

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1668/2003

New Delhi. this the 17th day of March, 2004

HON BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON BLE SHRI S.K.NAIK, MEMBER (A)

Sushil Lal
Flat No.3, CPWD Inquiry Office
Sector-8
R.K.Puram, *New Delhi*
Executive Engineer(E)
CPWD, Suchna Bhawan.
New Delhi-110 022. ... Applicant

(By Advocate: Shri Rajinder Nischal with Shri Ashish
Nischal)

Versus

Union of India through
its Secretary
Ministry of Urban Development and Poverty
Alleviation
Nirman Bhawan
New Delhi. ... Respondent

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

O R D E R (Oral)

Justice V.S. Aggarwal:-

Applicant who is an employee of Central Public Works Department, was sent on deputation to Civil Construction Wing, AIR, Pune from 11.8.1989. He was repatriated to Central Public Works Department on 10.8.1994. The applicant was served with major penalty chargesheet on 14.3.2000 after repatriation.

2. By virtue of the present application, he seeks quashing of the Article of Charge on the ground that there has been an inordinate delay in issuing of the impugned chargesheet and further that the charges so framed are vague.

3. The application has been contested.

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4. It has been stated that the applicant was on deputation to Civil Construction Wing. Inspection was effected by high level Committee in January, 1992. Some serious lapses were pointed. The report was submitted and the matter was referred to Central Vigilance Commission. It advised initiation of major penalty proceedings. It is thereafter that major penalty proceedings were initiated. It is denied that the charges are vague and there is an inordinate delay. Pertaining to the chronology of events the respondents plead:

S.No.	Events	Date
A.	(Inspection of Pune Division)	19.1.92 to 22.1.92
B.	Submission of PE report after compiling all documents to DG, AIR 11-10-94	
C.	After due formalities matter was referred to CVC and 1st stage advice of CVC was received.	22-8-96
D.	Draft chargesheet was sent to CPWD by Ministry of I&B	24-2-97
E.	CPWD asked certain clarification	22.7.98
F.	After submission of clarifications chargesheet was served on.	14-3-2000"

5. The short question that comes up for consideration in the present case is as to whether there is an inordinate delay and if delay effected the departmental proceedings or not. The Articles of Charge herein reads:

"ARTICLE I

The said Shri Sushil Lal, EE (E), while purchasing the electrical materials/stores and T&Ps worth Rs.41,72,031/- by executing various agreements and supply orders from local market and through DGS&D, committed following irregularities in violation of the instructions contained in various paras under Section 2, 17, 37 and 38 of



CPWD Manual, Vol.II and paras. 64, 89, 144, 146, 148 of CPWD and Rules 131 (1), 132(2) 103 of GFR:

(i) Purchases have been made without any provision or scope in the sanctioned PE of the head of work against which the purchases were made.

(ii) The purchases made were not based on detailed estimates or assessed quantities on any project.

(iii) No technical sanction was accorded to many of the estimates for purchases made and no approved NIT or local market justification has been prepared in most of the cases. All the said actions were needed in the tendering process and acceptance.

ARTICLE II

During the aforesaid period, the said Shri Sushil Lal, Executive Engineer (E), had purchased Electrical Stores amounting to Rs.31,47,904/- [Total cost of purchases made of Rs.41,72,031/- - Rs.7,18,625/- (DGS&D) & Rs.3,05,502/- (T&P)] in violation of the delegations of power under Section 38, para.31 of CPWD Manual, Vol.II and paras 144 and 146 of CPWD Code.

ARTICLE III

During the aforesaid period, the said Shri Sushil Lal, EE (E) had made local purchases for the T&P items amounting to Rs.3,05,502/- by violating the provisions laid down in Section 37, Para 12 and Section 17, Para 4 of CPWD Manual, Vol.II and Rule 104 of GFR.

The entire purchases have been made in different agreements by splitting the purchases even for common items with the intention to bring down the estimated cost put to tender within rupees one lakh to avoid publicity through newspapers and to bring the cost of award within his power in clear violation of instructions contained in Section 17, Para 4 and Section 37, Para 12 of CPWD Manual, Vol.II and Rules 104 of GFR.

Shri Sushil Lal, Executive Engineer (E), by his above acts of omission and commission, failed to maintain absolute integrity, devotion to duty and exhibited conduct unbecoming of a Govt. servant thereby violating Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964."

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6. It is abundantly clear from the said Articles of Charge that they pertain to certain misconduct attributed to the applicant between July, 1989 to December, 1991. Admittedly, the Articles of Charge have been served only on 14.3.2000, i.e., after about nine years of the alleged misconduct.

7. The learned counsel for the applicant relied upon a decision of the Gujarat High Court in the case of **Mohanbhai Dungarbhai Parmar v. Y.B.Zala and another**, 1980 SLJ 477 where there was one and half year's delay in initiating the proceedings. Gujarat High Court took a strong view and held that it causes prejudice in the facts of the case. We are not going into the detailed controversy in this regard because the Gujarat High Court seemingly gave too short a time for initiating the departmental proceedings.

8. However, the Supreme Court had considered this controversy in the case of **State of Madhya Pradesh v. Bani Singh & another**, 1990 (Supp) SCC 738. The delay in initiating the departmental proceedings and the practice thereto was deprecated and the Supreme Court where there was 12 years' delay held:-

"4. The appeal against the order dated December 16, 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 to 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 1975-77. 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 April 1977 there was doubt about the involvement of

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the officer in the said 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 no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

9. In another decision rendered by the Apex Court in the case of **State of Andhra Pradesh v. N. Radhakishan**, JT 1998 (3) S.C. 123, the same question had again come up for consideration. 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 in concluding the disciplinary proceedings. The essence of the matter was stated to be that the court has to take into consideration all relevant factors and 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 delay is abnormal and there is no explanation for the delay. The nature of the charges and the complexity of the situation cannot be ignored. The Supreme Court held:-

"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 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

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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 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."

10. Similarly in the case of **State of Punjab and Others v. Chaman Lal Goyal**, (1995) 2 SCC 570, the Supreme Court held that if there is inordinate delay which is unexplained, the court can well interfere and quash the charges. A Division Bench of Delhi High Court in the case of **N.S.Bhatnagar v. Union of India & Anr.**, 92 (2001) DLT 301 also had gone into this controversy and on the ground of delay quashed the departmental proceedings.

11. On the contrary, our attention has also been drawn to some other decisions and the decision in the case of Chamal Lal Goyal (supra) was re-read to allege that a balance has to be struck though delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power.

12. In the case of **Union of India & Ors. v. A.N. Saxena**, 1992 (4) SLR 11, the disciplinary proceedings had been stayed. The Supreme Court held that this is improper exercise of power of discretion by the Tribunal. The said decision, in our opinion,

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is not relevant for the controversy before us, but in the decision rendered by the Supreme Court in the case of **B.C.Chaturvedi v. Union of India and Ors.**, JT 1995

(8) S.C. 65, this question had pertinently and specifically been considered. The Supreme Court held that delay by itself cannot be a ground to quash the proceedings. Each case has to be seen on its own facts. In the cited case, the Central Bureau of Investigation had investigated and recommended that the evidence was not strong enough for successful prosecution. Therefore, the delay had occurred in that case. It was held that the delay had proved fatal. The Supreme Court held:-

"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 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."

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13. Yet in another decision in the case of **Secretary to Government, Prohibition & Excise Department v. L.Srinivasan**, 1996(1) ATJ 617, the Supreme Court held that in the nature of the charges sometimes it takes long time to detect embezzlement and fabrication of false records and concluded that the Madras Bench of this Tribunal committed grossest error in its exercise of the judicial review. We reproduce the findings of the Supreme Court:-

"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 of 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."

14. In the case of **Food Corporation of India v. V.P.Bhatia**, JT 1998 (8) SC 16, there was a delay in service of the charge-sheet. The delay occurred because the Central Bureau of Investigation had taken up the investigation and submitted the report after some time and then the matter was sent to the Central

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Vigilance Commission. The concerned High Court had quashed the proceedings because of inordinate delay. The Supreme Court had set aside the order of the High Court.

15. Having pondered thus far in various precedents, it is obvious that a conclusion can well be drawn and at the first blush, it may appear that there was some inconsistency in the precedents referred to above. On closure scrutiny, it is patent that there is no such inconsistency. The findings are clear. It was being held that if there is delay in submission of the charge-sheet in disciplinary proceedings, it causes prejudice to the delinquent and the same should be quashed. If there is delay which is explained, the proceedings need not be quashed. In any case where the matter was firstly investigated and it took some time and thereafter proceedings started, the Supreme Court held that the delay is explained.

16. Taking this principle of law in view, we can revert back to the facts of the present case.

17. While the respondents' learned counsel more eloquently tried to explain the delay but it clearly reveals that the explanation is certainly unsatisfactory. It is in the reply that high level ~~inspected~~ committee had ^{accepted} ~~noticed~~ during the January, 1992 and noticed the serious lapses. In other words, the lapses came to the notice in January, 1992. Thereafter at every step, there appears to be an inordinate delay occurring. Preliminary report did not come for more than two and half years even after

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the ~~preliminary~~ report. It is contended that the advice of the Central Vigilance Commission again took two years and from that point after some clarifications it took almost four years to serve the charge-sheet.

18. It is obvious that it is not a case where it took some time to detect the misconduct. Once the misconduct is detected and the matter is ^{not} _A under investigation by the Central Bureau of Investigation or otherwise, one fail to understand as to why it took nine years to serve the charge-sheet. While the balance has to be struck in this regard, the applicant would be justified in claiming that he is grossly prejudiced. He rightly contended that certain links would be snapped and he cannot defend the matter in a rightful manner. When there is an inordinate delay, prejudice becomes obvious unless there are other circumstances which are absent in the present case.

19. It is not one of those cases where there was some embezzlement, which could not be detected or the matter was before the Police agency which prompted the disciplinary authority to defer the matter.

20. Taking stock of the nature of the assertions against the applicant and the totality of the facts, we are of the considered opinion that there was an inordinate delay in this regard.

21. The charges were serious. But law must take its own course. Therefore, we hold that the disciplinary authority order deserves to be quashed.

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For these reasons, we allow the present Original Application and quash the disciplinary proceedings against the applicant.

Naik
(S. K. Naik)

Member (A)

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(V. S. Aggarwal)
Chairman

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