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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

OA No.1768/2003

New Delhi, this the 11th day of November, 2003

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

Shri V.P.Singh
Flat No.725, Guru Apartments
Sector-14
Rohini, Delhi-85.

.. Applicant

(Shri O.P.Gehlot, Advocate)

versus

1. Govt.of NCT of Delhi
through its Chief Secretary
Delhi Secretariat
Player's Building
I.P.Estate
Delhi.

2. Union of India through
the Joint Secretary (U.T.)
Ministry of Home Affairs
North Block, Central Secretariat
New Delhi.

.. Respondents

(Shri Rishi Prakash, Advocate)

ORDER

Justice V.S. Aggarwal

The applicant had joined the Delhi Administration on 16.11.1965. He earned his promotions now and then. He was promoted and appointed under Rule 25(3) of the Delhi, Andaman and Nicobar Islands Civil Service, 1971 to a duty post of Delhi Andaman and Nicobar Islands Civil Service on ad hoc basis. He continued working as such and was regularised vide the notification of 21.8.2001. He was promoted to the higher scale of Rs.8000-13,500/-

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retrospectively and superannuated on 31.12.2002. At the relevant time, he was holding the post of Assistant Registrar in the office of the Registrar, Cooperative Societies. A few days before, the applicant superannuated, he was served with a charge-sheet Memorandum dated 13.12.2002 proposing to hold an inquiry against him for imposition of a penalty therein. Before issuing the charge-sheet, the respondents had issued a Memorandum of 30.5.1996 to which the applicant had replied but no action was taken for quite some time. Thereafter the charge-sheet had been served. The applicant by virtue of the present application seeks quashing of the charge-sheet and the consequential proceedings and thereupon release of his retiral benefits.

2. Notice was issued to the respondents on 18.7.2003 for 28.8.2003. Despite service, none appeared on behalf of the respondents. When the matter was taken up by the Deputy Registrar, the position once again was the same on 25.9.2003. It was listed before the Bench on 15.10.2003 and still there was no appearance on behalf of the respondents. Only on 30.10.2003, the respondents' counsel had put in appearance. A request had been made at that time without filing any application for permission to place the counter reply. In the absence of any such application, we had heard the parties' learned counsel. The statement of articles of charge framed against the

applicant reads:-

> "While functioning as ASTO in old ward-23 (new ward-54), Shri V.P.Singh committed misconduct in as much as he had issued 260 ST-1 forms and 355 ST-35 forms to M/s. Pilco Systems, and 25 ST-1 and 40 ST-35 to M/s Krishna Stores in quick succession. He failed to keep a check over the nefarious activities of both the dealers by getting the transactions of the dealers (as shown in ST-II A/cs) verified through lower functionaries. Sh.Singh also failed to invoke provisions of Sec 18 of DST Act, 1976 by enhancing the sureties of both the dealers in view of huge purchases indicated in ST-II A/cs furnished by them. Loss of revenue caused to the Sales Tax Department by M/s Pilco Systems & M/s Krishna Stores are to the tune of Rs.30 crores and Rs.29 crores respectively.
>
> Thus, Sh.V.P.Singh by his above acts, exhibited negligence, lack of integrity in issuing statutory forms to both the dealers in quick succession causing heavy loss of revenue to the Sales Tax Department and thus acted in a manner which is unbecoming of a Government servant, thereby violating the provisions of Rule 3 of CCS (Conduct) Rules, 1964."

3. The sole argument advanced on behalf of the applicant was that the charge sheet had been served with respect to issuance of statutory forms to M/s. Pilco Systems and M/s.Krishna Stores for the years 1987 and 1988. In other words, it pertained to an incident more than 14 years before the charge-sheet had been served and, therefore, it is contended that because of the inordinate delay, the charge-sheet should be quashed.

4. 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.

5. In the present case in hand, it appears that when the charge-sheet was served, the applicant had called for certain documents. The same had even been supplied with which we are presently not concerned. The applicant at no stage had pointed to the disciplinary authority that there is inordinate delay and, therefore, prejudice, if any, is caused so that the disciplinary authority could

apply its mind as to whether there is any explanation for the delay that has occurred. This becomes necessary in view of what we have recorded pertaining to the ratio deci dendi in this controversy.

6. In face of the aforesaid when such facts are not on the record, we dispose of the present application with a direction to the applicant to take up this matter by filing an appropriate representation to the concerned authority, who may if such representation is made, pass an appropriate order thereon.

7. At this stage, we deem it necessary to express our displeasure to the manner in which the State litigation is being looked after. As already noted above, despite service and on three occasions there was no appearance on behalf of the respondents. We direct that a copy of the present order should be sent to the Chief Secretary, Government of National Capital Territory of Delhi (respondent No.1) for taking remedial appropriate measures in this regard. No costs.

(S.A.Singh)
Member (A)

(V.S.Aggarwal)
Chairman

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