

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 285 of 1998

Jabalpur, this the 25th day of March 2003.

Hon'ble Mr. Shankar Raju - Member (Judicial)
Hon'ble Mr. R.K. Upadhyaya - Member (Admnv.)

Jawahar Jha son of Shri
Kalikant Jha aged about 58 years,
Occupation Music Composer, All
India Radio,
Ambikapur Distt. Sarguja permanent
resident of Laxmi Sagar,
Near Gas Godown,
Darbhanga, Bihar.

- APPLICANT

(By Advocate - Shri Dharmendra Sharma)

VERSUS

1. Union of India
through its Secretary
Ministry of Information and
Broadcasting, New Delhi.
2. Director General
All India Radio
Akashwani Bhavan,
New Delhi
3. Station Engineer
All India Radio
Ambikapur Distt. Sarguja (M.P.)

- RESPONDENTS

(By Advocate - Shri P. Shankaran)

ORDER

Mr. Shanker Raju, Member (J):

Applicant impugns a major penalty chargesheet issued to him vide memorandum dated 31.1.96 under Rule 14 of the C.C.S. (C.C.A.) Rules, 1965. He has sought quashment of the same.

2. Applicant, who has been working as Music Composer in All India Radio, while posted at Darbhanga Station during the year 1988-89 as the Radio Station was in urgent need of quality musical instruments two Harmoniums were purchased of which quotations were collected by the Station Director and on perusal of the comparative statement M/s Das and Company was

approved for purchase having lowest rates. Applicant was sent to Patna for checking the instrument and thereafter approved the same. Later on, purchase was made by Abdul Khalil from the local dealer at Darbhanga. During the aforesaid period audition test of music Artists was held where 500 Artists appeared. Before the audition test a Committee was constituted where applicant was one of the members. The tests were fair on the basis of performance on merits of the candidates. To defame one of the members, i.e., applicant a statement has been made by Shri Rajeshwar Prasad Singh after one year of the audition test, but no action was taken on that upto December, 1995.

3. A chargesheet was issued on 31.1.96 where the following allegations have been levelled against the applicant:

A R T I C L E - I

"That the said Shri Jawahar Jha, while functioning as Music Composer in All India Radio, Darbhanga during the period 1988-89 was the only music knowing member of the Music Audition Committee of which Dr. Khalique was the Chairman. As such Shri Jha in collusion with Dr. Khalique obtained Rs.500/- each from Sh. Jagdish Das, Shri Jai Kishore Singh, Shri Munna and Shri Sttu for their upgradation as 'B' high grade artists in flute, while they were suitable for only 'B' grade standard. By his above act, Shri Jawahar Jha violated the provisions of Rule 3 (1) (i)(ii) & (iii) of CCS (Conduct) Rules, 1964.

A R T I C L E - II

That the said Shri Jawahar Jha while functioning as Music Composer, All India Radio Darbhanga during the period 1988-89 has been instrumental in the purchase of two harmoniums for AIR, Darbhanga from a fake firm at a cost of Rs.10,500/-, ignoring the earlier proposal of purchasing the instruments from reputed firm of Patna. As stated by Dr. Khalique, Shri Jha was sent to Patna to contact the firm and test the instruments and Shri Jha after return, informed that the firm would only accept cash and not any cheque or Demand Draft and that the quality of the instruments were not upto mark. But, Shri Jha had stated that the

quality of the harmoniums were good. Subsequently the harmoniums were purchased by Shri Khalique on the recommendation of Shri Jha. However, throughout the process, Shri Jha was actively involved in the purchase of harmoniums from a fake firm in collusion with Shri Khalique. By his above act, Shri Jha has violated the provisions of Rule 3 (1) (i), (ii) & (iii) of Central Civil Services (Conduct) Rules, 1964."

In response to this enquiry was ordered to be conducted by the Commissioner of Departmental Enquiries, C.V.C. New Delhi where applicant had requested for supply of certain documents and also prayed for engagement of a Defence Assistant. The enquiry proceeded and is concluded through proceedings dated 14.7.98, wherein applicant has been directed to present his written defence brief. At this stage, applicant has approached this court and by an order dated 25.8.98 respondents have been directed not to pass final order. It has now been transpired that the enquiry is pending and the matter has been referred to UPSC for seeking advice.

4. Learned counsel for applicant Sh. Dharmendra Sharma impugns the chargesheet on the ground that it does not disclose any misconduct and the same has been issued against the law. According to him no misconduct is attributable to applicant to warrant any disciplinary proceedings. In fact, it is stated that applicant has victimised and an arbitrary decision of respondents with a pre-determined mind to punish him has resulted in a chargesheet. It is further stated that issuance of a chargesheet after seven years from the date of the alleged misconduct is inordinately delayed and there are no reasons come-forth on behalf of the respondents to justify the delay. The aforesaid delay has greatly prejudiced applicant in his defence as at this late stage it is not practicable rather impossible to procure his

defence and other material to prove his innocence.

Shri Sharma placed reliance on the decision of the Apex Court in State of M.P. v. Bani Singh, 1990 (2) SLR 798 to contend that for want of reasonable explanation for delay, initiating enquiry after 7 years of the alleged misconduct without any satisfactory explanation vitiates the chargesheet.

Learned counsel further relied on the decision of the Apex Court in State of A.P. V. N. Radhakishan, 1998 (4) SCC 154 in support of his plea of inordinate delay and quashment of the chargesheet.

5. By referring to the decision of the Apex Court in A.R. Antulayv. R.S. Naik, 1992 (1) SCC 225 it is contended that in order to apply the plea of delay in disciplinary proceedings the court has to consider all the relevant factors and to balance and weigh them to determine if it is in the interest of clean administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay.

6. Shri Sharma further relied upon the decision of the Apex Court in State of Punjab v. Chaman Lal Goyal, (1995) 29 ATC 546 to contend that delay in issuance of chargesheet without any explanation vitiates the chargesheet.

7. Lastly, relying on the decision of the High Court of Judicature at Jabalpur in Pramod Kumar Singhal v. Central Bank of India & Others, writ Petition No.2767 of 1996 decided on 19.9.97 it is

contended that the decision is on all fours covers his case where after examining the balancing process enquiry has been set aside on inordinate delay.

8. On the other hand, learned counsel for the respondents Sh. Shankaran vehemently opposed the contentions and stated that the charges levelled against applicant are grave and pertain to corruption and after meticulously going into all the relevant factors and materials disciplinary authority instituted the disciplinary proceedings and the delay has taken place on account of the fact that one of the files containing vital documents to prove one of the allegations at All India Radio, Darbhanga was misplaced which resulted in delayed issuance of the chargesheet.

9. However, it is stated that the enquiry is almost completed and the applicant has never took an objection to delay of chargesheet and rather he participated in the enquiry and as such at this stage as an after thought he has raised the issue of delay in chargesheet which is not open for him to raise. Apart from it, it is contended that applicant has been afforded adequate opportunities to prove his defence and in the event he is not found guilty, law shall take its own course and in case of an adverse order it would be open for applicant to assail the orders passed in accordance with law. Moreover, learned counsel for respondents relied upon the decision of Apex Court in Deputy Registrar, Coop. Societies v. Sachindra Nath Pandey, (1995) 29 ATC 538 to contend that where the charges are serious mere lapse of period would not be sufficient to close the matter and the Tribunal at an inter-locutory stage would not go into the correctness

or otherwise of the charge prior to the conclusion of the enquiry and relies upon the decision of the Apex Court in *Transport Commissioner, Madras-5 v. A. Radha Krishna Moorthy*, (1995) 29 ATC 113 to substantiate his plea.

10. Applicant in his rejoinder re-iterated the pleas taken in his OA.

11. We have carefully considered the rival contentions of the parties and perused the material on record. The following observations have been made by the Apex Court in *A.R. Antulay's case (supra)*:

"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 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 it is open to the court to make such other appropriate order as it finds just and equitable in the circumstances of the case."

Apex Court in *N. Radhakishan's case (supra)* held as under:

"19. It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the 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 the 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 the delay has vitiating 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 the 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 his path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their 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 delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

In Chaman Lal Goyal's case the Apex Court has observed as follows:

"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 trite to say that such disciplinary proceedings 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 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, mala fides 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 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. In other words, the court has to indulge in a process of balancing.

After undertaking the process of balancing the Apex Court in Chaman Lal Goyal's case held as follows:

"Applying the balancing process, 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. It is more appropriate and in the interest of justice as well as in the interest of administration that the enquiry which had proceeded to a large extent be allowed to be completed. At the same time, it is directed that the respondent should be considered forthwith for promotion without reference to and without taking into consideration the charges or the pendency of the said enquiry and if he is found fit for promotion, he should be promoted immediately. This direction is made in the particular facts and circumstances of the case though we are aware that the rules and practice normally followed in such cases may be different. The promotion so made, if any, pending the enquiry shall, however, be subject to review after the conclusion of the enquiry and in the light of findings in the enquiry. It is also directed that the enquiry against the respondent shall be concluded within eight month from today. The respondent shall cooperate in concluding the enquiry. It is obvious that if the respondent does not so cooperate, it shall be open to the enquiry officer to proceed ex parte. If the enquiry is not concluded and final orders are not passed within the aforesaid period, the enquiry shall be deemed to have been dropped.

In the orders passed on 19.9.97 by the High Court of Judicature at Jabalpur, Madhya Pradesh, in Pramod Kumar Singhai's case (supra) the following observations have been made:

"So far as the alleged participation of the employee in the enquiry is concerned, the order sheet of the enquiry officer shows that as the first step in his defence the petitioner questioned the competence of the disciplinary authority to take disciplinary action after a long lapse of time. It is only after the disciplinary authority refused to drop the proceedings that the approach has been made to this Court."

12. From the perusal of the aforesaid rulings the irresistible conclusion that can be derived is that delay in serving the chargesheet or completion of the enquiry cannot be always used as a thumb

^{rule} to vitiate the chargesheet but before exercising the power of judicial review in the light of the decision in Antulay's case (supra) balancing process is to be carried out, which includes weighing factors for and against and taking the decision on the totality of the circumstances. In case of grave misconduct involving corruption balance has to be maintained between the purity of administration as well as adverse effect of prolonged proceedings on an employee. Applying the aforesaid test and examining the balancing process it is relevant to consider the nature of charge and extant of delay and whether it is attributable to applicant or not as well as the sequence of events till filing of the present OA. The factors in favour of applicant are (a) delay in issuance of chargesheet has deprived him to procure defence material and to defend a charge which is anterior to time and is almost relates back to the year 1989 whereas the chargesheet has been issued in 1996; (b) co-delinquent B.P. Hazari on his super-annuation the chargesheet has been withdrawn by the President vide order dated 2.4.1997.

13. The factors which are against applicant, charges are very grave, not only involves charges of accepting illegal money from the Artists but also was found instrumental in purchasing harmoniums from a

fake firm, delay has been explained on account of misplacement of a relevant file which contained an important document essential for drawing up one of the allegations which has delayed the chargesheet. Applicant's own participation in the enquiry and not challenging it at the stage of issuance of chargesheet for alleged inordinate delay, completion of the enquiry and its status in the final stages, respondents have been restrained from passing a final order by this court in the year 1998. On balancing the factors for and against, we are of the considered view that applicant's challenge to the proceedings on account of delay is an after thought as despite issuance of chargesheet after seven years not only he participated in the enquiry but at every stage made representations for supply of relevant documents as well as for appointment of defence assistant. He had never through any of the communication put an objection to the delayed chargesheet or challenged its continuance.

14. Respondents' explanation for delay in issuance of chargesheet that the concerned file was misplaced, cannot be ignored. In our considered view the aforesaid explanation is bonafide and satisfies the delay in issuing the chargesheet.

15. As the charges are grave pertaining to corruption the ^{decision of} Apex Court in Bani Singh's case (supra) would not apply to the case and is distinguishable where there has been a delay of 13 years in issuing the chargesheet and the delay was ^{not} satisfactorily explained.

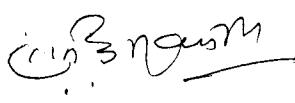
16. In so far as charges are concerned, the same pertain to corruption and the delay, in our considered view, is neither abnormal nor is unexplained. On the other hand the basic principle of administrative justice enjoins an officer entrusted with a job to perform to act honestly and efficiently in accordance with the rules. If any deviation is made he has to suffer the penalty prescribed. Moreover, as the enquiry has proceeded to a large extent it should be allowed to be completed. The decision of High Court (supra) would not apply to the facts and circumstances of the present case and is distinguishable, wherein the chargesheet was challenged on refusal of the disciplinary authority to drop the proceedings. In the instant case applicant has never questioned the delayed issuance of the chargesheet and allowed it to proceed, rather he participated throughout in the enquiry. As such, once the enquiry is complete it would not be open for him as an after thought to take up the plea of inordinate delay. In fact, applicant has been accorded sufficient opportunities and would be given further in accordance with rules to effectively defend the charges against him. As such the decision of the High Court shall not be of any help to applicant in the facts and circumstances of the present case.

17. Having regard to the reasons recorded above and the fact that after balancing the process the delay in issuance of chargesheet has neither prejudiced

the applicant nor is it unexplained, we earnestly hope that respondents shall meticulously consider expeditious disposal of the enquiry by passing a final order in accordance with rules subject to cooperation by applicant within a period of six months from the date of receipt of a copy of this order.

18. However, the claim of applicant for quashment of chargesheet on account of delayed issuance is bereft of merit and is accordingly dismissed. No costs.

19. Interim order is vacated. OA is accordingly dismissed.


(R.K. Upadhyaya)

Member (A)


(Shanker Raju)

Member (J)

'San.'

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....
प्रतिलिपि द्वारा दिनः—

(1) अधिकारी, उत्तर बंगाल कार्यालय, जबलपुर

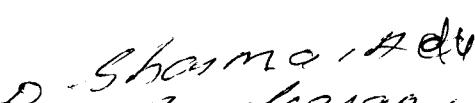
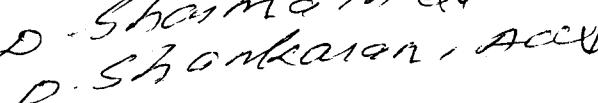
(2) अधिकारी, द्वितीय विभाग, राज्य काउंसिल

(3) अधिकारी, द्वितीय विभाग, के काउंसिल

(4) अधिकारी, द्वितीय विभाग, जबलपुर न्यायाधीश

सूचना एवं आवश्यक कार्रवाड़ी देनु

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