

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.229 OF 1998
Cuttack this the 16th day of December, 1998

Pratap Chandra Nayak

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? **Yes**
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? **NO**

(SOMNATH SOM)
VICE-CHAIRMAN

16.12.98

(G.NARASIMHAM)
MEMBER (JUDICIAL)


CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.229 OF 1998
Cuttack this the 16th day of December, 1998

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)
...

Sri Pratap Chandra Nayak,
aged about 60 years,
Son of Late Sebak Nayak,
Retired Superintendent of Post Offices,
Nehru Nagar-10, Bherhampur, Ganjam-3
P I N - 760 003

...

Applicant

By the Advocates : M/s.S.K. Mohanty
S.P.Mohanty,
P.K.Lenka

-Versus-

1. Union of India represented through
its Secretary, Ministry of Communication,
Dak Bhawan, New Delhi-110001
2. Director General(Posts)
Sansad Marg, Dak Bhawan,
New Dehi
3. Chief Post Master General
Orissa Circle, Bhubaneswar
4. Post Master General,
Berhampur Region, Ganjam

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Respondents

By the Advocates : Mr.Ashok Mohanty

...

ORDER

MR.G.NARASIMHAM, MEMBER(J): In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant Shri Pratap Chandra Nayak, retired as Superintendent of Post Offices on superannuation on 31.10.1996. He prays for quashing the proceedings initiated against him as per memo dated 27.6.1996 by Respondent No.3 (Annexure-6) and for further direction to release his pensionary benefits which have been withheld due to pendency of this proceeding.

From 22.7.1993 to 22.5.1995 the applicant was serving as Assistant Manager, Postal Printing Press at Bhubaneswar. On 25.3.1995 (After-noon) he left for Girisola to attend a departmental inquiry and returned to the headquarters on 30.3.1995. In the night of 28.3.1995 paper store of the Postal Printing Press caught fire resulting in destruction of printing papers kept in printing store causing huge loss to the Government. After preliminary inquiry the applicant was placed under suspension on 22.5.1995 in contemplation of initiation of departmental proceedings against him (Annexure-A/1). He preferred Original Application No.629/95 before this Tribunal claiming enhanced rate of subsistence allowance and expeditious disposal of the disciplinary proceeding. On 15.11.1995, as agreed by the then learned Addl.Standing Counsel, this Tribunal directed the respondents to complete the disciplinary inquiry within three months peremptorily from the date of receipt of

that order (Annexure-2). As no proceeding was initiated, Misc.Application No.222/96 was filed by the applicant for revocation of the order of suspension. On 22.3.1996, on the submission of the learned Addl.Standing Counsel that the C.B.I. is investigating into the matter, this Tribunal directed the respondents to revoke the order of suspension and on the prayer of the respondents the department was allowed to complete the proceeding within six months of its initiation. Thereafter the applicant was reinstated and posted at Phulbani where he retired on 30.10.1996 on superannuation.

The disciplinary proceeding was initiated through memo dated 27.6.1996 (Annexure-6) on three grounds, viz., firstly the applicant while working as Assistant Manager of the Postal Printing Press, Bhubaneswar, did not ensure safe custody of duplicate keys of locks used by him in the Main Paper Stores as one of the joint custodians and thereby facilitated pilferage substantial stock of papers from the Main Paper Store causing pecuniary loss of about five lakh to the Department; secondly, he did not make adequate fire fighting arrangement in the Postal Printing Press building as Officer-in-Charge of security arrangement of the said building and in the absence of such arrangement fire broke out on 28.3.1995 causing huge loss to the department; and thirdly, the applicant did not inspect the stores branch of the Postal Printing Press and did not record the result of the inspection as required of him. Thus, according to Department, the

applicant failed to maintain devotion to duty and thereby violated provisions of Rule-3(1) (ii) of C.C.S.(Conduct) Rules, 1964.

Annexure-6 of the charge memo dated 27.6.1996 contains a list of six documents on which the charges were framed. Two of these documents are general in nature, i.e, copy of orders showing duties and responsibility of Assistant Manager and letter APLI/PPP/Co-ord/91 dated 3.9.1993 of A.P.M.G.(PLI). The remaining four are statements of the delinquent given on 18.4.1995/19.4.1995 and witnesses, N.Krishna Swamy, Deputy Manager of the Printing Press, B. Patnaik, In charge Officer of the Printing Press and Subash Kumar Routray, an employee of the Printing Press, recorded on 6.4.1995. There is also a list of five witnesses including N.Krishna Swamy, B.Patnaik, Subash Kumar Routray and the then Assistant Post Master General(PLI). The applicant was directed to submit written statement within 10 days of the receipt of the charges.

On 8.7.1996, the applicant sent a representation for supply of copies of documents on which the charges were framed in order to enable him to file written statement. In letter dated 16.8.1996, disciplinary authority, i.e. Chief Post Master General refused to supply the same with intimation that he would get the opportunity to inspect the documents during proposed inquiry. Hence the applicant in general denied the charges in toto. The disciplinary authority then in memo

dated 3.9.1996 appointed Shri B.N.Tripathy, Director of Postal Services, Sambalpur as Inquiring Officer and Shri L.Pradhan, S.S.R.M.(North) Division, Cuttack as Presenting Officer. These facts are not in controversy.

2. The grievance of the applicant is that there has been delay at every stage in initiating the proceeding as well as in the progress of the proceeding. On 1.1.1997 the Inquiring Officer intimated him the date first sitting of the inquiry to be held on 10.1.1997 on which date the applicant was allowed 10 days time to submit list of documents required to be produced and also the list of defence witnesses. This was complied on 18.1.1997 explaining the relevancy of each document and witnesses. There was, however, no further response from the Inquiring Officer. Only six months thereafter the Inquiring Officer communicated his decision to supply some of the documents. On further prayer by the in his letter dated 17.8.1997 the Inquiring Officer in his letter dated 3.12.1997 agreed to supply some of those documents, but refused to supply three documents which were originally asked for. The applicant again moved the Inquiring Officer through a letter, supply those documents explaining the relevancy of the same, but there has been no response from him inspite of representations for expediting the inquiry now and then.

The applicant prays for quashing of the proceeding mainly on the ground of delay as the Department had violated the directions of this Tribunal

in the matter of finalising the proceeding and their own circular dated 7.7.1995(Annexure-10) for expeditious disposal of departmental proceeding giving top priority in case of retired employees within three months of the retirement positively. Further the department failed in their duty in denying supply of copies of documents relied upon along with charge-sheet as mentioned in their departmental instructions dated 2.5.1985(Annexure-11) and thus prevented him from giving effective defence in the written statement.

3. The Respondents in their counter take a stand that the applicant in his statement dated 18.4.1995 and 19.4.1995 (apparently during preliminary inquiry) admitted removal of 143 reels of 60 GSM papers from the Main Paper Store before the incident of fire and approximate cost of these papers would come to about Rs.5 lakh and even if he retired on 31.10.1996, in view of the pecuniary loss the proceeding continued under Rule-9(2) of CCS(Pension) Rules. As to the delay in progressing^{of} the inquiry their case is that the Director of Postal Service, Sambalpur, who is the Inquiring Officer is managing Sambalpur^{2.04} in the absence of Post Master General since the post of Post Master General of that region is lying vacant since long and as such he is overburdened in administrative work. The applicant in fact delayed the proceeding by calling^{for} for additional documents on some plea or the other. Though the inquiry was fixed to

28.5.1998, the applicant did not attend the same sending a representation stating that he had already filed this Original Application. The department was not bound to supply copies of those documents relied on by them to the applicant along with charge sheet in view of their departmenta instructions contained in G.I. CVC letter No.4/42/73-R dated 19.9.1973. Thus there was no irregularity on their part in turning down the request of the applicant at this stage. The applicant has been sanctioned provisional pension ^{have been} and D.C.R.G. and leave encashment ^{even} held up due to pendency of the disciplinary proceeding under Rule 69 of the Pension Rules and Rule-39 of CCS(Leave)Rules because of the amount of loss rupees five lakh to the department was due to negligence of the applicant. There is, however, no denial as to the departmental instructions for expediting the proceeding as against retired employee under Annexure-10 and supply of copies of documents along with charge sheet in departmental letter dated 2.5.1985 under Annexure-1.

4. During the pendncy of this Original Application, by order dated 26.5.1998, 50% of the D.C.R.G. and leave encashment were ordered to be paid to the applicant on his furnishing undertaking that in case after completion of the disciplinary proceedings more than 50% of D.C.R.G. and leave encashment dues are ordered to be withheld then the excess amount which would have been paid to him by virtue of this order would be recovered from the Dearness Relief from the petitioner.

5 The fire incident took place in the night of 28.3.1995. The applicant was placed under suspension on 22.5.1995. Prior to placing him under suspension, a preliminary inquiry appears to have been conducted by the department. This is apparent from the charge memo dated 27.6.1996 which discloses the statements of the applicant and witnesses N.Krishna Swamy, B. Patnaik and Subash Kumar Routray taken during April, 1995. In fact the charge memo is based mainly on these statements. There is no mention of any C.B.I. investigation in charge memo. It is, however, ^{the} stand of the respondents that the matter was referred to C.B.I. for investigation, who ultimately instructed the department to move the local police. It is not clear when the matter was referred to C.B.I. and how long it was pending before the C.B.I. and whether the local police have been moved in the matter. The fact however, remains, the charge memo ^{is} based on the statements and materials unearthed during preliminary inquiry and not on the materials brought out in C.B.I. investigation, if any. Even assuming the matter was referred to C.B.I., there is no legal bar to initiate a proceeding side by side. The department was aware that the applicant will be retiring on superannuation on 31.10.1996, yet no proceeding was initiated against him soon after placing him under suspension in May, 1995 in spite of positive direction from this Tribunal in order dated 15.11.1995 passed in O.A.629/95 to complete the proceeding within three months and which order was passed as agreed by the then learned Addl.Standing Counsel. Even in order dated

22.3.1996 passed in M.A.222/96 there was sufficient direction and reminder to the department to initiate the proceeding if any, and complete the same within six months thereafter as undertaken by the department. Even then the department slept over the matter for another three months and came up with charge on 27.6.1996. This apart, there is departmental instruction of the Directorate in letter dated 3.5.1995 circulated in Orissa Circle in letter dated 7.7.1995 (Annexure-10) in the matter for expeditious disposal of the proceeding in case of the employees already retired or about to retire. Contents of this Annexure have not been denied in the counter. There is positive direction that cases of misconduct coming to the notice of the department relating to officers/officials retiring in nearfuture are to be processed on **top priority basis**, so that their cases are finalised expeditiously and no charge sheet is issued to any officer/official at least during the last six months prior to his retirement, unless the irregularity/misconduct on his part had come to light during that period only in which event such cases also to be processed on **top priority basis** so that the cases are decided before retirement and if not possible, within three months of retirement positively.

Thus there has been undoubtedly delay in initiating proceeding and this delay apart from being not explained properly runs contrary to the directions of this Tribunal and instructions of their own department,

Even after initiation of the proceeding there has been delay at various stages. Though the Inquiring Officer appointed through memo dated 3.9.1996 and though the department has to give top priority in finalising the proceeding within three months of the anticipated retirement on superannuation on 31.10.1996, the Inquiring Officer did not move in the matter till ~~time to time~~ from 1.1.1997. Applicant's letter dated 18.1.1997 with the list of additional documents and additional witnesses was responded seven months thereafter in letter dated 17.8.1997. Thereafter the applicant sent a representation dated 21.11.1997 to the Inquiring Officer for expeditious disposal of the proceeding (Annexure-9). Still then there was no further progress in the inquiry. It is only after the applicant approached this Tribunal on 24.4.1998 and the respondents-department were ordered to file show cause, the next date of inquiry had been posted to 28.5.1998. Since the applicant had already challenged the proceeding on the ground of delay, he did not think fit to further participate in the inquiry and accordingly sent intimation to the Inquiring Officer.

Thus undoubtedly there has been delay not only in initiation of the proceeding, but also at various stages after its initiation. The stand of the respondents that the Inquiring Officer being in charge of Post Master General, Sambalpur was overburdened with administrative work is not proper explanation for the delay because, in case of retired employees there own circular

(Annexure-10) lays down that such proceeding shall be expedited within three months of the retirement by giving top priority.

5. Question then arises whether on account of this sort of delay the proceeding needs to be quashed. The learned Senior Standing Counsel Shri Ashok Mohanty contended that delay by itself is not sufficient to quash the proceedings. He places reliance on Subir Kumar Ray vs. Union of India, decided by C.A.T. Lucknow Bench reported in All India Service Law Journal 1997(2) Page 232; State of Punjab vs. Chamanlal reported in 1995(2) S.L.J.(Supreme Court) 126, and Satyabir Singh vs. Union of India reported in 1998 (1) All India Service Law Journal, C.A.T.(Mumbai) Page 481. All these decisions lay down that mere delay cannot be the cause to quash the charge sheet and impact of delay has to be examined with reference to facts of each case and Court should examine the balance ^{of} convenience. But none of these cases relate to retirement of postal official, governed under the instructions under Annexure.10 for expeditious disposal of the proceedings within three months from the date of retirement on top priority basis.

In AIR 1998 SC 1833 (State of Andhra Pradesh vs. N. Radhakisan) relied by the learned counsel for the applicant the latest legal position regarding delay after taking note of their previous decision in Chamanlal Goel's case has been explained. In para 19 it has been observed as follows:

"The essence of the matter is that the Court has to take into consideration all 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 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 in 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 his 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 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 to diverse considerations".

It has already been discussed that the delay part has not been properly explained and that disciplinary authority appeared to be not serious in pursuing the charge against the delinquent. Hence delay as discussed above cannot but cause prejudice to the applicant, who even after retirement on 31.10.1996, is still in dark whether he would be able to ^{receive} ~~release~~ all his retirement dues.

Apart from delay there is another factor which goes to the root of the proceeding. Admittedly along with the charge sheet copies of the documents, i.e. the statements of witnesses ^{who} were to be examined in the proceeding have not been supplied to the applicant. Even his representation for supply of the same to prepare his defence written statement was turned down on the ground that he would get the opportunity to inspect the documents during the inquiry (not even before inquiry) by citing a circular of the year 1973. That circular even if automatically stands superseded in view of circular dated 2.5.1985 (Annexure-11) issued by the Department of Personnel and Administrative Reforms, a copy of which has been communicated by the Chief Post Master General, Orissa Circle, in letter dated 11.6.1985 to all concerned under him. We may as well quote Clause IV and V of this circular:

"A properly drafted charge-sheet is the sheet-anchor of a disciplinary case. Therefore, the charge-sheet should be drafted with utmost accuracy and precision based on the facts revealed during the investigation or otherwise and the mis-conduct involved. It should be ensured that norelevant material is left out and at the same time noirrelevant material or witnesses are included".

"With a view to reducing the time taken by the Government servant for inspection of documents before submission of his written statement of defence in reply to the charge-sheet, copies of all the documents relied upon and the statements of witnesses cited on behalf of the Disciplinary Authority should be supplied to the Government servant along with the charge-sheet, wherever possible".

As earlier stated contents of this annexure have not been denied in the counter.

It is not as though the document cited in the charge-sheet, i.e., the statements witnesses are voluminous in nature, so that the copies of the same cannot be extracted or prepared in which case facility of inspection of the same can be given to a delinquent. Thus there is no justification for the department in refusing to supply copies of this statement in spite of request from the applicant to enable him to prepare effective defence in the written statement to be submitted by him. In otherwords, the department denied effective opportunity to the applicant in preparing the written statement.

Not only the circular under Annexure-11, but also the Apex Court, time and again reiterated that delinquent officer must be supplied copies of documents relied upon in support of the charges and in case of non-supply, prejudice to the delinquent officer is implicit in which event proceeding can also be quashed. In this connection we may as well quote paragraphs-4,5 and 6 of the Apex Court decision in **State of U.P. vs. Satrugnalal** reported in AIR 1998 SC 3038:

"4. Now, one of the principles of natural justice is that a person against whom an action is proposed to be taken has to be given an opportunity of hearing. This opportunity has to be an effective opportunity and not a mere pretence. In departmental proceedings where charge-sheet is issued and the documents which are proposed to be utilised against that person are indicated in the charge-sheet but copies thereof are not supplied to him in spite of his

request, and he is, at the same time, called upon to submit his reply, it cannot be said that an effective opportunity to defend was provided to him". (See: Chandrama Tewari v. Union of India, 1987 (Supp) SCC 518 : AIR 1988 SC 117; Kashinath Dikshita v. Union of India, (1986) 3 SCC 229: AIR 1986 SC 2118: State of Uttar Pradesh v. Mohd. Sharif, (1982) 2SCC 367: AIR 1982 SC 937)

"5. In High Court of Punjab and Haryana v. Amrik Singh, 1995 Supp(1) SCC 321, it was indicated that the delinquent officer must be supplied copies of documents relied upon in support of the charges. It was further indicated that if the documents are voluminous and copies cannot be supplied, then such officer must be given an opportunity to inspect the same, or else, the principles of natural justice would be violated".

"6. Preliminary inquiry which is concluded invariably on the back of the delinquent employee may, often, constitute the whole basis of the charge-sheet. Before a person is, therefore, called upon to submit his reply to the charge-sheet, he must, on a request made by him in that behalf, be supplied the copies of the statements of witnesses recorded during the preliminary enquiry particularly if those witnesses are proposed to be examined at the departmental trial. This principle was reiterated in Kashinath Dikshita v. Union of India (1986) 3 SCC 229: (AIR 1986 SC 2118) (Supra), wherein it was also laid down that this lapse would vitiate the departmental proceedings unless it was shown and established as a fact that non-supply of copies of those documents had not caused any prejudice to the delinquent in his defence".

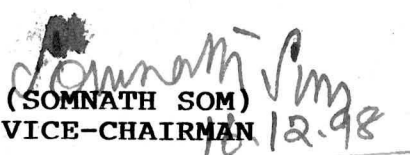
In view of this legal position enunciated by the Apex Court, even if the present proceeding is allowed to continue, in the absence of effective opportunity to the prejudice of the delinquent, the proceeding cannot but be ~~quashed~~. *ultimately stand.*

We are aware that there has been huge pecuniary loss to the department on account of alleged negligence of the applicant, but the department was quite aware that

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this applicant would be retiring on 31.10.1996, i.e. within one year seven months of the incident. Yet there was slackness from the side of the department as discussed above, even in initiating proceeding despite orders of this Tribunal and the departmental instructions under Annexure-10. Hence we are not inclined to allow the proceeding further to continue; more so, on account of denial of effective opportunity to the applicant to enable him to submit written statement in supplying copies of the documents relied in the charge-sheet.

For the reasons discussed above, the disciplinary proceeding initiated in memo dated 27.6.1996 under Annexure-6 is quashed. The respondents are directed to release the pensionary benefits which are due to the applicant within a period of sixty (60) days from the date of receipt of this order. No order as to costs.


(SOMNATH SOM)
VICE-CHAIRMAN

B.K.SAHOO

16/12/98
(G.NARASIMHAM)
MEMBER (JUDICIAL)