

**Central Administrative Tribunal
Principal Bench**

OA No.839/2014

New Delhi, this the 08th day of August, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Praveen Mahajan, Member (A)**

Shri V.K. Puri, A-184
Sarita Vihar
New Delhi-11007.

..Applicant

(By Advocates: Shri S. Sunil and Shri Jagdish N)

Versus

Union of India through Secretary
Department of Revenue
Ministry of Finance, North Block
New Delhi-110001.

...Respondents

(By Advocate: Shri Gyanendra Singh)

ORDER (ORAL)

Justice L. Narasimha Reddy:-

The applicant joined the Indian Revenue Service(IRS) in the year 1976. Thereafter, he earned promotions to various positions. In 1993 he worked as Additional Commissioner, New Customs House, Mumbai. By virtue of the office held by him, he was vested with the powers of adjudication in quasi judicial capacity. He had to deal with several cases and to pass orders. It appears that in the year 1998, a complaint

was received by the department to the effect that the applicant decided certain matters contrary to the relevant provisions of law and thereby granted relief to the parties thereto. The concerned authority exercised powers of review and such orders are said to have been reviewed in the year 1999.

2. The applicant was issued a charge memo dated 20.06.2012 wherein it was alleged that the applicant adjudicated cases of import of certain consignment with ulterior motive, ignoring technical opinion and thereby caused loss to the exchequer. This was done five days before the applicant attained the age of superannuation. The applicant filed OA No.2494/2012 before this Tribunal challenging the charge memo. The O.A. was dismissed on 31.07.2012. Aggrieved by that, the applicant filed WP(C) No.5323/2012 before the Hon'ble Delhi High Court. During the pendency of the Writ Petition, the applicant submitted a detailed representation dated 12.09.2012 to the disciplinary authority raising various grounds to the charge memo, and rejecting that representation an order was passed on 12.12.2012 by the disciplinary authority. The writ Petition was withdrawn by the applicant seeking

permission of the High Court to assail the order dated 12.12.2012. Permission was accorded and the Writ Petition was withdrawn. It is with this background, that the applicant has filed the present OA challenging the order dated 12.12.2012.

3. The applicant contends that he raised several objections including the one of inordinate delay and lack of substance in the charge memo and though a detailed order was passed by the disciplinary authority, hardly any reason was mentioned for not accepting the contentions.

4. The respondents filed a counter affidavit opposing the OA. An objection is raised as to limitation as well as the maintainability of the OA. It is stated that once the challenge to the charge memo was rejected by this Tribunal, there is no basis for the applicant to file the present OA, in relation to a reply given to a representation made by him. It is also stated that the allegations contained in the charge memo can be dealt with, in the departmental inquiry and that the OA is not maintainable.

5. We heard Shri S. Sunil, learned counsel for the applicant and Shri Gyanendra Singh, learned counsel for the respondents.

6. The initial challenge made by the applicant to the charge memo failed and that resulted in filing of a writ petition. It is during the pendency of the writ petition, that the impugned order came to be passed on the representation made by the applicant. Strictly speaking the impugned order is not a concomitant part of the disciplinary proceedings, nor is it the one that resulted in punishment to the applicant. However, a detailed consideration has been undertaken by the competent authority on certain important issues raised by the applicant, which would have a direct bearing on the entire proceedings.

7. If an employee has committed acts of fraud or serious irregularities while in service, the delay in initiation of the disciplinary proceedings would not be an important factor. Where, however, the allegations are not one of fraud or of similar seriousness, a prompt and immediate action is warranted by the employer so that the employee may not be subjected to the

inconvenience or harassment by reopening the issues which have achieved finality.

8. In the instant case, the allegations against the applicant pertain to the nature of the orders passed by him as an adjudicating authority. Assuming that the view taken by the applicant while adjudicating a dispute was not correct and the order passed by him was set aside by the appellate or reviewing authority, it hardly constitutes the basis for initiation of the disciplinary proceedings. It is a different matter if the allegation is that the result of the adjudication, *albeit*, strictly in accordance with law, was tainted with acts of fraud or illegal gratification. Such is not the case here.

9. Even as of now, the copy of complaint stated to have been received in the year 1998, has not been made available to the applicant. Added to that, in all fairness, the authority who passed the impugned order stated therein that in spite of best efforts, made by them, they were not able to trace the complainant. It was also mentioned that though the complaint was received in the year 1998, the first report of

investigation came into existence in the year 2008. The relevant para thereof reads as under:-

".....With regard to inordinate delay in issuing charge sheet to him, it is stated that the complaint against Shri V.K. Puri was received sometimes in January, 1998. The Directorate General of Vigilance, New Delhi vide letter No. V-521/6/98 dated 14.02.1998 referred the matter to Directorate General of Vigilance, West Zonal Unit, Mumbai for investigation. The Investigating Officer submitted his report on 09.07.2008. Though the reasons for delay in submitting the investigation report, are not indicated in the said report, it is revealed that certain orders in original passed by the Charged Officer where then pending in Appeal/Review. In one such case, the order in appeal was passed on 30.11.199. During the course of prima facie investigation, letters were issued by Directorate General of Vigilance, West Zonal Unit to the complainant for verification of the complainant at the address given by him and efforts were made to locate his address by visiting the area but the address mentioned by the complainant was found to be fictitious."

10. Further, even though the investigation report came in the year 2008, the charge memo was issued in the year 2012. This delay is not explained.

11. We are conscious of the fact that to the extent possible, the Courts and Tribunals must permit the disciplinary proceedings to continue and the verification

of the correctness or otherwise of the charges can be undertaken only after the disciplinary authority passes an order. However, an employee cannot be subjected to the disciplinary proceedings on the basis of stale matters, that too, if the allegations are not serious in nature.

12. In ***State of Madhya Pradesh Vs. Bani Singh and Anr.*** [1990 (Supp) SCC 738], the Supreme Court found fault with the disciplinary proceedings which were initiated with a delay of ten years. In the instant case, the delay is much more.

13. In ***Union of India & Anr. vs. Hari Singh*** in W.P.(C)No.4245/2013 dated 23.09.2013, a Division Bench of the Delhi High Court took note of the OM dated 23.05.2000 issued by the Central Vigilance Commission and held that the delay of eight years is fatal to the proceedings.

14. The respondents placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of ***Union of India & Anr. v. Ashok Kacker***, [1995 Sup (1) SCC 180] and two other judgments. However, they

are the cases where the charges were of serious nature and the delay was not much. In the instant case, the charge itself is not of serious nature. Secondly, the proceedings were initiated nearly twenty years after the adjudication was undertaken by the applicant herein. Added to that, the charge memo was served just five days before the retirement of the applicant.

15. For the foregoing reasons, we allow the OA and set aside the charge memo dated 20.06.2012. There shall be no order as to costs.

(Praveen Mahajan) (Justice L. Narasimha Reddy)
Member(A) Chairman

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