

IN THE HIGH COURT OF DELHI

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Writ Petition (C) No. 4472/2003

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Date of decision : 23rd November, 2005

VIRENDER KUMAR DHALL

..... Petitioner.

represented by: Mr.Puneet Mittal and
Mr.Tanveer Ahmed,Advocates

versus

UNION PUBLIC SERVICE
COMMISSION & OTHERS

..... Respondents.

represented by: Mr.A.K.Bhardwaj,
Advocate

CORAM:

Hon'ble Justice Dr. Mukundakam Sharma.

Hon'ble Mr. Justice Sanjiv Khanna.

1. Whether reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Dr. Mukundakam Sharma, J :

1. Being aggrieved by the judgment and order dated 6.5.2003 passed by the Central Administrative Tribunal in O.A.No.962/2003 , dismissing the writ petition filed by the petitioner, the present petition is filed.

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2. The contention that is raised in this writ petition is that initiation of departmental proceedings against the petitioner after inordinate and unexplained delay of ten years is liable to be quashed.
 3. The petitioner herein was appointed as an Upper Division Clerk with Union Public Service Commission. He was sent on deputation w.e.f 12.8.91 to the Ministry of Law, Justice and Company Affairs. During the aforesaid period of deputation, the petitioner also officiated as an Accountant w.e.f.12.8.91. The petitioner was on deputation and on expiry of his deputation he was repatriated back to his parent organization, namely, Union Public Service Commission on 11.8.94. After he reported back for duty to his parent organisation, namely, the Union Public Service Commission, he was placed under suspension under order dated 18.8.94. The aforesaid order of suspension was, however, revoked by an order dated 12.8.99.
 4. A complaint was also lodged by the Ministry of Law, Justice and Company Affairs with the Police alleging misappropriation of Government money and on the basis of the said complaint an FIR was registered against the petitioner on 26.6.1993. The petitioner was arrested in connection with the aforesaid criminal case but he was later on granted bail. A chargesheet was filed against him in the said criminal case and in the said trial only four witnesses have been examined out of a long list of witnesses. A memorandum of charge, proposing to hold a departmental enquiry against the petitioner was

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issued by the Union Public Service Commission on 29.3.2003. The said memorandum contains two articles of charges alleging, inter alia, that while working on deputation during the period of 12.8.91 to 11.8.94, he had failed to maintain absolute integration and devotion to duty as he deliberately violated laid down procedure for accounting Government money, made fictitious entries in the cash book, forged two challans relating to payments amounting to Rs.50,000/- and Rs.60,000/-.

5. The petitioner upon service of the aforesaid memorandum of charges received by him on 31.3.2003, immediately challenged the legality of the same before the Central Administrative Tribunal by filing an original application which was registered as O.A.No.962/2003 in which an ad interim stay order was also passed by the Tribunal against continuation of the departmental proceedings. The said interim order continued till 6.5.2003 when the original application filed by the petitioner was dismissed. Thereafter, the petitioner submitted his reply to the memorandum of charges by his letter dated 10.6.2003. The said reply was found to be unsatisfactory and accordingly the disciplinary authority appointed an Enquiry Officer and the Presenting Officer.

6. Being aggrieved by the aforesaid order passed, the petitioner filed the present writ petition. During the pendency of the writ petition in this court an interim order was also passed by this court

that the departmental proceeding may continue but no final order shall be passed in the said proceedings.

7. We have heard the learned counsel appearing for the petitioner. He has mainly raised two contentions before us. The first contention raised was unexplained delay in issuance of the chargesheet which vitiates the departmental proceeding. The next contention which was raised by the learned counsel for the petitioner was that simultaneous continuation of the departmental proceeding would cause prejudice to the petitioner as he would be required to disclose his defence which would prejudicially effect his interest in the criminal case.

8. Counsel appearing for the respondent, while refuting the aforesaid submissions, submitted before us that reasonable explanation has been provided by the respondents for the delay, if any, in conducting the departmental enquiry. It was also submitted that the petitioner has already disclosed his defence in the departmental proceeding and, therefore, the question of his defence being prejudicially effected has become redundant and is without any merit.

9. In the light of the aforesaid submissions of the counsel appearing for the parties, we proceed to dispose of this writ petition.

DELAY IN INITIATION OF THE DEPARTMENTAL PROCEEDINGS:-

The incident, which is subject matter of the departmental proceedings, admittedly, relates to a period between 1991 to 1994 when the petitioner was working with the Ministry of Law, Justice and Company Affairs. A criminal case was registered on the basis of a complaint filed by the respondent No.3 which is dated 26.6.93. Pursuant to registration of the FIR the petitioner was arrested but later on was released on bail. He was placed under suspension by order dated 18.8.94 but the said order was revoked on 12.8.99. The impugned memorandum of charge was issued much later i.e on 29.3.2003. As there was a delay of ten years in initiation of the said departmental proceedings, the legality of the same was challenged on the ground of inordinate delay relying on the decision of the Supreme Court in **P.V.Mahadevan vs MD, T.N.Housing Board** reported in 2005 (6) SCC 636, **State of Madhya Pradesh vs Bani Singh and Another** reported in AIR 1990 SC 1308, **State of Andhra Pradesh vs. N.Radhakrishan** reported in AIR 1998 SC 1833, **Capt. M.Paul Anthony vs. Bharat Gold Mines** reported in AIR 1999 SC 1416 and **State of Rajasthan vs. B.K. Meena** reported in 1996 (6) SCC 417.

10. Counsel for the respondent in support of his submission that the delay in initiation of the departmental proceeding has been explained by the respondent, also referred to and relied upon some of

the aforesaid judgments as also to decision of the Calcutta High Court in the case of Lakshman Kumar Mondal v. UCO Bank & Ors. reported in 2004-II-LLJ-614. We have perused the aforesaid decision of the Calcutta High Court wherein also a similar clause being 6.3 came up for interpretation. Said clause 6.3 provides that a departmental proceeding cannot be proceeded with against a delinquent, if steps have been taken to prosecute an employee or get him prosecuted for an offence involving moral turpitude, unless he is put on trial within a year of the commission of offence. It was argued in the said case that the commission of the offence would be the date when commission of offence is brought to the notice of the prosecuting authority, namely, the date of lodging of the FIR and that unless one year expired from the lodging of the said FIR the departmental proceeding cannot be initiated. The aforesaid contention was considered by the Calcutta High Court at length and upon reference to the case of Capt. M. Paul Anthony (supra) and other cases like Rishbud H.N. and Inder Singh v. State of Delhi reported in AIR 1955 SC 196 and State of Uttar Pradesh v. Bhagwant reported in AIR 1964 SC 221, it was held that 'investigation' and 'inquiry' is something other than trial and that

the very definition of 'inquiry' suggests that trial is something different from inquiry. It was held that a trial is a judicial proceeding which ends in conviction or acquittal as held by the Patna High Court in Hema v. Emperor reported in AIR 1929 Patna 644. Reference was also made to the Full Bench decision of the Calcutta High Court in Hari Das v. Sanitulla reported in ILR 15 Calcutta 608 (FB) whereby the Full Bench of the Calcutta High Court held that trial begins when the accused is charged and then accused is to be convicted or acquitted on the charge so framed. It was also held that in summons case the position would be different as the trial begins as soon as the accused is brought before the Magistrate. The Calcutta High Court also held that object of investigation is collection of evidence which generally starts on information relating to the commission of the offence given to the officer in charge of a police station and recorded under Section 154 of the code or when it is started without information under Section 157. Considering all the aforesaid aspects the Calcutta High Court held that lodging of First Information Report is not a trial and that the aforesaid Clause 19.4 never intended that domestic inquiry would be stayed only on the lodging of the First Information Report and that the period

of one year has to be calculated from the date of commission of the offence. It was held that if, within the said period, the trial does not commence, the said embargo in Clause 19.4 would not be attracted to a disciplinary or departmental proceeding which cannot be stayed until the trial begins and, therefore, the Calcutta High Court allowed the departmental proceeding to go on.

11. In our considered opinion the ratio of the aforesaid decision of the Calcutta High Court squarely applies to the facts of the present case.

12. In Additional Superintendent of Police v. T. Natarajan reported in 1999-III-LLJ (Supp) 1482, the Supreme Court has held that it is settled law that mere delay in initiating proceedings would not vitiate the enquiry unless the delay results in prejudice to the delinquent officer. The ratio of the aforesaid decision would also apply with full force to the facts of the present case.

13. The reason for the delay in initiation of the departmental proceeding is given by the respondents in their counter affidavit filed before the Tribunal and also before this Court. The learned Tribunal has referred to the aforesaid explanation and accepted the said explanation as bona fide and reasonable. It is submitted that since a criminal case was registered against the petitioner, in which the petitioner was also arrested, therefore, the respondents genuinely and

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bonafidely believed that they could not draw up a departmental proceeding since simultaneous proceeding of both criminal and departmental proceeding has not been approved by the Supreme Court in the decision of Capt. M.Paul Anthony (supra) and B.K. Meena (supra). It is stated that the aforesaid view, which was taken by the respondent that while the criminal proceeding was pending they could not initiate departmental proceeding or even if the proceeding are initiated, then the same would be kept in abeyance, was an erroneous view which they became aware of on receipt of copy of order dated 19.4.2002. It was also stated that in similar cases, namely, in MA 2751/2001 in O.A.126/90 and MA 15/2001 in OA 105/97, the Tribunal has passed an order on 19.4.2002 staying the disciplinary proceedings. It is also pointed out that subsequently in some other cases i.e in the cases of D.R.Chugh and B.S.Negi the Tribunal took a different view. In the said cases, in view of the delay in finalisation of the criminal proceedings, respondents were permitted to initiate the disciplinary proceedings against D.R.Chugh and B.S.Negi. The aforesaid order was passed on 19.4.2002 and thereafter the respondents reviewed the case of the petitioner herein and the charge memo was issued on 29.3.2003. In that context, therefore, it is contended that the delay stands explained as the respondents had taken an erroneous view that they cannot initiate departmental proceeding when a criminal case is pending. It is also stated that the


petitioner is involved in a serious charge and, therefore, the same should be allowed to be brought to a logical end. The Tribunal has accepted the aforesaid explanation as bona fide and cogent. We find no ground to take a different view. Delay in initiation of departmental proceeding stands explained by the reasons given for such delay.


14. Courts in some cases ordered for stay of the departmental proceeding in view of pendency of the criminal proceedings on the ground that if a departmental proceeding is allowed to be continued, in that event the accused would be prejudiced as he would be required to disclose his defence in the departmental proceeding. But here is a case where criminal proceeding is pending since 1994. Same was registered in 1993 upon filing of the complaint on 26.6.1993. More than ten years have passed since the said complaint was filed. There is not much progress in the said criminal case. Only four witnesses, out of the long list of witnesses, have been examined. Trial appears to be definitely delayed and would take some more time before it could be finalised. If there is further delay in the departmental proceedings, witnesses, who are available, would stand retire from there service and in that event it would be difficult to have their attendance in the deposition in the departmental proceeding.

15. Considering the entire facts and circumstances of the case, we are of the considered opinion, that the departmental proceeding should be allowed to be continued so as to bring the same to a logical

end. Any further delay in completion of the departmental proceeding would create complication in effective completion of the departmental proceeding. Question of causing any prejudice to the petitioner, at this stage, also does not arise as he has already filed his reply to the chargesheet and, therefore, defence of the petitioner stands disclosed upon submission of the aforesaid reply to the memorandum of charges. Therefore, the submissions that there is delay in initiation of the departmental proceeding as also the plea that simultaneous continuation of both the proceeding would cause prejudice to the petitioner, are found to be without any merit and are rejected.

16. We find no infirmity in the order passed by the learned Tribunal. There is no merit in these writ petition and the same is dismissed.


(Dr. Mukundakam Sharma)
Judge


(Sanjay Khanna)
Judge

23rd November, 2005.

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