divisional Officer, Guntur. He was in charge of acquisition of lands in Guntur and other five taluks within his jurisdiction. It is alleged that the applicant while working in that capacity had committed certain irregularities and had violated the circular instructions thereby causing unintended expenditure on the State exchequer.

(b) In connection therewith a major penalty charge memo. has been served on the applicant on 13.6.97.

(c) During this interregnum period i.e. between 27.7.83 and 12.6.87 the applicant was promoted to the post of Special Deputy Commissioner and appointed to I.A.S. Cadre in the year 1988. His year of allotment is 1984. It is stated that the applicant is likely to be promoted to the Selection Grade scale in IAS in the near future.

4. Being aggrieved by the issuance of the charge memo. the applicant has filed this O.A. ^{praying} for quashing the charge Memo. issued in G.O.Rt.No.2578(GA, SCD) Department dated 13.6.97 (page 11 of the O.A.) on the following grounds :

(a) That there has been an inordinate delay of 14 to 17 years in initiating the disciplinary proceedings.

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- (b) That about 7 officers junior to him bore grudge towards him and they were instrumental in issuing the impugned charge memo.
- (c) That the charge levelled against him is vague, indefinite and not precise; that the names of the land owners and the villages where the acquired lands were situated are not mentioned in the charge memo.
- (d) That while he was working at Guntur he was a State Group A officer and that now the disciplinary proceedings cannot be initiated against him under the All India Service Disciplinary Rules, 1968² and
- (e) That the promotions held by him have the effect of wiping out the misconduct, if any, alleged to have been committed by him while working at Guntur².

5. A counter has been filed on behalf of the respondent No.2. The sum and substance of the counter is that they became aware of the irregularities committed by the applicant recently and that the promotions held by the applicant could not have any effect on the misconduct noticed by them recently; that there is absolutely no delay in initiating the disciplinary proceedings; that no prejudice has been caused to him and that he has approached the Tribunal in haste without submitting his explanation to the charge memo²; that there is no vagueness or indefiniteness in the charges served on the applicant and that there are no merits in the O.A.

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6. The learned counsel for the applicant mainly canvassed before us the grounds of delay, effect of promotion and vagueness in the charges levelled against the applicant. To buttress his various submissions, the learned counsel relied upon the following citations:-

- i) The State of Punjab v. Dewan Chuni Lal (1970 SLR 375 para 10)
- ii) The Collector of Customs v. Rebati Mohan Chatterjee (1976(2) SLR 897 para-13 onwards)
- iii) Union of India & others v. Md. Habibul Haque. 1978(1) SLR page 748.
- iv) State of M.P. v. Bani Singh and another. (1990(2) SLR page 798 at para 4)
- v) Bhuwaneshwar Prasad Singh v. State of Bihar & Ors. (1992(5) SLR page 114)
- vi) Sushil Kumar Dutta v. UOI & Ors. (1993(3) SLJ(CAT) page 133)
- vii) G. Chandrakanth v. Guntur Dist. Milk Producers' Union Ltd. (1994(4) SLR page 397)
- viii) Transport Commissioner, Madras-5 v. A. Radha Krishna Moorthy (1995) 1 SCC 332 (para-9)
- ix) P.P. Jethva Chief Engineer v. State of Gujarat. (1995(4) SLR page 480 paras 17 and 18)
- x) State of Orissa and others v. Ram Chandra Das. ((1996) 5 SCC 331 para-7).

7. In the first instance, we take up the ground raised by the applicant in the O.A. that some seven officers junior to him were behind the issuance of the charge memo. We are not prepared to accept this contention, for those seven officers are not running the Government. It is not the case of the applicant that those seven officers have control over the Government and persuaded the Government to issue the said charge memo. Whatever personal grudges may be, we are not convinced about the allegations made against them. We are convinced that the said ground cannot be accepted.

8. It is an admitted fact that the period of tenure of service of the applicant at Guntur was between 5.4.80 and 25.7.83. The charge sheet has been

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issued on 13.6.97. Thus the learned counsel for the applicant strenuously contended that there has been an inordinate delay in issuing the charge sheet and therefore that delay must influence us to quash the charge sheet. In this connection, the learned counsel for the applicant strongly relied upon the decision of the Hon'ble Supreme Court of India in the case of M.P. v. Bani Singh (reported in 1990(2) SLR page 798).

9. We would like to refer to the Division Bench decision of the Hon'ble High Court of Punjab and Haryana in the case of Ajit Singh and another vrs. Food Corporation of India and others (reported in 1994(4) SLR page 293). In paras-8 to 14 their Lordships observed as follows :

" 8. What is the effect of delay in issuance of charge-sheet in disciplinary proceedings?

The concept of delay in initiating disciplinary proceedings has its genesis in criminal law where a right to speedy trial is considered of essence and delay in the trial by itself is considered to constitute denial of justice. Though in the Constitution the right speedy trial is not enumerated as a fundamental right, yet it has been considered implicit in the sweep and content of Article 21 of the Constitution. In Smt. Maneka Gandhi v. Union of India and another AIR 1978 SC 597, the apex Court took the view that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law.

'Procedure' further is required to be reasonable, fair and just and deprivation of such procedure is violative of Article 21. The right to speedy trial was held to be a part of reasonable, fair and just procedure. In State of Maharashtra v. Champalal Punjaji Shah, AIR 1981 SC 1675, the apex Court, however, held that while a speedy trial is an implicit ingredient of a fair trial, the converse is not necessarily true and that delayed trial is not necessarily unfair trial. The question whether a conviction should be quashed on the ground of delayed trial was held to be dependent upon the

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facts and circumstances of each case and if, on account of delay, the accused is found to have been prejudiced in his defence, the conviction would have to go. The same view was reiterated by the apex Court in *State of Andhra Pradesh v. P.V. Pavithran*, AIR 1990 SC 1266, where it held that the Court has to consider whether delay on the part of the investigating agency has caused grave prejudice or disadvantage to the accused. For the said assessment, the apex Court further held that the factors vary from case to case and that no general and wide proposition of law can be formulated to state that delay ipso facto would provide a ground for quashing the first information report or proceedings arising therefrom.

9. So far as the matter of delay and laches in initiating the disciplinary proceedings is concerned, it was first considered by a Single Judge of the Gujarat High Court in *Jitendra Jyantilal Joshi v. State of Gujarat and others*, 1978(2)SLR 728. In that case, the instructions of the Government of Gujarat were impugned on the ground that the same did not prescribe a time limit within which the enquiry was to be completed. The learned Single Judge held that no rigid or inflexible time limit could be laid down for completing such enquiry. However, it was further held that a departmental enquiry must be completed within a reasonable time and if an enquiry was unduly prolonged and on that account the delinquent suffered prejudice, that particular enquiry could be called into question.

10. In this Court, the question of delay in initiating the disciplinary proceedings was considered by a Division Bench in the case reported as *Dr. B.S. Sandhu v. The State of Punjab*, 1989(1) Northern Legal Reports 213. In that case, charge-sheet pertaining to events which took place in 1974-75, was served on the petitioner after 1988. The charges pertained to embezzlement and in the interregnum the petitioner had earned a number of promotions. The Bench found that the action of the respondents was totally unjustified and, if not mala fide, smacked of unfairness especially in view of the fact that the trial of the co-accused had ended in acquittal.

11. The matter of delay and laches in initiating the disciplinary proceedings was considered by the apex Court in *The State of Madhya Pradesh v. Bani Singh and another*, AIR 1990 SC 1308 : (1990(2)SLR 798(SC)). In that case, the Central Administrative Tribunal quashed the disciplinary proceedings on the ground of delay of over 12 years in the initiation of departmental proceedings with reference to an incident that took place between 1975 and 1976. In appeal against the judgment of the Central Administrative Tribunal, it was urged that

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merely on the ground of delay and laches the proceedings could not have been quashed. The apex Court upheld the decision of the (apex Court) observing thus :-

"The appeal against the order dt. 16.12.1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matters on merits. We are unable to agree with this contention of the learned counsel. The irregularities which were the subject-matter of enquiry is said to have taken place between the years 1975-1977. It is not the case of the department that they were not aware of the said irregularities, if any, and come to know it only in 1987. According to them, even in April, 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

The crux of the judgment is that the apex Court held that there was no satisfactory explanation for the 12 years' delay in initiating the departmental proceedings, and, therefore, it would be unfair to permit the departmental enquiry proceedings to continue. The judgment rendered in Bani Singh's case was followed by this Court in C.W.P.No.564 of 1989 (Surinder Mohan Pandit v. The State of Punjab), decided on October 11, 1990. In that case, for irregularities committed in the year 1973-74, for which the explanation of the petitioner had been called on October 8, 1974, the charge-sheet was issued after his retirement on October 3, 1988. The learned Single Judge held thus :-

"Had there been his involvement, the department would have been prompt in taking action and his promotion would have been withheld. There is no satisfactory explanation for the inordinate delay in issuing the charge-sheet after the lapse of more than a decade."

Accordingly, on the ground of delay and laches this Court quashed the charge-sheet.

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12. The apex Court's judgment in Bani Singh's case (Supra) was again followed by this Court in B.D.Mathur v. The State of Punjab and others, 1992(4) SLR 510. In that case, there was 12 years' delay in issuing charge-sheet in departmental proceedings. It was contended on behalf of the petitioner and accepted by a learned Single Judge that by mere lapse of time the true sequence of events had been forgotten and it was not possible for the petitioner to defend himself effectively. On that basis, the Court held that the delay was sufficient to quash the departmental proceedings.

13. A Full Bench of this Court in Dr.Ishar Singh v. The State of Punjab and another, 1993(4) SLR 655, has also gone into the matter of delay and laches in initiating the disciplinary proceedings. The questions posed before the Full Bench are noticed in the opening paragraph of the judgment. Questions No.(3) and (4) read as under :-

" (3) Whether the Government can initiate or continue with the departmental enquiry long after the date of alleged lapse in spite of the fact that officer had retired from service many years back.

(4) Should the enquiry proceedings be quashed on the ground of long pendency alone. "

These questions are dealt in paragraph No.71 onwards of the judgment. In paragraph 71, the Full Bench has held that there is no limitation prescribed for initiating disciplinary proceedings, but in case there is any delay, there must be bona fide explanation for the same. If the delay is found to have caused prejudice to the employees, the Court would normally interfere in the matter. However, the Court would not exonerate a person solely because of lapse of time. It is for the delinquent officer to show as to how he has been prejudiced or deprived of fair trial on account of delay and if defence is found to have been denied due to delay, the final order may be quashed. Delay by itself has been held not to be a ground for quashing the disciplinary proceedings. Thus, the ratio of the Full Bench judgment is that only where prejudice is shown to have been caused on account of delay, the proceedings can be quashed.

14. From the above, it can be concluded that the preponderance of judicial opinion seems to be that mere delay in the issuance of charge-sheet or concluding the disciplinary proceedings would not by itself be sufficient ground to quash the disciplinary proceedings. However, if the delinquent official can establish that delay has caused him prejudice, the disciplinary proceedings would be liable to be quashed. The learned counsel for the petitioners has not laid any foundation in the pleadings or brought any material at the time of arguments to show

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that the petitioners are likely to be prejudiced or deprived of a fair trial because of delay. Prejudice has to be established before challenging the inquiry on the ground of delay and laches. No such prejudice has been shown."

The Hon'ble High Court of Punjab and Haryana took into consideration the decision of the Hon'ble Supreme Court of India relied upon by the applicant.

10. In our humble view the normal principle is that the delay does not invalidate the disciplinary proceedings. It is an accepted principle of service jurisprudence that an employer can always enquire into the misconduct or misbehaviour or dereliction of duty or any acts of omission or commission or irregularity - financial, procedural or of any kind committed by its employee at any time during the service tenure of the employee. So long as the relationship of master and servant subsists, master can always proceed against his servant for the misconduct, but no limitation can be imposed on the employer. Even the Government can proceed against his retired employee provided certain conditions are complied with; that is to say, the misconduct committed by the employee must be within the period of four years prior to the issuance of the charge sheet provided the misconduct is grave and has thereby resulted in pecuniary loss to the Government. It cannot be imagined that a bar has been imposed on the employer to proceed against its employee during the tenure of service of the employee.

11. Coming to the facts of this case, the applicant himself in para-6(K) of the O.A. has



clearly enumerated the documents on which the proposed enquiry is to be held. Those letters/ documents are of the year 1994^{AD}. The contention of the respondent No.2 is that the irregularity committed by the applicant came to light only in 1994 and therefore, there is no delay, as such, in issuing the charge memo. Normally, the authority before initiating any disciplinary proceedings must be fully satisfied about the involvement of the official and disclosure of a prima facie case to proceed against the official. In the instant case, the matter came to light in 1994 and probably the respondent No.2 took some time to ascertain the persons who are involved in the said irregularity. Though the applicant has stated that he was given promotion in between the said period, he has not placed any material on record to show that he earned promotion with the respondent No.2 knowing fully well of the irregularities committed by him while he was working at Guntur. The applicant could not place any material on record to show that respondent No.2 was fully aware of the alleged irregularities and kept quiet all these years granting successive promotions to the applicant. That being so, we are of the humble view that the delay cannot be taken as a ground to quash the charge sheet in this particular case. In fact there is no delay at all.

12. The learned counsel for the applicant submitted that the applicant was promoted as Special Deputy Collector and was promoted to I.A.S.; that he is likely to be considered for promotion to Selection Grade scale in I.A.S. in the near future. It is his contention that these promotions washed away the misconduct, if any, committed by the

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applicant. We are not persuaded to accept the said proposition. If such a view is taken, then any official who earns promotion cannot be proceeded with, even though he committed any irregularity or misconduct. It must be shown by the employee that he earned promotion with the full knowledge of the Government about the misconduct committed by him. In the absence of any such material, we are not persuaded to accept the view that once a promotion is granted to an employee, he is absolved of all the earlier misconduct or acts of commissions or omissions.

13. The other contention urged by the learned counsel is that the charge memo is not clear, specific, distinct and perfect. We have gone through the charge sheet. We are not persuaded to accept the said contention. Vagueness in the charge memo also cannot be a ground to quash the charge sheet. In the case of D.I.G. of Police vs. K.S.S. Swaminathan (reported in 1997(1) SLR 176) the Hon'ble Supreme Court has held that the Tribunal has no jurisdiction to quash the charge sheet at the initial stage.

14. Even in the case of Transport Commissioner vs. A. Radha K. Moorthy (reported in 1995(1) SCC 332) the Hon'ble Supreme Court has observed in para-7 as follows :

"7. So far as the truth and correctness of the charges is concerned, it was not a matter for the Tribunal to go into- more particularly at a stage prior to the conclusion of the disciplinary enquiry. As pointed out by this Court repeatedly, even when the matter comes to the Tribunal after the imposition of punishment, it has no jurisdiction to go into truth of the allegations/ charges except in a case where they are based on no evidence, i.e., where they are perverse. The jurisdiction of the Tribunal is akin to that of the High Court under Article 226 of the Constitution. It is power of judicial review. It only examines the procedural correctness of the decision-making process. For this reason, the order of the Tribunal insofar as it goes into or discusses the truth and correctness of the

charges, is unsustainable in law."

Therefore, in our humble view, the contention of the applicant has to fail.

15. The applicant has not chosen to submit his explanation to the charge memo. If he feels that there is any vagueness or indefiniteness in the charges levelled against him, it is for him to bring the same in detail to the notice of the disciplinary authority and then the disciplinary authority may look into the matter and if it agrees with the views of the applicant, it may withdraw the charges and issue a fresh charge memo removing the defects, if any. The applicant has rushed to this Court in haste. He was expected to submit his explanation to the charge memo. He has not done so.

16. In view of the decisions relied upon by us, we feel it not necessary to go into the various citations brought to our notice by the learned counsel for the applicant.

We have gone through the decisions and we feel that they do not in any way help the case of the applicant. We are of the view that the stage is premature to quash the charge sheet dated 13.6.97 issued to the applicant.

There is absolutely no delay. The respondent No.2 came to know of the irregularity only in the year 1994. In fact the Special Officer, Urban land ceiling, Guntur, submitted his report on 31.12.1994; that means, the respondent No.2 has taken hardly about a year and half to ascertain the involvement of the applicant. When that is so, we are not persuaded to take a view that there is delay - inordinate or otherwise.

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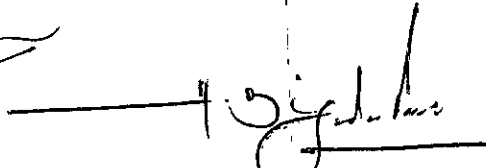
17. Viewed from any angle, there are no grounds to quash the charge sheet. Hence we are of the view that there are no merits in the O.A. and the same is liable to be dismissed.

Accordingly the O.A. is dismissed. No order as to costs.



(B.S. JAI PARAMESHWAR)
MEMBER (JUDICIAL).

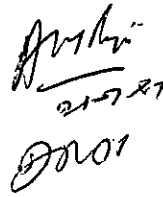
21.7.97



(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE).

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Dated the 21st July, 1997.


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To

1. The Chief Secretary, State of A.P.
Secretariat, Hyderabad.
2. The Secretary, Ministry of Personnel,
Public Grievances and Pension,
Dept. of Personnel and Training,
Govt. of India, New Delhi.
3. One copy to Mr. P. V. S. S. Rama Rao, Advocate, CAT. Hyd.
4. One copy to Mr. N. R. Devraj, Sr. CGSC. CAT. Hyd.
5. One copy to Mr. P. Naveen Rao, Spl. Counsel for A.P. Govt. CAT. Hyd.
6. One copy to HBSJP. M. (J) ? CAT. Hyd.
7. One copy to D. R. (A) CAT. Hyd.
8. One spare copy.

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28/7/97

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TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE
VICE-CHAIRMAN
and

THE HON'BLE MR. H. RAJENDRA PRASAD: M(A)
The Hon'ble Mr. B.S. Jaisankaran: M(C)

Dated: 21-7-1997

ORDER/JUDGMENT

M.A./R.A./C.A.No.

In

O.A.No.

783/97

T.A.No.

(w.p.)

Admitted and Interim directions
Issued.

Allowed

Disposed of with directions

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Ordered/Rejected.

No order as to costs.

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