

Central Adminisrative Tribunal
Principal Bench

O.A.No.1494/2003

(B)

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri R.K.Upadhyaya, Member (A)

New Delhi, this the 25th day of August, 2003

D.Prasad
345, Laxmibai Nagar
New Delhi - 110 023. ... Applicant

(By Advocate: Sh. G.K.Aggarwal)

Vs.

1. Union of India through
Director General (Works) &
Ex-Officio Secretary
Central Public Works Deptt.
Nirman Bhawan
New Delhi - 110 011.
2. Central Vigilance Commissioner
Satarkata Sadan, INA
New Delhi - 110 023. ... Respondents

(By Advocate: Sh. R.P.Aggarwal)

O R D E R(Oral)

By Shri Shanker Raju, Judicial Member:

Applicant impugns respondents' Memorandum issued on 28.2.2003 under Rule 14 of the CCS (CCA) Rules, 1965 holding an inquiry for a major penalty. He has sought quashment of the same with all consequential benefits.

2. Applicant, who is working as Assistant Engineer (Electrical), has been issued a Memorandum on 26.2.2002 calling upon him to explain why not be issued a memorandum, for holding a disciplinary proceedings, against him. Applicant responded to the aforesaid memorandum by filing his detailed reply.

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3. Vide memorandum issued under Rule 14 of the CCS (CCA) Rules on the basis of Central Vigilance Commission's recommendations dated 13.12.2002 statement of articles of charge have been framed against the applicant which are reproduced as under:

"ARTICLE-I:

The said Shri D.Prasad, AE(E) procured materials costing Rs.519,796/- by placing indents on CPWA-7, from unauthorised Co-operative Societies/Stores which was in violation of instructions contained in DPT's OM No.14/3/88-Welfare, dated 4.2.88.

ARTICLE-II:

Shri D.Prasad, did not obtain Non-Availability Certificate from Central Stores Division before preparing the said indents in violation of instruction contained in Para 38.32 of CPWD Manual Vol.II (1988 Edition).

Many of the items purchased by Sh. D.Prasad, AE(E) from unauthorised Co-operative Stores were available in Central Electrical Stores at lower rates. In this manner Sh. D.Prasad, AE(E) not only violated para 38.32 of CPWD Manual Vol.II (1988) but also caused a loss of over Rs.10,000/- to the Government in respect of materials available in Central Electrical Stores during the corresponding period.

ARTICLE-III:

Many of the items purchased by Sh. D.Prasad AE(E) from unauthorised Co-operative Stores, were available on DGS&D rate contract at lower rates. By purchasing such items from the unauthorized Co-operative Stores at higher rates. Sh. D. Prasad, AE(E) not only violated para 38.10 of CPWD Manual Vol.II (1988) but also caused a loss of over Rs.35,000/- to the Government.

ARTICLE-IV:

In purchasing materials from unauthorised Co-operative Stores, the said Sh. D. Prasad, AE(E) failed to follow the procedure prescribed for local purchase of material in para 38.28 of CPWD Manual Volume-II.

Thus the said Shri D.Prasad, by his above acts failed to maintain absolute integrity and exhibited lack of devotion to duty thereby contravening Rules 3(1)(ii) of CCS (Conduct) Rules-1964.

4. Applicant impugns the above memorandum on the ground of inordinate delay in issuance of the chargesheet, no misconduct attributable to him and hostile discrimination under Articles 14 and 16 of the Constitution of India.

5. Shri G.K.Aggarwal, learned counsel for applicant, relying upon a decision of the Apex Court in State of A.P. & Others v. Sh. N.Radhakrishan, (1998) 4 SCC 154 contended that no pre-determined principle can be applied to all situations, the Court has to take in essence the relevant factors into consideration and if the charge-sheet issued on the applicant is not in the interest of clean administration, it should be allowed to terminate after inordinate delay. As delay in proceedings, which is unexplained, is prejudicial to the delinquent employee and also prejudice the charged officer in the matter of his defence. Reliance has also been placed on the decision of Apex Court in State of Punjab & Others v. Shri Chaman Lal Goyal, (1995) 2 SCC 570 to substantiate his plea.

6. In the aforesaid backdrop, it is stated that though the charges pertain to from 1988 to 1993, even as per the recommendations made by the CVC, the complaint was made in 1996 and the delay from 1998 when the Chief Engineer has made a complaint, till the issuance of the chargesheet remains unexplained.

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7. Shri G.K. Aggarwal further stated that from the perusal of the Articles and supporting documents, allegations as it is, if proved, would not amount to misconduct, as every lapse would not be misconduct unless the same shows any ulterior motive or dishonest intention on the part of the delinquent officer.

8. In so far as the discrimination is concerned, it is stated that Sh. J.K. Chaudhari, who was working as AE(E), was found to have misconduct in a similar manner has been issued a minor punishment chargesheet and has been let off with warning.

9. Referring to the case of Mr. U.B. Narang, AE, it is contended that in his case only minor penalty chargesheet has been issued whereas the amount involved was more what has been alleged against the applicant and was let off with a minor penalty of censure and recovery of Rs. 7500/-. In this manner, it is stated that being an identically situated and equal in all respects hostile discrimination meted out to the applicant without any reasonable basis which is violative of Articles 14 and 16 of the Constitution of India.

10. On the other hand, OA is contended by Shri R.P. Aggarwal, learned counsel for respondents, who vehemently opposed the contentions. According to him, as regards delay is concerned, the matter was reported in 1996 but the Chief Engineer has on a detailed inquiry made a complaint to the Vigilance Unit in October 1998 thereafter the matter was referred to the CVC and the CVC vide its

recommendations dated 13.12.2002 advised for initiation of major penalty proceedings against the applicant. Accordingly, as the matter was being investigated and under process there is no inordinate delay on the part of the respondents. Immediately, on receipt of the recommendations of CVC,, explanation has been sought from the applicant and thereafter a chargesheet has been issued.

11. In so far as the prejudice to be caused to the applicant is concerned, it is stated that applicant has not earlier, anywhere in this OA, stated that he would not be able to procure his defence as from the perusal of the written explanation, he has meticulously opposed the allegations.

12. As regards no misconduct is concerned, learned counsel for respondent states that even if there is no ulterior motive or dishonest intention allege: dt against the applicant yet his act of procurement of material from unauthorised process and stores and prejudice in violation of local unit and put indent without approval is clearly in contravention of CPWD Manual, and as the inquiry has been initiated, applicant would be afforded reasonable opportunity to defend in its course. It is stated by Shri R.P.Agarwal that Tribunal at an interlocutory stage should not interfere at the stage of chargesheet in disciplinary proceedings unless the material disclosed alleges no misconduct. For this, he has relied upon the decision of the Apex Court in The Deputy Inspector General of Police v. K.S. Swaminathan, JT 1996(10) SC 40.

13. In so far as the discrimination is concerned, it is stated that whereas the applicant has been recommended as per his misconduct for a major penalty, the others have not been recommended and as the allegations are different, there is no violation of Articles 14 and 16 of the Constitution of India.

14. We have carefully considered the rival contentions of the parties and perused the material on record.

15. In view of the decision of the Apex Court in Union of India v. Shri Upendra Singh, JT 1994(1) SC 658, the disciplinary proceedings cannot be assailed at an interlocutory stage in a judicial review unless it is vitiated from mala fides or based ^h on ~~no~~ misconduct. From the perusal of the chargesheet issued to the applicant, we are satisfied that the applicant has contravened the departmental instructions while working as Assistant Engineer (E) in procurement of material. We cannot assume role of investigating authority or sitting over the chargesheet as an appellate authority. The inquiry shall not be interfered at an interlocutory stage as we do not find this is to be a case of 'no misconduct'. Applicant shall get reasonable opportunity in accordance with rules to defend himself and raise all these contentions, it is for the ^h departmental authorities to pass a final order. At this stage, it is precluded ^h to go into the truth or correctness of the charge.

16. In so far as the delay is concerned, delay which causes prejudice and is inordinate and unexplained results in quashment of the chargesheet. Once the delay is explained this would not result in quashment of the chargesheet. The Apex Court in State of M.P. v. Banni Singh, 1991 SCC (L&S) 638 quash the chargesheet on an inordinate and unexplained delay.

17. In Shri N.Radhakrishan's case supra, the following observations have been made by the Apex Court:

"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

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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."

18. If one has regard to the above, mere delay in issuance of chargesheet shall not ipso-facto vitiate it. If the delay is unexplained, prejudice to the delinquent employee is writ large on the face of it, only then, it is fatal. In the present case, the violation of the procedure from 6.1.1988 to 11.10.1993 was found in 1996 and on an investigation was unearthed in 1998 on a complaint of Chief Engineer, the same was probed into the CVC at the first stage recommended for disciplinary proceedings against the applicant in 2002. Immediately, thereafter the applicant has been put to notice and a chargesheet has been issued. We are satisfied that the delay has been validly explained and is not inordinate. This similarly circumstance have also been issued major penalty chargesheet under Rule 14 of the CCS (CCA) Rules ibid.

19. In so far as the prejudice is concerned, applicant has not even *whispered* ^u about any prejudice to be caused in case he faces the disciplinary proceedings rather he had *ample* ^u material to defend which he has reflected in reply to the explanation. In this case the delay does not defeat justice.

20. There has been a proper explanation for delay keeping in view of the seriousness of the charge, we do not find any prejudice caused to the applicant.

21. In so far as the discrimination alleged by the applicant, in order to substantiate the same it has to be established that the applicant in all respects is equal with respect to others. The allegations against the applicant are different from others, who had not been recommended by the CVC ~~for~~ a major penalty.

22. As equality has not been established, we do not find any discrimination meted out to the applicant.

23. However, we observe that in the disciplinary proceedings applicant would have opportunity to put-forth of his contentions and to effectively defend the charge.

24. In the result, though no good grounds have been found to set-aside chargesheet at this stage, we dispose of the OA with direction to the respondents to expeditiously complete the disciplinary proceedings within a period of six months from the date of receipt of a copy of this order. We also observe that the applicant would extend fullest cooperation in the proceedings and shall not use delaying tactics. If on participation of the applicant, without any delaying tactics, the disciplinary proceedings are not concluded within a period of six months the same shall stand abated. Applicant has also at liberty to adduce all his contentions raised herein before the competent authority. No costs.

C. N. Narayana

(R.K.Upadhyaya)
Member (A)

S. Raju

(Shanker Raju)
Member (J)