(12)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1270/2003

New Delhi, this the 6th day of August, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A.SINGH, MEMBER (A)

Atul Kumar Garg
Executive Engineer (Civil) C.P.W.D.
s/o Late Shri K.C.Garg
r/o 1015, Narmada Complex
J.N.U., New Delhi - 110 067. ... Applicant

(By Advocate: Sh. M.S.Ganesh, Sr. Counsel with Sh. C.P.Saxena)

Versus

1. Union of India through
the Secretary to the
Govt. of India,
Ministry of Urban Development
and Poverty Alleviation
Nirman Bhavan,
New Delhi - 110 011.

2. Director General (Works)
Central Public Works Department
Ministry of Urban Development
and Poverty Alleviation
Nirman Bhavan,
New Delhi - 110 011.

3. Central Vigilance Commission through
its Director, Satarkta Bhavan
Block "A", G.P.O. Complex
I.N.A., New Delhi.

4. Union Public Service Commission
through its Secretary
Dholpur House, Shahjahan Road
New Delhi - 110 011. .. Respondents

(By Advocate: Sh. N.S.Mehta with Smt. Avnish Kaur)

O R D E R

Justice V.S. Aggarwal:-

Atul Kumar Garg, the applicant, is an Executive Engineer (Civil) C.P.W.D. By virtue of the present application, he seeks quashing of the order dated 25.11.2002 passed by Respondent No.1 as well as the report of the inquiry officer and a direction to Respondent Nos.1 and 2 to restore his increments and

for holding a review Departmental Committee Meeting with respect to the promotions made vide Office Order dated 12.11.2002.

2. Some of the relevant facts are that the applicant had been served with the following Article of Charge:

"**Article-I**

The said Shri Atul Kumar Garg, E.E. (Civil) was indifferent and slack in making available the records/documents as asked for by the vigilance unit of the DG(W), CPWD in connection with the investigation of a case of sub-standard execution of the work of "Construction of Government Co-Educational Senior Secondary School Building Phase II, Mundala Kalan, Najafgarh, Delhi" under agreement No.55/E.E./PWD-XL80-81. This indifference and slackness on his part resulted in delay in the investigation which frustrated the efforts of the disciplinary authority to initiate disciplinary proceedings against Shri B.N.Mittal, Assistant Engineer (Civil), as a result of which the proceedings against the said Shri B.N. Mittal, Assistant Engineer (Civil) became time-barred.

Thus, Shri Atul Kumar Garg, Executive Engineer (Civil) by his above acts exhibited lack of devotion to duty, thereby contravening provisions of Rule 3(1)(ii) of CCS (Conduct) Rules, 1964."

3. The inquiry officer had been appointed and after scanning through the evidence, he returned the findings that applicant could not solely be held responsible for failure of the disciplinary authority to institute the disciplinary proceedings against Shri B.N.Mittal, Assistant Engineer which became time barred on his retirement. It was held that nothing prevented the applicant to write to the Executive Engineer to search the records and his silence was indicative of lack of devotion to duty.

4. The Union Public Service Commission was also consulted and it advised that the dereliction of duty on the part of the applicant is deliberate and purposeful. It advised that interest of justice would be met if penalty of withholding of one increment for a period of one year with cumulative effect is imposed. The disciplinary authority keeping in view the facts, had accepted the said advice and imposed the following penalty:

> "Therefore, the file was referred to the UPSC for the advice. The Commission vide their letter dated 13.11.2002 (a copy of which is enclosed herewith) have advised imposition of penalty of withholding of one increment for a period of one year with cumulative effect. The President has considered the records of the case, findings of the I.O., representation of Shri Atul Kumar Garg and come to the conclusion that ends of the justice would be met if the penalty of withholding of one increment for a period of one year with cumulative effect is imposed upon Shri Atul Kumar Garg, Executive Engineer. President orders accordingly."

5. As already referred to above, the applicant assails the said order on various pleas which are being defended by the respondents.

6. Learned counsel for the applicant had contended that under Rule 18 of the CCS (CCA) Rules, 1965, there were other delinquents who have not been dealt with by the Department, and therefore:

a) departmental proceedings against the applicant could not be initiated:

b) the applicant could not be held responsible in this regard and our attention was drawn to Sub-Rule (2) to Rule 9 of the CCS (Pension) Rules, 1972: and

c) there has been an inordinate delay in initiation of the disciplinary proceedings against the applicant.

7. We have heard the parties' counsel. It is obvious from the resume of the facts to which we have referred to above, that the assertions against the applicant was of indifferent and slack attitude in making available the records/documents which were asked by the vigilance unit. In connection with the investigation of a case of sub-standard execution of the work of "Construction of Government Co-Educational Senior Secondary School Building", this indifference on the part of the applicant resulted in delay in investigation and further to initiate disciplinary proceedings against one Shri B.N.Mittal.

8. The inquiry officer had taken note of the totality of the facts and had reproduced the following fact:

> "i) on receiving complaint from some quarter, ACB (DA) collected some records related to the work:
>
> ii) matter was brought to the knowledge of C.T.E. under the Chief Vigilance Commissioner.
>
> iii) if prima facie case against Sh. B.N.Mittal AE could be made, the case should have been handed over to the

Vigilance Unit of CPWD for further investigation and in that case records should have been handed over to the Vigilance Unit in 3/88 instead of handing over the same to AE in charge of the work.

Had it been done the Vigilance Unit could have started the investigation right away during 1988 and possibly the Disciplinary Authority would have been in position to initiate disciplinary proceedings against Sh. Mittal AE before his retirement on 31.12.90.

iv) Event for which the Disciplinary Authority intended to initiate the disciplinary proceedings against Sh. B.N.Mittal AE must have occurred either during or before 1983. Obviously, the departmental proceedings against Sh. Mittal had to be instituted before his retirement in compliance with the cl.b of sub rule 2 of Rule 9 of CCS (Pension) Rules, 1972.

9. It further referred to the fact that none of the letters of the vigilance unit had been taken so seriously. Applicant was not solely responsible. His failure to act was not the sole reason for failure of the disciplinary authority to institute the proceedings, though non-submission of the records by the applicant with the promptitude it deserved, definitely helped in saving the said Shri B.N.Mittal. The findings of the inquiry officer in this regard are:

"None of the letters of the Vigilance Unit mentioned this aspect. At least reminder after Vigilance Unit's second letter dated 24.11.89 should have mentioned this aspect and inform him that non submission of records within specified time would make CO personally responsible for any adverse result. The Vigilance Unit's letter dated 12.2.90 was a routine letter in cyclostyled format without conveying any real urgency in the matter (though letter was marked 'immediate', but sense of urgency would have been more apparent if real urgency was brought out in the letter in succinct manner) when there was hardly ten months left for institution of the disciplinary proceedings against Sh. B.N. Mittal AE before it become time barred.

v) After letter dated 12.2.90 subsequent reminder was issued by EE (V) IV on 15.2.91 exactly after one year (by this time Sh. Mittal, AE, had already retired and no useful purpose would have served by calling records at this stage as the case had already become time barred. In this particular case matter should have been taken up at CE & SE level explaining the urgency during 89 itself instead of directly corresponding with EE Div.XVII and copies endorsing to CE & SE).

6.11 In the light of the above discussions it would be apparent that delayed submission of records by CO was not the sole reason for failure of the Disciplinary Authority to institute the disciplinary proceedings against Sh. B.N.Mittal AE before the proceedings became time barred.

Non submission of records by CO with the promptitude it deserved definitely helped in saving Sh. B.N. Gupta AE from the rigour of disciplinary proceedings after his retirement, but CO could not be held solely responsible for the fiasco."

10. From the aforesaid, it is clear that the delay had even been caused, besides the applicant, by other persons.

11. Rule 18 of the CCS (CCA) Rules, 1965 reads as under:

"18. **Common Proceedings**

(1) Where two or more Government servants are concerned in any case, the President or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding.

NOTE.- If the authorities competent to impose the penalty of dismissal on such Government servants are different, an order for taking disciplinary action in a common proceeding may be made by the highest of such authorities with the consent of the others.

(2) Subject to the provisions of sub-rule (4) of Rule 12, any such order shall specify-

(i) the authority which may function as the Disciplinary Authority for the purpose of such common proceedings;

(ii) the penalties specified in Rule 11 which such Disciplinary Authority shall be competent to impose;

(iii) whether the procedure laid down in Rule 14 and Rule 15 or Rule 16 shall be followed in the proceeding."

12. Perusal of the same clearly shows that where two or more Government servants are concerned in any case, an order may be made directing that disciplinary action against all of them may be taken in a common proceedings. The expression **'are concerned in any case'** necessarily would not mean those against whom no action has been contemplated. The concerned officers would be those against whom common departmental proceedings are being initiated.

13. Rule 18 does not cast duty that if there is any other said person concerned against whom disciplinary proceedings are not being initiated, he must also face joint/common proceedings. Therefore, this particular argument so much thought of and eloquently put forward by the learned counsel, must be rejected.

14. Reverting back to the second limb of the argument, it is obvious, as we have already recorded above, that there were other persons concerned who also delayed the action. It is unfortunate that no action has been taken against them but in no event

will it absolve the responsibility of the applicant that records were being despatched to his office and he did not make available the relevant record.

15. The matter of the fact is that applicant also delayed in despatch of the relevant records and there was dereliction of duty on his part. A clear and specific finding has been arrived at. It is not preposterous or without any material to prompt us to interfere.

16. As regards the last submission about the inordinate delay in initiation of the departmental proceedings, we take advantage in referring to the certain precedents.

17. This question as to effect of delay has been considered more often than once by the Apex Court. The Supreme Court in the case of **State of Madhya Pradesh** v. **Bani Singh and another**, 1990 (2) SLR 798 was concerned with a controversy whether there was a delay in initiation of the departmental proceedings. There was a delay of 12 years to initiate the departmental proceedings. The Supreme Court deprecated the said practice of delay initiation of departmental proceedings and held:-

> "4. The appeal against the order dated 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 the decide the matter on merits. 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 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 not grounds to interfere with the Tribunal's orders and accordingly we dismiss the appeal."

Similarly in the case of **Registrar of Cooperative Societies Madras and Another** v. **F.X.Fernando,** (1994) 2 SCC 746, there was delay in initiation of the departmental proceedings. The delay had taken place because Directorate of Vigilance and Anti- Corruption was not prompt. It was held in the facts and circumstances of that case that the Registrar of Cooperative Societies cannot be faulted and, therefore, it was not held appropriate to quash the proceedings. Similar view had been expressed by the Supreme Court in the case of **Union of India and others** v. **Raj Kishore Parija,** 1995 Supp (4) SCC 235. In the said case, the concerned employee had been suspended in the year 1984 and the charge-sheet was served in the year 1988. When he challenged his suspension as well as disciplinary proceedings, the Tribunal had quashed the same. The Supreme Court held that the Tribunal travelled beyond its jurisdiction in quashing the charges and the disciplinary proceedings in the facts of the case and the appeal had been allowed. Similarly in the case of **B.C.Chaturvedi** v. **Union of India and Ors.,** (1995) 6 SCC 749, there was delay in initiation of departmental proceedings. The matter was before the Central Bureau of Investigation. The

Central Bureau of Investigation had opined that the evidence was not strong enough for successful prosecution, but recommended to take disciplinary action. It was held that when such a delay occurs, the same is not violative of Articles 14 and 21 of the Constitution. The findings read:-

> "11. The next question is whether the delay in initiating disciplinary proceedings is an unfair procedure depriving the livelihood of a public servant offending Article 14 or 21 of the Constitution. Each case depends upon its own facts. In a case of the type on hand, it is difficult to have evidence of disproportionate pecuniary resources or assets or property. The public servant, during his tenure, may not be known to be in possession of disproportionate assets or pecuniary resources. He may hold either himself or through somebody on his behalf, property or pecuniary resources. To connect the officer with the resources or assets is a tardious journey, as the Government has to do a lot to collect necessary material in this regard. In normal circumstances, an investigation would be undertaken by the police under the Code of Criminal Procedure, 1973 to collect and collate the entire evidence establishing the essential links between the public servant and the property or pecuniary resources. Snap of any link may prove fatal to the whole exercise. Care and dexterity are necessary. Delay thereby necessarily entails. Therefore, delay by itself is not fatal in this type of cases. It is seen that the C.B.I. had investigated and recommended that the evidence was not strong enough for successful prosecution of the appellant under Section 5 (1)(e) of the Act. It had, however, recommended to take disciplinary action. No doubt, much time elapsed in taking necessary decisions at different levels. So, the delay by itself cannot be regarded to have violated Article 14 or 21 of the Constitution."

Similarly in the case of **Secretary to Government, Prohibition & Excise Depar~tment** v. **L.Srinivasan**, 1996(1) ATJ 617, the Supreme Court while considering the said controversy was concerned with the charge of embezzlement and fabrication of false records. It was

held that it would take a long time to detect such charges. The Tribunal had quashed the proceedings on the ground of delay. The Supreme Court held that quashing of the proceedings was improper and the Administrative Tribunal had committed grossest error in its exercise of the power of judicial review. The findings read:-

> "The Tribunal had set aside the departmental enquiry and quashed the charge on the ground of delay in initiation of disciplinary proceedings. In the nature of the charges, it would take long time to detect embezzlement and fabrication of false records which should be done in secrecy. It is not necessary to go into the merits and record any finding on the charge levelled against the charged officer since any finding recorded by this Court would gravely prejudice the case of the parties at the enquiry and also at the trial. Therefore, we desist from expressing any opinion on merit or recording any of the contentions raised by the counsel on either side. Suffice it to state that the Administrative Tribunal has committed grossest error in its exercise of the judicial review. The member of the Administrative Tribunal appear (sic) to have no knowledge f the jurisprudence of the service law and exercised power as if he is an appellate forum de hors the limitation of judicial review. This is one such instance where a member had exceeded his power of judicial review in quashing the suspension order and charges even at the threshold. We are coming across frequently such orders putting heavy pressure on this Court to examine each case in detail. It is high time that it is remedied."

Similarly, we refer to a decision of the Supreme Court in the case of **State of Andhra Pradesh** v. **N.Radhakishan**, JT 1998 (3) S.C.123 wherein it was held that if delay is unexplained, prejudice would be caused, but if the delay is explained, in that event, it cannot be a ground to quash the proceedings. The Supreme Court held:-

> "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 its 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."

From the aforesaid, it is clear there should not be inordinate delay in the departmental proceedings. They should be initiated at the earliest, but if the delay can be explained then, it has to be seen in the facts and circumstances of each case. Otherwise presumption of prejudice even can be drawn.

18. All these facts necessarily have to be gathered and examined on the touchstone as to whether any prejudice is caused to a person or not. If no prejudice is caused, in that event it cannot be termed that delay would vitiate the departmental action. It is not shown that applicant in any way, in the present case, was not able to defend the proceedings properly or that because of the delay that occurred, by any stretch of imagination, prejudice has been caused. The assertions were simple that the applicant was asked to make available a record relating to sub-standard execution of the work of "Construction of Government Co-Educational Senior Secondary School". He did not make it available. It was followed by three reminders. The applicant did not respond to the

same. He only finally made the record available on 23.9.1999, that is to say after an inordinate delay on his part when the records were called in the year 1990-91.

19. Taking stock of these facts, it is obvious that in the peculiar facts, it cannot be said that any prejudice is caused and the applicant cannot take advantage of the said plea.

20. For these reasons, the OA being without merit must fail and is accordingly dismissed.

(S.A.Singh)
Member (A)

(V.S. Aggarwal)
Chairman

/NSN/