CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

OA/021/00751/2019

HYDERABAD, this the 10th day of March, 2021

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

Tooprani Krishnamachari,
S/o. late T. Gopalachari,
Age: 60 years, Occ: Retd. Postal Assistant, Zaheerabad HO,
R/o. H. No. 14-31, Near Shivalayam,
Post & Village NARSAPUR – 502 313,
Medak District.

...Applicant

(By Advocate: Mr. M. Venkanna)

Vs.

1. Union of India represented by its Secretary to GOI,
   Ministry of Communications and I.T.,
   Department of Posts, Dak Bhawan,
   Sansad Marg, New Delhi-110001.

2. The Chief Postmaster General,
   Telangana Circle, Hyderabad – 500001.

3. The Director of Postal Services,
   Hyderabad HQ Region, Hyderabad – 500 001.

4. Superintendent of Post Offices,
   Sangareddy Division, Sangareddy – 502 001.

....Respondents

(By Advocate: Mr. B. Madhusudhan Reddy, Addl. CGSC)

ORAL ORDER
(As per Hon'ble Mr. B.V. Sudhakar, Administrative Member)

Through Video Conferencing:

2. The applicant filed the OA for a direction to the respondents to release the provisional pension w.e.f. 01.01.2019 and pensionary benefits with interest.

3. Brief facts of the case are that the applicant appeared in the Inspector of Post Offices Examination (IPO) held in 1996 and was issued Rule 14 charge sheet under CCS (CCA) Rules in 1999 for indulging in malpractices in the exam. A criminal complaint was filed with Crime No. 413/1997 with identical set of charges. The criminal case ended in acquittal and in respect of the disciplinary case, 20 years have elapsed and it is yet to be finalized. Applicant retired on 31.12.2018 and the pension and pensionary benefits have not been released. Therefore, the OA.

4. The contentions of the applicant are that as per the provisions of Leave Encashment Rules and Gratuity Act, any amount can be withheld if any pecuniary loss has been caused to the Govt. The case of the applicant pertains to alleged malpractices in the exam, which has no relation to pecuniary loss. In fact, the respondents have scope to impose a cut in the pension, if charges are proved, based on the Rule 14 charge sheet converted into Rule 9 proceedings after retirement, which is under progress. Applicant's services have not been terminated to forfeit gratuity.

5. Respondents in the reply statement state that the applicant, while he was on deputation to the Army Postal Service, appeared in the IPO exam in 1996 and for indulging in malpractices, a police complaint was lodged as well as disciplinary action was initiated by issuing Rule 14 charge sheet dated 23.8.1999 under CCS (CCA) Rules. Applicant retired on 31.12.2018 and the Rule 14 has been converted into Rule 9 proceedings. The present stage of the inquiry is examination of witnesses. Terminal benefits have been withheld as per Rule 39 (3) of FRSR Part III & Rule 69 of CCS (Pension) Rules, 1972. Applicant was acquitted in the criminal case since the prosecution could not prove the charges beyond doubt. Therefore, the applicant has to wait till the Rule 9 case is finalized.

6. Heard learned counsel for the applicant and perused the pleadings on record. Respondents counsel was absent. The case relates to the year 2019 and has come up for hearing on 13 occasions. The case was taken up for hearing, since the applicant has retired from service and the pension and terminal benefits were withheld. At the admission stage the respondents were directed to release the provisional pension which they have complied on 17.10.2019.

7. I. The dispute is about non release of terminal benefits on the eve of the retirement of the applicant. The reason given by the respondents is that the applicant indulged in malpractices while appearing in the IPO exam held in 1996 and therefore, criminal as well as disciplinary cases were initiated against the applicant. Applicant was acquitted in the criminal case

filed in FIR No. 413 of 1997 and the relevant portion of the judgment delivered by the Court of Metropolitan Magistrate – 06 (NDD), Patiala House Courts, New Delhi dt. 08.10.2018, is as under:

> *"12. For twelve years since framing of charge, the matter was on trial. The star prosecution witness was PW1 who was only partly examined on 23.09.2009 as mentioned above and the right to further examine him was closed vide order dated 24.02.2018. Thus, the contents of the complaint were not proved. No other witness examined by the prosecution from the Department of Post were even called upon to identify the signature of the aforesaid witness. Further, the case of the prosecution was based upon the premise that accused U. Lakra was the assistant deputed in DE Section at the relevant time. The office order though on record was not adduced in evidence. Even though, the examiners have proved that they were not the authors of the relevant documents, it has not been proved from their testimony as to who were then the signatories/ authors. It is pertinent to note that the FSL report has not been proved. Even otherwise, by itself, it cannot be made a ground of conviction and it is a corroborative piece of evidence. In the considered view of this Court, even though a water tight case, chargesheet was filed, the prosecution has not been conducted diligently despite ample opportunities ranging over twelve year. Since, the prosecution failed to adduce best of evidence, the essential ingredients of offences have not been proved beyond reasonable doubts. As such, the accused persons are acquitted of the offences charged with."*

The judgment in the criminal case is an insightful commentary on the way the respondents have handled the criminal case. 12 years spent and yet the respondents could not prove the charge, the case was a water tight one. Given the approach in the criminal case, it appears that the respondents have been over-cautious and are taking their own time in deciding the disciplinary case, which is liable to be questioned under law.

II. To be precise, respondents have initiated disciplinary case based on identical charges in 1999. Ld. Counsel for the applicant submitted that the disciplinary case has not been finalized even though 22 years have lapsed. We are surprised that the respondents could keep the case pending for 22 years, which we are of the view is unfair. Delaying disciplinary cases is

neither in the interests of the respondents organization or of the employees. CVC has been repeatedly emphasizing the need to dispose the disciplinary cases expeditiously. The Hon'ble Supreme Court in ***Prem Nath Bali Vs. Registrar, High Court of Delhi & Anr.*** held that disciplinary inquiry to be completed within 6 months and if it could not, for justifiable reasons, within one year and the relevant observations of the Hon'ble Apex Court are as under:

> *"... ... we are of the considered view that every employer (whether State or private) must make sincere endeavour to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of inquiry but not more than a year."*

The direction of the Hon'ble Apex Court was to complete the disciplinary case within a maximum period of one year. We have on hand a case where the inquiry is still at the stage of examination of witnesses after 20 years, as admitted by the respondents in the reply statement. Therefore, the action of the respondents is grossly violative of the Hon'ble Apex Court observation.

III. Besides, for undue delay in disposing the disciplinary case, the charge sheet can be set aside. The respondents have not explained as to why they have delayed the disposal of the disciplinary case for over 20 years. Instead, they have made a harsh statement stating that the applicant has to await the finalization of the Rule 9 case. We are constrained to state that such observations are not expected from a model employer like the

respondents organization. In the context of the delay in disposal of disciplinary cases, the observations of the Hon'ble Apex Court/ Delhi High Court are extracted hereunder:

i) In the **State of M.P. Vs Bani Singh & Anr., (1990) Supp.(1) SCC 738,** wherein there had been a delay of 12 years in initiating the proceedings, the Apex Court has held,

> *"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 inquiry to be proceeded with at this stage."*

ii) Again, the Apex Court has, in the case of ***State of A.P. v. N. Radhakishan, (1998) 4 SCC 154,*** held as under:-

> ***"19.*** *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 what account the delay has occurred. 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 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."*

iii) Hon'ble Delhi High Court Judgment dated 13.08.2019 in ***D.P. Sharma vs. M/s. BSES Rajdhani Power Limited & Anr***. in W.P.(C) 8489/2016:

> *"40…..In considering, whether, delay was vitiated the disciplinary proceedings, the Court has to consider the nature of charge, its complexity and on what account the delay was 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, the disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeat the 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. It is further observed in the aforesaid judgment that if the delay is too long and remains unexplained, the court may interfere and quash the charges. However, how delay is too long would depend upon the facts of each and every case and if such delay has prejudiced or is likely to prejudice, the delinquent in defending the inquiry ought to be interdicted."*

Nowhere, it was adduced in the reply statement that the applicant was responsible for the delay in completing the disciplinary inquiry nor was there a whisper in the reply statement as to reasons for the inordinate delay. In addition, the way the criminal case was handled indicates that the respondents have not bestowed the seriousness they ought to have, to pursue the cases of the nature in question. At any rate, delaying the disciplinary inquiry for over 2 decades is disturbing to note and the end is still not in sight, as per the submissions of the Ld. Counsel for the applicant. The applicant lost the regular promotions and financial up-gradations in view of the pending disciplinary case. It is here that the question of fairness in decision making comes into picture. Respondents need to discipline employees for misconduct, but within a reasonable period of time and not

for aeons. Considering the factors expounded above, we find it proper to direct the respondents to put a full stop to the disciplinary case in a given interval of time.

Therefore, for the delay of 20 years and more, the charge sheet can be set aside straight away. Moreso, when the respondents have not come forward with any plausible explanation for the delay in the reply statement. Nevertheless, we restrain ourselves from doing so as the applicant has indulged in alleged malpractices and the respondents, to uphold the integrity of exam, have to take disciplinary action. After 20 years, setting aside the charge sheet and giving liberty to the respondents to proceed, if they so desire, may not be a fair conclusion, since it would drag the case for some more years to come. In the process, Justice would be a casuality. Justice delayed is Justice denied. Hence, we refrain from setting aside the charge sheet but we are of the view that the respondents owe a responsibility of deciding the disciplinary case within the outer limit of 6 months from date. Though the applicant nor the Ld. Counsel has not prayed for the same but keeping in view the legal principles laid down by the Hon'ble Apex Court, we have made the said observation.

IV. Now coming to the aspect of withholding of terminal benefits, we need to observe that the terminal benefits can be withheld if there is any financial loss caused to the respondents by the applicant by indulging in financial malpractices, damage to respondents properties, not paying government dues etc. In the instant case, it is none of them. An alleged

malpractice in the exam has no financial connotation. Even if in case the respondents have to penalize the applicant, the option open is to impose a cut in the pension, depending on the charges held to be proved in the disciplinary inquiry. In fact, we extract hereunder the relevant provisions of the Leave Encashment Rules and the Gratuity Act to drive home the point that only when there is a financial loss caused, respondents can withhold the terminal benefits.

Rule 39 of CCS (Leave) Rules, 1972 is reads as under:

> *"39 (3) The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any."*

Further, Clause 6 of Section 4 of the Gratuity Act, 1972 reads thus:

> *"(6) Notwithstanding anything contained in sub-section (1)-*
>
> *(a) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.*
>
> *(b) the gratuity payable to an employee may be wholly or partially forfeited.*
>
> *(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or*
>
> *(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment. "*

Therefore, as per the aforesaid provisions, withholding of terminal benefits is not in order and in particular, when respondents still have the option to impose a penalty after conclusion of the proceedings under Rule 9 of CCS (Pension) Rules, which will have financial ramifications to the applicant, provided the charges are proved. Respondents have cited Rule 39 (3) of

FRSR and Rule 69 of CCS (Pension) Rules, 1972 in support of their contentions. They do provide a general provision to withhold the terminal benefits. The spirit of the provisions is to be appreciated before invoking the said provisions, which make it apparent that to set off any loss caused to the respondents by the questionable deeds of the employees like defrauding public money invested in the post offices, damaging respondents property, not paying government dues like rent for quarters occupied etc. The applicant has not been terminated from service to forfeit the Gratuity. In the case on hand, it is the alleged malpractices indulged while appearing in the IPO exam, which has no nexus to financial impropriety. Thus, invoking the provisions cited is not in the spirit of the context in which the Rules have been framed. Rules have to be invoked not only in letter but in spirit as well. Hence, the different authorities in the hierarchy of the respondents organization are provided with wide discretion to invoke them. Judicial scrutiny will come into play when the decision making process is not in wavelength with the objective of the rule for which it has been framed. Besides, in the instant case, the respondents have no answer as to why the disciplinary case could not be finalized for more than two decades. According to the respondents, the applicant was paid the following amounts:

i) CGEGIS – Rs.71,822/- on 26.11.2019

ii) Provisional Pension Rs.24,800/- on 17.10.2019

iii) GPF Final withdrawal Rs.10,33,734/- on 17.09.2019.

They state that, payment of EL encashment at credit and Gratuity are withheld as per Rule 39 (3) of FRSR Part III & Rule 69 of CCS (Pension) Rules, 1972. However, the terminal benefits withheld are substantial considering the cadre of the applicant. Holding on to them for over two decades without being able to decide the disciplinary case is disturbing to note. It is time that the first respondent reviews the disciplinary cases in his organization and direct the subordinate formations to take expeditious steps for completing disciplinary inquiry within one year, as observed by the Hon'ble Apex Court in the verdict cited supra.

V. Therefore, in view of the above we direct the respondents to release the terminal benefits due to the applicant, if they have not imposed any penalty as on date of judgment i.e. 10.3.2021, touching upon the terminal benefits due to the applicant. Further, as observed in para supra, the respondents are directed to dispose of the disciplinary case within a period of 6 months from the date of receipt of this order, if they have not done so far.

VI. With the above directions the OA is allowed to the extent indicated. No costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/evr/