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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 2359/2003

New Delhi, this the 14th day of May, 2004

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

Chander Bhushan
s/o Sh. Om Prakash
r/o S-4/253, Timarpur
New Delhi. ... Applicant

(By Advocate: Sh. Yogesh Sharma)

Versus

1. The NCT of Delhi through
The Chief Secretary
New Secretariate
New Delhi.
2. The Secretary (Education)
Dept. of Education
Govt. of NCT of Delhi
Players Building
I.P. Estate
New Delhi.
3. The Director of Education
Directorate of Education
Old Secretariate
Delhi - 54. .. Respondents

(By Advocate: Sh. Sachin Chauhan proxy of Mrs.
Avinish Ahlawat)

O R D E R

Justice V.S. Aggarwal:-

Applicant (Chander Bhushan) was working as Cashier in the After Care Home, Madipur. A charge-sheet under Rule 14 of the CCS (CCA) Rules, 1965 vide Memorandum of 7.1.1999 was issued pertaining to the following charges:

"Sh. Chander Bhushan, LDC while working as Cashier in the After Care Home for Boys, Madipur was required to show absolute integrity and devotion to duty. However, physical verification of cash revealed following lapses on his part:

1. An amount of Rs. 26936/- was found short. In place of cash sixty

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slips were found during physical verification of cash for an amount of Rs.26979/-/

2. Salary/arrears of Rs.15442/- in respect of Smt. Kirti Sharma, Welfare Officer was not disbursed to her.
 3. The money drawn from treasury on contingent bills amounting to Rs.14538/- was not disbursed to the claimants but was used for purposes other than for which it was drawn.
 4. The cash chest was not in working order since long but it was not reported to the DDO."
2. After the inquiry had been conducted in which the findings were against the applicant, the disciplinary authority had imposed a penalty of removal from service on the applicant vide order of 1.11.2002. He preferred an appeal which was dismissed on 27/28.2.2003 by the Secretary (Education), Govt. of National Capital Territory of Delhi. The applicant seeks to assail and quash the said orders.

3. The learned counsel for the applicant had raised two contentions:

- a) The department was relying upon the three documents and four witnesses but copies of the documents and statements of the witnesses were not supplied despite the representation of the applicant, and:

A handwritten signature in black ink, appearing to read "S. Agarwal".

b) There has been an inordinate delay in initiation of the departmental proceedings, namely, 7 years and therefore, the proceedings deserve to be quashed.

4. The application has been contested. The respondents plead that the applicant had never asked for any documents and further that for the financial irregularities, a detailed inquiry was conducted but applicant did not participate in the inquiry.

5. The principle which was not disputed was that in terms of Article 311 of the Constitution, a reasonable opportunity to contest has to be granted to the alleged delinquent in the disciplinary proceedings. One of the cardinal principle in this regard is that the documents relied upon should be supplied unless the Court or Tribunal can come to the conclusion that no prejudice is caused.

6. In the present case, it is asserted that the applicant had never asked for the documents. However, our attention was drawn to the letter written by the applicant dated 20.9.1999, in which he pointed:

"The slips may be checked again. A details which photo copies may please be provided to him also for further query if any."

This clearly shows that the applicant did demand the copies of the slips. The reply does not indicate that the same had been supplied. The nature of the charge

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framed clearly indicates that the slips were relevant and once the same were not supplied, the applicant rightly contended that prejudice has been caused to him.

7. Another fact agitated was that the dereliction of duty, if any, was of the year 1990-91 and the charge-sheet had been served, after 8 or 9 years, on 7.1.1999. This caused prejudice to the applicant.

8. We know from the decision in the case of **B.C.CHATURVEDI v. UNION OF INDIA AND ORS.** JT 1995 (8) S.C. 65 that delay in initiation of disciplinary proceedings cannot be regarded as violative of Articles 14 and 21 of the Constitution. That by itself is not fatal. In the cited case, there was a CBI investigation that was pending. The Supreme Court, therefore, negatived such plea, but held:

"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

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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."

9. In another decision rendered in the case of SECRETARY TO GOVERNMENT, PROHIBITION & EXCISE DEPARTMENT v. L. SRINIVASAN, 1996 (1) ATC 617, the Supreme Court was dealing with the matter where there was a charge of embezzlement and fabrication of false records. It was held that it would take long time to detect such charges and on the ground of delay, the proceedings could not be quashed.

10. We may also refer with advantage to the decision of the STATE OF ANDHRA PRADESH v. N. RADHAKISHAN, JT 1998 (3) S.C. 123. Herein also, there was a delay in initiation of the departmental proceedings, which was not explained. It was held that it caused prejudice to the concerned person. From the aforesaid, it can conveniently be stated that if delay is explained or has occurred as a result of some investigation or enquiry that was pending, in that event, on the ground of delay the proceedings cannot be quashed. But if the delay is not explained and it is obvious that prejudice is caused, in that event, the Court can certainly quash the proceedings.

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The Supreme Court in the cited case in fact observed that "if delay is unexplained prejudice to the delinquent employee is writ large on the face of it"

11. In the present case, it has simply been stated that the inquiry was being conducted. In fact, the explanation was not at all plausible. The alleged misconduct was detected in 1991. Keeping in view the said fact, there was no question of delaying the matter further because it is not explained that any criminal case was being investigated or any other investigation in this regard was underway. Keeping in view the inordinate delay, therefore, it must follow that the proceedings are liable to be quashed.

12. For these reasons, we allow the present application and quash the impugned order. The applicant would be entitled to the consequential benefits in accordance with law.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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