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Central Administrative Tribunal
Principal Bench
....

OA No. 2711 of 2003

New Delhi, this the 17th day of August, 2004

Hon'ble Mr. Justice V.S.Aggarwal, Chairman
Hon'ble Mr. S.K. Naik, Member (A)

Chaman Lal
s/o late Sh. Shibbar,
r/o House No. 19, Village Munirka
Vasant Vihar,
New Delhi. ...Applicant

(By Advocate: Shri Aditya Madan)

-versus-

1. The Commissioner
Sales Tax
Salex Tax House,
I.T.O., New Delhi.

2. Govt. of NCT of Delhi through
Director of Education
Old Secretariat
New Delhi. ...Respondents

(By Advocate: Sh. Saurabh Ahuja proxy for Sh. Ajesh Luthra)

ORDER (ORAL)

By Mr. Justice V.S.Aggarwal-

Applicant (Chaman Lal) had been served with the following charge:

> "That the said Shri Chaman Lal while functioning as Record-keeper during the period May, 1983 in Ward-29 of Salex Tax Deptt., committed misconduct in as much as he
> failed to submit the complete record of M/s. India Plywood Store, 627/13, Loni Road, Shahdara to the A.S.T.O. Sh. Sachdeva on 30.5.83 for issuance of forms. The Assessing Authority, Shri Sachdeva issued 15-ST-1 forms to the said dealer on 30.5.83 on the forms issue application of the dealer but subsequently the forms issue sheet and forms issue application were found missing from the record file of the dealer. Being a record keeper he was constodian of the file of the said dealer,

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> and failed to keep and maintain the record in a proper manner which resulted in misplacement of the rlevant documents from the record.
>
> Thus, Shri Chaman Lal had shown negligence and dereliction to duty by not keeping the record file of the said dealer in a proper manner; thereby failed to maintain devotion to duty and acted in a manner unbecoming of a Govt. servant and contravened sub-clauses (ii) and (iii) of sub rule 1 of Rule 3 of CCS (Conduct) Rules, 1964".

2. The enquiry officer, who had been appointed,held that the charge was partly proved because according to him, the entries in the form issue register have been made in the same handwriting and the forms have been issued in seriatam but applicant had indicated the probability of availability of the supplementary account sheets in his almirah. The documents were supposed to be kept in the same file. The entry on form issue register have been made by the same person on a few days prior to 3.5.1983. The applicant has only tried to shift the responsibility and could not be absolved off his responsibility of maintaining the documents.

3. The disciplinary authority vide the order dated 22.1.1999 imposed a penalty of reducing the applicant to the lower Grade-III of DASS in the scale of pay Rs. 4000-6000 with immediate effect. His pay in Grade-III of DASS was re-fixed at the minimum of the scale. Against the said order, the applicant preferred an appeal. The appellate authority reduced the penalty holding:

> "In view of these facts and circumstances of the case, I am of the considered view that the ends of justice would be met if the penalty of "reduction to the lower grade of Grade-III of DASS in the scale of pay of Rs. 4000-6000 with immediate

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> effect and reduction of pay as Grade-III of DASS at the minimum of the scale imposed upon Shri Chaman Lal, now Grade-III DASS is reduced to that of "reduction to the lower grade of Grade-III of DASS in the scale of pay of Rs. 4000-6000 with protection of his pay in the scale of pay of the lower grade as admissible under the rules with effect from the date spot the impugned order was passed by the disciplinary authority i.e. 22.01.1999. I order accordingly. The appellant be informed."

4. By virtue of the present application, the applicant seeks to assail the said orders.

5. Learned counsel for the applicant had contended that in the facts of the case the concerned authority travelled beyond the findings of the enquiry officer and therefore when no note of disagrement even had been recorded, the applicant could not have been held responsible for any other act.

6. In this regard, we have already given the basic findings of the enquiry officer pentaining to the charge, which is partly proved. However, when the matter went up in an appeal, the appellate authority further went on to hold, besides approving the findings, that at the time of issuance of the forms, the applicant as a recorded keeper was required to make entry in the form issue register and the relevant entry was simultaneously to be recorded in the existing form issue sheet. He instead made an entry on a separate form issue sheet and failed to give any cogent reason for deviating from the known procedure. The appellate authority further recorded that the record had remained in the personal custody of the Assessing Authority

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(other than the applicant) for a substantial period. These findings clearly show that they are at little variance with that of the enquiry officer and in this regard, in normal cirsumstances, we would have remitted the matter back to the appellate authority.

7. However, in the present case, as has been noticed above, the incident pertained to the year 1983 and the charge had been served in the year 1992. It is in this backdrop that the question of inordinate delay had been highlighted which, in the peculiar facts, must prevail.

8. 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

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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,**

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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

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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.

9. In the present case before us, as already recorded above and re-mentioned at the risk of repetition, the incident is of the year 1983; the charge was served in the year 1992; the penalty was imposed by the Chief Secretary

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in the year 1999 and the ultimate appeal had been dismissed only after three years. In this backdrop, the prejudice to any delinquent, when it is not shown that he was delaying the proceedings, is writ large. It also shows that the disciplinary authority was not serious in pursuing the charge against the applicant and we consequently, for these reaons, find that it is a fit and proper case where proceedings should be quashed.

10. For the reasons given above, the application is allowed and the impugned orders are quashed.

(S.K.Naik)
Member (A)

(V.S.Aggarwal)
Chairman

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