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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 182 OF 1999
Cuttack this the 15th day of December, 1999

Rabindra Behera

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? 75
2. Whethe it be circulated to all the Benches of the Central Administrative Tribunal or not ?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 12.99

G. Narasimham 15.12.99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.182 OF 1999
Cuttack this the 15th day of December, 1999

CORAM:

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

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Rabindra Behera,
aged about 40 years
Son of Late Sikhuli Behera
At present working as Postal Asst.
Chhatrapur Head Post Office
District : Ganjam -
residing at Village : Gajapatinagar
P.S. Rambha, Dist: Ganjam

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Applicant

By the Advocates : Mr. P.K.Mishra

-Versus-

1. Union of India represented through
Secretary, Department of Post & Telegraph
New Delhi

2. Post Master General
Department of Posts & Telegraph,
Bhubaneswar

3. Senior Superintendent of Post Offices
Berhampur (East Division)
Dist: Ganjam

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Respondents

By the Advocates : Mr.B.Das
Addl.Standing Counsel
(Central)

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ORDER

MR.G.NARASIMHAM, MEMBER(JUDICIAL): Applicant, a Postal Assistant prays for quashing the charges under Annexure-3 series framed through Memo dated 13.4.1999 by the disciplinary authority, viz., Senior Superintendent of Post Offices(Res.3).

2. The following facts are not in controversy.

On the basis of complaint that on 2.1.1987 the applicant had taken a sum of Rs.5000/- from the Treasurer under receipt, but did not account for the same and absconded and that he had misappropriated a cash of Rs.27, 970.10, which was the collection made at the counter on various Heads of Accounts; G.R.case 3/87 was registered under Section 409 of I.P.C. against him. On 21.7.1990, the learned Trial Magistrate, in his judgment disbelieved the entrustment of cash of Rs.27, 970.10 but holding that the applicant had misappropriated cash of Rs.5000/- and sentenced him convicted him to undergo R.I. for one month and to pay a fine of Rs.500/-, in default to undergo R.I. for 10 days. On appeal by the applicant, the learned Sessions Court by its judgment dated 16.11.1990 allowed the appeal and set aside the order of conviction and sentence. As against this judgment, the State preferred appeal and the complainant, i.e. the Department preferred a revision before the High Court of Orissa. Through judgment dated 23.4.1997(Annexure-2), the High Court dismissed the appeal preferred by the State and revision preferred by the Department by observing that the prosecution have not given a true version of the case and the case has become suspicious because of varieties of reasons discussed therein. On 7.7.1997 the suspension order against the

applicant was revoked and he was permitted to join as Postal Assistant. Since his arrear salary for the periods under suspension with other service benefits were not granted in spite of several ^{representations} / he preferred O.A.659/98 before this Tribunal with an interim prayer for payment of arrear salary as well as revised scale of pay with effect from the date of his rejoining on revocation of suspension order. After hearing the version of the Department, by order dated 29.1.1999, this Tribunal directed the respondents to pay the arrear salary of the applicant and granted liberty to the applicant to exercise his option in regard to revised scale of pay, as per rules. It is only thereafter this charge memo dated 13.4.1999 under Annexure-3 series had been framed.

Charges have been framed on two grounds. The first ground is that he had misappropriated an amount of Rs.27,970.10 on 2.1.1987 and other one is that on 2.1.1987 also after signing in the Attendance Register and having worked till 15 hours in S.B.Counter left the office without the knowledge of his Group Supervisor and did not turn up till closure of the office on that date nor on subsequent dates. In this way he failed to maintain absolute integrity and devotion to duty as required under Rule 17 of CCS(CCA)Rules, 1964.

It has been urged by the applicant that after acquittal even ~~at~~ the level of High Court, this proceeding on the ~~very~~ same fact is a futile exercise. No reason has been assigned for this abnormal delay of 12 years in initiating disciplinary proceeding and the proceeding has been initiated only to delay the payment of arrear salary demanded by him.

3. In the counter the stand of the Department is that the disciplinary authority is empowered to frame any charge upon a delinquent official other than the charges on which he was acquitted by Court of Law and the charges framed in the disciplinary proceedings are different from the accusation levelled against the applicant in the criminal case. The delay in framing of charge is on account of non receipt of records from the Criminal Courts. The records were received on 12.1.1999 and after verification this proceeding was initiated.

4. No rejoinder has been filed by the applicant.

5. We have heard Shri P.K.Mishra, learned counsel for the applicant and Shri B.Das, learned Addl.Standing Counsel appearing for the respondents. Also perused the records.

6. It will be seen from Annexure-3 series that no charge has been framed in respect of misappropriation of Rs.5000/- which was also the subject matter involved in the criminal case instituted against the applicant. As to the charge of misappropriation of Rs.27, 970.10, the learned Trial Court disbelieved the version of the prosecution and cleared the applicant from that allegation. Neither the State nor the Department preferred Criminal Revision as against that finding of the learned Trial Court before the Court of Sessions or before the High Court. Yet, for the same charge this proceeding has been initiated. There is no legal bar for initiating disciplinary proceeding parallel to pending criminal case. It is not as though the Department was not aware of the alleged misappropriation of Rs.27, 970.10 and the abscondence of the applicant on 2.1.1987, before

handing over the matter to Police. Hence, there was no legal bar or difficulty for initiating disciplinary proceeding also by then.

Even otherwise, the applicant having not been held guilty by the learned Trial Court for the alleged misappropriation of Rs.27, 970.10 in the year 1990 itself, and the Department having not preferred Criminal Revision challenging that finding, could have initiated departmental proceeding on this charge in the year 1990 itself ^{along with} ~~and on~~ the charge of abscondence which was not the subject matter of Criminal case. ~~in the year 1990.~~ However, this has not been done. The only explanation offered is since the records were held up in the Criminal Court and after receipt of the records they had taken a decision to initiate this disciplinary proceeding. We are not impressed with this reasoning because, the counter is ^{are} conspicuously silent as to what / those records which were held up in the Criminal Court and on which reliance has been placed in this proceeding. At this state it cannot be lost sight of the fact that after the verdict of the High Court, the applicant moved this Tribunal in O.A.659/98 wherein interim order was passed against the Department on 29.1.1999 for payment of arrear salary within a period of two months and liberty was given to the applicant to exercise his option in regard to revised pay scale, as per rules. It is only thereafter this disciplinary proceeding has been initiated.

Question then arises whether on account of this abnormal delay in initiating the disciplinary proceeding, the same is vitiated under law. In *State of Madhya Pradesh vs. Bani Singh* (AIR 1990 SC 1308), Central

Administrative Tribunal, Jabalpur Bench quashed the disciplinary proceeding on the ground of delay and laches, because the irregularities forming part of the proceeding had taken place between 1975 to 77 and yet the proceeding was initiated in the year 1987. The Apex Court, while confirming the decision of the Tribunal in para-4 of their judgment observed as follows :

"...It is only 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 state".

Similarly in *State of Andhra Pradesh vs. N. Radhakishan* (AIR 1998 SC 1833) the Apex Court quashed the charge memo on the ground that it related to an incident over 10 years stale and no explanation was given why enquiring officer for all these years did not examine the records. While quashing the charge memo the Apex Court observed as follows :

" 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 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 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 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".

Thus the legal position is that an unexplained delay of a decade or more in initiating disciplinary proceeding vitiates the disciplinary proceedings, because, delay causes prejudice to the charged officer unless it could be shown that he is to blame for the delay.

In the case before us, as earlier stated, the Department was aware of the developments in the year 1987 itself. They could have as well initiated proceeding in that year, besides, reporting the matter to Police. Even after finding of not guilty recorded by the learned Trial Court in the year 1990, as to the alleged misappropriation of Rs.27, 970.10 which was the main charge in the disciplinary proceeding, the Department slept over the matter till the year 1999. Even otherwise, nothing prevented them to initiate proceeding after the alleged abscondence which was not the subject matter before the Criminal Court.

We have no hesitation to hold that the Department

have no proper and reasonable explanation in initiating this disciplinary proceeding after an abnormal delay of more than 12 years and that too after the applicant filed O.A.659/98 and obtained an interim order against the Department.

7. For the reasons discussed above, we quash the charges framed under Annexure-3 series vide Memo dated 13.4.1999 against the applicant.

In the result the application is allowed, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
15.12.99

B.K.SAHOO

15.12.99
(G.NARASIMHAM)
MEMBER (JUDICIAL)