

(1983) 04 DEL CK 0019

In the Delhi High Court

Case No : Civil Writ Appeal No. 193 of 1982

Union of India and Others

APPELLANT

Vs

J.S. Arora

RESPONDENT

Date of Decision : 07-04-1983

Acts Referred:

Citation : (1983) 04 DEL CK 0019

Hon'ble Judges : S.B. Wad, J

Bench : Single Bench

Advocate : K.R. Nagraja and D.P. Wadhawa, for the Appellant;

Judgement

S.B. Wad, J.

(1) The petitioner was working as an Income Tax Officer at Amritsar, when on 2nd June, 1981, he was served with the statement of imputations of misconduct for commencing a proceeding under Rule 16 of the C.C.S. (C.C.A) Rules 1965. It was alleged that from 14-12-1978 to 18-12-1978, while on tour, he Along with Jagdish Mittar, I.T.O. used Car No. 7112-JK.P. belonging to M/s. Jammu General Stores, Jammu, with its Driver. The said firm was being assessed by him at that time. The charge was that he failed to maintain absolute devotion to duty thereby contravening the provisions of Rule 3(l)(i) of the Central Civil Services Conduct Rules, 1964. On 30-10-1981 a D.P.C. for promotion to the post of Assistant Commissioner considered him for promotion but the result was kept in a sealed cover. The petitioner's contention is that he was actually selected by the D.P.C. On 20th January, 1982 he filed a Writ Petition in this Court as large number of I.T.Os. junior to him were being promoted. In his writ petition he prayed for the quashing of the proceedings and the Memo. dated 2-6-1981. He also challenged validity of O.M. No. 39/3/56-Ests. dated 31st August, 1960, issued by the Ministry of Home Affairs providing for the procedure of the sealed cover. According to the petitioner his Explanation was accepted by the department and the respondents dropped the departmental proceedings in March, 1982, but it was not formally communicated to him. On 31-3-1982 the

counsel for the Respondents asked for the second extension of time for filing a reply to the stay application

" THE Memorandum Annexure "B" to the writ petition was issued as far back as 2nd June, 1981. It is not disputed that many junior officers to the petitioner have already been promoted. The Department may produce the file in this Court to indicate what steps have been taken from 2nd June, 1981 till date to finalise the proceedings. Let the relevant file be produced on 14th May, 1982".

On seeing the file Goswamy, J. passed a further order on May 14, 1982 :

"I have heard the learned counsel for the parties. I am of the opinion that the only order which can be passed at this stage is that the promotions, if any, made would be subject to the result of this writ petition. Mr. Wadhwa has further stated that in case the petitioner succeeds in this petition or is exonerated in the disciplinary proceedings he will be entitled to his promotion with all the consequential benefits with retrospective effect i.e. from the date he was entitled to be promoted. I would also like to observe that the departmental proceedings have been hanging fire for the last about 2 years and in this situation the department would complete the proceedings within three months from today. In the circumstances, this writ petition should be set down for hearing high up in the list on 16-8-1982. The interim stay, already granted, stands vacated."

(2) After the said order of the Court on 14-5-1982 the petitioner was served with a fresh chargesheet on the same charges, for an enquiry under Rule 16(l)(b) of the C.C.S. (C.C.A.) Rules, 1965 on the advice of the Central Vigilance Commission. The statement of imputations of misconduct was also supplied to him Along with the chargesheet. Some more imputations of the conduct of the petitioner during 14-12-1978 to 17-12-1978 were also stated. It was said that at Kistawar he asked the people to become members of the Lions Club, that he did not work at Bhadarwa, that he consumed liquor with Jagdish Mittar, that he interfered with the official work of Shri Mittar and misbehaved with one Advocate, V. Grover, that he went on tour after handing over of the charge on 1-12-1978. It may be noted that the first enquiry was a summary enquiry being one involving minor penalties. But the second enquiry was to be conducted according to the detailed procedure of Rule 14 of the said Rules, although it was also for minor penalties. This Court had earlier directed to complete the enquiry within three months from May 14, 1982. But in between the second chargesheet was served and the enquiry was continued. The petitioner requested for certain clarifications, in order to enable him to give his statement in defense to the second charge sheet. He pointed out the discrepancy between the first charge-sheet and the second charge-sheet. He also pointed out that the statement of imputations with the second charge-sheet mentioned additional allegations against him. He, Therefore, wanted to know against which charges he was to furnish his defense statement. According to the petitioner he could not file the statement of defense as no clarification was received. An enquiry Officer was appointed and also a Presenting Officer. He was informed of the same on

10-9-1982 and was directed to be present for an enquiry. On 20-9-1982, 6-10-1982 and on 5-11-1982 the Presenting Officer was not present, nor the enquiry papers were submitted to the Enquiry Officer in spite of his reminders. The Enquiry Officer, Therefore, closed the file and sent it back.

(3) The counsel for the petitioner submits that both the enquiry proceedings are bad in law and are illegal. It is claimed by the Respondents that the second proceeding under Rule 16(I)(b) is in continuation of the first proceeding under Rule 16(I)(a). It is also claimed by the Respondents that the second proceedings were initiated on the direction of the Central Vigilance Commission. The counsel submits that once a statutory enquiry is started-under Rule 16 the C.V.C. has no legal competence, to interfere with or to give directions. C.V.C. is only an administrative body created by the Cabinet decision) and the administrative directions given by such a body cannot act contrary to the statutory function of the Disciplinary Authority. Moreover, the enquiry proceedings under Rule 16 are quasi-judicial proceedings. An administrative agency cannot give any direction as to how the quasi judicial proceedings should be conducted. The counsel then submits that in March, 1982, after receiving the reply of the petitioner to the statement of imputations dated 2-6-1981, the Disciplinary Authority was satisfied and had dropped the proceedings. The Disciplinary Authority, could not in law act on the direction of the C.V.C. and start a fresh proceeding on the same charges. Counsel for the Respondents counters this submission and submits that the Disciplinary Authority was legally competent to continue the original proceedings but with a new procedure under Rule 16(I)(b). The C.V.C. had not interfered with the quasi judicial function. After the Disciplinary Authority came to a tentative conclusion that the proceedings should be dropped, a reference was made to the C.V.C. as required by the instructions of the Ministry of Home Affairs. After going through the petitioner's Explanation and its own information, the C.V.C. was of the opinion that the recording of the evidence would be necessary to bring home the charge. The Disciplinary Authority agreed with the opinion of the C.V.C. and ordered proceedings under Rule 16(I)(b), enabling itself to record detailed evidence under Rule 14. The procedure had not caused any prejudice to the petitioner since he will have better right, of being heard, including cross-examination of prosecution witnesses and leading his own evidence in defense.

(4) The question as to whether the second proceeding was in continuation of the original proceeding or whether it was a fresh proceeding has special importance in this case. The validity of the proceedings are challenged by the petitioner. But apart from this, the question has another significance. The Respondents are not opening the sealed cover and are not, promoting the petitioner on the plea of the pendency of the departmental proceedings. During the course of the hearing the C.V.C. file was produced and I have gone through it. It is true that the Disciplinary Authority had come to a conclusion that the proceedings should be dropped in view of the petitioner's Explanation, but the C.V.C. thought that there was other evidence which would justify the proceeding. The first proceeding was initiated for minor penalties under Rule 16(I)(a). The second was initiated under

Rule 16(I)(b). The procedure laid down under Rule 16 is as follows :-

16.(1) Subject to the provisions of Sub-rule (3) of Rule 15, no order imposing on a Government servant any of the penalties specified in clause (i) to (iv) of Rule 11 shall be made except after:- (a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehavior on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal; (b) holding an inquiry in the manner laid down in Sub-rules (3) to (23) of Rule 14 in every case in which the disciplinary authority is of the Opinion that such inquiry is necessary; (c) taking the representation, if any, submitted by the Government servant under Clause (a) and the record of inquiry, if any, held under Clause (b) into consideration; (d) recording a finding on each imputation of misconduct or misbehavior; and (e) consulting the Commission where such consultation is necessary. 2. The record of the proceeding, in such cases shall include :- (i) a copy of the intimation to the Government servant of the proposal to take action against him ; (ii) a copy of the statement of imputations of misconduct or misbehavior delivered to him ; (iii) his representation, if any ; (iv) the evidence produced during the inquiry ; (v) the advice of the Commission, if any ; (vi) the findings on each imputation of misconduct or misbehavior ; and (vii) the orders on the case together with the reasons therefore."

(5) When the Disciplinary Authority decides to initiate a proceeding for minor penalty under Rule 16 it must make up its mind to select one of the two courses open. Rule 16(I)(b) provides for a detailed enquiry with evidence, cross-examinations etc. The Disciplinary Authority may follow this course if the occasion so requires. But if a detailed enquiry is not necessary it may follow a summary procedure prescribed by Rule 16(I)(a). But the Rule does not contemplate two proceedings in regard to the same facts and same transactions, one after another and particularly as a continuation of one by the other. The procedure under Rule 16(I)(a) is simple. A statement of imputation of misconduct is given to a delinquent. He then furnishes his representation in writing with documentary evidence. The representation is considered by the Disciplinary Authority and a finding on each imputation of misconduct is recorded. Then a final reasoned order is passed) by the Disciplinary Authority. The simple summary procedure is prescribed because the misconduct is of a minor nature requiring only minor penalties. Sub-rule 1(A) clarifies this position. It states that where minor penalties are likely to have other serious consequences in the future service, a detailed procedure under Rule 14 should be followed. The object of the provision is that in the summary proceeding the right of hearing of the delinquent is a limited right. He has no opportunity of getting all the documents necessary for his defense, nor has a right of cross-examination of the prosecution witnesses or to lead his own evidence in defense. therefore) in the interest of the delinquent holding detailed enquiry under Rule 15 is enjoined by Sub-Rule 1(A). It is not the choice of the delinquent to prefer a summary remedy

as against the elaborate remedy. He has to submit to the course of action taken by the Disciplinary Authority. Therefore, when he is made to submit to a summary procedure with a limited opportunity of defense and where with such a limited opportunity he has been able to prove his innocence, can he be subjected to a second enquiry because the Disciplinary Authority thinks that they are in possession of an additional evidence ?

(6) The facts of this case would amply demonstrate the prejudice caused to the petitioner in the procedure followed by the Respondents. In the first Memo. dated 2nd June, 1981 the charge against the petitioner was that he used a Car belonging to M/s. Jammu General Stores with its Driver when the firm was being assessed by him. The number of the car, namely, JKP-7112 was also stated in the Memo. In his representation the petitioner denied the said allegations and produced the affidavit of a partner of the said firm. The partner had categorically stated that the firm did not own nor requisitioned Car No. JKP-7112 with its Driver for the petitioner. The Disciplinary Authority was satisfied with the affidavit and the petitioner's representation, and decided to drop the proceedings. In the second Memo. issued on 26th June, 1982, the name of the firm M/s. Jammu General Stores was dropped and it was vaguely stated that he used the car "of an assessed". A second proceeding cannot be started on a general charge where a specific charge has not been established in the first proceeding, nor can the second proceeding with a new charge can be said to be a continuation of the first proceeding. The Disciplinary Authority cannot be permitted to change the charge-sheet one after another after receiving the representations of the delinquent, by improving the prosecution case with additional evidence each time. In the statement of imputations annexed with the second charge-sheet same additional misconducts are alleged against the petitioner. As a matter of law the statement of imputations only gives details of facts supporting the charge in the chargesheet. It cannot level fresh charges as done in the present case. The allegation is that it is an attempt to bolster up the misconduct alleged in the charge-sheet with other prejudicial material so as to magnify the seriousness of the charge in the chargesheet. The petitioner submits that this is a mala fide attempt to book the petitioner somehow. It may not necessarily be so but it is an indication of the thinking of the Department. A "new set of facts and misconducts have prompted the second proceeding. Considering the nature of misconduct in the two charge-sheets, additional prejudicial facts and misconduct suggested in the second proceedings and the distinct procedure followed under the statutory rules in the two proceedings, I am of the view that the second proceeding is not the continua corporation of the first proceeding and it is a fresh proceeding in law.

(7) If the two proceedings are to be held as one proceeding the objection of the petitioner in regard to C.V.C. direction would be a serious obstacle. Under the instructions of the Ministry of Home Affairs, in regard to cases of corruption, the C.V.C. directions are binding on the administrative departments. But C.V.C. directions have no statutory status statutory proceedings under the C.C.S. Rules can be initiated only by the Disciplinary Authorities of the administrative

departments. Disciplinary Authority can avail of the services of the C.V.C. officers as Enquiry Officers. But once the proceeding is started under Rule 16(1) and is complete C.V.C. cannot direct the entire change of procedure and the charge-sheet, as a continuation of the original proceeding. As an independent high power agency, dealing with corruption in public service, the C.V.C. has an important role to play in directing the administrative departments on the appropriate steps but it cannot act in conflict with the statutory provisions, particularly when the proceedings are quasi judicial in the nature. In other words, the Disciplinary Authority, in discharge of the quasi judicial functions was not legally bound to change the original course of action during the pendency of the proceedings. The validity of the second proceedings will have, Therefore, to be decided on the basis of its being a separate, distinct and new proceeding.

(8) Legal validity of the second proceeding is contested by the petitioner on the ground that the same is in violation of Rule 14(4) and 14(5). He submits that after the written statement of defense is filed by the delinquent, the disciplinary authority has three choice. They are, to drop the proceedings, to enquire itself the charges leveled or appoint an Enquiry Officer for conducting the enquiry and a Presenting Officer for the presentation of the case on behalf of the defendant. The petitioner submits that immediately after receiving the charge-sheet he asked for the clarification so as to prepare his written statement of defense. The clarification was necessary because the second charge-sheet was stated to be the continuation of the first with a different charge and the statement of imputation of misconduct went beyond the articles of charge by making the additional allegations. He wanted to know whether he was to defend only the Articles of Charge or the other allegations made in the statements of imputations. No such clarification was given to him with the result that he could not file the written statement of defense. But without defense statement before him, the Disciplinary Authority appointed the Enquiry Officer and the Presenting Officer, and the petitioner was directed to appear before the Enquiry Officer. As noted earlier the second charge-sheet is of a general nature only referring to an "assessed" without name. There is no allegation that the "assessed" was being assessed at the time of the incident, which was so stated in the first charge-sheet. In the statement of imputations it was further stated that he did not perform his official duty at Kistawar or Bhadarwah but was asking people to become members of Lions Club and consuming liquor. He also interfered with the official work of Shri Mittar, I.T.O. and misbehaved with one Shri V. Grover, Advocate, when he was appearing before Mittar. It was also alleged that the tour programme was undertaken by him after he had handed over the charge on transfer. Considering the nature of these allegations I find that the clarification sought by the petitioner was justified and without which he could not have been able to file a proper statement of defense. The petitioner was not interested in delaying the matter as his promotion was withheld and his juniors were being promoted. Another fact is also relevant to judge the validity of the appointment of an Enquiry Officer and Presenting Officer before the statement of defense was

filed. The Disciplinary Authority, at the earlier stage, had decided to drop the proceeding because a satisfactory Explanation was furnished by the petitioner with appropriate documentary evidence. Petitioner submits that the Disciplinary Authority did not exercise its own mind and acting on the directions of the C.V.C. entrusted the enquiry to C.V.C. without even considering what the petitioner wanted to submit in his statement of defense. On the facts of the case as disclosed on the file produced by the Respondents this conclusion appears to be inevitable. The appointment of the Enquiry Officer and the Presenting Officer was done by the Disciplinary Authority mechanically and without application of the mind to the duty under Rules 14(4) and (5) of the Rules. The proceedings will have to be quashed on this short ground.

(9) The two proceedings are further assailed by the petitioner on the ground of inordinate delay. According to him the delay has vitiated both the proceedings. He has relied on the decision of the Gujarat High Court in *Mohanbhai v. Y.B. Zala & Ans.* 1973 (3) Slr 130. The petitioner further submits that the proceedings should be quashed as in spite of the Court's order to complete the proceedings within three months the proceedings were delayed and not completed as directed by this Court. Reliance is placed on the judgment of the Rajasthan High Court in *State of Rajasthan v. Sardara Ram* 1973(3) Slr 245. In *Mohanbhai* the Gujarat High Court has held that a delay of one and a half years in initiating the proceedings after the occurrence vitiated the proceedings as being violative of the principles of natural justice. The delinquent and witnesses may not be able to remember the facts after such a long time and this would amount to denial of reasonable opportunity to defend to a delinquent. In *State of Rajasthan* the Rajasthan High Court quashed the disciplinary proceedings and it was held that failure to comply with the High Court's direction to complete the enquiry within four months and, delaying it without justification was fatal.

(10) It is true that the first Memo. was issued to the petitioner after 2 1/2 years. The alleged misconduct was committed by the petitioner between 14-12-1978 and 17-12-1978. The Memo. was issued on 2-6-1981." On 10-5-1982 this Court directed the department to produce the concerned files in the court to indicate what steps were taken to finalise the proceedings. On examination of the file the Court was apparently not satisfied and directed that the proceedings should be completed within three months. That order was passed on May 14, 1982. But instead of completing the proceedings within time, a second charge-sheet was served on the petitioner 26th June, 1982. Thus the second charge-sheet was served, in regard to the same incident, 3 1/2 years after the incident. But that too was not expeditiously prosecuted. The Enquiry Officer had to abandon the proceedings and to return the file on 5-11-1982 as for three consecutive dates the Presenting Officer did not attend, in spite of the reminders and the enquiry papers were not presented to the Enquiry Officer. The petitioner had fully co-operated with the Enquiry Officer. On 1st June, 1982, 10th June, 1982 and 28th June, 1982 the petitioner had himself written to the Department to complete the proceedings early as his promotion was being delayed. In his representation to

the second charge-sheet, the petitioner has expressly brought to the notice of the Department that the matter was more than 31 years old. He asked for certain clarifications stated above, as number of new allegations were made against him. This was necessary for filing the proper statement of defense. The delay was caused by the Department all along and particularly after the specific directions by this Court. The petitioner had fully cooperated in the early disposal of the proceedings. I am in respectful agreement with the decisions of the Gujarat and Rajasthan High Courts. The said two proceedings were prolonged in violation of the . principles of natural justice and are, Therefore, quashed.

(11) The next submission of the petitioner is that the procedure of the sealed cover for withholding the promotions during the pendency of the departmental proceedings laid down by the administrative instructions is contrary to statutory Rules II of the C.C.S. Rules. The argument is that withholding of promotions is a minor penalty under Rule II and the same can be imposed only after due departmental proceedings. Withholding of promotion by a sealed cover procedure has in fact the same effect as that of a punishment under Rule II. He submits that there is a net loss of Rs500.00 per month by way of salary and allowances due to delay in his promotion. He relies on the decision of the Andhra Pradesh High Court in the Director of Postal Services v. C.Muneswara Rao 1980 2 SLR 662. In that case the Court was called upon to examine challenge to the sealed cover procedure prescribed by paragraph 156 of the Post Office Manual. It may be noted that the said instructions are in pari materia with the instructions of the Ministry of Home Affairs applicable in the present case. After considering large number of decisions the Division Bench of the Andhra Pradesh High Court held, "The result of the discussion is that the instructions contained in paragraph 156 of the Posts and Telegraphs Manual Volume Iii to withhold promotion of an employee pending disciplinary proceedings against him are contrary to Rule II of the C.C.S.(CCA) Rules and are accordingly void." The Court held that the effect of withholding of promotions under the administrative instructions and as a penalty under Rule 11 is same. The administrative instructions cannot be contrary to the statutory Rules in matters of dispensing with the departmental proceedings.

(12) The counsel for the Respondents opposes these submissions. His contention is that promotion cannot be claimed as a matter of right by a Government servant. Postponement of promotion under the procedure of the sealed cover cannot be equated with penalty of withholding of promotion under Rule 11. He submits that the various instructions issued by the Ministry of Home Affairs from time to time aim at reducing the hardship of a Government servant whose promotion is threatened because of the pendency of the departmental proceedings. He further submits that if there is a delay of more than two years in completing the proceedings a delinquent can be promoted on ad hoc basis. After his exoneration in the proceedings he is promoted from the original date on which he was found fit and his seniority is restored. He does not get the arrears of salary for the inter annum as he has never worked in the promotional posts during that

period. This is in keeping with the Fundamental Rules, which are statutory in character. He relies on the decision of this Court in *S.S. Karir v. Delhi Administration* and another (All India Services Law Journal page 146) wherein it is held that the sealed cover procedure is not discriminatory even though no arrears are paid after restoration of promotion to a delinquent.

(13) The sealed cover procedure was introduced by the Ministry of Home Affairs on 3-11-1958, through the administrative instructions. It was amended on 31st August, 1960, 2nd December, 1964, 14th July, 1977 and 30th January, 1982. Each time further changes were made to reduce the hardship of the Government servants under suspension or against whom the departmental proceedings are pending. The said instructions as amended on 30th January, 1982 now lay down that after his complete exoneration a Government servant will get benefit of seniority and fixation of pay on a notional basis with reference to the date on which he would have been promoted in the normal course but no arrears will be allowed in respect of the period prior to the date of actual promotion. If the proceedings are not completed within two years a delinquent can be promoted on ad hoc basis on certain conditions. One of the conditions is that the delay should not be caused directly or indirectly by the official concerned. There is no doubt that the promotion is not as a matter of right, nor non-promotion after due selection can be challenged in the court of law. It is also true that by and large the procedure of sealed cover is laid down for the benefit of a delinquent Government servant. But it is also true that there is an element of punishment if it results into heavy loss to a Government servant because of the delay in the conclusion of the proceedings. But to my mind the Division Bench's judgment of the Andhra Pradesh High Court in the *Director of Postal Services* goes little too far in holding that the procedure is violative of Rule II and is, Therefore, void. The judgment of this Court in *S.S. Karir* is also not to the point. In that case the challenge to the procedure was on the ground of discrimination and violation of Articles 14 and 16. This Court held that it was not so. However, I broadly prefer the approach of this Court in balancing the interest of the Government and of the Government servant. 14. Promotion does not merely mean higher pay to a Government servant but means higher responsibility and the recognition of his merit to handle higher responsibility. If it is so, a person under a cloud regarding his integrity, cannot be called a fit person to be entrusted with higher responsibilities. It is only when he is completely exonerated that the question of his fitness with retrospective effect arises. According to the administrative instructions his seniority is restored and his pay is fixed on a notional basis giving the benefit of accretion to the pay for the intervening period. Non-payment of the pay of the promotional post is a natural incidence of his not working in the said post, which he could not do because he was under a cloud. But if the conclusion of the proceedings are inordinately delayed and there is no fault of the delinquent, deprivation of salary would have no rational basis and would be discriminatory. This is what this Court (Deshpande, J.) has actually held. The Court held : "If an official can show that the Government has either failed to take

care to see that the investigation or the enquiry is completed in a reasonable time or that the Government has deliberately prolonged the same, then the spirit of the Home Ministry instructions would be violated and the delay on the part of the Government may make the action of the Government discriminatory as contrary to Article 16 of the Constitution." How to decide unreasonable delay in such cases? We get an answer to it in the C.C.S. Rules themselves. Rule 16 prescribes a summary procedure based on the written representation by the delinquent and it should not result into longer delays. A detailed enquiry under Rule 14 might take a longer time. But there also some indication about the time limit can be perceived in different sub-rules of Rule

(14) However, whether the delay was justified and whether the delinquent had any role in the delay are questions of fact which would vary from case to case. Delinquent would be entitled to arrears of pay if the delay is beyond a reasonable period. From the narration of facts it is clear in the present case that the delay was unjustified and that the petitioner had not contributed to the delay.

(15) The case of an unjustified delay has, however, to be distinguished from a case where the proceedings themselves are illegal and void. In such a case there is illegal deprivation of promotion and he is entitled to all the arrears of pay from the date he is selected by the D.P.C. for promotion. The Fundamental Rules which deny the salary of a post in which a person has not actually worked assumes that non-working was for a lawful reason. But where a person is illegally deprived of an opportunity to perform duty of a post, as in the present case, (a promotional post) he is entitled to the full salary and allowances. This is in the nature of damages for illegal deprivation and loss. The present case is one of illegal deprivation of the promotional post. *S.B. Jain v. Union of India*, (CWP 1390/79 decided on 22-1-1981.)

(16) For the reasons stated above the proceedings against the petitioner are quashed. He is entitled to promotion if he is already selected by the D.P.C. The sealed cover should now be opened to find out whether the D.P.C. had recommended the petitioner for promotion. If he is so recommended, he should be promoted from the date from which officer immediately junior to him has been promoted. The petitioner would be entitled to seniority, fixation of pay and the arrears of pay on that basis. The Rule is made absolute. But on the facts of the case, I do not make any order as to costs.