

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
~~JODHPUR BENCH, JODHPUR~~
JAIPUR BENCH : J A I P U R

O.A. No. 404/2001
T/A. No.

199

DATE OF DECISION 3/6/2002

DR. B. M. MEENA Petitioner

MR. NAND KISHORE Advocate for the Petitioner (s)

Versus

UNION OF INDIA & ORS. Respondent

MR. T. P. SHARMA Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. JUSTICE O. P. GARG, VICE CHAIRMAN

The Hon'ble Mr. A.P. NAGRATH, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(A.P. Nagrath)
Adm. Member


(Justice O.P. Garg)
Vice Chairman

.....

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

.....

Date of Order : 03-06-02.

Original Application No. 404/2001

Dr. B.M. Meena aged 47 years, S/o Shri Prasadi Lal, working as Assistant Medical Officer, Western Railway Hospital, Reengus, Jaipur Division, Jaipur, resident of Railway Bungalow, Near Railway Dispensary, Reengus.

.....Applicant.

versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai - 20.
2. The Chief Medical Director, Western Railway, Churchgate, Mumbai-20.
3. S.L. Jain, Retired C.M.E. (Planning), CCG Apartment, Acharya Kriplani Marg, Jaipur.

.....Respondents.

.....

CORAM :

Hon'ble Mr. Justice O.P. Garg, Vice Chairman
Hon'ble Mr. A.P. Nagrath, Administrative Member

.....

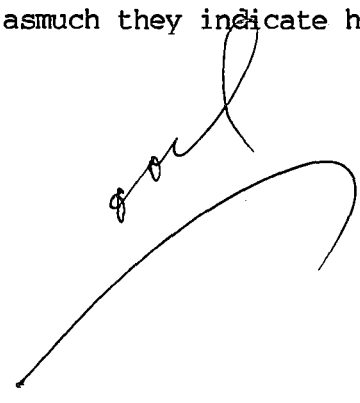
Mr. Nand Kishore, Counsel for the applicant.
Mr. T.P. Sharma, Counsel for the respondents.

.....

O R D E R

[Per Hon'ble Mr. Justice O.P. Garg]

This case has a chequered history and its facts are interesting inasmuch they indicate how an employee has been unnecessarily harassed,

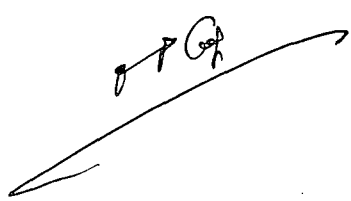


.2.

nagged and driven to devote most of his otherwise precious time in avoidable litigation.

2. The thumb-nail sketch of the case is that the applicant, who was appointed on the post of Assistant Medical Officer (Class II), on ad hoc basis on 20th June, 1984 for a period of four months, joined at Kandala Port on Ajmer Division. He was transferred from Ajmer to Okha in Rajkot Division, Western Railway, in the month of June 1985. His services were terminated by order dated 30th September, 1986. The order of termination was challenged by the applicant by filing O.A. No. 354/1986 before the Central Administrative Tribunal, Ahmedabad. The said O.A. was allowed in terms of the directions of Hon'ble the Supreme Court that, all the Assistant Medical Officers, appointed in the Railways up to 1st October, 1984, shall be regularised in service in consultation with the Union Public Service Commission on evaluation of their work and conduct on the basis of their Confidential Reports. It was further ordered that the services of those persons appointed prior to 1st October, 1984 and whose services have been terminated except on resignation or on disciplinary grounds, shall also be considered for regularisation and if found fit, their services shall be regularised as if there was no break in continuity in the service but without any back wages. The Ahmedabad Bench of the Tribunal while disposing of O.A. No. 354/1986 directed the respondents to examine the claim of the applicant in the light of the orders and directions of Hon'ble the Supreme Court. The General Manager, Western Railway, was required to pass a speaking order within a period of four months of the date of the order. Pursuant to the said decision, the respondents passed a speaking order dated 30th November, 1989. In para 5 of the said order, the following facts were mentioned with regard to the applicant :-

"It is seen from records that during the tenure of his adhoc service, Dr. B.M. Meena was found indulging in malpractices and contravened laid down rules and regulations. He also



falsified documents to extend undue benefits to the individuals. Therefore, on consideration of the adverse report to this effect by the Vigilance Organisation, the then General Manager decided not to grant extension to him to continue in his adhoc appointment beyond 30.9.1986 (AN) when his term expired. The Central Vigilance Commission had also recorded their agreement with the action of the Railway Administration."

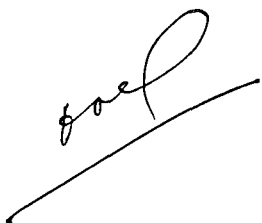
The applicant again approached Ahmedabad Bench of the Tribunal by filing O.A. No. 133/1990 which was allowed by order dated 28th August, 1994, a copy of which is Annex. A/1. The operative portion of the order passed by the Tribunal runs as follows :-

"The application is allowed. The order passed by General Manager dated 25.9.86 and speaking order dated 30.11.89 are quashed and set aside. The applicant is ordered to be reinstated in service within eight weeks from the date of receipt of this order. The applicant shall make a representation to General Manager regarding backwages who shall decide the same within eight weeks from the date of the receipt of the representation. It is open to the respondents to hold an enquiry in accordance with Railway Servants Discipline & Appeal Rules and in accordance with principles of natural justice. If they decide not to hold an enquiry against the applicant, his case shall be sent up for consideration by UPSC immediately after decision not to hold enquiry is taken. In case it is decided to hold enquiry against the applicant, his case may or may not be referred to UPSC depending upon the result of the enquiry. The decision whether or not to hold an enquiry shall be taken by the respondents within six weeks from the date of reinstatement of the applicant. No order as to costs."

In compliance with the above order, the applicant was reinstated in service by issuing order dated 1.12.1994. He resumed his duties as Assistant Medical Officer on 25th July, 1995. A decision was taken by the competent authority to initiate departmental inquiry against the applicant and on 24th December, 1996, a chargesheet in the standard form under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 (hereinafter called as "the Rules"), was issued. The following four articles of charges supported with statement of imputation, were framed against the applicant :-

"1.0 ARTICLE I

Dr. Meena had taken on sicklist even the employee falling out of his jurisdiction, prepared prescription Memos without



sick memos (G-18 B) from respective departments/issued/prepared/ cancelled/reissued fresh certificates after cancellation of certificates. He failed to obtain the signature & Medical I Ward No. of the employee on the certificates.

He marked false attendance on the prescription memos in back dates so as to give the undue advantage by issuing certificates for such period.

2.0 ARTICLE II

He issued certificates for the period when he was not present at his HQ station rather he was out of station on duty.

He made addition/alterations in the prescription memos/certificates by obliterating/over writing.

3.0 ARTICLE III

He issued duty certificates SR 3/4 to the employees who were under sick of private doctors and not followed the procedures, even he issued regular certificates to the outstation employee instead of transfer certificates.

He also violated the instructions of DRM (E) Ajmer issued vide No. EP/639/1 part I dt. 28.9.94 and issued sick/fit certificates.

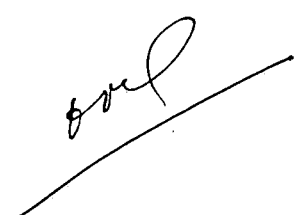
4.0 ARTICLE IV

He denied the patient to be taken in sick list and issue sick certificate initially but later on he issued the sick & fit certificate in back date by overwriting on the certificate.

By the mis-conduct as aforesaid which was full of malafide and vested interest Shri B.M.Meena, AMO/KDLP failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in the manner unbecoming of Railway servant thus violated para 3.1 (i), (ii) & (iii) of Railway Service Conduct Rules 1966."

Shri S.L.Jain, a retired C.M.E. (Planning), was appointed as Inquiry Officer by order dated 10th May, 1998. He conducted the proceedings on various dates and submitted the report of inquiry on 8th August, 2000 returning the findings and arriving at the conclusion that none of the charges have been proved against the applicant.

3. It appears that before the submission of inquiry report, the applicant has challenged the validity of the inquiry and the procedure adopted by the inquiry officer on various grounds by filing O.A. No. 471/1999 before this Bench as the applicant at the relevant

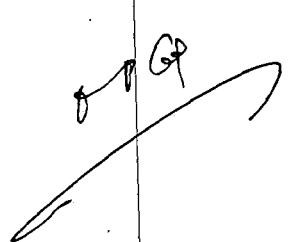


time, was working as Assistant Medical Officer, Western Railway Hospital, Reengus, Jaipur Division, Jaipur. During the course of hearing of the O.A. aforesaid, it transpired that the inquiry officer had already submitted the inquiry report on 8th August, 2000 on which no final decision had been taken by the disciplinary authority. The said O.A. No. 471/1999 was decided by issuing the following directions :-

"It appears that due to pendency of this O.A. probably the matter is pending with the Disciplinary Authority. Since the inquiry has now been completed and the verdict of the Disciplinary authority is to be communicated to the applicant, therefore, it is directed that the disciplinary authority may take decision within a period of 3 months from the date of communication of this order and communicate the same to the applicant as early as possible after 3 months."

It was only on 3rd June, 2001 that Shri V.D. Gupta, General Manager, Western Railway, who admittedly, was a competent authority, took into consideration the report of inquiry and in exercise of the powers in terms of Sub Rule (2) of Rule 10 of the Rules of 1968, directed "further inquiry" in the case by Shri S.L. Jain, who had earlier submitted the report after inquiry. The reasons which impelled the disciplinary authority to make an order for "further inquiry" may be gathered from the order itself and we would do better to quote the reasons in extenso as below :-

"..... The undersigned (V.D.Gupta, General Manager), having carefully gone through the records of the enquiry finds that the enquiry against Dr. B.M.Meena, AMO/Reengus has not been held in accordance with laid down procedure in as much as :

- i) the only prosecution witness was dropped without the consent of the P.O. This has resulted in no examination of the OW by PO and subsequent right of cross-examination by CO/defence & re-examination by PO have been denied, thus vitiating the enquiry.
 - (ii) The documents have not been taken on record and not considered while drawing the findings.
 - (iii) The PO was asked to examine the CO which is against laid down rules.
 - (iv) Correspondance folder not maintained.
- 

(v) PO's brief & CO's brief not taken."

On receiving the communication for further inquiry, the Inquiry Officer Shri S.L.Jain, wrote back by addressing a letter dated 20th March, 2001, to the General Manager, Western Railway, clarifying each one of the five grounds on the basis of which further inquiry was directed. He prayed that the decision dated 3rd February, 2001, for further inquiry be re-examined in the light of itemwise clarification submitted by him. He clearly gave out his mind that in case further inquiry is considered necessary, some other person may be nominated as Inquiry Officer. Certain communications were exchanged in between Shri S.L. Jain and the respondents and when the former has opted not to conduct the inquiry any further, the General Manager, Western Railway, by order dated 29th August, 2001, appointed one Shri R.S. Prashad, as the Inquiry Officer. Shri Prashad, is now ^{- seized -} ~~ceased~~ of the departmental inquiry against the applicant. It is, at this stage that the applicant has filed the present O.A. under Sec. 19 of the Administrative Tribunals Act, 1985, claiming the following reliefs :-

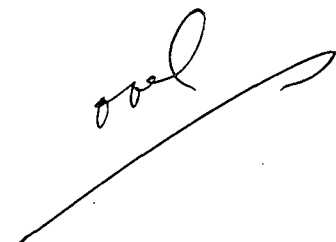
"(i) The proceedings of the D.A.R. may be quashed and set aside as the respondents have lost their authority to finalize the case within stipulated time as per policy circular for Railway Board as well as the direction of the learned Tribunal dated 18.12.2000.

(ii) The applicant may be regularised as a A.D.M.O. in consultation with UPSC as per direction of the Hon'ble Supreme Court which was done in the case of similarly situated persons AMO's and ADMO's.

(iii) Any other appropriate order which may be found just and proper in the facts and circumstances of the application."

4. A reply has been filed by the respondents to which a detailed and elaborate rejoinder has been filed by the applicant.

5. We have heard Shri Nand Kishore, learned counsel for the applicant as well as Shri T.P.Sharma, appearing on behalf of the



respondents at considerable length. Since the applicant has taken an exception about the substitution of the original inquiry officer Shri S.L. Jain by Shri R.S. Prasad and assailed the order for "further inquiry" , we directed the respondents' counsel to produce before us, the entire departmental record pertaining to the initiation of inquiry against the applicant. The Original record was produced before us and most of the facts narrated above, have been culled out ^{from} the departmental record.

6. The learned counsel for the applicant primarily raised two objections to the conduct of "further inquiry" against the applicant : firstly, that the General Manager, Western Railway, has acted without jurisdiction and in an arbitrary manner in rejecting the report dated 8th August, 2000 submitted by the inquiry officer and in ordering further inquiry and, secondly, that it is a case where an in-ordinate delay has defeated the justice as on account of unwarranted delay in concluding the inquiry in respect of the stale charges the future prospects of the applicant in service have been blocked for no fault of his. Shri T.P. Sharma, repelled the above submissions.

7. We have given thoughtful consideration to the matter and find that the submissions made on behalf of the applicant have substance and merit. They are of considerable force. With a view to gauge the jurisdiction and authority of the disciplinary authority after the receipt of the report of inquiry, we have waded through the procedure prescribed in the Rules of 1968. Sub rules (1) to (3) of Rule 10 of the Rules, run as follows :-

"(1) If the disciplinary authority, having regard to its own findings where it is itself the inquiring authority, or having regard to its decision on all or any of the findings of the inquiring authority, is of the opinion that the penalty warranted is such as is within its competence, that authority may act on evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, recall the witnesses and examine, cross-examine and re-examine the witnesses and may impose on the Railway servant such penalty as is within its competence, in accordance with these rules. Where such

disciplinary authority is of the opinion that the penalty warranted is such as is not within its competence, that authority shall forward the records of the inquiry to the appropriate disciplinary authority who shall act in the manner as hereinafter provided.

(2) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold further inquiry according to the provisions of Rule 9 as far as may be.

(3) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any articles of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record, is sufficient for the purpose."

There is another Sub Rule (24) of Rule 9 of the Rules of 1968, which also needs attention as a passing reference was made to it. It reads as follows :-

"(24) Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein and is succeeded by another inquiring authority which has, and which exercises, such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor, and partly recorded by itself: Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinabove provided."

The import of the above Rule 9 (24) is that, where an inquiring authority ceases to exercise jurisdiction and is succeeded by another inquiring authority, the latter inquiring authority may act on the evidence recorded by its predecessor provided further examination, cross-examination and re-examination, after recall of the witnesses may be permissible, if found necessary in the interest of justice. In the instant case, the inquiry officer has submitted his report on 8th August, 2000. At no point of time, he ceased to exercise jurisdiction. Therefore, the provisions of Rule 9 (24) of the Rules, are not germane to the controversy in hand. The legal position which flows from a reading of Sub Rules (1) to (3) of Rule 10, may after

over

analysis be summarised as follows :-

- (1) The disciplinary authority agreeing with the report of inquiry accept the findings and pass suitable orders, according to law.
- (2) If, after taking into consideration the findings recorded by the inquiring authority, the disciplinary authority is of the opinion that the penalty warranted in the circumstances of the case, is such as is within its competence, it may act on the evidence on record or in the alternative, if it is of the opinion that further examination of any of the witnesses is necessary in the interest of justice, it may recall the witnesses and examine, cross examine and re-examine them with a view to impose such penalty as is within its competence.
- (3) Where, the disciplinary authority is of the opinion that the penalty warranted is such as is not within its competence, it shall forward the record of the inquiry to the appropriate disciplinary authority, who may act in the manner as analysed in clause (1) above.
- (4) If, the disciplinary authority disagrees with the findings of the inquiring authority, it may record its reasons for such disagreement and may record its own findings on any articles of charge, if there is sufficient evidence on record for the purpose, and
- (5) Where, the disciplinary authority itself is not the inquiring authority, it may for reasons to be recorded in writing, remit the case to the inquiring authority for further inquiry and report and thereafter, the inquiry officer shall proceed to hold further inquiry according to provisions of Rule 9 of the Rules.

From the above analysis, it would be clear, as has been held by the Central Administrative Tribunal, New Mumbai Bench, in the case of H.D. Chothani Versus Additional Divisional Railway Manager, Central Railway and another, reported in 1990 (3) (CAT) AISLJ 288, that though, the disciplinary authority, if it dis-agrees with the findings of the inquiry officer, has no power to order for new inquiry but, certainly it has power to order further inquiry as is contemplated under Sub Rule (2) of Rule 10. After receipt of the report of inquiry, it was the bounden duty of the disciplinary authority to take further action thereon in accordance with the provisions of Rule 10 of the Rules of 1968. The disciplinary authority has not taken recourse to Sub Rule (1) or Sub Rule (3) of Rule 10 in the present case. The only course left with him was to



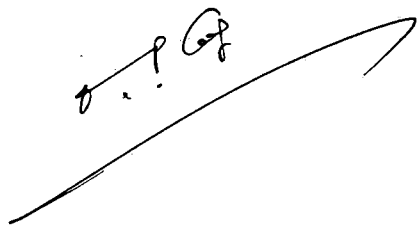
act under Sub Clause (2) of Rule 10 which empowered it to order "further inquiry" in accordance with the provisions of Rule 9, as far as may be. The General Manager, Western Railway, who was the disciplinary authority, had ordered further inquiry for which he has recorded the reasons in his order dated 3rd February, 2001 (quoted above). Though, the disciplinary authority has power and jurisdiction to order further inquiry into the matter, such an order has to be passed for very valid and cogent reasons to be mentioned in writing. In the instant case, we find that the reasons recorded by the disciplinary authority are too tenuous, flimsy and casual. It appears that under the pressure of the order passed by this Tribunal on 18th December, 2000 in O.A. No. 471 of 1999, the disciplinary authority adopted a slip-shod approach and a short-cut method by ordering "further inquiry". The report of the inquiry officer dated 8th August, 2000 indicates as many as six dates i.e. 22.2.1999, 20.8.1999, 23.9.1999, 1.12.1999, 10.2.2000 and 14.7.2000, ~~which~~ were fixed for the conduct of the inquiry. The relevant witnesses were not forth-coming. There was no evidence to support the articles of charges against the applicant. The inquiry officer found that the replies submitted by the applicant i.e. the charged officer, were satisfactory and that some of the charges have arisen due to practical difficulties in working. According to the inquiry officer some minor irregularities were inevitable due to pressure of work as the only AMO/KDLD was managing the work and the paper work had to be managed by the Pharmasist when the AMO was away on official work. It was in the back-ground of the above facts that the inquiry officer found the charges against the applicant, as not proved.

8. The order for further inquiry has been reasoned-out on as many as five grounds which have been quoted above. A reading of these grounds would lead any one to the conclusion that the disciplinary authority was bent upon in not finalising the inquiry against the

gud

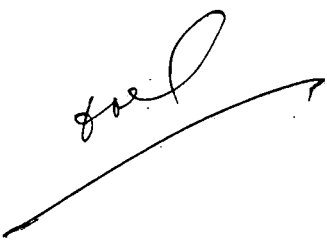
applicant but, was interested in allowing the matter to pend by any means. It was in the background of ^{this} ~~the~~ mindset that the order for further inquiry was passed without any valid or cogent reasons. A very hyper- technical view of the matter has been taken by the disciplinary authority. He has ordered further inquiry because the inquiry officer failed to maintain the correspondence folio or to obtain the briefs from the presenting officer and the charged officer. The other grounds mentioned in the order too have no nexus with the procedure of inquiry. The disciplinary authority virtually had no reasons to dis-agree with the conclusions arrived at by the inquiring authority but in his zeal to keep the matter alive against the applicant, passed an order of further inquiry by recording totally untenable and non-existent grounds for disagreement. The disciplinary authority though, had power and jurisdiction to remit the same for further inquiry; he could not act in an unbridled or capricious manner. The reasons recorded for disagreement with the inquiry officer and the order for further inquiry, is subject to judicial scrutiny and having so scanned, we find that there was hardly any reason or basis to disagree with the report of inquiry submitted by Shri S.L.Jain on 8th August, 2000. The clarification submitted by the inquiry officer was not taken into consideration and, therefore, Shri Jain, finding himself in a quandry opted out and reclused himself of the inquiry on the charges which according to him, were the out-come merely of the practical difficulties rather than remissness or misconduct on the part of the applicant. We, therefore, conclude that there was no occasion for the disciplinary authority to have dis-agreed with the findings of the inquiry officer and to invoke the powers under Sub Rule (2) of Rule 10 of the Rules of 1968 to order for further inquiry.

9. Now, it is the time to consider the second limb of the argument advanced on behalf of the applicant that, it is an eminently suited



case where the inquiry against the applicant should be dropped on the ground of inordinate delay. Our attention was drawn to the decision of the Apex Court in the case of State of Punjab and Others Vs. Chaman Lal Goyal, reported in 1995 (1) 700 as well as a subsequent decision in the case of State of Andhra Pradesh Versus N. Radha Kishan, reported in 1998 (2) SLR 786. A reference to earlier decision in the case of State of Madhya Pradesh Versus Bani Singh and Another, reported in 1990 (Suppl) SCC 738, was also made to support the contention that it would be unfair to permit the departmental inquiry if, there has been an in-ordinate delay in issuing the memorandum of charge without any satisfactory explanation. In Bani Singh's case (supra), a Bench of this Tribunal had quashed the departmental proceedings merely on the ground of delay and laches. It was canvassed before Hon'ble the Supreme Court that the Tribunal instead of quashing the proceedings on the ground of delay, should have allowed the inquiry to go on, to decide the matter on merits. This submission did not find favour with the Hon'ble Court. In that case, the irregularities which were subject matter of inquiry were said to have taken place in between the years 1975-77. The inquiry was initiated in the year 1987 i.e. after about twelve years. It was not the case of the department that they were not aware of the said irregularities and came to know about the same only in the year 1987. There was no satisfactory explanation for in-ordinate delay in issuing the charge memo. The Hon'ble Supreme Court finding no ground for interference with the order of Tribunal, took the view that it will be unfair to permit departmental inquiry to be proceeded with at such a later stage.

10. In the case of Chaman Lal Goyal (supra), the memorandum of charges was quashed by Hon'ble the High Court on one of the grounds that, there was delay of five and half years in serving the chargesheet for which there was no acceptable explanation ; that on



account of lapse of time, it has become more difficult for the respondent - employee to adduce evidence or to prove his innocence; that number of witnesses whom he could have examined, are either dead or no longer available and some of them either retired or transferred elsewhere and since the evidence of negligence on the part of the charged employee was missing and, therefore, holding of an inquiry at that distance of time shall be prejudicial to the interest of the charged employee. The Apex Court while dealing with the matter, referred to the principles to be borne in mind, as have been set out by the Constitution Bench in A.R. Antulay Vs. R.S. Nayak and another, reported in 1992 (1) SCC 225. It was observed that though the aforesaid case pertains to criminal prosecution, the principles of speedy trial enunciated are broadly applicable to a plea of delay in taking the disciplinary proceedings as well. In paragraph 86 of A.R. Antulay's case, the Apex 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 was also 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 nature of 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 that it is open to the court to make such other appropriate order as it finds just and equitable in the circumstance of the case. In Chaman Lal's case (supra), the earlier case of Bani Singh and another (supra), was distinguished by observing that wherever delay is put forward as a ground for quashing the charges, the Court has to weigh all the

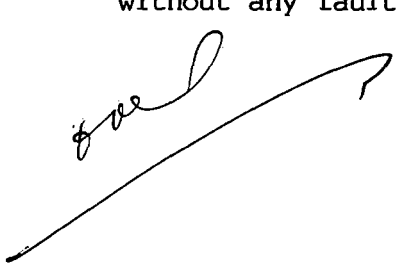
for

factors and come to a conclusion which is just and proper in the circumstances.

11. In the backdrop of the above legal position, it may be concluded that it is trite to say that disciplinary proceedings may 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 the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus also not in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the court may 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 inquiry 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. In other words, the court has to indulge in a process of balancing.

12. In N. Radhakishan's case (supra), the law on the point has been summarised in para 19 which runs as follows :-

"19. It is not possible to lay down any pre-determined 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."

13. Shorn of all superfluities now, let us examine the facts of the present case in the back ground of the above legal position. The services of the applicant who was appointed on ad hoc basis, were terminated by order dated 30.9.1986. He had to file an O.A. No. 354/1986 which was allowed with certain directions for treating his case in the light of the decision of the Apex Court for regularisation of his services, provided he had not himself resigned or departmental inquiry into his conduct, was not pending or required to be made. The competent authority by order dated 30.11.1989 did not find it proper to grant extension to the applicant to continue on ad hoc appointment beyond 30th September 1986. This order was again challenged by the applicant by filing O.A. No. 133/1990 which was allowed with certain directions. In the said O.A. it was observed that it would be open to the respondents to hold an inquiry into the conduct of the applicant under the relevant rules for which a decision may be taken after due consideration of all the facts. This order was passed on 24th August, 1994. The decision according to the direction of the Tribunal was required to be taken within six weeks after the reinstatement of the applicant. Instead of taking a decision within a period of six weeks, as directed by this Tribunal, the competent authority unnecessarily whiled away the time and allowed the matter to linger-on for a considerable long period of more than two years, as it was only on 24th December, 1996




when a decision to initiate departmental inquiry against the applicant was taken and a chargesheet of the said date was served upon him. There did not appear to be any understandable reason as to under what circumstances, the applicant was kept in lurch and uncertainty for a period of more than two years without taking a decision for initiating the departmental inquiry, particularly when the applicant was backed with an order of the Tribunal dated 28th August, 1994 that, if any decision is to be taken to proceed against the applicant departmentally, such a decision must be taken within a period of six weeks. Not only this, the callousness on the part of the department in dealing the applicant is further apparent that after serving the chargesheet, the inquiry officer was appointed by an order only on 10th May, 1998. In short it took four years to initiate departmental inquiry against the applicant by appointing the inquiry officer from the date the order was passed by the Tribunal in O.A. No. 133/1990. The Inquiry Officer took his own time and submitted the report on 8th August, 2000 i.e. after more than two years of his appointment. The disciplinary authority did not take any action on the report of the inquiry officer till a direction was issued by this Tribunal by order dated 18th December, 2000 in O.A. No. 471/1999. In spite of the said direction, the competent authority took about six months' time to pass a casual, sweeping and slipshod order for further inquiry, thereby deliberately keeping the matter alive against the applicant. The attitude of the competent authority right from the very beginning has been to nullify the various decisions of the Tribunal and to keep the applicant guessing as to what is to happen about his future career. Without repeating the facts all over again, suffice it to say that the attitude of the competent authority or say the departmental authorities can not but be condemned for having unnecessarily put the applicant to vexatious results. This is one part of the story.

over

14. The disciplinary inquiry which was sought to be initiated against the applicant for the alleged misconduct, pertains to the period 1984-85. Though, the chargesheet dated 24th December, 1996 had been served on the applicant, the order of inquiry could be effectively translated into action only on 10th May, 1998 when the inquiry officer was appointed. The inquiry was thus, conducted into the stale charges which related to the alleged misconduct committed by the applicant about 14 years back. Obviously, as observed by the inquiry officer in his report dated 8th August, 2000, there was no possibility of the charges having been proved against the applicant on account of the non availability of witnesses and the changed circumstances. The key witness Shri B.S. Paul, was not available for examination. The charges pertain to the period when the applicant was a new entrant in service. He is alleged to have committed certain irregularities at the threshold of the career which could be corrected in course of time by proper counselling and, if necessary administering admonition. The practical approach adopted by the inquiry officer, was set at naught by the disciplinary authority by ordering a further inquiry into the charges which are not capable of being established for want of evidence and lapse of a long period of 16 years. It was on account of this reason that Shri S.L. Jain, in utter disgust has declined to conduct 'further inquiry', which according to him was not possible.

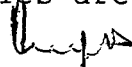
15. The present inquiry officer Shri R.S. Prashad, who has succeeded Shri S.L. Jain, perhaps is groping in the dark. Annexure A-7 dated 20th February, 2002 would make clear that he is embarking upon a preliminary inquiry which is always said to be a fact finding report on which the foundation of the regular disciplinary inquiry is laid. The competent authority has passed an order to remit the case to the inquiring authority for "further inquiry". Instead of proceeding with the departmental inquiry on the charges as framed earlier



against the applicant on 24th December, 1996, Shri Prashad has taken upon himself the task of making a preliminary inquiry. The Inquiry Officer and, for that matter the departmental authorities, are not sure as to what they are required to do after the passing of the order for further inquiry by the competent authority on 3rd June, 2001. If such a situation is allowed to prevail, the applicant would continue to shuttle down from one unknown corner to another without any corresponding advantage and for no fault on his part. The applicant has already suffered immensely and has been subjected to unnecessary harassment now for a long period of about 18 years. No useful purpose is likely to be served by directing further inquiry into the matter. We are of the opinion that it is a case fit enough and eminently suited for quashing of the chargesheet dated 24th December, 1996 and prohibiting the inquiry officer to proceed with the inquiry pursuant to the order passed by the competent authority on 3rd June, 2001. In all fairness, it has to be taken that the charges against the applicant relating to the period 1984-85, cannot now be established for want of evidence and change in circumstances.

16. In conclusion, for the reasons stated above, we find that the O.A. succeeds and is to be allowed.

17. The O.A. is allowed and the decision to initiate a departmental inquiry against the applicant, the chargesheet dated 24th December, 1996, and the order dated 3rd June, 2001, passed by the competent authority remitting the case for further inquiry as well as the DAR proceedings pending before Shri R.S. Prashad, are all hereby quashed. The respondents shall consider the case of the applicant for regularising his services on the post of A.D.M.O. and for further promotion, according to rules and in consultation with the U.P.S.C. The departmental inquiry which was initiated against the applicant shall be of no consequence and it shall be totally ignored. The parties are left to bear their own costs.


(A.P. Nagrath)
Adm. Member


(Justice O.P. Garg)
Vice Chairman

.....