

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 804/01, 811/01, 812/01, 813/01,
814/01, 815/01, 816/01, 817/01,
818/01 and 819/01.

Dated this Thursday the 29th day of August, 2002.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

1. P. V. Deshmukh,
Postal Assistant (S.B.C.O.)
Jalna H.O.
Residing at - House No. 31,
Mhada Colony, Mantha Road,
Jalna - 431 203. ... Applicant in
O.A.No. 804/01.
2. S. S. Gudadhe,
Sub Postmaster,
Collector Complex,
Jalna, At District Jalna.
Residing at "Shivneri",
Vivekanand Nagar,
Near Tahsil Office, Old Jalna, ... Applicant in
Dist. Jalna - 431 203. O.A.No. 811/01.
3. V. W. Darade,
Postal Assistant,
Jalna H.P.O.
Residing at : Deepak Niwas,
Shakuntal Nagar, Mantha Road, ... Applicant in
Jalna - 431 203. O.A.No. 812/01.
4. R. M. Mungipaithankar,
Postal Assistant,
Jalna H.O.
Residing at : Kanhaya Nagar,
Devalgaon Raja Road, ... Applicant in
Jalna, Dist. Jalna - 431 203. O.A.No. 813/01.
5. S. B. Thorat,
Sub Postmaster,
R.P. Bal. Jalna.
Residing at - Shakuntal
Nagar, New Mamtha Bia-Pass ... Applicant in
Road, Jalna - 431 203. O.A.No. 814/01.
6. B. B. Jadhav,
Sub Postmaster,
Ambika Market, Jalna.
Residing at - Kanhaya Road,
Devalgaon Raja Road, Applicant in
Jalna - 431 203. O.A.No. 815/01.

7. K. A. Lande,
Sub Postmaster,
Old Jalna Sub Post Office,
Jalna.
Residing at : Ramnagar
Colony, Near Azad Maidan,
Jalna - 431 203. ... Applicant in
O.A.No. 816/01.
8. A. P. Zine,
P.A. Jalna H.O.,
Residing at - Chaudhari
Nagar, Mantha Road,
Jalna - 431 203. ... Applicant in
O.A.No. 817/01.
9. B. S. Mandalkar,
Sub Postmaster,
M.I.D.C. Sub Post Office,
Jalna.
Residing at : Shakuntala Nagar,
Mantha Road,
Jalna - 431 203. ... Applicant in
O.A.No. 818/01.
10. P. G. Vaidya,
P.A. (S.B.C.O.),
Aurangabad P.O.
Residing at - Ganpati Galli,
Kacheri Road, Old Jalna,
Pin Code - 431 203. ... Applicant in
O.A.No. 819/01.

(By Advocate Shri S. P. Kulkarni)

VERSUS

Union of India,
Department of Posts (through)

1. Sr. Superintendent of Post
Offices, Aurangabad Division,
Aurangabad - 431 001.
2. Director of Postal Services,
Aurangabad Region,
Office of the Postmaster
General, Aurangabad Region,
Aurangabad - 431 001. ... Respondents in
all the O.As.

(By Advocate Smt. H. P. Shah)

ORAL ORDER

By Hon'ble Mr.B.N.Bahadur - Member (A) -

A set of ten OAs is being considered together, as the basic facts are similar as also the issues involved, and are being disposed of through this common order, with the consent of learned counsel of both sides. For convenience, the Learned Counsel have taken up the facts in OA 811 of 2001 and these are being referred to. Apart from perusing records in the cases and hearing arguments made by both learned counsel, I have also seen original records produced by the Respondents.

2. The bare facts are that the Applicant in (OA 811 of 2001) who was working as Deputy Postmaster from April, 1992 to May, 1993 at Jalna Head Office has been served with a memorandum dated 31.8.2001 proposing action against him under Rule 16 of the CCS (CCA) Rules i.e. for minor penalty proceedings. The charge basically is for failing in performance of supervisory duties details have been mentioned in the statement of imputations of misconduct. In fact while factual details are different in different OAs, the basic facts are that all Applicants in the ten OAs are proceeded against for failing in their duties as required by rules, because of which it has perhaps not been possible to detect the offence committed by Shri S.R.Dhoke, who was the main offender. Shri Dhoke's defalcation of certain amounts of money which are said to be totalling to 4.15 lakhs approximately are a separate cause and Shri Dhoke has been dealt with and punished separately.

3. The main averment taken by the Applicant is that the charge memo has been issued after about 8 years of the event.

The Applicant, has sought the relief for a declaration that issue of charge memo after 8 years in 2001, and re-opening this case against a subsidiary offender is arbitrary and illegal. It is also a fact that the Applicant's have come up to the Tribunal before the finalisation of the enquiry process, which are minor penalty proceedings. OA 811 of 2001 has been filed on 13.11.2001 and the charge sheet in this case is 31.8.2001.

4. A reply statement has been filed by the Respondents, resisting the claims of the Applicant and providing detailed facts of the case. It is stated that one Shri S.R.Dhoke, SPM, RR, Bal Jalna had committed a fraud of an amount of Rs.4.15 lakhs approximately. Investigation was carried out in July, 1993 and some 17 persons were identified as subsidiary offenders in the report dated 26.7.1993. Amongst these identified persons, admittedly ten persons are those who have filed the present OA. The list is given at page 26 and 27 of the Paper Book. Persons at serial nos.1 to 4 have been punished. Thereafter, the matter to take action against others have been considered, such action has been initiated only through these Memos before us, which in OA 811 of 2001 is dated 31.8.2001.

5. The reply-statement also seeks to meet the averments made in the OA, parawise. I have seen all papers in the case and have heard the learned counsel on both sides. Two basic issues will come up for consideration, as posed by respective sides, which

need to be discussed, first. The first one is regarding the long delay of some eight years is prejudicial to the interests of the Applicants and that in view of this delay, the proceedings deserve to be quashed and set aside. This argument was made forcefully by learned counsel for the Applicant, who depended on a large number of cases of Hon'ble Supreme Court, High Courts and the Tribunal. These will be discussed ahead. The second issue that was raised as a basic issue for consideration was raised by learned counsel for the Respondents to state that the enquiry has not yet been finalised and that a judicial review should not be taken up at this stage. Support was sought by the Respondents' learned counsel through a few cases of the Hon'ble Supreme Court, which will also be discussed ahead.

6. I will take up these two issues together. The case law in the matter of Union of India & others Vs. Upendra Singh, 1994 (2) AISLJ 77 was relied upon by Respondents learned counsel to state that it has been decided that a Tribunal or Court should not review the matter in a departmental enquiry at a premature stage, that is, before enquiry is finalised. Also, that such inference can be made only if on the charges framed imputations are such that no misconduct or other irregularity can be said to have been made out, or the charges framed are contrary to any law. Learned counsel has also taken support of the following case law:—

(a) District Forest Officer Vs. R.Rajamanickram and another,
2000 SCC (L&S) 1100. (b) Air India Ltd. Vs. M.Yogeshwar
Raj, 2001 (1) SLJ 45 (c) State of Punjab & others Vs.
Chaman Lal Goyal, JT 1995(2) SC 18 = 1995 (2) SCC 570.

In fact both sides seek support of ^{the} ~~this~~ case law of Chaman Lal Goyal ^{case.} *BS*

7. On the other hand, learned counsel for the Applicants stated that the matter can be gone into even at the initial stage if the infirmity of long delay is involved. A large number of cases have been cited. In fact learned counsel depended on the case decided by M.P.High Court in the case of Lavkush Prasad Gautam Vs. Food Corporation of India (2001 (3) Service Cases Today 899) In Gautam's case (supra) important cases decided by the Hon'ble Supreme Court have been discussed. These are (a) State of M.P. Vs. Bani Singh, AIR 1990 SC 1308, State of Punjab & others Vs. Chamanlal Goyal (supra), State of A.P.Vs.Radhakishan (AIR 1988 SC 1833) and (d) Union of India Vs. Raj Kishore Parija (1995 Supp (4) SCC 235.

8. The point that really has to be decided at the threshold is as to whether in view of the ratio in Upendra Singh's case (supra), Tribunal like ours are precluded from going into the

aspect of delay till the departmental enquiry proceedings are finalised. There is no doubt that Tribunals have normally to allow departmental enquiries to proceed to their logical conclusion as brought out in detail in Upendra Singh's case. (This case is the more relevant of the cases cited on behalf of the Respondents). The point however is as to whether this Tribunal is totally precluded from going into such cases on the grounds of delay. Guidance if any on this point will also have to be sought from judgments of the Hon'ble Supreme Court. This Tribunal is guided in this regard by the important cases of Bani Singh (supra), R.Radhakishan (supra) and Raj Kishore Parija (supra). It is squarely held in all three of these judgments by Hon'ble Apex Court that where delay is prejudicial to the case of the Applicant, and an enquiry has been started after long years of the event, the Court can intervene depending upon the facts and circumstances. In fact it has been mentioned that no clear cut definition of delay can obviously be laid down. In fact after examining the cases of Bani Singh (supra), Chamanlal Goyal (supra), R.Radhakishan (supra) etc. the MP High Court has summarized its views in Paras 5, 6 and 7 of the judgment in Gautam case (supra).

9. To get a total picture of the guidance available in the cases from the Hon'ble Supreme Court, we quote relevant paras of the above judgment.

"5. In support of her submission Mrs.Menon has placed reliance on the decision of the Supreme Court in the case of State of M.P.Vs.Bani Singh and another, AIR 1990 SC 1308; in which it has been held as follows:-

"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 any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

Another decision on which Mrs.Menon has placed reliance is the judgment of the Supreme Court in the case of State of Punjab and others Vs. Chamanlal Goyal, 1995 (2) SCT 343 (SC): 1995 (2) SCC 570 and my attention has been drawn to the following passage:-

"Now remains the question of delay. There is undoubtedly a delay of five and a half year in serving the charges. The question is whether the said delay warranted the quashing of charge in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and mis-use of power. If the delay is too long and is unexplained the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the Court has to weigh the facts appearing for and against the said plea and take decision on the totality of circumstances. In other words, the Court has to indulge in a process of balancing" (Emphasis supplied).

Yet another decision on which she has placed reliance is the judgment of the Supreme Court in the case of State of Andhra Pradesh Vs. Radhakishan, AIR 1998 SC 1833; wherein it has been held as follows:-

"It is not possible to lay down any one determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceeding. Whether on that ground the disciplinary proceeding 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 proceeding 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 proceeding 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 proceeding 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 the 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 the path he is to suffer a penalty prescribed. Normally, disciplinary proceeding 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 proceeding. Ultimately the Court is to balance these two diverse considerations."(Emphasis supplied).

She has also referred to the decision of this Court in the case of N.K.Soloman Vs. Food Corporation of India and another, 1997 (3) SCT 443 (M.P.) (Jabalpur Bench):1997 (2) M.P.L.J. 94. This Court on consideration of this various authorities held as follows:-

"I have considered the submission made by the learned Counsel for the parties in the light of the decision of the Supreme Court cited by them. In the opinion of this Court the departmental enquiry commenced after 13 years of the commission of the alleged misconduct deserves to be quashed on the ground of unreasonable delay and laches on the part of the employer. It need not be emphasized that unduly delayed disciplinary action is bound to cause prejudice to the employee in defending himself. The decision of the Supreme Court in the case of Bani Singh (supra) supports that view."

6. Shri Jha, however, appearing on behalf of the respondents submits that delay cannot itself be ground to quash the charges. In support of his submission he has placed reliance on a judgment of the Supreme Court in the case of Union of India and others Vs. Raj Kishore Parija, 1995 Supp (4) SCC 235. It is apt to reproduce the entire Judgment:-

1. Leave granted.
2. Heard parties. There is no doubt that the employee was suspended from the year 1984 and the charge-sheet was served on him in the year 1988. The enquiry is not yet complete. The Tribunal was, therefore, right in ordering reinstatement of the employee. However, the Tribunal travelled beyond its jurisdiction in quashing the charges and the disciplinary proceedings themselves. We are informed that in pursuance of the order of the Tribunal the respondent-employee has been reinstated in service.
3. We, therefore, quash that part of the order of the Tribunal by which the Tribunal had quashed the charges and the disciplinary proceedings, and permit the appellant-Union of India, if it so intends, to proceed with the enquiry. However, the appellant is directed to complete the enquiry within 6 months from today. The appeal is allowed accordingly with no order as to costs.

In this case, the Supreme Court has not gone into the question of delay per se and on the facts of the said case interfered with the order of the Tribunal and held that charges ought not to have been quashed.

7. From the judgments of the Supreme Court in the case of Bani Singh (supra), Chamanlal Goyal (supra), Radha Kishan (supra) and of this Court in N.K.Soloman

(supra) there is no manner of doubt that delay and laches in initiating the departmental enquiry can be a ground for quashing the departmental enquiry itself. Further, no hard and fast rule can be laid as to the extent of delay which shall result into quashing of the charge-sheet. Further, when the delay is explained satisfactorily, charge-sheet cannot be quashed. Here in the present case, I find that the petitioners are being proceeded against for an act which is alleged to have been committed on 10.3.1980 and for which charge sheet was filed on 14.7.1997."

Let us look at the case law cited by Respondents. It must be mentioned here that in case of Air India Ltd. Vs. M. Yogeshwar Raj (supra) there was no delay, and hence that would not be the case which would help to decide the issue where long delay was involved. In the case of DFO Vs. Rajamanickram (supra), the details regarding the aspect of delay do not come forth, it will therefore not be possible to find out whether it is applicable or not. However in view of the decisions of the Hon'ble Supreme Court in cases of Bani Singh's (supra) and R.Radhakishan (supra) and even in the light of the observations made in Chamanlal Goyal's case (supra) , one thing that is clear is that Tribunals are not to function in a blanket fashion to go into the aspect of delays, just because the Applicants have approached a Court before enquiry has been completed.

10. Now once having reached this basic conclusion on the basis of the above case law, it would then be necessary to go into the facts and circumstances of the OAs before us to determine whether it is justifiable to interfere at this stage. I accordingly go into the basic facts of the case, as available

from the written statement of the Respondents themselves. The events pertain to 1992 -93. The main offender Shri S.R. Dhoke has committed fraud for the period between April, 1991 to June, 1992. Investigations were carried out in July, 1993. On 26.7.1993 itself a report had been made available in respect of subsidiary offenders. All these ten Applicants are not only identified at this stage; in fact action has been taken against some of the identified officials. Now the first flaw is it is not as if the matter came to light, later. Certainly in cases where the matter has come to light later, the date/year of the initial cause of action will not be relevant so much, as the time when the matter comes to light. But here the matter has come to the full notice of the department right in July, 1993. Thereafter, it was dragged on till 2001 it was dragged 2001 to issue charge sheets. Under the circumstances, it cannot be stated that there are mitigating factors regarding the delay. The reason given for the delay is that it was delay on administrative grounds only. No further or cogent reasons have been given by Respondents, and it is difficult to accept that a delay of some eight years can be explained away as being "administrative grounds only". The fact of the matter is that such a long delay will certainly prejudice the Applicants' case and it cannot be accepted, as argued by learned counsel for Respondents, that no prejudice can be caused because of the delay to the Applicants.

11. The second fact to be noted as a balancing factor is the nature of the offence. The main offender has already been punished. The rest of the offenders are subsidiary offenders. However, in the balancing factors it has to be remembered that it is a subsidiary offence and this factor will also come against the Respondents, when we examine the prejudice of delay.
12. A point was raised by the Learned Counsel for Respondents that the investigation in 1993 was by Director in the initial stage since the Senior Superintendent of Post Offices was on leave and in the first report the names of the subsidiary offenders were not shown. Some of these papers as available on original record and have been seen. It is true that the full report became available in July, 1993, as already stated, where names were also mentioned. In any case the Director in the Department is not a lower officer but a senior officer and is, in fact, senior to the Senior Superintendent of Post Offices. This argument will therefore not have force. It is also admitted that the main offender and four subsidiary offenders were penalised after enquiry in 1994-95 itself. Subsequently, reviews have made as seen from original file and it has been decided from time and as seen from Page 179 which is review referred to quarter ending March, 1999 at two stages, the name of subsidiary offenders were available but the final decision to take enquiry against them and for minor penalty came only in 2001. There is nothing on record that would offer enough justification for the delay. Under the

circumstances and the assessment of facts of the case against the background of the ratio of cases decided by Hon'ble Supreme Court as referred to above, it is clear that it would be unjust to allow the continuation of the enquiries which started eight long years, after the availability of the full report and some ten years after the event.

13. The relief sought in the OA therefore deserves to be provided. Since all these Original Applications are basically similar, and flow out of the same event of Shri Dhoke's misconduct and Applicants are in all OAs are subsidiary offenders, similar reliefs will have to be provided in all the ten OAs which are being considered jointly in this common order.

14. In the consequence all OAs considered viz.OAs Nos. 804/01, 811/01, 812/01, 813/01, 814/01, 815/01, 816/01, 817/01, 818/01 and 819/01 are hereby allowed. Respective impugned orders are quashed and set aside. The Respondents are directed not to proceed against the Applicants in their enquiries. There will be no order as to costs.

(B.N.Bahadur),
Member (A)

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