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24.5.07

Mr. R.N. Mathur, Counsel for applicant

Mr. T.P. Sharma, Counsel for respondents

Heard. The OA is disposed of by a separate order, for the reasons recorded therein.

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(Tarsem Lal)
M(A)

bc

(Kuldeep Singh)
V.C.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 24th day of May, 2007

ORIGINAL APPLICATION No.188/2006

CORAM:

HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN
HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER

Mukesh Vij
s/o Shri R.K.Vij,
aged about 49 years
r/o Flat No.4, Type-V,
G.P.R.A. Colony,
S-7, Vidhyadhar Nagar,
Jaipur, presently posted as
Superintending Engineer (Electrical),
Central P.W.D., Jaipur

.. Applicant

(By Advocate: Mr. R.N.Mathur)

Versus

1. The Union of India through
Secretary,
Ministry of Urban Development,
Govt. of India, Nirman Bhawan,
New Delhi.
2. Chief Vigilance Commissioner,
Satarkta Bhawan,
Block-A, G.P.O. Blocks,
New Delhi.

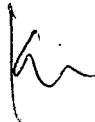
.. Respondents

(By Advocate: Mr. Tej Prakash Sharma)



O R D E R (ORAL)

The applicant who is Superintending Engineer and member of the Indian Engineering Service has challenged memorandum Ann.A1 issued to him under Rule 16 of the CCS (CCA) Rules, 1965 proposing to impose a minor penalty upon the applicant. Copy of the allegations of misconduct or misbehaviour is annexed with the OA. According to the allegations, the applicant while working as Executive Engineer (Electrical), Bhopal Central Electrical Division, Central PWD, Bhopal during the period 03.06.1992 to 29.05.1996 ^{is} ~~has~~ alleged to have committed certain lapses while taking supplying of 2 numbers of 500 KVS Transformers alongwith other equipments from M/s Engineering India for the work of construction of Regional Medical Research Centre (RMRC), Jabalpur providing 33 KV/0.433 KV sub-station under Agreement No.25/EE(E)/BCED/94-95. According to the allegation, the applicant is alleged to have accepted duplicate Transformers supplied by the contractor. The applicant was required to check 10% of the measurements recorded by his subordinate at least every alternate bill for work at his headquarter and at least every 3rd bill for works outside his headquarter. Yet in this case, major agreement items amounting to Rs. 8,06,329/- including the item of transformer were paid till 2nd RA bill and



agreement item Nos. 6, 14 and 15 amounting to Rs. 4,277.60 were only left, which were subsequently measured in 3rd bill. Thus, neither the pre-despatch tests were carried out at manufacturer's place nor was the condition regarding inspection at manufacturer's works waived by him. Had the Transformers been inspected at the manufacturer's works, the possibility of passing of the duplicate Transformers other than Kirloskar-make supplied by the contractor could have been avoided and if the applicant test checked the measurements in the 1st or 2nd RA bills, the supply of duplicate Transformers could have been detected. It is further stated that before the impugned memo of chargesheet was issued, a ~~memorandum~~ preliminary enquiry ^{Concluded in} was also issued in the year 1995 and to the knowledge of the applicant after careful consideration of the case, the Ministry of Urban Development as also the C.P.W.D. were of the opinion that no departmental enquiry should be initiated against the applicant because he has not committed any misconduct in the facts of the case. However, when the matter was referred to the Chief Vigilance Commission (CVC), it recommended to initiate departmental enquiry against the applicant. The applicant also claims that no case of misconduct is made out. It is further stated that the disciplinary action has been initiated against the applicant for an act alleged to have been committed during the period between 3.6.1992 to 29.5.1996 and



thus the chargesheet has been issued after a period of 10 years after the applicant was transferred from the post of Executive Enginner (Electrical), Central Electrical Division, C.P.W.D., Bhopal.

Even otherwise, it is stated that since there was a dispute between the C.P.W.D. and the contractor regarding payment and entitlement of damages for supplying the equipments, hence the dispute was referred to the Arbitrator in the year 1997-98. However, the respondents chose to initiate departmental enquiry against the applicant after 10 years though the complete facts regarding delivery of Transformers and related facts were in the knowledge of the respondents. So the main claim of the applicant is that initiation of departmental enquiry against the applicant after a delay of more than a decade is arbitrary, unreasonable and unjust and there is no convincing explanation for the inordinate delay to issue the chargesheet and the applicant is suffering because of the inordinate delay on the part of the respondents and the delay amounts to violation of Articles 14 and 21 of the Constitution of India. It is further stated that delay will also deprive the applicant to defend himself in an effective manner. So it has caused prejudice in the matter of his promotion and also jeopardized effective rebuttal to him.



The applicant has also taken plea that the allegations did not constitute a case of misconduct as he has tried to complete the requirement of the agreement itself. The equipment were subject to only routine test and these tests are required to be witnessed not personally by the supervising officer. Moreover, the headquarter of the applicant was at Bhopal whereas the goods were dispatched at Jabalpur and on the equipments, name plates of M/s Engineering India were affixed and according to the agreement, the departmental representative can inspect the equipments before dispatch, but the applicant is not required to inspect the equipments at the place of manufacturer. Since name plate of M/s Kirloskar Electrical was affixed, therefore, there was a strong presumption that equipments are manufactured by M/s Kirloskar Electrical. Further, Jabalpur has test checked the same equipments and sent the bills for payment to Bhopal. The applicant has placed on record certain pleadings on the merits of the case to show that the applicant has not committed any misconduct. However, on the ground of delay, the applicant submits that the chargesheet could not have been issued and the same is required to be quashed.

2. The respondents are contesting the OA. They have filed a reply in which they have taken preliminary objection that the applicant has filed this OA



challenging the chargesheet, but the OA has been filed without exhausting the remedies available to him and since the applicant has not exhausted the remedies and the chargesheet has been issued on the recommendation of the Chief Vigilance Commission dated 2nd March, 2006, so the OA cannot be maintained.

It is further stated that the chargesheet has been issued on the ~~on the~~ basis of complaint made by the Chief Engineer (E), WZ, Central PWD, Mumbai regarding supply of 2 numbers fake Transformers for RMRC, Jabalpur. The Vigilance Unit of the CPWD carried out a detailed investigation and on the basis of the investigation and in consultation with the Central Vigilance Commission, a minor penalty chargesheet under Rule 16 of the CCS (CCA) Rules, 1965 was issued to the applicant. The applicant was also given opportunity to explain his point of view on the lapses committed by him. The applicant was required to submit reply within 10 days of receipt of the said memo. However, he had asked for additional 10 days as had to verify some records pertaining to the work in the DGW, CPWD office. His request was acceded to and he was allowed to submit reply within additional 10 days, but instead of submitting reply to the chargesheet he has filed this OA. It is further stated that the applicant is guilty of serious charges so a chargesheet was issued to him.

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3. We have heard the learned counsel for the parties and gone through the material placed on record.

4. The applicant in order to challenge the chargesheet has raised two issues. Firstly, the chargesheet has been issued with an inordinate delay which caused prejudice to the applicant for his next promotion and has jeopardized his defence also since the matter pertains to a transaction which had taken place more than 10 year ago i.e. during the period between 1992-1996 and secondly, he has also challenged merits of the chargesheet. At the outset, we may mention that this court is not required to go into the merits of the chargesheet so that it is for the disciplinary authority to see whether the chargesheet has some merit or that final order has to be passed after careful examination of the entire documents and record of the case.

However, as regards the inordinate delay in issuing the chargesheet is concerned, the learned counsel for the applicant has referred to various judgments, such as State of M.P. vs. Bani Singh and another, reported in 1990(2) SLR 798 decided by the Hon'ble Supreme Court. In the said case an IPS officer of the Madhya Pradesh cadre has filed OA against initiation of disciplinary enquiry proceedings and issue of chargesheet on 22nd April, 1987 in respect of certain incidents that had happened in 1975-76 when

the said officer was posted as Commandant 14th Battalion, SAF Gwalior. The Tribunal quashed the charge memo on the ground of inordinate delay of about 12 years in initiation of departmental proceedings with reference to an incident that had taken place in 1975-76. An appeal against the order of the Tribunal was filed before the Hon'ble Supreme Court on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and latches. The Hon'ble Supreme Court has observed as under:-

"....We are unable to agree with this contention of the learned counsel. The irregularities which were the subject matter of the 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 came to know it only in 1987. According to them even in 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 year 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 the appeal."

On the same lines, the applicant has also relied upon another judgment of the Hon'ble Supreme Court in case of P.V.Mahadevan vs. MD, T.N.Housing Board reported in 2005 SCC (L&S) 861. In this case also charge memo was issued to the appellant after a long period and the Hon'ble Supreme Court relying upon the earlier decision in State of M.P. Vs. Bani Singh (supra) observed as under:-

"11. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, 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 the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.



12. We, therefore, have no hesitation to quash the charge memo issued against the appellant. The appeal is allowed. The appellant will be entitled to all the retiral benefits in accordance with law. The retiral benefits shall be disbursed within three months from this date."

On the same lines, there is another judgment given by Coordinate Bench of this Tribunal at Principal Bench in OA No. 641/2006 decided on 14th December, 2006, wherein it was also held that the Hon'ble Supreme Court in a catena of judgments has held that when there is unexplained delay of 10 years or more in instituting disciplinary proceedings vitiates the enquiry and for this purpose the Principal Bench has relied upon M.V.Bijlani vs. Union of India and Ors., 2006 (5) SCC 88, State of Andhra Pradesh v. N.Radhakrishnan, JT 1998 (3) SC 123, State of M.P. v. Bani Singh and Anr., 1990 (2) SLR 798 and P.V.Mahadevan v. MD T.N.Housing Board (supra)

So now it is trite law that when there is unexplained inordinate delay then the proceeding initiated against an officer are liable to be quashed since the same prejudice the career of the officer concerned and in this case same has also been pleaded. In the present case, the transaction on the basis of which chargesheet has been issued pertaining to the period between 1992-1996 and when it came to the knowledge of the Department then the matter was

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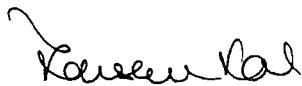
referred to the Arbitrator and in any case it came to the knowledge of the Department on 10th April, 1998 when M/s Kirloskar Electric Co. vide their letter dated 10th April, 1998 denied having supplied two numbers 500 KVS Transformers and the impugned chargesheet has been issued in the year 2006.

The learned counsel appearing for the respondents made half hearted attempt to explain the delay and stated that the advice of the CVC had been received in the year 2006 so immediately thereafter a memo was issued to the applicant for initiating department proceedings under Rule 16 of the CCS (CCA) Rules. We had checked the record which shows that the matter was referred to the CVC at a very belated stage and there is no explanation as to why the matter was referred to the CVC after such an inordinate delay as the alleged misconduct is of the period between 1992-1996 and the matter was referred in the year 2006. There is no satisfactory explanation as to why the matter was referred only in the year 2006. Though the counsel appearing for the respondents tried to explain that since the matter had been referred to the Arbitrator so they were waiting result of the Arbitration but to our mind this contention of the learned counsel for the respondents has no merit because referring the matter to the Arbitrator against the contract has no bar for initiating departmental proceedings against the applicant, if the applicant had committed any



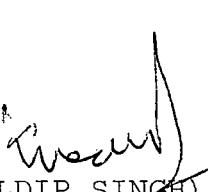
misconduct. Rather by that time, the Department after holding the preliminary enquiry was satisfied that no chargesheet was to be issued.

5. Therefore, we are of the considered opinion that in this case inordinate delay had taken placed in issuing the chargesheet to the applicant and there is no satisfactory explanation for inordinate delay. So we find that as per the law laid down by the Hon'ble Supreme Court in the cases of M.V. Bijlani, N.Radhakrishnan, Bani Singh and P.V.Madhavan (supra) as applied by the Coordinate Bench at Principal Bench which is also binding on us, and we have no reason to differ from the same. As such, we find that the OA has sufficient merits and deserves to be allowed. We, therefore, allow the OA and quash and set aside the chargesheet. No order as to costs.


(TARSEM LAL)

ADM. MEMBER

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(KULDIP SINGH)

VICE CHAIRMAN