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

Reserved on: 30.10.2014

Pronounced on : 22.12.2014

+ **W.P.(C) 7449/2011, C.M. NO.16888/2014 (for stay)**

UNION OF INDIA

..... Petitioner

Through: Sh. H.K. Gangwani, Advocate.

versus

VAKUL VARDHAN GAUTAM

.... Respondent

Through: Ms. Shikha Sapra and Sh. Tushar
Joshi, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE VIPIN SANGHI

MR. JUSTICE S. RAVINDRA BHAT

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1. In this writ proceeding under Article 226 of Indian Constitution, the petitioner, Union of India (here after the "UOI") challenges an order of the Central Administrative Tribunal ("CAT") dated 03.03.2011. By that order, the CAT set aside the charge sheet issued against the respondent (hereafter "the applicant").

2. In 1982, the applicant joined the Central Revenues Control Laboratory and thereafter, he was serving in the Small Scale Service Institution and Patent, Design and Trademark Department. On 31.10.1993 he joined the services of the petitioner as a direct recruit Superintendent through UPSC and in June 2002 he was posted to Inland Container Depot, Tughlakabad, New Delhi.

3. In January 2003, the applicant received information that a group of companies are indulging in evasion of duty by resorting to misdeclaration. On the basis of information submitted to authorities, and after conducting necessary investigation under the supervision of higher authorities, he submitted the file pertaining to the investigation to the authorities concerned. He also recorded the statement of the Managing Director of the company in question. While the inquiry against the company was going on, the applicant was placed under suspension between 20.01.2004 and 17.10.2006. His statement was recorded in the meantime. Inquiry against the said company was concluded and fine was imposed on both the company as well as Director. The fine imposed was also collected.

4. In November 2007, the applicant requested for necessary permission to retire voluntarily from service in terms of provisions of Rule 48 (A) of the CCS (Pension) Rules read with Fundamental Rule F.R. 56 (k). This request was, however, turned down by the Union of India without assigning any reasons. The applicant on 22.09.2009 once again requested for voluntary retirement under the aforesaid rules and this time by order dated 9.11.2009, the request was accepted and he was permitted to retire with effect from 31.12.2009.

5. Before he could retire, a charge sheet was issued against him. Issuance of charge sheet was challenged in the CAT on the ground of inordinate and unexplained delay. The CAT allowed the petition and observed as follows:

“16. The situations available in this case, especially inordinate delay, existence of sufficient opportunity for issue of charge sheet at the relevant point of time etc. as well as the

applicants retirement from service distinguish the case of the applicant from the case of Upendra Singh. As such the decision in Upendra Singh (supra) cannot come to the rescue of the respondents. Instead the cases of Bani Singh (supra), Mahadevan (supra), Bijlani (supra) as well as Radhakishan (supra) apply fully to the facts of the case. As per the records, perused by the Tribunal, there was absolutely no action taken till 2008 and even after 2008, the matter was not so seriously pursued to get a firm decision from the D.G. Vigilance. Had the charge sheet been filed on time, even from 2008 perhaps, prior to the retirement of the applicant the same too could have been concluded. Great prejudice is caused to the applicant by the inordinate and unexplainable delay involved in issuing the charge sheet. This prejudice is irremediable.

18. *In view of the above, we have no hesitation to hold that issue of charge sheet at this belated stage on a stale material cannot be sustained legally. Accordingly, the O.A. is allowed. Charge sheet dated 23.12.2009 is hereby quashed and set aside. Respondents are directed to afford the applicant the consequential relief. In the circumstances, however, there shall be no orders as to costs.*

6. The Union of India submits that the CAT failed to appreciate that an earlier application had been rightly disposed of, by relying on the judgment of the CAT in the case of *Gopal Singh Purohit v. Union of India* (OA No. 1600/ 2009) decided on 04.08.2009. It was also argued that there is no delay in issuance of charge sheet, since it had been issued immediately on receipt of the vigilance advice, and the Central Government cannot be faulted for delay in vigilance advice. Counsel placed reliance on the judgment of the Supreme Court in the case of *Registrar of Cooperative Society, Madras and Anr. v. F.X. Fernando* 1994 (2) SCC 746 to the following effect:

“17. ... long delay in initiating of departmental proceedings cannot be supported because in this case the Directorate of

Vigilance and Anti-Corruption had not been prompt. Therefore, the appellant cannot be faulted. Accordingly, we set-aside the order of the Tribunal...”

7. Learned counsel further advanced the submission that proceedings can be quashed if prejudice has been caused to the person concerned, placing reliance on the judgments in *P.D Agrawal v. State Bank of India*, (2006) 8 SCC 776 and *State of Punjab v. Chaman Lal Goyal*, (1995) 2 SCC 570. In the present case, it was contended that the respondent failed to demonstrate how prejudice has been caused to him.

8. Counsel for the applicant submitted that the case of *Gopal Singh Purohit (supra)* does not apply in the present case, since it did not deal with the question of unexplained and inordinate delay in initiation of proceedings, and limited in its reach, to the question of whether a request for voluntary retirement can be denied, on the ground of ongoing departmental inquiry on serious charges. Counsel further relied on the Supreme Court judgment in the case of *State of Andhra Pradesh v. N. Radhakrishnan*, AIR 1998 SC 1833, where it was observed that:

“19. ... 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.

9. Counsel further submitted that the CAT correctly appreciated the fact that there is no explanation for the delay of 6 years and why proceedings were not initiated:

- (a) In 2004 when he was kept under suspension.
- (b) In 2006 when the Lachem Organics Ltd. penalized and
- (c) In 2007, when his request for voluntary retirement was initially denied.

10. It was also submitted that vigilance clearance is obtained before granting permission to retire. On the question of prejudice, it was argued that prejudice was in fact caused to the applicant due to delay in initiation of proceeding, and this was correctly appreciated by CAT. No action at the relevant time by authorities when they had ample opportunities to take an action, distinguishes this case from others.

Analysis and Conclusions

11. This Court is of the opinion that the reliance on *Gopal Singh Purohit (supra)* is misguided in the present case, since the question of inordinate delay in initiation of proceedings did not arise in that case. The case, as discussed earlier, is restricted to the validity of application for voluntary retirement, when a departmental inquiry is ongoing.

12. The observations in *Radhakrishnan (supra)* are that:

“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.”

13. In *Chaman Lal Goyal (supra)*, the Court observed that the facts and circumstances of the case themselves speak to justify the decision on delay, i.e. a delay of five and a half years in serving the memo of charges. Further the Court also reiterated the principle of prejudice and observed that:

“10. ... It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, malafides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case.

Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted, Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the court has to indulge in a process of balancing.”

14. Essentially if the delay is inordinately long without proper explanation, the allegations are not of grave nature, and prejudice has been caused due to delay, the Court can interfere in the proceedings. *State of Madhya Pradesh Vs. Bani Singh*, AIR 1990 SC 1308 is an earlier judgment of the Supreme Court supportive of the proposition that in the absence of any satisfactory explanation for inordinate delay in issuing the charge memo, it would be unfair to permit a departmental enquiry. The inquiry as to what constitutes delay in such cases is entirely fact dependent. When the employee approaches the CAT or the Court, the important question to bear in mind is whether it would be a sound exercise of discretion to entertain the petition and direct quashing of enquiry, on the ground of delay.

15. In the present case, the record reveals that the incident - into which the Union of India seeks to hold a departmental inquiry - occurred in 2003.

The explanation given to the CAT, that the matter was with the CVC, is vague, considering that the other features reveal that the firm - in whose case, he is alleged to have been complicit - was penalized, with finality in 2006. The applicant sought leave to retire voluntarily in 2007. Having regard to these facts, the allegations against the applicant were not of such grave nature, so as to warrant delayed initiation of proceedings. A six year delay in initiating proceedings is additionally prejudicial, considering that it would be difficult to remember facts relating to incident.

16. The observations of the Supreme Court in *Registrar of Cooperative Society (supra)* are not applicable in the present case since the facts in that case differ from the one at hand. In the present case, the Union had sufficient opportunity to initiate the proceedings against the applicant in six years, and a delayed initiation would crucially result in prejudice to the applicant, thus justifying the CAT's intervention in the present case.

17. In light of above, this court observes that order of CAT does not require any interference, and accordingly, the present writ petition is dismissed along with the pending application.

S. RAVINDRA BHAT
(JUDGE)

VIPIN SANGHI
(JUDGE)

DECEMBER 22, 2014
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