

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A.No.1089 /199 Date of Decision: 22 - 12 -1998

Shri Lal Rikhuma Sailo .. APPLICANT

(By Advocate Shri VSR Krishna

versus

Union of India & Ors. .. RESPONDENTS

(By Advocate Shri Mrs. Jyotsna Kaushik

CORAM:

THE HON'BLE SHRI

THE HON'BLE SHRI S.P. BISWAS, MEMBER(A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES
2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER BENCHES OF THE TRIBUNAL?


(S.P.Biswas)

Member(A)

Cases referred:

1. State of Punjab Vs. Chaman Lal Goyal (1995(2)SCC 570)
2. State of A.P. Vs. N. Radhakishan (1998 SCC(L&S) 1044)
- 3.

22/12/98

(M-A)

Order pronounced in the open
Court today.

Dr
Kishor
Cope III

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-1089/98

New Delhi this the 22nd day of December, 1998.

Hon'ble Shri T.N. Bhat, Member(J)
Hon'ble Shri S.P. Biswas, Member(A)

Shri Lal Rikhuma Saini,
R/o E-7, D.A. Flats,
Model Town-I,
Delhi-9.

.... Applicant

(through Shri VSR Krishna, advocate)

versus

1. Chief Secretary,
Govt. of NCT of Delhi,
Old Secretariat,
Delhi.

2. Director of Education,
Govt. of NCT of Delhi,
Old Secretariat,
Delhi.

.... Respondents

(through Sh. Ajesh Luthra for Mrs. Jyotsna Kaushik)

ORDER

Hon'ble Shri S.P. Biswas, Member(A)

✓ Applicant, presently Principal of Government Boys Sr. Secondary School, Mori Gate/Delhi is aggrieved by A-1 memorandum dated 2.2.88 issued by Deputy Secretary Delhi Administration by which departmental proceedings have been initiated against him. It is stated that even though more than 10 years have passed, departmental proceedings are still continuing for no reason whatsoever. Consequently, the applicant has sought relief in terms of quashing the aforesaid charge memo and issuance of directions to respondents to consider applicant's case for promotion to the next higher grade as per statutory rules.

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2. It is the case of the applicant that the memorandum dated 2.2.88 has been wrongly issued alleging that while working as Principal in the aforesaid school from 7.10.83 to 29.10.85, the latter did not supervise the working of the school in a proper way as expected of a responsible official like the Principal herein, resulting in a number of discrepancies in accounts of the school. The applicant has alleged that no proceedings in this case have taken place since 24.7.92 and that he is badly harassed. The applicant claims to be senior most Principal in the office of the respondents and juniors to him have since been promoted either to the grade of education officer or further to the post of Dy. Director/Education. The applicant would submit that his promotion to the higher grades have been denied wrongly and on the flimsy ground of the disciplinary proceedings pending against him. The main plank of applicant's attack is that as a model employer, the respondents should have finalised the disciplinary proceedings pending against him since 2.2.88 but no development whatsoever has taken place after July 1992. The applicant would further add that the enquiry officer, who is the Commissioner for departmental enquiries, has in his letter dated 3.4.92 stated that the Presenting Officer (P.O. in short) has failed to present/submit the relevant documents before the enquiry officer and hence those documents have never been shown to the Commissioner by the P.O. That apart, the charges levelled against him are those to which the applicant is in no way connected directly. The charge is lack of over all supervision and the applicant could not be held directly responsible for the charges as enunciated in the memo or in the statement

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of imputations. The basic charge and the specific lapses are on the part of Vice-Principal who is the DDO of the School and the Accountant UDC. It is basically because of the failure of these officials that the amounts collected could not be deposited or conveyance charges paid without proper control or restraint or the charges collected from the boys fund were less than the amount paid and for all these the applicant cannot be held responsible. Drawing support from the decision of the Hon'ble Supreme Court in the case of State of Punjab Vs. Chaman Lal Goyal (1995(2) SCC 570). The applicant would argue that the charge memo deserves to be quashed.

3. In the counter, the respondents have submitted that the chargesheet was issued as per rules since serious irregularities in maintenance of records relating to school fees, fines and various funds were noticed due to lack of supervision on the part of the charged official. That the enquiry and presenting officers were appointed in this case by the Disciplinary Authority but the enquiry proceedings are held up as the original documents relating to the case are lying in the custody of the DCP (Crime & Railways) in a criminal case registered by the Education Department vide FIR dated 16.5.87. Being head of the office, the charged official was responsible for maintenance of the office records whereas he has failed to do so resulting in embezzlement in government funds. The respondents have further submitted that the case of the applicant was not recommended for promotion as vigilance clearance was not issued due to pending disciplinary proceedings against him.

4. We have heard rival contentions of learned counsel for both parties and perused records made available before us. As mentioned in Goyal's case, normally pendency or contemplated initiation of disciplinary proceedings against a candidate must be considered to have no impact upon his right for consideration of promotion. After departmental enquiry had reached the stage of framing of charges after prima facie case has been made out, the normal procedure followed would be to adhere to "sealed cover" procedure. But if the disciplinary proceedings had not reached that stage of framing of charges after the prima facie case is established, the consideration for the promotion to a higher or selection grade cannot be withheld merely on the ground of pendency of such disciplinary proceedings. Deferring the consideration of promotion by the D.P.C. on the basis that a case is pending is not supportable in terms of law. In the instant case the chargesheet was framed and served and yet the sealed cover procedure has not been followed. After the charge memo was served upon the applicant in February 1988 nothing has really progressed virtually even after the lapse of more than a decade. The question is whether the said delay in the conduct of the proceedings warranted quashing of the charges. It is trite to say that such disciplinary proceedings must be conducted soon after the irregularities are committed or soon after the charge memo have been served. It would not be fair treatment to delinquent official to make him to suffer for such a delay in finalising the proceedings particularly when the delay is not attributable to him. Delayed completion of

the proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the court may interfere and quash the charges. But how long a delay is too long always depends upon the facts and circumstances of each case. If the delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Whenever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the court has to indulge in a process of balancing.

5. We find that the facts and circumstances of the case are on all fours applicable to those in the case of State of A.P. Vs. N. Radhakishan (1998 SCC (L&S) 1044). That was the case where the City Planner working in the Municipal Corporation was issued with a chargesheet in November 1987 and several enquiry officers changed but the enquiry made no significant progress. There was no valid explanation for the delay. Meanwhile the respondents therein had become due for promotion. The State Administrative Tribunal quashed the subsequent memo dated 31.7.95 and directed that the respondents be promoted on the basis of recommendations of DPC. The decision of the Tribunal was upheld by the Hon'ble Supreme Court. For the purpose of appreciating the principles that has to be followed in such cases, we

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shall do well to extract the same as enunciated in the case of N. Radhakishan (supra).

"It is not possible to lay down any predetermined 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 the relevant factors and to balance and weigh 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 the 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 the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on that 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 the disciplinary authority is serious in pursuing 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 their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

6. In Goyal's case (supra), the Apex Court has also suggested that Courts/Tribunals are required to do such balancing process to render justice in such

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situations. Applying the said criteria of balancing process, we find that the following factors are in favour of the applicant.

- (i) That he was only a supervisory officer in the school and the charges do not relate directly to his acts of commission or omission or involvement in the matter of alleged embezzlement.
- (ii) That admittedly the criminal case, pending with the police/in court, are not directed against the applicant. Nor any chargesheet in the pending criminal proceedings have been issued against the Principal.
- (iii) That the only explanation of the respondents for the delay in conducting the proceedings is that the "documents have been seized by Police and the same are in the custody of Dy. Commissioner of Police(Crime & Railways) being part of judicial custody." There is no mention as regards the development at the level of police authorities or what is the plan of action to deal with the case. Explanation thus offered by the respondents for the delay is hardly acceptable.

(iv) That after July 1992 no proceeding has taken place nor there are any indications about scheduling of the proceedings for future with a target date for finalisation of the case. Pendency of disciplinary enquiry is bound to prejudice applicant's case for promotion since he has been already been superseded in terms of promotion. The respondents have not controverted this.

(v) That even for the lapses for which there has been discrepancies in the accountal on different heads, the Principal had brought those to the knowledge of the authorities against those erring officials.

7. The factors against the applicant are as follows:-

(a) That he should have initiated appropriate action against the staff concerned when he noticed the irregularities having taken place and

(b) That he suffered no inconvenience on account of the delay.

8. In the present case, we find there are no reasonable explanation whatsoever for the delay in concluding the enquiry proceedings all these years. No

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witnesses had been examined. The Presenting Officer did not present/submit his relevant documents before the enquiry officer. Relevant documents have not been shown to Commissioner of departmental enquiries. There is no report that the applicant at any stage tried to obstruct or delay the enquiry proceedings. In fact, despite best of our efforts, we did not find any explanation worth consideration for causing such inordinate delays. Nor does the materials placed before us indicate any possibility of the present disciplinary proceedings getting concluded in near future.

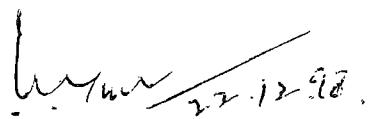
10. Applying the balancing principles, we are of the firm view that we may not quash the charges in the circumstances of the case. It is more appropriate and in the interest of justice as well as interest of administration that the enquiry which has been contemplated be allowed to be completed. At the same time, it is directed that the applicant should be considered forthwith for promotion without reference to and without taking into consideration the charges or the pendency of the said enquiry and if he is found fit for promotion, he should be promoted immediately. The promotion so made, if any, pending the enquiry shall, however, be subject to the review after the conclusion of the enquiry and in the light of the findings in the proceedings. We allow the O.A. with the above directions in the particular facts and circumstances of the case though we are aware that the rules and practice normally followed in such cases may be different. We

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find our orders aforesaid are in conformity with the law laid down by the Hon'ble Supreme Court in the cases of Chamai Lal Goyal and N. Radhakrishnan (supra). Our aforesaid order for considering applicant's claim for promotion shall be implemented within a period of 3 months from the date of receipt of a copy of this order.

9. The application is allowed and disposed of in terms of directions as aforesaid. No costs.


(S.P. Biswas)
Member(TA)


(T.N. Bhati)
Member(J)

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