

CENTRAL ADMINISTRATIVE TRIBUAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.612 OF 1998
Cuttack this the 14th day of December, 1999

Laxmidhar Mohapatra

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
(SOMNATH SOM)
VICE-CHAIRMAN
14.12.99.

14.12.99.
(G.NARASIMHAM)
MEMBER(JUDICIAL)

7

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ORIGINAL APPLICATION NO. 612 OF 1998
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CORAM:

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

...

Sri Laxmidhar Mohapatra
aged about 59 years
S/o. Late Dibakar Mohapatra
At/Po: Kanikapada
Via: Mangalpur, Dist: Jajpur

...

Applicant

By the Advocates : M/s.P.V.Ramdas
P.V.B.Rao

-Versus-

1. Union of India represented
by the Chief Post Master General,
Orissa Circle,
Bhubaneswar-751001
2. Superintendent of Post Offices
Cuttack North Division
Cuttack-753001
3. Sub-divisional Inspector(Postal)
Dharamsala-755008

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Respondents

By the Advocates : Mr.A.K.Bose
Sr.Standing Counsel
(Central)

...

ORDER

MR.G.NARASIMHAM, MEMBER(JUDICIAL): In this application for quashing of charge memo dated 14.9.1998(Annexure-2), the applicant, who was appointed as E.D.S.P.M., Kanikapada E.D.S.O. under Jajpur Head Office was found absconded on 2.8.1983 without handing over charge of the Post Office, like cash/valuables, office key and so on. After necessary verification by the higher authorities, F.I.R. was lodged within a few days thereafter, i.e., on 28.8.1983, which was registered as G.R.Case No.650/83 under Section 409 of the T.P.C. for misappropriation of an amount of Rs.27,000 and some odd. This G.R.Case, after contest ended in acquittal of the applicant through judgment dated 25.8.1997(Annexure-1). The learned Court in para-12 of the judgment observed that ~~exhibition~~^{depictions} of the prosecution witnesses 1, 4, 5 and 6 are self contradictory and unreliable and that the prosecution has not come up with clean hands. After the acquittal on 28.10.1997, the applicant filed representation for his reinstatement. As he was not reinstated, he preferred Original Application 115/98 seeking reinstatement on 2.3.1998. Thereafter the impugned charge memo dated 14.9.1998 vide Annexure-2 has been served on him under Rule-8 of E.D. Agents (Conduct & Service) Rules, 1964. Res.3, has been appointed as an Inquiring Officer under Annexure-3.

These facts are not in controversy.

It has been urged by the applicant that the disciplinary proceeding initiated 15 years after the alleged incident without any explanation to this abnormal delay is not maintainable and is a counter-blast to

9
O.A.115/98 praying for reinstatement.

2. In the counter these facts have not been disputed. On the other hand, it has been admitted that the decision to initiate disciplinary proceeding was taken after conclusion of the criminal case and the disciplinary proceeding could not be initiated because of pendency of the criminal case.

3. We have heard Shri P.V.Ramdas, learned counsel for the applicant and Shri A.K.Bose, learned Addl. Standing Counsel appearing for the respondents. Also perused the records.

4. Charges have been framed under Annexure-2 on the ground that the applicant ~~was~~ ^{had} absconded on 2.8.1983 without handing over charge and keys of the office and there was dislocation in the official work till 4.8.1983 when Shri R.K.Das, A.S.P.O. arrived. Even the put off duty order could not be served, because the memo sent through Regd.Post dated 23.9.1983 returned undelivered with remark "addressee absent from home and his address unknown". Thus the applicant, according to Department, failed to maintain absolute integrity and due devotion to duty in violation of Rule-17 of F.D.Aagents(Conduct & Service) Rules, 1964.

Hence the only point for determination is whether the charge memo dated 14.9.1998 under Annexure-2 can be quashed on the ground of delay. Admittedly the incident relates to August, 1983, i.e. more than 15 years prior to framing of charge. Pendency of criminal case is no bar for initiation of departmental proceeding on the same subject matter, as per the settled legal position of law. Moreover, in the charge memo there is no allegation of

misappropriation which was the subject matter in G.R. case. This G.R. case ended in acquittal of the applicant on 25.8.1997, even with an observation that the Department had not come with clean hands to prosecute the applicant. Despite this acquittal with this observation the Department had not immediately taken up any step to initiate proceeding against the applicant despite the fact that the applicant filed a representation on 28.9.1997 for his reinstatement. It is only after the applicant filed Original Application 115/98 on 2.3.1998 seeking direction for his reinstatement, the Department could come to senses and initiated this proceeding on 14.9.1998 under Annexure-2.

It is not the case of the Department that they could not have initiated this very proceeding in the year 1983 itself, specially when there was no allegation of misappropriation in the charge memo as was made in the criminal case, the documents relied under charge memo relate to the year 1983 only and not that those documents have been, in original, were produced before the criminal Court for evidence.

With this background it is to be seen whether this abnormal delay in initiating this proceeding is fatal. In **State of Madhya Pradesh vs. Bani Singh** reported in **AIR 1990 SC 1308**, disciplinary proceeding was initiated in the year 1987 in respect of some irregularities taken place in between 1975 - 77. The Apex Court observed as follows :

.... 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 a recent decision in the case of **State of Andhra Pradesh vs. N.Radhakishan** reported in AIR 1998 SC 1833, the Supreme Court reiterated the same view with the following observation.

" It is not possible 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 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 is writ large on the fact 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 the 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 delay in conducting the disciplinary proceedings. Ultimately, the Court is to balance these two diverse considerations".

In this Radhakishan case the charge memo related to

an incident over 10 years and the case depended only on departmental records. There was no explanation why the enquiring officer for all those years did not examine them. The delinquent did not contribute to delay. Hence it was held that the charge memo was liable to be quashed.

In view of the aforesaid legal position enunciated by the Apex Court, we have no hesitation to hold that the Department has no proper explanation for initiating this disciplinary proceeding in respect of an incident relating to year 1983, sometime in September, 1998, that too when the applicant filed O.A.115/98 seeking reinstatement though proceeding of this nature could have been initiated in the year 1983 itself. Hence prejudice is implicit.

5. For the reasons discussed above, we quash the charge memo dated 14.9.1998 vide Annexure-2. In the result, the application is allowed, but without any order as to costs.


(SOMNATH SOMA)
VICE-CHAIRMAN
14.12.98

B.K.SAHOO

14.12.98
(G.NARASIMHAM)
MEMBER (JUDICIAL)