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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 962/2003

New Delhi this the 6th day of May, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).
Hon'ble Shri V.K. Majotra, Member (A).

Virender Kumar Dhall
@ V.K. Dhall,
S/o Sh. Om Prakash Dhall,
R/o House No. 119, Pocket G-27,
Sector-3, Rohini,
Delhi. Applicant.

(By Advocate Shri Puneet Mittal)

Versus

1. Union Public Service Commission,
through its Secretary,
Shahjahan Road,
New Delhi.
2. Department of Personnel & Training,
through its Secretary,
North Block,
New Delhi.
3. Ministry of Law Justice & Co. Affairs,
through its Secretary,
Shastri Bhawan,
New Delhi. Respondents.

(By Advocate Shri A.K. Bhardwaj)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).

The applicant has impugned the Memorandum issued by Respondent No.1 - UPSC dated 29.3.2003. By this Memorandum, they proposed to hold an inquiry in respect of two articles of charges under the provisions of Rule 14 of the CCS (CCA) Rules, 1965 (hereinafter referred to as 'the Rules').

2. The brief relevant facts of the case are that the applicant was appointed as UDC with UPSC. He was sent on deputation w.e.f. 12.8.1991 to Respondent No.3, that is Ministry of Law, Justice and Company

Affairs upto 11.8.1994. During his period of deputation, he states that he officiated as an Accountant w.e.f. 12.8.1991 in the office of Respondent No.3. In the impugned Memorandum of charges issued against the applicant, it has been alleged that while working on deputation basis with Respondent No.3, he had failed to maintain absolute integrity and devotion to duty in that during May-June, 1993, he deliberately violated the laid down procedure for accounting Government money, made fictitious entries in the Cash Book and forged two challans relating to remittance of Rs.50,000/- and Rs.60,000/-. Accordingly, a complaint was given by Respondent No.3 and an FIR was registered against the applicant dated 26.6.1993. The applicant was arrested but later on he was granted bail. A charge-sheet under Section 173 Cr. P.C. has been filed against him and he has stated that the case is now fixed for prosecution evidence on 27.9.2003. He was placed under suspension vide order dated 18.8.1994 which was revoked by the order dated 12.8.1999.

3. The learned counsel for the applicant has contended that the alleged misconduct of the applicant pertains to the period 12.8.1991 to 11.8.1994 whereas the impugned memorandum of charges has been issued much later on 29.3.2003 after about 10 years. He has relied on the judgement of the Supreme Court in State of Madhya Pradesh Vs. Bani Singh and Anr. (1990 (Supp) SCC 738). He has, therefore, contended that there has been inordinate delay and on this ground the memorandum of charges should be quashed and set aside. The second ground taken by the learned counsel is that on identical

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grounds, an FIR has also been registered against the applicant. He has contended that the list of documents and list of witnesses are the same in both the proceedings. He has also taken a ground that under Rule 20 of the Rules, as the applicant was on deputation with Respondent No. 3 at the relevant time of the alleged misconduct, the borrowing authority has the powers of the appointing authority for the purposes of placing him under suspension as also that of the disciplinary authority for the purposes of conducting disciplinary proceedings. He has contended that the borrowing authority failed to exercise the powers as envisaged under Rule 20 of the Rules and the same is being exercised by his parent Department i.e. UPSC which, according to him, is contrary to Rule 20 of the Rules. Another ground taken by the learned counsel is that when Respondent No. 1 passed the order dated 12.8.1999 revoking the suspension order against the applicant, it was stated that the decision regarding regularisation of the period of suspension as well as pay and allowances for the period of suspension will be taken after finalisation of the criminal case. He has contended that even at that stage, the respondents chose not to do so and it was only after another three and a half years or so, they have taken a decision to issue the impugned Memorandum dated 29.3.2003 initiating disciplinary proceedings. Learned counsel has relied on the judgements of the Hon'ble Supreme Court in State of Rajasthan Vs. B.K. Meena (1996 (6) SCC 417) and Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Anr. (1999 (3) SCC 679). In the circumstances, learned counsel has submitted that the impugned memorandum dated 29.3.2003 should be quashed and set aside with a direction to the respondents to grant all monetary benefits to the applicant.

4. We have seen the reply filed by the respondents and heard Shri A.K. Bhardwaj, learned counsel. The respondents have stated that when Respondent No. 3 referred the case to the CBI for investigation and repatriated the applicant to his parent cadre, that is UPSC - Respondent No.1 w.e.f. 12.8.1994, UPSC placed him under suspension vide order dated 18.8.1994. Later, the same was reviewed by the competent authority and the suspension order was revoked by order dated 12.8.1999. The criminal proceedings are pending in the court of Metropolitan Magistrate, Patiala House, New Delhi. Learned counsel for respondents has stated that the competent authority had reviewed the case of the applicant in the light of the judgements of the Hon'ble Supreme Court in B.K. Meena's case (supra) and Capt M. Paul's case (supra). He has submitted that it is settled law that there is no legal bar for both proceedings, that is disciplinary proceedings and criminal proceedings to be taken simultaneously against a Government servant. He has submitted that in Capt. M Paul's case (supra), the Supreme Court has held that if the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of pendency of criminal case, can be resumed and proceeded with. He has also relied on the Tribunal's order in Rati Pal Vs. Union of India & Ors. (OA No.1049/99), decided on 18.1.2000 (Annexure R-2). He has submitted that the criminal proceedings instituted against the applicant under FIR are not likely to be concluded soon and as a decision has, therefore, been taken to initiate disciplinary proceedings against the applicant, keeping in view the aforesaid orders of the Hon'ble Supreme Court in similar

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cases. He has also relied on another judgement of the Tribunal in **S. P. Pandey Vs. Union of India** (OA 2201/2002), decided on 24.9.2002, copy placed on record.

5. With regard to the objection taken by the learned counsel for the applicant on the delay in initiating proceedings by the impugned Memorandum, learned counsel has submitted that earlier the respondents had taken an erroneous view that while the criminal proceedings were pending they could not initiate disciplinary proceedings or even if they were initiated, they should be kept in abeyance. He has referred to the orders of the Tribunal dated 19.4.2002 in MA 2751 of 1999 in OA 126/90 and MA 15/2001 in OA 105/97 (Annexure R-3). In that order, the Tribunal relying on the aforesaid judgements of the Hon'ble Supreme Court has observed that if for the purpose of stay of the disciplinary proceedings, the cases of D.R. Chugh B.S. Negi can be compared with that of Shri R.P. Saroj (OA 1049 of 1999), they "could also be compared with him for the purpose of initiation of (sic 'or') continuation of the disciplinary proceedings." In this order, it was, therefore, held that "in view of the delay in finalisation of the criminal proceedings, respondents are permitted to initiate the disciplinary proceedings against applicants D.R. Chugh and B.S. Negi". Learned counsel for the respondents has submitted that following the order of the Tribunal dated 19.4.2002, the respondents had reviewed the cases. Accordingly, the charge-memo dated 29.3.2003 was issued against the applicant in the present case, taking a uniform decision in similar matters that were before Respondent No. 1/UPSC. In the circumstances, he has contended that there has been no undue delay on the part of the respondents in initiating disciplinary proceedings keeping in view also the

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fact that the charge against the applicant is still pending for final decision before the competent criminal court. He has submitted that the charges against the applicant are for mis-utilisation of Government funds which are of a serious nature. He has relied on the judgement of the Hon'ble Supreme Court in **Deputy Registrar, Cooperative Societies, Faizabad Vs. S.N. Pandey & Ors.** (1995 (4) SLR 17).

6. With regard to the contentions of the learned counsel for the applicant based on Rule 20 of the Rules, he has submitted that under Rule 20 (2) (ii), there is no bar on the lending authority, that is the UPSC, from taking disciplinary proceedings against the applicant as he has since returned to the parent Department in August, 1994. Learned counsel has, therefore, submitted that there are no grounds to quash and set aside the memorandum of charges and he has, therefore, prayed that the O.A may be dismissed.

7. We have also heard learned counsel for the applicant in rejoinder who has more or less reiterated his arguments based on undue delay and prejudice that may be caused to him as the criminal charge which is pending against him is also of a serious nature.

8. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

9. On the ground of delay on the basis of which learned counsel for applicant has prayed that the memorandum of charges should be quashed and set aside, we are satisfied with the reply filed by the respondents and the submissions of the learned counsel, giving the reasons for it. It is settled that in such cases, each case has to be decided, taking into

account the particular facts and circumstances. The respondents have admitted that earlier they had taken an erroneous view of such cases and their corrective action cannot be faulted, especially taking into account the fact that the criminal proceedings against the applicant are still pending in the court of Metropolitan Magistrate, New Delhi. In the facts and circumstances of the case, the action taken by the respondents after reviewing the cases, including that of the applicant, cannot be faulted. Besides, they have also taken a uniform decision in similar matters. Therefore, in the circumstances of the case, also considering that the charges against the applicant are of a serious nature, the plea of the applicant's counsel for quashing the Memorandum of charges on the ground of delay fails and is rejected.

10. We are also not impressed by the submissions made by the learned counsel for the applicant that there is a vast difference between the case of initiation and another case of continuation of the disciplinary proceedings which has been kept in abeyance/stayed for sometime. In the present case, the respondents have initiated the disciplinary proceedings taking into account the circumstances of the case, including the delay in finalisation of the criminal proceedings. In our view, whether it is continuation of a disciplinary proceeding after the same has been kept in abeyance for sometime or initiation of the proceedings like in the present case, it will not make any difference. The orders of the Tribunal dated 19.4.2002 in MA 2751/2001 in OA 126/1990 are also relevant. Accordingly, the contentions of the learned counsel for the applicant to the contrary are rejected as we find no infirmity in the initiation of the disciplinary proceedings against him by the impugned Memorandum of charges dated 29.3.2003. Having regard to the judgements of the Hon'ble

Supreme Court in B.K.Meena's case (supra) and Capt. M. Paul Anthony's case (supra), there is also no legal infirmity or bar in the initiation of the disciplinary proceedings against the applicant, while the criminal proceedings are pending against him.

11. The contentions of Shri Puneet Mittal, learned counsel on the basis of Rule 20 of the Rules are also untenable. Although the applicant was on deputation with Respondent No.3 at the relevant time when the alleged misconduct occurred, since he returned to the parent Department, that is Respondent No.1/UPSC, there is no flaw in the actions taken by them in placing the applicant under suspension vide order dated 18.8.1994. Under Rule 20 of the Rules, it is provided, inter alia, that the borrowing authority shall have the powers of the appointing authority for certain purposes, like placing the Government servant under suspension and for conducting the disciplinary proceedings against him upto a point as provided in the Rules. However, in the circumstances of the case, since it is not disputed that Respondent No.1 is the appointing authority of the applicant, it has all the powers of the disciplinary authority. As mentioned above, when the suspension order was issued against the applicant, it is a fact that the applicant had already returned to the parent Department from the borrowing authority, that is respondent No.1/UPSC and their actions are accordingly valid. Therefore, the contentions of applicant's counsel based on Rule 20 fail and are rejected. Besides, no prejudice has also been caused to him in any way on this account, which justifies any interference in exercise of the powers of judicial review.

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We have also considered the other contentions raised by the learned counsel for the applicant but do not find any merit in the same.

12. In the result, for the reasons given above, as we find no merit in the application, the O.A. fails and is dismissed. No order as to costs.

V.K. Majo Tra
(V.K. Majo Tra)

Member (A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

'SRD'