CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

...

OA No. 1288/2003

New Delhi, this the 2nd day of January, 2004

Hon'ble Shri Justice V.S.Aggarwal, Chairman
Hon'ble Shri S. A. Singh, Member (J)

Shri Jagdish Upadhyay,
s/o Sh. K.D. Upadhyay,
Carpet Training Officer,
Regional Carpet Store,
Aasshapur, Sarnath,
Varanasi (U.P.) ...Applicant

(By Advocate: Shri S.M.Rattan Paul)

Versus

1. Union of India through
The Secretary,
Ministry of Textiles,
Udyog Bhawan, Rafi Marg,
New Delhi.

2. The Development Commissioner (Handicrafts)
West Block No. 7,
R.K.Puram,
New Delhi - 110 066.

3. The Regional Director,
Office of the Development
Commissioner (Handicrafts),
Central Region,
B-46, Mahanagar Extension,
J-Park, Lucknow (UP).

4. The Assistant Director (Admn. & Coord),
Office of the Development
Commissioner (Handicrafts),
Carpet Weaving Training-cum-Service Centre,
D-64/151, A-M-1,
Nagar Nigam Colony,
Sigra, Varanasi (UP). ...Respondents

(By Advocate: Shri K.R. Sachdeva)

O R D E R

Justice V.S. Aggarwal:-

Applicant is a Carpet Training Officer. While he was posted at Carpet Weaving Training-cum-Service

Centre at Varanasi, he was issued a chargesheet on 28.11.1988 stating that while functioning as Carpet Training Officer, Service Centre, Varanasi during the year 1984 he embazzled 14 carpets of 5/52 quality, amounting to Rs. 19,656/- and in addition to that he committed the following acts of misconduct:

i) Sold 74 Carpets unauthorisedly:
ii) Charged different rates for the same quality of Carpets:
iii) Did not maintain proper records for receipts of carpets and its disposal.

2. An Enquiry Officer was appointed. He was changed in February, 1990. The new Enquiry Officer held the departmental enquiry against the applicant and submitted his report in November, 1991. He had returned the findings that the charges were not proved. On 9.3.1993, the disciplinary authority ordered for further enquiry under sub rule (1) to Rule 15 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 holding that enquiry was not held in accordance with the prescribed procedure. Thereafter fresh enquiry was held by the Enquiry Officer. He submitted his report again on 22.10.1996. Now it was held that charges/sub charges stood proved except the sub charge regarding charging of different rates for the same quality of carpets. The disciplinary authority on 4.9.1998 did not accept the

report of the Enquiry Officer and directed further enquiry regarding:

> "And whereas, the undersigned having carefully gone through the records of the inquiry and submission dated 6.9.1997 made by Shri Jagdish Upadhyay, consequent on receipt of inquiry report, finds that the inquiry against Shri Jagdish Upadhyay has not beenheld in accordance with the procedure and found deficit on the following counts:
>
> (i) The Charged Officer Shri Jagdish Upadhyay submitted the details of 107 carpets which were stated to be received by him. Report of Inquiry Officer does not clear whether the details submitted by the Charged Officer are correct or not.
>
> (ii) Deposition of Shri R.N.Mishra, the then Dy. Director, FAC, Varanasi and Shri Amar Nath, Cashier as defence witnesses is considered as essential to find out the factual position, for not issuing cash memos and gate passes and other points raised by the C.O. but both of them have not been called for.
>
> Now, therefore, the undersigned hereby directs, in terms of Rule 15(1) of the aforesaid rule that a further inquiry may be held in this regard by Shri V.S. Shukla and report submitted within two months after completion of inquiry as per prescribed procedure."

3. The Enquiry Officer again held the enquiry and submitted his report.

4. The disciplinary authority on 3-4/6/2002 passed an order imposing the penalty of reduction to a lower stage in pay scale and recovery of the cost of 14 carpets with penal interest. The applicant had

preferred an appeal against the said order which was dismissed on 4.4.2003. By virtue of the present application, the applicant prays for quashing the orders passed by the disciplinary as well as the appellate authority.

5. Needless to state that in the reply filed, the application has been contested. The respondents pleaded that the applicant was not authorized to receive those carpets but he had received them. The applicant admitted that he had received those carpets but on the verbal instructions of his superiors. The procedure is well settled that if there are verbal orders, written permission must be obtained. Out of 107 carpets received by the applicant, 74 carpets were sold, 10 carpets were sent for washing against proper receipts and 8 were handed over to RCS Ashapur, 1 sent to Service Centre, Bhadohi and other 14 carpets are stated to have been embezzled. The applicant had failed to produce any proper receipt for maintenance. It is insisted that the proper procedure had been followed as when there was some deficiencies,the matter was remitted by the disciplinary authority to the Enquiry officer. It is denied that there is any procedural irregularity or illegality in this process.

6. We have heard the parties counsel.

7. Learned counsel for the applicant urged that the chargesheet has been served after four years of the alleged incident and the proceedings continued for next 14 years. This caused prejudice to the applicant. It was further contended that the disciplinary authority had been directing de novo enquiries to be held which is not permissible under CCS(CCA) Rules. The charge otherwise was also alleged to be vague because according to the learned counsel it did not give the size of the carpets and the quality thereto. Further on facts, it was the plea of the learned counsel that inspection of all the documents were not permitted, defence witnesses were not allowed to be examined and in any case the applicant cannot be held responsible for any dereliction of duty.

8. As per the respondents' learned counsel, there is no procedural irregularity. In accordance with the procedure, all the documents were made available and there was no de novo enquiry nor any prejudice has been caused to the applicant.

9. The first and foremost question that comes up for consideration is as to if there can be a de novo enquiry which could be ordered by the disciplinary authority or not? The decision of the Constitution Bench of the Apex Court in the case of **K.R.Deb v. Collector of Central Excise, Shillong,** AIR 1971(Suppl.)SCR 375 had considered this question. The

Supreme Court held that Rule 15 only contemplates one enquiry and not a de novo inquiry. The findings of the Supreme Court read:

> "It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defects has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquriy officer to record further evidence. But there is no provision in rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under rule 9."

10. Subsequently, in the decision rendered by the Supreme Court in the case of **Union of India & Ors. vs. P.Thayagarajan**, 1999 (1) SCC 733, the case of K.R. Deb had been again considered. The same was distinguished on facts. The Supreme Court held that if the enquiry officer has not followed the correct procedure in taking evidence of witnesses in that event the matter can be sent back by the disciplinary authority to the Enquiry Officer. In paragraph 8, the Supreme Court held:

> "8. A careful reading of this passage will make it clear that this Court notices that if in a particular case where there has been no proper enquiry because of some serious defect having crept into the enquiry or some important witnesses were not available at the time of the enquiry or were not examined, the disciplinary authority may ask the enquiry officer to record further

> evidence but that provision would not enable the disciplinary authority to set aside the previous enquiries on the ground that the report of the enquiry officer does not appeal to the disciplinary authority. In the present case, the basis upon which the disciplinary authority set aside the enquiry is that the procedure adopted by the enquiry officer was contrary to the relevant rules and affects the rights of the parties and not that the report does not appeal to him. When important evidence, either to be relied upon by the Department or by the delinquent official, is shut out, this would not result in any advancement of any justice but on the other hand, result in a miscarriage thereof. Therefore we are of the view that Rule 27(c) enables the disciplinary authority to record his findings on the report and to pass an appropriate order including ordering a de novo enquiry in a case of the present nature."

11. From the aforesaid it is clear that de novo enquiry will not be permissible. But if there is a procedural irregularity or illegality, in that event, the discipliary authority can certainly send the matter back to the enquiry officer.

12. Reverting back to the facts of the present case, it is patent from the resume of facts that enquiry officer had earlier sent his report on 9.3.1993. The disciplinary authority had, in exercise of the powers under sub rule 1 to rule 15 of the CCS(CCA) Rules, remitted the case back and had noticed the following facts:

> "And whereas, the undersigned, having carefully gone through the records of the inquiry and submission dated 16.3.1992 made by Shri Jagdish Upadhyay consequent on receipt of the inquiry report, finds that the inquiry against Shri Jagdish Upadhyay has not been held in accordance with the procedure in as much as that:

(a) The Charged Officer, Shri Jagdish Upadhyay was not allowed inspection of the documents, as listed in Annexure-III of the memorandum dated 28.11.88. This tantamounts to denial of reasonable opportunity to Shri Upadhyay under the principles of natural justice.

(b) The Inquiry Officer has failed to evaluate and analyse the oral and written evidences adduced by the prosecution and defence sides during inquiry proceedings, in his inquiry report.

(c) Out of 29 documents inspected by the Charged Officer in his defence, only two documents were forwarded by the Inquiry Officer to the Disciplinary Authority. Remaining 27 documents have not been forwarded."

13. Perusal of the above shows that so far as procedeural flaw pertaining to inspection of the documents and not allowing the remaining documents is concerned, on that count the matter could certainly be sent back to the enquiry officer but if the enquiry officer had evaluated the matter and the evidence in another way, in that case it is not a good ground to remit the case to the enquiry officer. In such a situation the disciplinary authority, who has the right, may formulate its own opinion, record it and take further necessary action. In the order of 9.3.1993, the disciplinary authority has recorded that the enquiry officer has failed to evaluate the oral and written evidence of the defence side during the enquiry proceedings. As recorded above, if it is a matter of evaluation in that case it cannot be taken to be a ground to send the matter back to the enquiry officer.

14. Similarly in the order of 4.9.1998, the disciplinary authority again had sent the case back to the enquiry officer. We have already reproduced above the relevant portion of the same. Herein again, the matter pertained to evaluation and discussion of the evidence. If it did not come to the expectations of the disciplinary authority he could formulate its own opinion, as already recorded above, instead he chose the easier course, which was not permissible in law and remitted the matter back to the enquiry officer. This certainly would be de novo enquiry recording fresh reasons, which is not permissible in law. It cannot be taken to be a procedural flaw. The case of K.R. Deb (Supra), therefore, comes to the rescue of the applicant. The other limb of the argument advanced by the applicant was pertaining to the delay in initiation and completion of the proceedings. We have alredy referred to above the basic facts. It pertained to the dereliction of duty which took place in the year 1984. The chargesheet was served in the year 1988 and the disciplinary authority passed the order after 18 years of the alleged dereliction of duty. It is these facts which were being highlighted so as to contend that prejudice is caused. In the facts of the case, reliance strongly was placed on the decision of the Supreme Court in the case of **B.C.Chaturvedi vs. Union of India & Ors.**, 1995 (6) SCC 749. The Supreme Court deprecated the practice of delaying the initiation of disciplinary proceedings and where there was a delay of

large number of years, it was held that unless explained, the proceedings could, on that ground, be quashed. The findings are:

> "11. The next question is whether the delay in initiating disciplinary proceeding 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 tardy 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 these type of cases. It is seen that the CBI 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."

15. In another case entitled **Secretary to Government, Prohibition & Excise Department vs. L.**

Srinivasan, 1996 (3) SCC 157, the same question was again alive for consideration wherein the charge pertained to embezzlement. The Supreme Court held that in the nature of the charges, it would take a long time to detect embezzlement and fabrication of false records which should be done in secrecy and, therefore, quashing of suspension and charges on the ground of delay was improper. The order passed by the Tribunal accordingly had been set aside.

16. We take advantage in further referring to another decision of the Supreme Court in the case of **State of Andhra Pradesh vs. N. Radhakishan**, JT 1998(3) SC 123 in which the Supreme Court held that it is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay, each case has to be examined on its own merits. The court has to take into consideration all 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 the delay. The court has to see whether prejudice has been caused or not. The precise findings are:

> "19.....In considering whether 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 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 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."

17. Similarly, in the case of **Food Corporation of India vs. V.P. Bhatia**, JT 1998(8)SC 16, the CBI had taken up the investigation and had submitted the report. There was undue delay. The High Court had quashed the proceedings. But the Supreme Court held that keeping in view that the matter was under investigation and, therefore, there was delay in initiation of disciplinary proceedings. The High Court was not justified in quashing the proceedings. The Supreme Court held:

> "8. In the facts referred to above it cannot be said that there was undue delay on the part of the appellant-Corporation in initiating disciplinary procedings against the respondents or in conducting the said proceedings after serving of the charge-memos. In the circumstances the High Court was not justified in quashing the charge-memos against the respondents on the ground of delay."

18. However, it has further been noted by the Supreme Court that undue delay in initiation of

disciplinary proceedings may cause prejudice but the facts of each case must take predominance.

19. The analysis of the aforesaid, therefore, would be that the disciplinary proceedings ordinarily should be initiated at the earliest. If there is delay, a person can only succeed, if he can establish that prjudice is caused to him.

20. Reverting back to the facts of the present case, it is obvious that the disciplinary proceedings had been initiated after four years of the alleged dereliction of the duty by the applicant. Thereafter on two occasions the matter was remitted by the disciplinary authority. Ultimately, it is alomost 18 years of the alleged incident that the disciplinary authority had imposed the penalty. When such is the inordinate delay, a person can reasonably complain that he is being prejudiced. It has to be borne in mind that in stale matters it is inappropriate even to take action particularly when it is not a case where matter was under investigation with the police or that it was a case of such embezzlement which takes long to detect. Herein detection was effected and process had started but still for reasons, which are not explained, there has been inordinate delay. Applicant, therefore, rightly complained that when delay is not explained, he has been prejudiced. We also agree.

21. Keeping in view the aforesaid it becomes unnecessary to go into any other controversy. Resultantly, we allow the present application and quash the impugned orders. No costs.

(S.A.Singh)
Member (A)

(V.S.Aggarwal)
Chairman

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