

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.3657/2010 & CM No.7312/2010**

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Date of Decision: 25.05.2010

Union of India. Petitioner
Through Mr.Sameer Aggarwal, Advocate.

Versus

Sh.Deepak Sinha & another Respondents
Through Mr.V.S.R.Krishna, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioner, Union of India, through the Secretary, Ministry of Communication, Department of Telecom has challenged the order dated 21st August, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A.No.2610 of 2008, titled as 'Sh.Hari Shankar Sharma v. Union of India' and in O.A.No.2672 of 2008, titled as 'Sh.Deepak Sinha vs. Union of India', allowing the Original Applications of the respondents and setting aside the memorandum of charge issued against them and awarding simple interest @ 8% per annum and arrears of retirement dues to respondent No.2.

Brief facts to comprehend the disputes are that respondent No.2, Sh.Hari Shankar Sharma superannuated on 31st July, 2000, who had been issued a memorandum of charge on 10th September, 2003 for the incidents of 1996 to 1998. The enquiry officer and the presenting officer were appointed on 10th March, 2004 and thereafter no further action was taken till 3rd December, 2008 which resulted into the enquiry proceedings being stayed by the Tribunal. Respondent No.2 is stated to be 69 years old who was denied retiral benefits such as gratuity and commutation of pension etc.

The articles of charges framed against respondent No.2 were that he processed the file of purchase of stocked items without calling for tenders and without obtaining non-availability certificate from Circle Store Depot and thus he failed to point out about failure to follow the norms of financial propriety and he also failed to ensure that the stocked items purchased from open marked were TEC approved /Quality Assured. It was also alleged that he failed to purchase 15 2/2 VHF and 4/4 VHF systems without inviting tenders and in piecemeal without assessing the requirement of SSA, Mathura; that he failed to point out that the purchase of Interactive Voice Response Systems (IVRS) on quotation basis was without calling for tenders and he also failed to assess the total requirement of IVRS Systems and recommended purchase of IVRS Systems in piecemeal in favour of a

particular firm and that while functioning as DE (plg) and committed misconduct by not pointing out that hiring of vehicle from a private agency amounted to violation of DOT order No.4-18/95-MVT dated 6th December, 1995 and 19 July, 1996, resulted in over spending of Government fund without proper justification.

Respondent No.1 was also issued charge sheet on identical charges except two more charges that while functioning as TDM Mathura, he without justification allowed the PCO owners, the reconnection of PCOs engaged in unauthorized STD/ISD dialing by allowing deposit of Rs.10,000/- per PCO without approval of the competent authority and that he approved the rates of M/s Eureka Advertising and Marketing, Agra for upgradation of PC on quotation basis instead of calling of tenders and allowed the purchase of computers and accessories beyond the period of 9th August, 1998. The respondents had challenged the charges framed against them on account of delay which was refuted by the petitioner by giving the chronology of events from 1994 to 2008. It was also asserted on behalf of the petitioner that the respondents were responsible for the delay as they had not cooperated in the enquiry proceedings. It was also contended that the respondents might have approached the DOT and influenced concerned officer in not issuing charge sheet at their instance as no complaint was made to DOT for enquiry not being conducted by the enquiry officer. The petitioner also alleged before the

Tribunal that the respondents never bothered to intimate the difficulties, they were facing in connection with the enquiry, however, the petitioner would enquire into the aspect of the delay and will fix responsibility on erring officer in the DOT as well as Circle Office. The plea of the petitioner was also that the respondents have benefited on account of undue delay at various stages such as promotion etc. which could otherwise have been denied to them. The other contention on behalf of the respondents was that identical enquiries on identical charges were initiated against three other officials namely Sh.M.S.Chauhan, then SDE Administration, Mathura, Sh.A.K.Rastogi, then SDE, MM, Mathura and Sh.Chattar Singh, then SDE, PR, Mathura which were completed and they had been exonerated of similar charges.

The Tribunal after considering the respective arguments of the parties, relied on the decision of the Apex Court in State of Madhya Pradesh v. Bani Singh and another (1991) 16 ATC 514; Secretary to Government, Prohibition & Excise Department v. L.Srinivasan ((1996) 3 SCC 157; Food Corporation of India v. V.P.Bhatia JT 1998 (8) SC 16; State of Andhra Pradesh v. N.Radhakrishnan JT 1998 (3) SC 123; State of Punjab & others v. Chaman Lal Goyal, (1995) 2 SCC 570; P.V.Mahadevan v. M.D., T.N.Housing Board (2005) 6 SCC 636; and culled out the principles laid down by the Supreme Court and applied them in the facts and circumstances of the respondents. The Tribunal noticed that though recommendations of the Central Vigilance

Commission has been obtained in July, 2000, however, there is no explanation for not issuing memorandum of charge for next three years and not appointing the enquiry officer within the reasonable time despite clear guidelines of the CVC in this regard. The Tribunal repelled the explanation of the delay given by the petitioner. The explanations for the delay as given by the petitioner before the Tribunal are as under:-

- i. The applicant appears to be a very influential person and has perhaps prevailed over the concerned officer not to issue the memorandum of charge in time.
- ii. It is possible that the inquiry officer was also mixed with the applicant, because otherwise the applicant would have complained about the delay. The inquiry was delayed as per the wishes of the applicant.
- iii. As per the circumstantial evidence, the applicant is solely responsible for delay because he has benefited from the delay.
- iv. There is no whole time inquiry officer. The inquiry officer has to discharge his normal duties in addition to disciplinary inquiries.”

The Tribunal held that such explanations were unacceptable as they are based on just assumption without any basis. The Tribunal also noticed that there is no computation of loss or specific charges regarding this. Especially against respondent No.2 who has retired 9 years back and has suffered tremendous loss on account of retirement dues not paid to him and thus set aside the memorandum of charges holding that the disciplinary enquiry would abate.

Learned counsel for the petitioner has contended that the explanation for delay as given by the petitioner which has been crystalised by the Tribunal as detailed hereinabove, are not exhaustive and there other reasons also. Learned counsel for the petitioner has, however, failed to show any other reasons except as has been culled out by the Tribunal from the pleadings of the petitioner which are detailed hereinabove. No other pleas can be culled out from the pleadings of the petitioner. Reasons for the delay given by the petitioner are just based on assumption and in fact cannot be construed as reasons for delay. Even the chronology events given by the petitioner which have also been reproduced by the Tribunal in its order did not explain for the delay. As has been noted by the Tribunal that though the Central Vigilance Commission's recommendations had been obtained on 14th July, 2000 yet for the three years the Memorandum of charge had not been issued and no explanation at all has been given for this delay. What is the explanation for this delay has not been disclosed by the petitioner and even why the enquiry officer was not appointed within the reasonable time according to guidelines has not been explained. From the chronology of the events, it also cannot be inferred that the respondents are responsible for the delay. This is no more res integra that for the mistakes committed by the petitioner in procedure for initiating the disciplinary enquiry, the respondents should not be allowed to suffer and protection of such delayed disciplinary enquiry against Government

employees should be avoided not only in the interest of the employees but in public interest also.

Perusal of the facts and circumstances, it is apparent that the petitioner has failed to give satisfactory explanation for inordinate delay in issuing the memorandum of charges. The charges are not such which would have taken long time to detect specially in view of alleged complaint received in department of Telecommunication in 1997-1998. The allegations against the respondents are also not embezzlement or fabrication of false record. The allegations are regarding certain procedures which have not been followed in the purchase of equipment. The allegations are also not that the equipments which were purchased were sub standard and not according to specification. The delay on the part of the petitioner also cannot be denied as the petitioner has failed to show that the delay was on account of charged officer/respondents. On balancing adverse consideration in the facts and circumstances, especially since respondent No.2 retired from service about 10 years back and suffered on account of retirement dues not paid to him and other facts; the petitioner has failed to make out a case that the order of the Tribunal suffers from such illegality, or perversity which is required to be corrected by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The explanations by the petitioner for inordinate delay are not satisfactory and the delay has no doubt caused prejudice to the respondents even in defending themselves on account

of nature of charges. It is apparent that the prejudice to the respondents is writ large and such inordinate delay has caused prejudice to the respondents who had not been responsible for the delay. Though the petitioner has tried to assume that the delay could be on the part of the respondents as they might have had influential persons and might have prevailed upon the concerned officer and even that the enquiry officer was mixed up with the respondents. The pleas by the petitioner are based on assumptions, surmises and conjectures and cannot be construed as satisfactory explanation.

In the circumstances, there are no grounds to interfere with the order of the Tribunal by this Court in exercise of its extraordinary jurisdiction under Article 227 of the Constitution of India, and therefore, the writ petition is dismissed. All the pending applications are also disposed of. The parties are, however, left to bear their own costs.

ANIL KUMAR, J.

MAY 25, 2010
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MOOL CHAND GARG, J.