

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 366 of 2017

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Patitapaban Rout, aged about 57 years, Son of Late Loknath Rout, At/P.O. Sector-6, C.D.A. Plot No. F-626, Cuttack.
At present working as Assistant Provident Fund Commissioner, Office of Regional Provident Fund Commissioner, Odisha, At-Bhabisyanidhi Bhawan, Janapath, Bhubaneswar, Dist- Khurda, Odisha.

.....Applicant

VERSUS

1. Union of India, represented through Secretary, Labour & Employment Department, Shram Shakti Bhawan, New Delhi.
2. Central Provident Fund Commissioner, At- 14, Bhikaji Kama Place, New Delhi.
3. Regional Provident Fund Commissioner, Odisha, At-Bhabisyanidhi Bhawan, Janapath, Bhubaneswar, Dist- Khurda, Odisha.

.....Respondents

For the applicant : Mr. K. Mohanty, Counsel

For the respondents: Mr. S. K. Pattnaik, Counsel

Heard & reserved on : 24.2.2020

Order on : 13.05.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

By filing this Original Application under section 19 of the Administrative Tribunals Act, 1985, the applicant seeks the following reliefs as under:-

- (i) This Hon'ble Tribunal may be pleased to quash order dated 18.01.2016-Annexure-A/4 passed by Disciplinary Authority and order dated 26.04.2017 -Annexure-A/5 passed by the Appellate Authority;
- (ii) Further this Hon'ble Tribunal may grant the consequential relief in view of quashing of aforesaid orders Vide Annexures -A/4 and A/5 in the nature of directing the Respondents to refund the amounts recovered from the applicant by reducing his time scale to a lower stage from 01/2016 to 12/2016.
- (iii) And further as a consequential relief may direct the Respondents to promote the applicant for the post of APFC (Asst. Provident Commissioner) and RPFC-II (Regional Provident Fund Commissioner-II) from the date the immediate Junior Sri Satpal Singh was promoted, as he was exonerated from the minor penalty in view of quashing of Annexures-A/4 and A/5.

2. The applicant is aggrieved by the order of punishment of reduction in rank for one year imposed by the authorities in a disciplinary proceeding against him and denial of promotion to him to the post of Assistant Provident Fund

Commissioner (in short APFC) and Regional Provident Fund Commissioner (in short RPFC) from the dates his juniors were promoted to these grades in view of the aforesaid punishment imposed on him. He averred in the OA that a charge memo dated 1.6.2009 (Ann. A/1) was issued to him for minor penalty for incident which occurred in 1997 when the applicant was working as Enforcement Officer (in short EO) and the disciplinary authority (in short DA) took about 7 years to dispose of the minor penalty proceeding. The Appellate Authority (in short AA) has taken note of the delay and has reduced the punishment period to one year in place of three years ordered by the DA. It is also averred in the OA that the DA has acted in violation of the DOPT and CVC guidelines and the proceeding was initiated belatedly to harass the applicant.

3. The respondents have filed Counter, with the following main averments as under:-

(i) While working as Enforcement Officer at Cuttack, the applicant visited M/s B.P. Industries at Balikuda on 11.3.1997 alongwith Sri LD Sahoo, EO. Violation of the Provident Fund Act was noticed by the team as more than 40 workers were found working without any benefit of the Act.

(ii) The applicant submitted a report dated 21.5.1998 (Annexure-R/2) after 14 months of inspection recommending coverage of M/s B.P. Industries showing that there were 20 employees, contrary to the letter addressed to the employer on 19.3.1997.

(iii) He was asked by the RPFC to furnish certain clarifications in this regard vide his letter dated 12.8.1998 (Annexure-R/3), but the applicant did not comply with the direction till he was transferred from Cuttack in 1999.

(iv) The matter was taken up by the Vigilance Directorate which issued a memorandum to the applicant on 14.12.2001 in this regard and then the charge memo dated 1.6.2009 was issued to the applicant.

(v) The delay in disposal of the proceeding was stated to be due to the fact that when the RPFC was considering the matter, the applicant was promoted to the rank of APFC on adhoc basis on 2.7.2009 after which, RPFC ceased to be the DA. The matter was referred to the Central Provident Fund Commissioner (in short CPFC) on 15.1.2010 (Annexure-R/4).

4. Further, it is averred in the Counter that during pendency of the proceeding, the applicant was not allowed regular promotion to the rank of APFC and the findings of the DPC in respect of him were kept in the sealed cover. After imposition of punishment by the DA vide order dated 18.1.2016 (Annexure-A/4), the sealed cover could not be opened in view of the OM dated 14.9.1992 (Annexure-R/10). It is stated that the OA is premature as the

applicant has not availed the statutory remedy of revision and review as per the rule 25 and 25-A of the EPF Staff (C. C. & A.) Rules, 1971.

5. No Rejoinder has been filed by the applicant. Learned counsel for the applicant at the time of oral hearing, has filed a written brief indication a date chart to highlight the delay in initiating and disposing of the proceeding and has filed copy of the judgment dated 22.3.2018 of the Principal Bench of the Tribunal in OA No. 30/2018 (Devyani Khobragade vs. Union of India & another) in support of his case.

6. Learned counsel for the respondents was heard and he also filed a written note of submissions, stating that all the rules and procedure relating to the disciplinary proceedings have been complied by the respondents and there is no defect in the decision. He also explained the delay on account of adhoc promotion of the applicant to the post of APFC immediately after issue of the charge memo, which necessitated the change of DA from RPFC to the CPFC. Regarding the judgment in OA No. 30/2018 of the Principal Bench relied by the applicant, it was stated by the respondents' counsel that the said judgment is distinguishable and the applicant was allowed adhoc promotion after issue of the charge memo. Learned counsel for the respondents has filed a copy of the judgment of Hon'ble Apex Court in the case of Union of India vs. N.P. Dhamania in support of his arguments.

7. We have duly considered the matter with reference to the pleadings and submissions by both the parties and take note of the fact that the applicant challenges the punishment orders on the ground of delay in initiating as well as completing the said proceeding and has sought consequential promotional benefits after quashing of the punishment. Learned counsel for the applicant has cited the judgment of the Principal Bench in the case of Devyani Khobragade (supra) in OA No. 30/2018 to argue that the applicant in this OA is also entitled to similar relief as allowed in the above OA. It is noticed that the applicant has not challenged the charge memo dated 1.6.2009 (A/1) on the ground of delay in initiation of the proceeding, although in the OA there is averment regarding belated issue of the charge memo in 2009 in a matter which related to the year 1997.

8. The implication of delay in a disciplinary proceeding has been laid down by Hon'ble Apex Court in a number of cases and the issue is no longer *res integra*. In the case of **B.C. Chaturvedi vs. Union of India & others, reported in 1996 AIR 484**, Hon'ble Supreme Court has considered the issue of delay in a disciplinary proceeding and has held in that case as under:-

“The next question is whether the delay in initiating disciplinary proceeding 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 tedious 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.”

9. In the case of **State of Madhya Pradesh vs. Bani Singh and another, AIR 1990 SC 1308**, the Tribunal had quashed the charge sheet issued after 12 years of the incident. In appeal, Hon’ble Apex Court has held as under:-

“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 to 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 April, 1977 there was doubt about the involvement of the officer in the said 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 no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal.”

10. In the case of **State of Andhra Pradesh vs. N. Radhakrishnan, (1998) 4 SCC 154**, Hon’ble Apex Court considered the issue of delay in disciplinary proceedings and held as under:-

“It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. the essence of the matter is that the court has to take into consideration all relevant factors and to balance and weight them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. 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 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 or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse consideration.”

11. Similarly, in the case of **P.V. Mahadevan vs, M.D. Tamil Nadu Housing Corporation Appeal (civil) No. 4901 of 2005**, no satisfactory reason was

furnished for delay in initiating the charge sheet and although it was explained that it came to notice of the authorities after the audit report, this explanation was not accepted and it was held by Hon'ble Apex Court as under:-

"It is now stated that the appellant has retired from service. There is also no acceptable explanation on the side of the respondent explaining the inordinate delay in initiating departmental disciplinary proceedings. Mr. R. Venkataramani, learned Senior counsel is appearing for the respondent. His submission that the period from the date of commission of the irregularities by the appellant to the date on which it came to the knowledge of the Housing Board cannot be reckoned for the purpose of ascertaining whether there was any delay on the part of the Board in initiating disciplinary proceedings against the appellant has no merit and force. The stand now taken by the respondent in this Court in the counter affidavit is not convincing and is only an afterthought to give some explanation for the delay.

Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

We, therefore, have no hesitation to quash the charge memo issued against the appellant. The appeal is allowed. The appellant will be entitled to all the retiral benefits in accordance with law. The retiral benefit shall be disbursed within three months from this date. No costs."

12. In the case of **Prem Nath Bali vs. Registrar, High Court of Delhi & Anr. in Civil Appeal No. 958 of 2010**, it was observed by Hon'ble Apex Court as under:-

"31) Time and again, this Court has emphasized that it is the duty of the employer to ensure that the departmental inquiry initiated against the delinquent employee is concluded within the shortest possible time by taking priority measures. In cases where the delinquent is placed under suspension during the pendency of such inquiry then it becomes all the more imperative for the employer to ensure that the inquiry is concluded in the shortest possible time to avoid any inconvenience, loss and prejudice to the rights of the delinquent employee."

12. In the case of Devyani Khobragade (supra) before Principal Bench of this Tribunal, cited by learned counsel for the applicant, the applicant was issued charge memo for minor penalty. The Ministry did not take any action in the matter although the applicant replied to the charges on 23.3.2015 and after a delay of about 20 months, referred the matter to UPSC for advice. In the process, the applicant's case for promotion was kept in the sealed cover. The Tribunal, after considering the facts of the case and the legal point in the case, did not interfere in the charge-sheet and the penalty imposed, although these were impugned in that case and the direction of the Tribunal related to the effective period of the penalty after considering the delay of 20 months at the level of the Ministry and to consider the case for promotion of the applicant in

that case before Principal Bench by opening the DPC findings kept in the sealed cover. If the applicant in the present OA claims that the ratio of the judgment in the case of Devyani Khobragade (supra) will be applicable to his case, then his challenge of the punishment orders in the present OA will also fail as in the cited case. With regard to the case for promotion to the rank of APFC, it is seen that the applicant has filed another OA No. 352/2017 before the Tribunal and also W.P. (C) No. 14331/2017 before Hon'ble High Court and he was allowed promotion to the rank of APFC vide order dated 31.8.2017 (Annexure-R/13), as averred in para 18 of the Counter and such averments in the Counter have not been contradicted by the applicant. In fact, in para 7 of the OA, the applicant has stated about pendency of the OA No. 352/2017. Hence, the facts relating to the applicant's case for promotion in this OA are different from the facts in the case of Devyani Khobragade (supra), cited by the applicant. For these reasons, we are of the view that the judgment in the case of Devyani Khobragade (supra) is distinguishable and it will be of no assistance to the applicant's case in this OA.

13. As discussed earlier, the applicant has chosen not to challenge the charge memo dated 1.6.2009 although he has challenged the punishment orders imposed on him by the DA and AA on the ground of delay. Applying the ratio of the judgments discussed earlier in this order, whether a disciplinary action is vitiated on the ground of delay, has to be considered on the basis of the facts of each case and the punishment cannot be nullified only on account of delay. In this case, it is stated in the Counter that the applicant did not bother to comply the instructions of the RPFC as per his letter dated 12.8.1998 (Annexure-R/3) regarding his report relating to M/s B.P. Industries till he was transferred from Cuttack. Nothing has been stated about it by the applicant in his pleadings. There is negligence on the part of the respondents for not initiating action as per the rules promptly, but it cannot be said that the disciplinary action against the applicant was without any basis.

14. It is also noted that the applicant has not been able to show if any prejudice was caused to him due to delay in disposal of the disciplinary proceeding, except for his reversion and non-consideration for promotion to the rank of APFC, for which he has filed the OA No. 352/2017 and he has been already promoted to the rank of APFC vide order dated 31.8.2017 (Annexure-R/13 of the Counter). It is also seen that in para 7 of the OA, the applicant has mentioned about pendency of the OA No. 352/2017. In the circumstances, the applicant cannot claim any prejudice caused to him due to delay in disposal of the disciplinary proceeding by the authorities. Further, initiation of the

proceeding by the charge memo dated 1.6.2009 has not been challenged in the OA as would be revealed for the prayer in para 8 of the OA.

15. The applicant has referred to the circular dated 18.1.2016 (Annexure-A/7 series) in which timely disposal of the disciplinary proceedings has been highlighted and a model time limit has been specified in the said circular. The applicant has stated in the OA that the time limit fixed in the circular has been deviated by the authorities in this case, for which the punishment orders are liable to be quashed. Nowhere in the said circular it has been specified that non-adherence to the time limit will nullify the punishment orders or the disciplinary proceedings. As per the law laid down by Hon'ble Apex relating to the disciplinary proceedings, whether delay has vitiated the disciplinary proceeding, is to be decided after considering the facts and circumstances of each case and no hard and fast norm can be specified in this regard. Hence, we are unable to accept the plea of the applicant in para 5.5 of the OA.

16. In view of the above discussions, we are of the view that the grounds furnished by the applicant to interfere in the punishment orders at Annexure-A/4 and Annexure-A/5 are not sufficient to call for any interference of this Tribunal in the matter. Accordingly, the OA is dismissed. However, it is clarified that the relief sought for by the applicant in para 8(iii) of this OA relating to his promotion has not been considered by us while passing this order, since another OA No. 352/2017 on the same issue is pending before this Tribunal. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

bks