CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 709//95

Transfar Application No:

DATE OF DECISION: 5-1-96

B.Sathiamurthy
Petitioner

Mr.S.P.Saxena
Advocate for the Petitioners

Versus

U.O.I. & Ors.
Respondent

Mr.R.K.Shetty
Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B.S.Hegde, Member(J)

The Hon'ble Shri M.R.Kolhatkar, Member(A)

1. To be referred to the Reporter or not ? ✓ Yes
2. Whether it needs to be circulated to other Benches of the Tribunal ? x

M.R.Kolhatkar
(M.R.Kolhatkar,)

M

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.NO: 709/95

Pronounced this the 5th day of January 1996

HON'BLE SHRI B.S.HEGDE, MEMBER(J)

HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

B.Sathiamurthy,
Superintending Engineer,
O/O the Chief Engineer,
Poona Zone, Pune 411 001.
(By advocate Shri S.P.Saxena) .. Applicant

-versus-

1. Union of India
through
The Secretary,
Ministry of Defence,
New Delhi - 110 011.

2. The Engineer-in-Chief,
Army Headquarters,
Kashmir House,
New Delhi - 110 011.

3. The Chief Engineer,
Southern Command,
Pune - 411 001.

4. The Chief Engineer,
Poona Zone,
Pune - 411 001.

5. Col.T.K.Mittal,
Inquiry Officer,
O/O the Chief Engineer,
Madras Zone,
Madras.
(By counsel Shri R.K.Shetty) .. Respondents

O R D E R (RESERVED)

(Per M.R.Kolhatkar, Member(A))

In this case u/s.19 of the A.T.Act, interim relief of stay of the departmental enquiry on the basis of chargesheet dt.29-11-94 was granted on 21-7-95. MP 670/95 was filed to vacate the stay. We have heard the parties and we are disposing of the

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matter at the admission stage.

2. The applicant joined the service of the respondents on 11-7-1964. At the material time, he was serving as Garrisson Engineer(Stores) at Port Blair from 16-7-1985 to 26-8-1988. According to the applicant, while so working w.e.f. 1-4-1987, the Chief Engineer (Project), Port Blair, issued a policy letter dt.18-12-86 changing the method of counting of the stores. However, the above practice was objected to by higher authorities viz. Chief Engineer, Headquarters, Southern Command, Pune. According to the applicant, he handed over full and complete charge of the office and stores to one Shri K.Sundareswaran who was applicant's successor, and no discrepancy in the stores was observed. The stock taking was done every three months and the applicant has enclosed a few certificates issued by the stock verifying officer for the period from 1-4-87 to 30-9-1989 which did not disclose any discrepancy. During the above period, Board of Officers was also constituted on 27-5-1988 which carried out physical checking of the stores and submitted its findings vide page 46, Ex. A-4. Thus there was no indication regarding any deficiency in the Stores. What is more, the applicant was promoted to the higher selection post of Superintending Engineer in M.E.S. by respondent No.1 w.e.f. 2-7-1993.

3. In this background, the applicant challenges the memorandum of chargesheet dt. 29-11-1994 under CCS(CCA)Rules,1965 issued to the applicant at Ex.A-1. The charge was in following terms:

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"(a) No physical stock verification during quarterly stock taking was carried out as required vide para 782 of Regulations for MES. The correct ground balance of stores therefore could never be ascertained.

(b) He did not issue any instructions/SOP specifying the responsibilities of various staff which caused confusion resulting in faulty accounting of stores. He also failed to issue instructions/SOP for shifting of stores from Port Blair to Brichgunj to prevent pilferage during transportation.

(c) He failed to carryout instructions contained in Para 6 of CE(P) letter No.500007/809/E5 dt. 18 Dec 86 issued in relation to new accounting system implemented after 01 Apr 87.

(d) He, as custodian of stores(Steel and general stores), did not carry out periodical/surprise checks of stores in order to exercise effective control over functioning of stock holders.

(e) He did not ensure adequate security at storeyards in Brichgunj where stores were lying in the open without security fencing, security lights and proper gates."

The statement of imputations is detailed but the crux is that there was a loss of about 847 MT of steel amounting to Rs.64,67,951/- Further, approximately 1380 MT of steel was shifted from Port Blair to Brichgunj from 1985 to 1987 without any record. The applicant made a representation on 28-12-1994 and 8-4-1995 to the Secretary, Ministry of Defence but there was no reply to this. On the other hand, the applicant was informed that as he has denied charges, an Inquiry Officer was appointed and the date of enquiry was also fixed which enquiry is in abeyance in terms of interim relief granted by this Tribunal.

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4. The counsel for the applicant has prayed for the relief of quashing and setting aside the impugned memorandum of charges dt. 29-11-1994. According to him the chargesheet is not supported by any evidence and as such perverse. Secondly, the chargesheet pertains to very old period of about eight years back and therefore on this ground alone, the chargesheet is liable to be quashed. Thirdly, the applicant has been promoted subsequent to the events on which the chargesheet is based and, therefore, the alleged misconduct, if any, has to be treated as washed off. It is also contended by the counsel that the chargesheet is malafide, specifically issued on the verge of retirement to deny to him the normal retirement benefits.(On instructions the counsel stated that applicant is due to retire at the end of 1997). The other aspects of the malafide is that no action has been taken against his successor, who has since been retired and secondly, the delay, apart from its being bad on the count of its length, is deliberate in the sense that it is designed to allow the army officers who may be involved along with applicant, who is a civilian officer, to go scot-free in the whole transaction. In this connection, attention is invited to the provisions of Army Act,1950, in which there is a limitation for trial of Army officers vide Section 122, which reads as below :

> "Sec.122: Period of limitation for trial
>
> S.S.(1)Except as provided by sub-sec(2), no trial by Court Martial of any person subject to this Act(Army Act 1950) for any offence be commenced, after the expiration of a period of three years from the date of such offence.

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S.S.(2) The provisions of sub section(1) shall not apply to a trial for an offence of desertion or fraudulant enrolment or for any of the offences mentioned in Sec.37."

5. The respondents have opposed the O.A. and in particular have prayed for vacation of interim relief. According to the respondents, sometime in 1991 it came to the notice of the respondents that there was no proper accounting/stocking of stores material and therefore action as required by rules was taken. The chronology of action is as below :

Sr.No.	Date	Action taken
1.	Jan'91	Discrepancy in steel stock noticed
2.	21 Jan 91	Board of officers ordered to establish whether discrepancy exists.
3.	18 May 92	Fortress HQ Andaman and Nicobar issued convening order to investigate into the circumstances under which approx 847 MT of steel and other general stores were found deficient in MES installations at Port Blair.
4.	Dec 92	Court of inquiry completed the proceedings.
5.	26 Feb 93	Court of inquiry proceedings forwarded to Eastern Naval Command by FortressHQ
6.	09 Mar 93	Copy of Court of Inquiry proceedings received in Chief Engineer Southern Command Pune office from Fortress HQ Port Blair for information.
7.	20 Mar 93	Copy of Court of Inquiry proceedings forwarded to EinC's Branch. Army HQ.
8.	23 Apr 93	Directions/Recommendation of Flag Officer Commanding-in-Chief Eastern Naval Command on the Court of Inquiry was called for.
9.	07 Aug 93	Directions of FOC-IN-C Eastern Naval Command was received at CE SC, Pune.
10.	01 Sep 93	Case taken up with EinC's Branch Army HQ for initiating action against the individual indicated by Court of Inquiry.
11.	29 Nov 94	Memorandum of charge under Govt. of India, Min. of Def. No.5(41)/93/D(Lab) dt. 29 Nov. 94 issued. "

According to the respondents there has been no

unavoidable delay in service of charge memo. The respondents have further contended that apart from the applicant, two more employees were also proceeded against as below: in respect of Shri A.Dev Raj, SK Gde II inquiry has hes been completed and inquiry report has been submitted CO. In respect of Shri P.L.Pingle SK Gde II, inquiry is in progress. According to respondents, whether applicant is guilty as alleged or not would come out during the enquiry and the Tribunal may not quash the proposed enquiry at this preliminary stage especially because there is, prima facie, a strong case and there are case laws in support. There is also a loss of substantial government revenue involved viz. loss of 847 MT of steel amounting to over Rs.64 lakhs. As the chargesheet was not issued at the relevant time, the respondents have promoted the applicant in the normal course. It is not, as if the record of the applicant is entirely blemishless. In this connection, respondents have enclosed documents regarding another departmental enquiry initiated against the applicant, in terms of chargesheet dt. 2-7-1993 involving a loss of 562.8 MT of cement costing Rs.1,93,151/- of which the outcome is awaited. According to the respondents, the report of the so called Board proceedings convened for stock verification in August,1988 is not valid as it was not countersigned.

6. In his rejoinder the applicant has submitted that the discrepancy came to the notice of the respondents in january'91 i.e. after 28 months of handing over the charge to his successor. There is no clear averment that the discrepancy pertained to the period when the applicant was Garrisson Engineer. There is

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also a further delay inasmuch as although the directions from FOC-in-C were obtained on 17-8-1993 no chargesheet was issued immediately thereafter but it was issued after a period of one year and four months viz. 29-11-94.

7. In their sur-rejoinder the respondents have stated that the delay of one year and four months from the date of directions of FOC-in-C, Eastern Naval Command and the date of issue of charge sheet is attributable to the time taken for processing the case through various administrative channels.

8. At the argument stage, the counsel for the applicant has relied on the case law which according to him shows that unexplained delay in issue of chargesheet vitiates chargesheet and that the promotion gained by a government employee well after the events on which the chargesheet is based have the effect of condoning any irregularities attributable to the Govt. employee; in particular, the applicant has relied on the decision of this Bench in R.C. Parate vs. U.O.I. & Ors. O.A.756/93 decided on 21-12-1994 in which after referring to the facts and reviewing the case law, the Tribunal granted the relief of quashing the chargesheet issued by the respondents at the preliminary stage.

9. The case law cited by the parties is volumnious but it is necessary to notice the case law in the context of the fact that the cases cited pertained to High Courts, various Benches of the CAT and also the Supreme Court. Moreover the cases cited

related to the delay in issue of chargesheet as an issue in concluded enquiries in which along with other matters delay in issue of chargesheet was also pleaded as fatal to the whole enquiry. We therefore, considered the case law selectively especially noticing the law laid down by the Supreme Court.

10. The leading case in the matter of delay in issue of chargesheet is that of State of M.P vs. Bani Singh and another, 1990(2)SLR 798. That was a case of an IPS officer in which several issues were raised and decided. The material pronouncement regarding a delay of more than 12 years being fatal to chargesheet is contained in para 4 of the judgment as below :

> "4.The appeal against the order dated 16.12.1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned counsel. The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-77. 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 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 any case, there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss the appeal."

It would thus be seen that the law laid down by the Supreme Court is that a delay of 12 years or more would certainly be fatal to the issue of chargesheet. In this particular case, the delay is of a little more than six years viz. from August, 1988 when the applicant demitted

the office as Garrisson Engineer till November'94 when the chargesheet was issued. The counsel for the applicant would say that the delay would be fatal also in terms of the judgment in Bejoy Gopal Mukerjee vs. U.O.I. & Ors. (1989)9 ATC 369. This was a case in which charges related to the work executed by the Govt. employee between 1976 and 1979 and the chargesheet was issed on 22-1-1983. However, this case is not an authority for the preposition that issue of chargesheet after 2/4 years by itself is fatal because the Tribunal had observed that it has not been satisfactorily explained by the respondents as to why the disciplinary proceeding against the applicant was started 4/5 years after the alleged acts and omissions on his part. The counsel for the applicant would next refer to the case of P.L.Khandelwal vs. U.O.I.,(1989)9 ATC 509. In that case it was noticed that the department had found the lapses on the part of the petitioner in the year 1981 and the decision to initiate departmental proceedings was initiated on 1987. Barring making a reference to certain correspondence as referred to in their counter, no material whatsoever had been placed on record to justify the delay caused in the matter. Thus in Khandelwal's case it was not inordinate delay as such but it was the failure of the respondents to place adequate material justifying the delay that weighed with the department. In M.Nagalinga Reddy vs. Govt. of A.P. and others,(1988)6 ATC 246 there was a delay of 9years in issue of chargesheet and the Tribunal found that the department had not proceeded in the matter in an expeditious manner. It also referred to the case decided by Gujarat High Court in the case of

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Mohanbai Dungarbhai Parmar vs. Y.B.Zala, 1980(1)SLR 324

in para 5 of which it is stated as below:

"(i)Mohanbhai Dungarbhai Parmar v. Y.B.Zala: It was a decision rendered by Hon'bleJustice M.P.Thakkar of Gujarat High Court(as he then was). In that case, the charge was levelled against a police officer for absence from morning parade and on some occasion and for absence when roll call was taken. The charge-sheet was issued one-and- half years after the alleged acts of misconduct. In this case, the applicant had disputed the initiation of enquiry on the ground that inordinate delay constituted denial of principles of natural justice because it was not possible to dig out from the store of memory the cause of his absence from the parade or the roll-call. Dealing this aspects, the Hon'ble Judge held as follows:

Can he however, at all offer a satisfactory explanation on the basis of his memory when the charge is levelled one-and-half years after the occurrence ? Having regard to the very nature and content of the charge, a delay of about 1½ years must be considered fatal from the point of view of affording reasonable opportunity to the constable concerned to show cause against the charge levelled against him. It would be asking for the impossible to expect the constable concerned to explain satisfactorily the reason which occasioned the delay in reporting for duty. If the charge or accusation had been levelled very soon after the lapse, the constable concerned could have rendered an appropriate explanation regardless of whether it was or was not considered satisfactory by the competent authority. Not having done so for more than 1½years after the occurrence, the constable cannot be penalised for not being able to show cause to the satisfaction of the disciplinary authority. Under the circumstances the very delay in initiating proceedings must be held to constitute a denial of reasonable opportunity to defend himself for one cannot reasonably expect an employee to have a computer like memory or to maintain a day-to-day diary in which every small matter is meticulously recorded in anticipation of future eventualities of which he cannot have a pre-vision. Nor can he be expected to adduce evidence to establish his innocence for after inordinate delay he would not recall the identity of the witnes who could support him. Delay by itself therefore, will constitute denial of reasonable opportunity to show cause. This would amount to violation of principles of natural justice and the impugned order must be struck down on this ground alone. "

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This case, however, has been distinguished in the judgment of the Chandigarh Bench in the case of Onkar Sharan Singh vs. U.O.I. & Ors. 1995(1)SLJ(CAT)541, decided on 16-12-1994. The Division Bench has pointed out that in the peculiar circumstance of that case, delay of 1½ years in initiating the disciplinary proceeding constituted denial of opportunity to defend and thus violation of the principles of natural justice. The Tribunal however, observed that when the allegations are more substantial that judgment may not apply. The Tribunal also pointed out that relief in Mohanbhai's case was granted mainly on the ground that the disciplinary authority had failed to take into account the departmental instructions contained in the Bombay Police Manual,1959 while imposing the punishment and further that the disciplinary authority had discriminated against the petitioner, in that he followed the instructions in respect of other police constable while he disregarded the instructions in respect of the petitioner therein.

11. In our view,therefore, Mohanbhai D.Parmar's case is required to be treated as an authority for the facts of that particular case and no more. On the other hand, respondents have invited our attention to a subsequent decision of a division bench of Gujarat High Court presided by the then Chief Justice S.Nainar Sundaram in L.M.SHAH vs. State of Gujarat, decided on 28-9-93 and reported at 1994(2) SLJ 103. In that case an Executive Engineer was denied promotion on the ground of initiation of departmental proceedings against him and a chargesheet was issued after a lapse of six years from the date of

occurrence of event. The Division Bench of Gujarat High Court after taking note of chronology explaining the delay observed as below :

> "Taking up the question of the issuance of the chargesheet; when we dwell upon the relevant happenings as noted above, we find that there could not be an adverse comment of inordinate delay in the formulation of the chargesheet. The processes gone through and the stages through which they were gone cannot be skipped over and to do so would involve risk for the administration because one step missed or glossed over, will make the auth-ority miss the link and every action followed up, culminating in the final decision, may run the risk of being characterised as the products of non-application of mind of relevant factors. The possibility of such a situation arising cannot be totally ruled out. Hence the formalities that have been gone through cannot be naively brushed aside on the simple ground that the time has been consumed over them. It is not even pleaded by the petitioner that inordinate delay occurred only at the instance of some one interested against the petitioner and the process was prolonged deliberately. There are no allega-tions of lack of good faith and malice. Hence, we are not in a position to accept the argument put forth by Mr.Y.N.Oza, learned counsel for the petitioner that we must hold that the respondent acted arbitrarily, and unreasonably in the matter of issuance of chargesheet."

12. It is not necessary to multiply the cases and we would therefore refer to the case law which deals both with the delay and constructive condonation involved in promotion granted post factum(factum of occurrence of irregularity). This is the case of Principal Bench in A.K.Basu vs. U.O.I., decided on 28-1-1992, reported at 1993(1)SLJ (CAT) 510, This case has considerable bearing on the present case because in this case also, the relief of quashing the memorandum of chargesheet was granted. The facts were that the applicant was an Income Tax Officer and he was alleged to have been guilty of gross misconduct in relation to an incident which occurred in September,1980 which led to issue of a charge memorandum dt. 23-7-90 i.e.

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after 10 years. The Tribunal in para 13 and 14 of its judgment stated as below :

> "13.We have gone througn the records of the case carefully and have heard the learned counsel for both the parties. In our opinion, the applicant is entitled to succeed on the short ground of inordinate delay in the initiation of departmental enquiry against him. There is no satisfactory explanation for the inordinate delay in issuing the charge memo, and it will be unfair to permit the departmental enquiry to be proceeded with at this stage. We are fortified in this conclusion by the decision of the Supreme Court in State of Madhya Pradesh v. Bani Singh, AIR 1990 SC 1309.
>
> 14.The alleged lapses or misconduct of the applicant were known to the respondents as early as in 1982. Despite this, he was given more than one promotion. In Audhraj Singh v. State of MP, AIR 1967 MP-284, it has been held that "if the lapse or misconduct is one which is known to the authority before the person is promoted and not one which comes to light subsequent to the promotion, and if the authority concerned knowing of this lapse or misconduct promotes the civil servant without any reservation, then it must be taken that the lapse or misconduct has been condoned."

It is observed that in A.K.Basu's case the Principal Bench relied on the ratio of Bani Singh's case.

It may also be observed that the delay involved is of substantial lehgth viz. more than 10 years i.e. nearer 12years when rounded off as in Bani Singh's case rather than nearer 5 to 6 years which has occurred in the present case.

Secondly, the Tribunal also proceeded on the doctrine of constructive condonation as enunciated in Audhraj Singh's case, AIR 1967 MP 284. We have to consider the context of Audhraj Singh's case (which should correctly be cited as Lal Audhraj Singh). That was a case decided by P.V.Dixit. C.J. & R.J.Bhave.J. of Madhya Pradesh High Court. The facts were as below:

After issuing a show cause notice for negligence in 1954 no further action against the petitioner was

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taken, but he was promoted in service and received increments, but after nine years, in 1953, a showcause notice was issued for withholding petitioner's increments for the same offence of negligence. The petitioner contended that his negligence was condoned. The High Court held that by not taking any action for nine years the authority had condoned the negligence of the petitioner, and hence it could not subsequently impose punishment on him. The M.P. High Court also noticed English case law and observed that the principle that emerges from these cases has long been adopted in India. But the principle of condonation was held applicable in the context of that particular case. In our view the doctrine of constructive condonation invoked in Lal Audhraj Singh's case does not apply to the facts of the case. On the other hand we would refer to the following observation of the Full Bench at Jabalpur in the case of G.R.Meena vs. U.O.I. & Ors. reported at (1995)31 ATC 683(FB) :

> "Condonation and the waiver are conscious acts. From the material on record, it is not brought out that the Central Government consciously intended to condone the applicant's alleged misconduct or to waive taking action against him.This is reflected in the fact that the applicant was not allowed the Senior Time Scale and he was also not given the charge of a district. Not only this, adverse entries were recorded in his character roll in the years 1990-91 and 1991-92. Therefore, the plea of delay, condonation, waiver and estopped cannot be sustained merely because the chargesheet has been issued after three years."

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13. The applicant has next relied on the case of Mrinal Kanti Chakraborty vs. State of West Bengal and others, 1993(2)SLR 647. That was a case in which a chargesheet was issued to a Govt. employee on the eve of his retirement. In that case the court held that the charges were vague and moreover related to the period 14 years prior to retirement and should be held to be stale. Thereafter the court proceeded to observe as below :

> "It is also well settled principle that after the promotions are given no departmental proceeding could be initiated on the basis omission or commission or materials which relate to periods prior to the granting of such promotions inasmuch as promotion once given on consideration of the entire records amounts to giving a clean chit and after promotion is granted disciplinary authority is estopped from issuing any chargesheet in respect of the allegations pertaining to the period prior to promotion. "

In our view this is a wide statement for which no authority of Supreme Court or other weighty authority has been cited. It is, therefore, difficult to follow Calcutta High Court.

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14. Lastly the counsel for the applicant pointed out that this bench having decided Parate's case was bound by the ratio laid down therein. In our view Parate's case is required to be distinguished because in that case the delay was of about 8 years(The govt. employee had demitted charge at Jabalpur on 11-5-85 and the charge memo was issued on 25-5-93)and moreover we did not have the benefit of latest Supreme Court judgment in the case of State of Punjab & Ors. vs. Chaman Lal Goyal, decided on 31-1-1995, reported at 1995(2)SLJ 126 on which respondents rely. The delay in issuing the chargesheet was about 5½years and the Supreme Court observed in para 9 as below :

> "9.Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is right to say that such disciplinary proceeding must be conducted on 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 the 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, malafides and misuse of power. If the delay is too long and 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 factors appearing for and against the said plea and take a decision on the totality of circumstances."

After enumerating the circumstances for and against the Govt. employee, the Supreme Court observed in para 11,12, and 13 as below :

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"11. The principles to be borne in mind in this behalf have been set out by a Constitution bench of this Court in A.R.Antulay v. R.S.Nayak & anr.(1992(1)SCC 225). Though the said case pertained to criminal prosecution, the principles enunciated therein are broadly applicable to a plea of delay in taking the disciplinary proceedings as well . In paragraph 86 of the judgment this court mentioned the propositions emerging from the several decisions considered therein and observed that "ultimately the court has to balance and weigh the several relevant factors- balancing test or balancing process- and determine in each case whether the right to speedy trial has been denied in a given case." It has also been held that, ordinarily speaking, where the court comes to the conclusion that right to speedy trial of the accused has been infringed, the charges, or the conviction, as the case may be, will be quashed. At the same time, it has been observed that that is not the only course open to the court and that in a given case, the natureof the offence and other circumstances may be such that quashing of the proceedings may not be in the interest of justice. In such a case, it has been observed, it is open to the court to make such other appropriate order as it finds just and equitable in the circumstances of the case. "

12. Applying the balancing procedd, we are of the opinion that the quashing of charges and of the order appointing enquiry officer was not warranted in the facts and circumstances of the case.

13. The High Court has relied upon the decision of this Court in State of Madhya Pradesh v. Bani Singh & Anr.(1990(Suppl)SCC 738) on the question of delay. That was a case where the charges were served and disciplinary enquiry sought to be initiated after a lapse of twelve years from the alleged irregularities. From the report of the judgment, the nature of the charges concerned therein also do not appear. We do not know whether the charges there were grave as in this case. Probably, they were not. There is another distinguishing feature in the case before us: by the date of the judgment of High Court, the major part of the enquiry was over. This is also a circumstance going into the scales while weighing the factors for and against. As stated hereinabove, wherever delay is put forward as a ground for quashing the charges, the court has to weigh all the factors, both for and against the delinquent officer and come to a conclusion which is just and proper in the circumstances. In the circumstances, the principle of the said decision cannot help the respondent."

It would thus be seen that the latest trend of the Supreme Court judgments is to consider the nature of the charges and to consider whether there are circumstances justifying delay (and not merely the fact of the delay) and to pass orders as would meet the ends of justice.

15. In the instant case, we are calledupon to quash the chargesheet at the threshold even without allowing the department to complete the enquiry. Our discussion of various cases shows that the mere fact of delay and the mere fact of promotion does not lead to the inevitable result of holding the chargesheet as void ab-initio. In our view it would be appropriate for the department to to be allowed to proceed with the enquiry in terms of the chargesheet which would also give an opportunity to the delinquent govt. employee to prove his innocence. At the same time we cannot overlook the fact that the employee is on the verge of retirement and, therefore, it is in the interest of justice that disciplinary enquiry is completed expeditiously. In our view, therefore, the case can be disposed of by issue of appropriate directions in this regard.

16. Before parting with this case we sould like to deal with two issues bearing on the rules. First of all, so far as the discrimination between civilian employees and armed forces employees are concerned, it has only been cited as an apprehension that there has been a delay which might have tended to benefit certain armed force officers by crossing the bar of limitation in regard to proceedings that could have taken against them. The discrimination between

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the armed force officers and civilian officers has neither been pleaded nor the respondents have replied to the same. Even otherwise, the Army Act has stood scrutiny at the hands of High Courts and the Supreme Court and we do not feel called on to enter this area. The second aspect is the one referred to in the Parate's judgment in which in para 7 we had mentioned that the applicant has also taken the stand that CCS(CCA)Rules are not applicable to his case as he is a civilian Government servant in the Defence services paid out of the Defence Estimates. The said contention is not tenable in view of Rule 3 of the CCS(CCA)Rules,1965. Although such a plea was not before us, we would like to refer to the latest developments in this regard which are reported in the case of Ranjit Kumar Majmudar v. U.O.I. & Ors. 1995(6)SCALE 646. The head note in respect of this case reads as below:

> "Service-Central Civil Services(Classification, Control and Appeal)Rules,1965-applicability of - whether the Rules apply to a civilian employee in the defence services who is suspended, especially in view of the provisions of Art.311(2) of the Constitution-In view of the apparent conflict between the decisions of this Court in Union of India and Another v. K.S.Subramanian, 1989 Supp.(1)S.C.C.331 and Union of India v. Inderjit Datta (Civil Appeal Nos.5292-93 of 1993 decided on September 6,1994) and Director General of Ordnance Services and Ors. v. P.N. Malhotra 1995(1)SCALE 402 - Court refers the matter to a Bench of three judges"

Since the matter stands referred to a three Judge Bench of the Supreme Court for resolution of the conflict we do not say anything on this point.

17. We, therefore, dispose of this O.A. by passing

the following order :

O R D E R

O.A. is admitted and dismissed. M.P.670/95 is allowed and the interim relief is vacated. Respondents are at liberty to proceed with the departmental enquiry in terms of charge memorandum dt. 23-11-94 with a direction,however, that the enquiry should be completed within six months of the communication of this order. We expect the employee to extend cooperation in completion of the enquiry.

There will be no order as to costs.

(M.R.KOLHATKAR)
Member (A)

(B.S.HEGDE)
Member(J)

M