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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.443/2003

New Delhi this the 3rd day of April, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Uttam Chand,
S/o late Heera Lal,
R/o C-557, J.J. Colony No.2,
Nanglori, New Delhi.

-Applicant

(By Advocate Shri A.K. Trivedi)

-Versus-

1. Govt. of NCT of Delhi
through its Chief Secretary,
Old Secretariat, Delhi.
2. The Director of Education,
Directorate of Education,
Govt. of NCT of Delhi,
Old Secretariat, Delhi.
3. The Dy. Director of Education,
O/o Deputy Director of Education,
Education Directorate, North East Division,
B Block, Yamuna Vihar, Delhi-110053.
4. The Principal,
Govt. Boys Senior Secondary School,
Seemapuri, Delhi-110095.

-Respondents

(By Advocate Shri George Paracken)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

Applicant impugns minor penalty chargesheet dated 14.2.2003 on inordinate delay pertaining to the allegations relating back to the period 31.5.90 to 30.9.92. He has sought quashment of the same with all consequential benefits.

2. Applicant has been working as chowkidar. On 26.4.99 he was placed under suspension on contemplated disciplinary proceedings. As no chargesheet was filed applicant filed Civil Suit No.808/97 before Civil Judge, Tis Hazari, Delhi. Thereafter suspension was revoked by an order 1.2.2001. Civil Suit was, however, withdrawn on

2.2.2001. Applicant preferred a representation for treatment of suspension period on 26.9.2001 but despite this no action has been taken, which resulted in filing of OA-2530/2002, which is still sub-judiced. A memorandum dated 11.2.2003 under Rule 16 of the CCS (CCA) Rules, 1965 for a minor penalty has been issued to applicant alleging misconduct pertaining to the period 31.5.90 to 30.9.92 inasmuch as he has been alleged to have caused loss to the Government property being entrusted with the security of the School. Applicant has filed his reply to the memorandum. As no FIR was lodged, as such in the show cause notice issued to applicant no particulars of FIR etc. have been divulged.

3. Learned counsel for applicant placing reliance on the following decisions of the Apex Court contended that as there has been an unexplained and inordinate delay in issuance of the chargesheet without any satisfactory explanation the same has prejudiced applicant and is liable to be set aside:

- i) State of M.P. v. Bani Singh, JT 1990 (2) SC 54.
- ii) Transport Commissioner, Madras v. A. Radha Krishna Murthy, 1995 (1) SLR 23 SC.
- iii) State of Punjab & Ors. V. Chaman Lal Goyal, 1995 (1) SCSLJ 233.

4. It is contended that the chargesheet is vague, does not disclose any cogent reasons and during the period of suspension the same has not been issued and shows

that there is no credible material in possession of respondents to initiate the proceedings. According to applicant delay in issuance of chargesheet has deprived him a reasonable opportunity and is contrary to law, as it would be impossible and impracticable for applicant to procure the defence material to effectively defend the charge..

5. On the other hand, respondents' counsel fairly stated that except the ground that the file as reported by the Education Officer through his letter dated 7.3.94 in which theft in the school was examined was misplaced which took a long time to initiate proceeding against applicant. Moreover, it is stated that the theft incident was reported to PS Mangol Puri and as the same is pending the charges against applicant could not be framed.

6. I have carefully considered the rival contentions of the parties and perused the material on record. In the light of the decision of the Apex Court in Bani Singh's case (supra) where there is a delay of about 12 years and the explanation tendered has not been found to be satisfactory the delay has been found sufficient in my opinion to set aside the proceeding at the charge stage itself. Moreover, in State of Andhra Pradesh v. N. Radhakishan, (1998) 4 SCC 154, following observations have been made:

"19. It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case.

The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.

7. Even undertaking the balancing process as held by the Apex Court in A.R. Antulay v. R.S. Naik, (1992) 1 SCC 225 applicant against whom proceeding has been initiated after about a delay of 11 years would be difficult for him to procure his defence and defend the charge. Moreover, the plea that file was lost as in 1994 itself matter was reported pertaining to misplacement of file but it took around 9 years for the respondents to reconstruct the file.

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8. In so far as criminal investigation is concerned, in absence of any material furnished, i.e., proof of FIR and offence it is not possible that FIR is pending for the last 9 years at the investigation stage. On the other hand, the factors in favour of respondents are that the theft has been committed and applicant has been working as chowkidar being responsible should not be scot free on the technical issue.

9. On balancing the factors and circumstances, I am of the considered view that the only explanation of delay, i.e., misplacement of file is not satisfactory. If the file was lost and the same was reported on 7.4.94 respondents could have procured and reconstructed the file and would have immediately processed the enquiry. Having failed to do so and in absence of any material to explain the delay merely because theft was reported and was under investigation without any proof of the same, the chargesheet is vitiated by inordinate and unexplained delay. The aforesaid delay had admittedly prejudice applicant as he would not be in a position to procure the defence at this belated stage.

10. Accordingly, having regard to the law laid down by the Apex Court (supra) the chargesheet is not legally tenable and is accordingly quashed and set aside. OA is allowed. Applicant is entitled to all consequential benefits except the pay and allowances during the period of suspension for which OA-2530/2002 is sub-judice. No costs.

(6)

S. Raju

(Shanker Raju)
Member (J)