CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

GUWAHATI

Original Application No.040/00295 of 2015

Date of Order: This the Day of November, 2017.

HON'BLE MOHD HALEEM KHAN, ADMINISTRATIVE MEMBER

HON'BLE MR.S.N.TERDAL, JUDICIAL MEMBER

1. Shri Dwipendra Nath Sharma.
   Son of Late Phanidhar Sharma
   DPS, Itanagar(Retd)
   Odalbakra, Guwahati
   Pin-781034, Assam Applicant

   By Advocate Mr.M.Chanda

   -Versus-

1. The Union of India
   Represented by the Secretary
   To the Government of India,
   Ministry of Communications and IT
   Department of Post
   Dak Bhawan, Sansad Marg,
   New Delhi-110116

2. The Director General (Vig.)
   Department of Post
   Ministry of Communications and IT
   Dak Bhawa, Sansad Marg,
   New Delhi-110116.

3. The Chief Post Master General,
   North East Circle, Shillong
   Shillong-793001. Respondents

   By Advocate Mr.S.K.Ghosh, Addl.C.G.S.C.

O R D E R

Per Mr.S.N.Terdal, Judicial Member:

This Original application is filed seeking the relief of setting aside the Memorendum of charge sheet bearing No.26-04/2012 vig dated 20.02.2015. The facts of the case are as follows:-

2. The Applicant while serving as Director of postal services, Itanagar, the above said charge sheet was served on him on 20.2.2015 just 4 days before his retirement on superannuation w.e.f. 24.2.2015.The said Memorandum of charge sheet contained 9 Articles of charges regarding irregularities in selection of candidates to several post of GDSs. In Article of Charge No.1, it was alleged that ignoring more meritorious candidates, the Applicant selected less meritorious candidates in so far as securing marks in the H.S.LC. Examination. In Article of Charge No II, it was alleged that he made appointment while he was holding only an additional charge of the post. In Article of Charge No III, it was alleged that he considered one of the candidate who was less than 18 Years of age. In Article of charge No IV, it was alleged that he considered the candidature of two candidates who has not submitted their

applications and he had received the applications of other candidates after the last date fixed for submitting the applications. In Article of charge No V, it was alleged that rejecting the candidature of two meritorious, he selected less meritorious candidate, in so far as securing percentage of marks in HSLC Examination. In Article of charge No VI, it was alleged that he again appointed a candidate who was less meritorious than another candidate. In Article of charge No VII, and charge No.VII… it was alleged that he had appointed candidates who were sponsored by District Employment Exchange, Guwahati, after expiry of the date for receiving of applications. In Articles of Charge No IX, it was alleged that the Applicant had placed a requisition to the concerned Employment Exchange without notifying the vacancies for information of the public.

3. The Applicant has filed his written statement against the said memorandum of charges, denying each Article of Charges on 09.04.2015. Then he has filed the instant O.A. seeking above stated relief.

4. Heard Mr.M.Chanda, learned counsel on behalf of the Applicant and Mr.S.K.Ghosh, learned Addl.C.G.S.C. for the

Respondents, perused the pleadings and all the documents produced by both sides.

5. Learned counsel for the Applicant submitted that the allegations with respect to all the Articles of charge is only regarding procedural lapses and the Departmental Enquiry was started only four days before his retirement. There is in-ordinate delay in initiation the Departmental Enquiry. As such the Charge Memo requires to be set aside. In support of his contention, the learned counsel for the Applicant has filed several Judgments of this Tribunal, of other Benches of the CAT, of the High Courts and of the Hon'ble Supreme Court. The learned counsel for the Applicant specifically brought to our attention several paras of the Judgments/orders which are extracted below:-

1. Judgment & Order dated 28.08.2017 passed in O.A.No.295/20-14, By CAT, Guwahati Bench in the case of Barnali Saikia Vs.Union of India & ors:-

> "3. By the impugned show cause Memo referred to above dated 30.06.2014 it was stated that one Shri Sailendra Kumar Baruah, has secured 78.16% of marks in HSLC Examination and another Shri Partha Pratim Rajbongshi has secured 69.66% in HSLC Examination, whereas the Applicant has secured 62.16% in the said examination. It was stated that the Applicant was only third in merit, and on that ground, it was stated that, the recruitment and

engagement of the Applicant was irregular. On the above ground the Director, Postal Service (HQ) sought to terminate her engagement. The Applicant submitted her reply against the show cause memo. But the Director, Postal Service (HQ) rejecting the submission of the Applicant passed an order dated 01.08.2014 cancelling the engagement of the Applicant, and issued termination Memo dated 06.08.2014."

"6. Thus in view of these facts, non-recruitment of the 1st & 2nd position holders cannot be considered as irregularity. In reply submitted on 11.7.2014 by the Applicant to the show cause memo dated 30.06.2014, some of these aspects were brought to the notice of the Respondents. The Applicant was admittedly in the 3rd position in merit. In Para-3 of the Written Statement the Respondents have stated that in view of the above facts, she was appointed vide letter dated 16.1.2014.

7. From the records and the pleadings referred to above, there is no irregularity or illegality in recruiting the Applicant for the said post. Without perusing their own documents, in spite of the Applicant bringing to their notice some of these facts in reply to the show cause memo, the Respondents passed the impugned orders.

8. Hence, the Original Application is allowed. The impugned (i) show cause Memo No.Staff/58-5/98/Pt-1 dated 30.06.2014, (ii) the termination letter No.Staff/58-5/98/Pt.1 dated 1st August 2014 and (iii) termination Memo No.H2-1228 dated 06.08.2014 are set aside. No order as to costs"

(2) 2007 (9) SCC 716, Kiran Singh Vs.Union of India & Ors:-

"14. Per contra, the learned counsel for the contesting Respondent 5 has sought to support the judgment of the Division Bench of the High Court to contend that admittedly, Respondent 5 stood first in

the merit list having secured 66.30 percent marks in the High School examination as against the appellant with secured 65.80 percent marks and that being the admitted position, CAT has rightly quashed the appointment of the appellant, which order has been upheld by the High Court and this Court in exercise of its powers under Article 136 of the Constitution of India will not be obliged to go into the question of facts thereby praying for the dismissal of the appeal."

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"20. In the facts and circumstances of the case, in our view the order of CAT which has been affirmed by the High Court is manifestly erroneous and cannot be sustained. The appellant and Respondent 5 both have qualified the High School examination by securing first division. The eligibility criterion for the selection of the candidate to the post of EDBPM as per the Service Rules was not only the merit between the two candidates in High School examination but the additional criterion was that the candidate must be one who has adequate means of livelihood derived from landed property or immovable assets" if the candidate is otherwise eligible for appointment. The instructions governing the eligibility of the candidates also provide that no weightage will be given for any higher qualification. The appellant has fulfilled the essential qualification and required eligibility criterion and as such her selection to hold the post in question was valid whereas Respondent 5 was not eligible to be appointed on the post for lack of income criterion in terms of the Circular.

21. In view of the matter, the impugned judgment and order of the High Court dated 19.12.2003 passed in CMWP No.56142 of 2003 and order dated 28.1.2005 recorded in CM Review/Recall Application No.9847 of 2004 are quashed and set aside. As a result thereof, the order dated 24.11.2003 of CAT in O.A.No.1041 of 1996 by

which the application of Respondent 5 has been allowed and appointment of the appellant has been set aside, shall also stand quashed and set aside.

22. In the result, this appeal is allowed accordingly. Parties shall bear their own costs."

3. 2005(6) SCC 636, P.V. Mahadevan Vs.M.D, T.N.Housing Board;-

" 7. The very same ground has been specifically raised in this appeal before this Court wherein it is stated that the delay of more than 10 years in initiating the disciplinary proceedings by issuance of charge memo would render the departmental proceedings vitiated and that in the absence of any explanation for the inordinate delay in initiating such proceedings of issuance of charge memo would justify the prayer for quashing the proceedings as made in the writ petition.

8. Out attention was also drawn to the counter-affidavit filed by the respondent Board in this appeal. Though some explanation was given, the explanation offered is not at all convincing. It is stated in the counter-affidavit for the first time that the irregularity during the year 1990, for which disciplinary action had been initiated against the appellant in the year 2000, came to light in the audit report for the second half of 1994-95

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"11. 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.

12. 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.

4. Judgment & Order dated 10.01.2012 passed in O.A.No.3507/2010 in the case of Shri S.K.Ahuja Vs.Govt. of NCT of Delhi) by the Principal Bench, New Delhi:-

" 11. It is an admitted facts that the alleged mis-conducts took place in mid 2005, the subordinate officials were dealt departmentally within short period of time but in case of applicant the disciplinary case was initiated on the very date of his retirement depriving him of his admissible retiral dues. His role being of minor nature, action under Rule 9 of CCS (Pension) Rules, where the nature of charge of misconduct/negligence should be grave will not be possible. The applicant at best could have been inflicted minor punishment while he was in service. In his post retirement period any punishment

under Rule 9 of CCS (Pension) Rules, would not be legally tenable.

12. Considering the facts and circumstances of the case; well settled legal position, we come to the considered conclusion that this is a fit case where the respondents have not convinced us with justifiable reasons for the delays at the stage of framing charge after long lapse of over four years. We are of the opinion that the delayed disciplinary action had already caused prejudice to the applicant as the applicant is due for his pensionary benefits which he had not yet received though more than two years had passed. Normally, in the cases where the disciplinary proceedings has commenced, enquiry report is available and disagreement note has been prepared, we should not be interfering but taking into account the facts and circumstances of the instant case, it would be a futile exercise in this case to allow the respondents to continue with disciplinary proceedings, as there is no provision under Rule 9 of CCS (Pension) Rules to impose penalty for minor mis-conducts. Therefore, the Charges framed against the applicant in the Memorandum dated 30.09.2009 and the Inquiry Officers report and the disagreement note of the Disciplinary Authority prepared when the OA was under adjudication are quashed and set aside.

13. The Original Application succeeds and is, therefore, allowed leaving the respective parties to bear their own costs."

5. 1998 (4)SCC 154, State of Andhra Pradesh Vs.N.Radha Krishnan:-

" 19. 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 has 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.

20. In the present case we find that without any reference to records merely on the report of the Director General, Anti-Corruption Bureau, charges were framed against the respondent and ten others,

all in verbatim and without particularizing the role played by each of the officers charged. There were four charges against the respondent. With three of them he was not concerned. He offered explanation regarding the fourth charge but the disciplinary authority did not examine the same nor did it choose to appoint any inquiry officer even assuming that action was validly being initiated under 1991 Rules. There is no explanation whatsoever for delay in concluding the inquiry proceedings all these years. The case depended on records of the Department only and Director General, Anti Corruption bureau had pointed out that no witnesses had been examined before he gave his report. The Inquiry Officers, who had been appointed on after the other, had just to examine the records to see if the alleged deviations and constructions were illegal and unauthorised and then as to who was responsible for condoning or approving the same against the bye-laws. It is nobody's case that respondent at any stage tried to obstruct or delay the inquiry proceedings. The Tribunal rightly did not accept the explanations of the state as to why delay occurred. In fact there was hardly any explanation worth consideration. In the circumstances the Tribunal was justified in quashing the charge memo dated July 31, 1995 and directing the state to promote the respondent as per recommendation of the DPC ignoring memos dated October 27, 1995 and June 1, 1996. the Tribunal rightly did not quash these two later memos"

6. **2006 (5) SCC 88, M.V.Bijlani Vs. Union of India & Ors:-**

" 16. So far as the second charge is concerned, it has not been shown as to what were the duties of the Appellant in terms of the prescribed rules or otherwise. Furthermore, it has not been shown either by the disciplinary authority or the appellate authority as to how and in what manner the

maintenance of ACE-8 Register by way of sheets which were found attached to the estimate file were not appropriate so as to arrive at the culpability or otherwise of the Appellant. The appellate authority in its order stated that the Appellant was not required to prepare the ACE-8 Register twice. The Appellant might have prepared another set of register presumably keeping in view the fact that he was asked to account for the same on the basis of the materials placed on records. The Tribunal as also the High Court failed to take into consideration that the disciplinary proceedings were initiated after six years and it continued for a period of seven years and, thus, initiation of the disciplinary proceedings as also continuance thereof after such a long time evidently prejudiced to the delinquent officer."

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"19. It is really a matter of great surprise that a disciplinary proceeding was initiated five years after the Appellant handed over charge. At that time he was admittedly not having possession of any documents. The Enquiry Officer furthermore took a period of seven years to complete the enquiry. The appellate authority also took seven years in disposing the appeal. Even then, the appellate authority did not go into the question as to whether the procedures laid down for holding the disciplinary proceedings had been followed or not. He did not go into the contentions of the Appellant herein minutely. The memo of appeal filed before the Appellant was very elaborate. He raised a number of contentions therein. The Enquiry Officer was charged with bias. He was also charged with unfair conduct. He was said to have committed a large number of irregularities in the departmental proceeding. The memo of appeal of the Appellant was in about 65 typed pages. It was sub-divided into five parts. He made all endeavours to deal with each and every findings of the Enquiry Officer and dealt with almost

all the documents relied upon by the department. He also dealt with the deposition of the witness examined on behalf of the parties."
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"28. The appeal is, therefore, allowed. The consequence of the said order would have been to remit the matter back to the disciplinary authority. We, however, do not intend to do so as the charges relate to the year 1969-1970. The Appellant, due to pendency of these proceedings, has suffered a lot. He is, therefore, directed to be reinstated in service, if he has not reached the age of superannuation. However, keeping in view the fact that, he has not worked for a long time, we direct that he may only be paid 50% of the back wages. He is also entitled to costs of this appeal. Counsel's fee assessed at Rs5,000/-."

7. Judgment & Order dated 28.07.2009 passed in FMA 2528 of 2005 by the Division Bench of Calcutta High Court:-

Let us now consider whether the alleged act of the respondent/writ petitioner on the basis whereof charge sheet was issued constituted any misconduct. In order to allege any misconduct against anyone, malafide intention has to be established.

In the case of Council of the Institute of Chartered Accountants of India vs. Somnath Basu reported in AIR 2007 Calcutta 29, Division Bench of this court observed:

1. Misconduct arises from ill-motive and mere acts of negligence, innocent mistake or errors of judgment do not constitute the misconduct. Even if there is any negligence in performance of duties or errors of judgment in discharging of such duties, the same - cannot constitute misconduct unless ill-motive in the aforesaid acts are established."

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"In the present case, the charge sheet was issued on 17th July, 1996 in respect of the events of 1989 i.e after lapse of more than 7 years.

The delay in issuing the charge sheet and initiation of the disciplinary proceedings in respect of the respondents/writ petitioner has not been explained. The disciplinary proceedings should be conducted immediately after commission of the alleged irregularities or soon after discovering the same. The disciplinary proceedings cannot br initiated after lapse of considerable period as sought to have been done in the present case.

No satisfactory explanation for the inordinate delay in issuing the charge memo has been given and, therefore, disciplinary proceedings are liable to be quashed on the aforesaid ground of unexplained delay in issuing the charge sheet.

In the case of State of Madhya Pradesh Vs. Bani Singh reported in AIR 1990 SC 1308, Supreme Court held that the disciplinary proceedings are liable to be quashed if no satisfactory explanation has been given for the inordinate delay in issuing the charge sheet."

8. **Judgment & Order dated 24.04.2015 passed in O.A.No.247 of 2014 by CAT, Guwahati Bench in the case of Bamin Tari Vs.Union of India & Ors:-**

"36. In P.V. Mahadevan Vs. Managing Director, T.N. Housing Board (supra), the Hon'ble Supreme Court held that: "The Tribunal quashed the charge memo and the departmental enquiry on the ground of inordinate delay of over 12 years in the initiation of the departmental; enquiry on the ground of inordinate delay of over 12 years in the initiation of the departmental proceedings with reference to any incident that took place in 1975-76. The appeal against the said order was filed in this Court on the ground that the Tribunal should not have quashed the proceedings merely on the ground opf delay and

laches and should have allowed the enquiry to go on to decide the matter on merits. This court rejected the contention of the learned counsel. While dismissing the appeal this Court observed as follows:-CCp.7440, para4)

"The irregularities which were the subject matter of the enquiry are said to have taken place between the years 1975-77. It is not the case of the departmental that they were not aware of the said irregularities, if any, and came to know it only in 1986. 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."
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" 51. The decision referred by the respondents authority in Appala Swamy's case (supra) is not applicable in the present case inasmuch as the delay of proceedings initiated upon the applicant caused serious prejudice to him in his service career besides causing mental agony and anxiety to as well as his family. The respondents authority failed to provide any convincing reasons for the inordinate delay in initiation of the proceedings against the applicant."
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"54. In view of the discussions made in the foregoing paragraphs and following the ratio laid down by the Hon'ble Supreme Court, the Hon'ble Delhi High Court as well as the decisions of the Central Administrative Tribunal, we accordingly set

aside and quash the impugned Memorandum of Charges dated 05.07.03.2014."

9. (1990) 4 SCC 314, D.V.Kapoor Vs.Union of India & Ors:-

"3. His further contention is that the appellant must be found to have committed "grave misconduct" or "negligence" within the meaning of Rule 8(5) (2) of the Rules which alone gives power and jurisdiction to the authority to wiwthhold by way of disciplinary measure the gratuity and payment of pension; Public employee holding a civil post or office under the State has a legitimate right to earn his pension at the evening of his life after retirement, be it on superannuation or voluntary retirement. It is not a bounty of th State. Equally too of gratuity, a statutory right, earned by him. Article 41 of the Constitution accords right to assistance in cases of old age or sickness or disablement . In D.S.Nakara V.Union of India". The Constitution Bench of this Court held that pension is not only compensation for loyal service rendered in the past, but also by the broader significance in that it is a social welfare measure rendering socio-economic justice by providing economic security in the fall of life when physical and mental prowess is ebbing corresponding to ageing process and therefore, one is required to fall back on savings. One such saving in kind is when one had given his best in the hey-day of life to his employer, in days of invalidity, economic security by way of periodical payment is assured. Therefore, it is a sort of stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus pension is earned by rendering long and efficient service and therefore can be said to be deferred portion of the compensation for service rendered. In one sentence one can say that the most practical raison détre for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

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4. At page 190-D (SCC p.327, para 36) it is stated that pension as a retirement benefit is in consonance with an furtherance of the goals of the Constitution. The goals for which pension is paid themselves give a fillip and push to the policy of setting up a welfare State because by pension the socialist goal of security from cradle to grave is assured at least when it is most needed and least available, namely in the fall of life. Therefore, when a government employee is sought to be deprived of his pensionary right which he had earned while rendering services under the State, such a deprivation must be in accordance with law. Rule 9(1)of the Rules provides thus:

"9. (1) The President reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the government, if in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement.

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees sixty per mensum."

5. Therefore, it is clear that the President reserves to himself the right to withhold or withdraw the whole pension or a part thereof whether permanently or for specified period. The President also is empowered to order recovery from a pensioner of the whole or part of any pecuniary loss caused to the Government, if in any, proceeding in the

> departmental enquiry or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re- employment after retirement."

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6. The Addl.C.G.S.C. has submitted that though the irregularities are pertaining to in the year 2005 to 2010, however the irregularities were noticed only on 20.04.2011 when Circle Office constituted a squad for carrying a review of the appointments in respect of 14 of GDS BPMs and the detailed Report was submitted. He also submitted that the allegations made in the charge memo against the Applicant are not mere procedural lapses but are serious in nature. He submitted that the Tribunal would be exceeding its jurisdiction in case the charge-sheet is set aside. He brought to our attention the observations made by the Hon'ble Supreme Court in Para 18 in the case of **Chairman, Life Insurance Corporation of India and others Vs.Masilamani reported in (2013) 6 SCC 530** which is extracted below:-

> "18. The Court/Tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of departmental proceedings, as such a power is dehors the limits of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge sheet or show cause notice, issued in the course of disciplinary

> proceedings, cannot ordinarily be quashed by the Court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question have to be examined taking into consideration the gravity/magnitude of charges involved therein. The essence of the matter is that the court must take into consideration all relevant facts and to balance and weigh the same, so as to determine if it is in fact in the interest of clean and honest administration, that the judicial proceedings are allowed to be terminated only on the ground of delay in their conclusion."

7. In our considered opinion, in view of the charge sheet having been served after inordinate delay of 4 years and satisfactory explanation is not being given for the said inordinate delay and for the alleged irregularities no action for cancellation of the related appointments having been not taken and charge sheet having been served only 4 days before the retirement of the Applicant and in view of the allegations of omission and commission stated in the charge sheet being of procedural in nature, and thus in view of the law laid down by the Hon'ble Supreme Court in Catena of cases, the impugned charge memo requires to be set aside.

8. In the result, O.A. is allowed and the Memorandum of charge-sheet dated 20.12.2015 bearing No…… is set aside. . No order as to costs.

(S.N.TERDAL)
JUDICIAL MEMBER

(MOHD HALEEM KHAN)
ADMINISTRATIVE MEMBER

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