

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 926/2016

With

MA No. 898/2016

&

MA No.1215/17

Reserved on: 18.05.2017

Pronounced on: 05.07.2017

Hon'ble Mr Raj Vir Sharma, Member (J)
Hon'ble Ms Praveen Mahajan, Member (A)

Sukhbir Singh Solanki, PET,
aged about 58 years,
S/o Late Sh. Suraj Singh,
R/o H.No. WZ-288,
Vill. & P.O. Palam, Near Jat Chaupal,
New Delhi-110045.

...Applicant

By Advocate: Mr M.K. Bhardwaj.

Versus

1. The Chief Secretary,
Govt. of NCT of Delhi,
New Secretariat, I.P. Estate,
New Delhi.
2. The Directorate of Education,
Govt. of NCT of Delhi through its Director,
Old Secretariat, Civil Lines,
Delhi.
3. The Dy. Director of Education,
Directorate of Education,
Distt. South C-Block,
Defence Colony,
New Delhi.

...Respondents

By Advocate : Mr Vijay Pandita.

ORDER

By Hon'ble Ms. Praveen Mahajan, Member (A):

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking following reliefs:

- (i) *To quash and set aside the impugned order dated 14.10.2014.*
- (ii) *To quash and set aside the charge sheet dated 07.11.2007 and consequential proceedings and direct the respondents to release all consequential benefits withheld on account of initiation of disciplinary proceedings vide aforesaid charge memo.*
- (iii) *To declare the action of the respondents in continuing the disciplinary proceedings for 09 long years as illegal and issue appropriate directions for taking disciplinary action responsible for harassing the applicant.*
- (iv) *Allow the OA with cost.*
- (v) *Pass any further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*

2. The facts leading to the present controversy are that in a charge memo dated 07.11.2007 (Annex. A/2), two separate charges were imputed against the applicant for contravention of the provision of rule 3 of CCS (Conduct) Rules, 1964 u/r 14 of CCS (CCA) Rules, 1965. In the first charge, it is alleged that the applicant while working in GBSSS, Shahbad Mohd. Pur, New Delhi gave a certificate, on the bill of Rs 5,000/- of M/s P&D Sports, RZ-614B, Raj Nagar, Palam Colony, New Delhi, that Football, Volley Ball, T. Shirts & Shorts and Dis-cus have been entered in consumable register (games) without receiving

the goods physically. In the second charge, it is alleged that he did not perform his duties sincerely & carefully. The applicant has denied the charges vide reply dated 22.11.2007. After a delay of about 03 years, Shri Chiddi Singh, Vice Principal was appointed as Inquiry Officer. The Inquiry Officer submitted the report dated 08.02.2012 to the Disciplinary Authority concluding that the charges were not found proved. Vide order dated 15.06.2012 (Annex. A/3), the Disciplinary Authority while exercising powers under rule 15 of CCS (CCA) Rules, 1965 sent back the inquiry report for conducting the inquiry de-novo from the stage of production of evidences by which the articles of charge were proposed to be proved under rule 14(14) of CCS (CCA) Rules. Again, the inquiry was conducted by another Inquiry Officer and the Inquiry Officer submitted the report dated 18.02.2014 holding the charges as not proved for passing of final order under Rule 14 of the CCS (CCA) Rules by the Disciplinary Authority. Vide order dated 14.10.2014 (Annex. A/1), the Disciplinary Authority again sent back the inquiry report for conducting the inquiry de-novo, from the stage of examination of SWs by the PO under Rule 14(14) of CCS (CCA) rules. Aggrieved of the same, the applicant has preferred the present OA.

3. It has been alleged by the applicant that he did not commit any misconduct and, therefore, the Inquiry Officer could not hold the charges as proved going by mere allegations. The Disciplinary Authority has acted in a strange manner and set aside the inquiry report vide order dated 15.06.2012 (A/3) on the ground that general examination of the applicant under rule 14(18) of CCS (CCA) Rules was not carried out. He alleges, that when the inquiry officer did not find any evidence against the applicant, there was no requirement of general examination under rule 14(18) of CCS (CCA) Rules. A perusal of Rule 15 of CCS (CCA) Rules makes it clear that the disciplinary authority has no power to keep on quashing the inquiry report on one pretext or the other just to ensure that the charges are finally held to be proved by all means. The disciplinary authority can only remit the case to the inquiring authority for further inquiry and cannot issue direction for holding the inquiry de-novo nor can the P.O. be directed to prepare the written brief in a particular manner. The disciplinary authority cannot become prosecutor in any disciplinary matter. Inquiry Officer in pursuance of order dated 14.10.2014 was directed to complete the inquiry within 15 days from the date of order. However, the inquiry was not completed even after expiry of about 1 year. Since the continuation of inquiry for the last 09 years was affecting the

applicant adversely as he was not granted promotion or financial upgradation due to the pending disciplinary proceedings, he requested the respondents to complete the proceedings and pass final orders without delay and drop the proceedings against him, which were constituted without any basis. Despite his repeated requests, the respondents did not conclude the disciplinary proceedings and only on 23.09.2015 (Annex. A/4), a letter was sent to the DDE (South) to complete the inquiry as per order dated 14.10.2014 without any delay. Despite order dated 14.10.2014 (Annex. A/1) and letter dated 23.09.2015, the inquiry was not concluded. The applicant has all the reasons to believe that the Inquiry Officer would examine the validity of order of disciplinary authority before proceeding further in the matter as per Rule 14 of CCS (CCA) Rules, therefore, he did not raise any issue against the order of Disciplinary Authority initially. The Vigilance Department also realized the illegality committed in the case of the applicant and seeing the inordinate delay in the matter, again sent a letter dated 07.12.2015 (Annex. A/5) to the respondent No. 3 for conclusion of inquiry within 07 days positively. Despite the aforesaid letter of the Vigilance Department, the Disciplinary Authority did not conclude the proceedings against the applicant till date. The Disciplinary Authority, as well as, the Inquiry Officer appointed is conscious of the fact

that the applicant has not committed any misconduct and has already been exonerated twice by the two Inquiry Officers. However, due to aforesaid arbitrary and illegal actions of the Disciplinary Authority, the applicant is suffering for no fault on his part.

4. In the reply, the respondents have stated that the applicant was found guilty for the gross misconduct of not performing duty sincerely & carefully. The same has been elaborated in the charges as Article-I and Article-II. The Department appointed Sh. Chhadi Singh (V.P.) as Inquiry Officer to conduct the inquiry. The competent authority observed various infirmities in the report dated 08.02.2012 and directed for conducting de-novo inquiry. The respondents further submitted that vide memo dated 07.11.2007, a charge sheet was served upon the applicant and he submitted his reply on 22.11.2007 denying the charges. Hence, vide order dated 21.07.2010, Shri Chiddi Singh, Vice Principal and Shri Sanjay Kumar, UDC were appointed as Inquiry Officer and Presenting Officer respectively. On perusal of the inquiry report, it is seen that the Presenting Officer has not produced/recorded the evidence by which articles of charge are proposed to be proved. Also, examination-in-chief, cross examination and re-examination of the prosecution witnesses

have not been conducted as per the procedures laid down under rule 14(14) of CCS (CCA) Rules. The witnesses are to be examined by or on behalf of the Presenting Officer. They may be cross-examined by, or, on behalf of the charged officer, and, the Presenting Officer may re-examine on any of the points on which witnesses have been cross-examined. Throughout the conduct of inquiry, the role of Presenting Officer as envisaged under CCS (CCA) Rules is missing. The Competent Authority felt, after perusal of the inquiry report that "It appears that the Inquiry Officer did not act judiciously and failed to show poise balance. He had overstepped his functions and used extraneous material, which had not appeared either on the articles of charges or in the statement of imputations." Therefore, the Disciplinary Authority in exercise of his power under Rule-15 of CCS (CCA) Rules, 1965 remitted back the inquiry report for conducting the inquiry de-novo from the stage of production of evidence by which the articles of charges are proposed to be proved under Rule 4(4) of CCS (CCA) Rules. The proof was found by the Inspection Team at the basic level. The Inquiry Officer, Presenting Officer and Charged Officer did not conduct the inquiry properly. Shri Jai Kishan, Principal was appointed as Inquiry Officer in place of Shri Chiddi Singh, Vice Principal vide order dated 13.12.2012 and Mrs Tapsi Shah, Head Clerk was appointed as

Presenting Officer vide order dated 27.02.2013. They submitted their report on 18.02.2014. On perusal of records and inquiry report, many discrepancies were observed by the Disciplinary Authority, detailed in the order itself. Therefore, the Disciplinary authority sent back the inquiry report for conducting the inquiry De-novo from the state of examination of SWs by the Presenting Officer under Rule 14(14) of CCS (CCA) Rules and directed the Inquiry Officer to submit the inquiry report within 15 days from the issuance of letter dated 14.10.2014 after scrupulously following the prescribed procedures and provisions under the rules. In reply to the applicant's contention that Shri Chiddi Singh, Vice Principal & IO submitted report dated 08.02.2012 concluding the charges as not proved, it has been stated that the inquiry report was remitted back by the Disciplinary Authority for conducting the inquiry de novo from the stage of production of evidence by which the Articles of charges were proposed to be proved under Rule 14(4) of CCS (CCA) Rules vide order dated 15.06.2012. Without waiting for the outcome of fresh disciplinary proceedings, the applicant approached the court by filing the present OA, and, the Hon'ble Tribunal has stayed the disciplinary proceedings vide order dated 07.03.2015.

5. In rejoinder, the applicant has stated that he did not commit any wrong warranting disciplinary action and that too under Rule 14 of CCS (CCA) Rules. The respondents are conscious of the this fact, and are still defending their action just to cover up the illegalities committed by their own officers in suspending the applicant without any case and thereafter subjecting him to disciplinary action under Rule 14 of CCS (CCA) Rules. The only charge against the applicant, as is evident from the charge memo dated 07.11.2007 is that the applicant gave a certificate on the bill of Rs 5000 without receiving the goods physically and in continuation of the said allegation the second Article was framed, though the same was not required. The applicant, in the rejoinder, in reply to para nos. 4.1 to 4.8 of the reply, has submitted that during the enquiry, the Inspecting Team had found that all the goods in question were duly available in the stock, and the HOS had also admitted the same during the enquiry. The HOS further submitted that he had written the letter dated 07.08.2007 under pressure of DDE, otherwise, he was satisfied with the applicant's performance. The respondents made two Articles of Charge against the applicant just to show the gravity of the matter, otherwise there was no truth in the allegation which would necessitate the respondents to issue the aforesaid charge sheet. The sequence of events, as mentioned in the OA

and in particular, the fact, that on 03.08.2007, the applicant was suspended by the DDE without disclosing any reason, and that the P.E. was conducted after 02 days by recording statement of the applicant on 04.08.2007 show the malafide intentions of the respondents. How could the applicant be placed under suspension before even conducting P.E. as per Rules. The stocks were verified on 06.08.2007, statement of HOS was taken on 07.08.2007, PE was submitted on 15.09.2007, and the charge sheet was issued on 07.11.2007. Despite the initial haste, the said proceedings were not concluded even after an expiry of more than 9 years. Due to said delay, the applicant is not only incapacitated to defend himself effectively, but has also been deprived of his right to Financial Upgradation as well as senior scale. The disciplinary authority wanted a report of its liking, therefore, irrelevant objections have been raised by the Disciplinary Authority, not only once but twice. Both the IOs conducted the inquiry strictly as per rules. Hence, it was not open to the disciplinary authority to reject the said reports merely because both the IOs recorded in the inquiry report about causing undue harassment to the applicant, who alleges that all this was done by the school authorities to cover up their negligence in causing death of an 8th class boy, due to drowning during recess time in the pond outside the school on 02.08.2007.

6. The applicant has also filed a Miscellaneous Application No. 898/2016 for condonation of delay to avoid any technical objection. In the facts and circumstances of the present case, the same is allowed.

7. We have heard learned counsels for the parties for some time and carefully perused the record.

8. It is seen from the record that the applicant was issued charge memo on 07.11.2007 with the following Article of Charges:-

Article-I : *That Sh. Sukhbir Singh, PET while working in while working in GBSSS, Shahbad Mohd. Pur, New Delhi given a certificate, on the bill of Rs 5,000/- of M/s P&D Sports, RZ-614B, Raj Nagar, Palam Colony, New Delhi, that Football, Volley Ball, T. Shirts & Shorts and Dis-cus have been entered in consumable register (games) without received the goods physically.*

Article-II : *That Sh. Sukhbir Singh, PET while working in while working in GBSSS, Shahbad Mohd. Pur, New Delhi did not perform his duties sincerely & carefully.*

Though the applicant filed his reply to the charge memo on 22.11.2007 but the Inquiry Officer and Presenting Officer were appointed only on 21.07.2010. The Inquiry Officer submitted the report to the Disciplinary Authority on 08.02.2012. The same was remitted back for conducting de novo enquiry. Again, new Inquiry Officer and Presenting Officer were appointed on 13.12.2012 and 27.02.2013 respectively. The

Inquiry Officer submitted his report on 18.02.2014. Once again, the Disciplinary Authority remitted the case back for de-novo inquiry vide order impugned dated 14.10.2014. It is relevant to note that in both the reports, i.e. the reports dated 08.02.2012 and 18.02.2014, the charges against the applicant were not found to be proved. For the 3rd time, the inquiry proceedings against the applicant have commenced. On 07.03.2016, the applicant approached this Tribunal, and the Division Bench of this Tribunal stayed further disciplinary proceedings against him, in pursuance of the order impugned.

9. It is relevant to note here that initially the charge memo was issued to the applicant on 12.11.2007 but the IO & PO for the disciplinary proceedings were appointed only on 21.07.2010 after a lapse of almost three years. The inquiry proceedings have remained inclusive till the year 2016, due to repeated remitting of the case, by the Disciplinary Authority. During the course of hearing, learned counsel for the applicant contended that the respondents have not rebutted the fact, as mentioned in the rejoinder while replying to the contents of para nos. 4.1 to 4.8 of the reply, that the goods in question were very much available in the stock and the HoS had also admitted the same during the enquiry proceedings.

10. It would be worthwhile to examine the instant case, in light of the following observations made by the Hon'ble Supreme Court in the case of **State of Andhra Pradesh vs N. Radhakishan** [AIR 1998 SC 1833] in the situations where there is delay in concluding the disciplinary proceedings:

“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 weight 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 or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.”

The Central Administrative Tribunal (Principal Bench) in its decision dated 23.4.2010, in ***Ashish Abrol, Joint Commissioner of Income Tax Vs. Union of India (UOI)*** through The Secretary, Ministry of Finance, Department of Revenue and Director General of Income Tax (Vigilance) [MANU/CA/0171/2010] analysed a number of decisions on the subject and clarified the position in the following paragraph:

“16. The sum and substance of the judgments is that the competent authority should be able to give an explanation for the inordinate delay in issuing the Memorandum of Charge; the charges should be of such serious nature, the investigation of which would take a long time and would have to be pursued secretly; the nature of charges would be such as to take a long time to detect such as embezzlement and fabrication of false records; if the alleged misconduct is grave and a large number of documents and statement of witnesses had to be looked into, delay can be considered to be valid; the Court has to consider the nature of charge, its complexity and on what account the delay has occurred; how long a delay is too long always depends on the facts of the given case; if the delay is likely to cause prejudice to the Charged Officer in defending himself, the enquiry has to be interdicted; and the Court should weigh the factors appearing for and against the disciplinary proceedings and take a decision on the totality of circumstances. In other words, the Court has to indulge in the process of balancing.”

10. In the present case, the premise of the charge memo is based on the report dated 15.09.2007 of Inspection Team headed by the DEO (Zone-21) during the inspection w.e.f. 04.08.2007. The team found some *prima facie* procedural

irregularities. The applicant stated the fact that he was suspended on 03.08.2007, whereas, Annexure-II to the charge memo mentions that the Inspection Team checked the record and inspected the charge on 04.08.2007. The applicant was issued charge memo on 07.11.2007, but the disciplinary proceedings, in pursuance to the charge memo, did not commence till 21.07.2010. There is no cogent reason put forth by the respondents to explain this abnormal delay of 03 years, merely to appoint an IO & PO. No prejudice has been alleged by the applicant against the appointment of IOs. Both the IOs have given their independent findings, both being in favour of the applicant. However, the findings of both the IOs were rejected by the Disciplinary Authority on one pretext or the other. Had the disciplinary authority not in agreement with the inquiry report of either of the inquiry officers, he would have recorded a disagreement note following the provisions of Rule 15 (2) of CCS (CCA) Rules, 1965, but the Disciplinary Authority has even failed to follow the same and kept on remitting the matter for conducting de novo enquiry. Moreover, the delay in concluding the disciplinary proceedings on part of the respondents is as good as penalizing the applicant much before the conclusion of the proceedings. The delay in concluding the disciplinary proceedings by the respondents was by itself prejudicial to the delinquent employee. The

charges framed against the applicant are not of a complex nature. These were found not to have been proved against the applicant in the report of both the Inquiry Officers, individually. It is only in the year 2016 that the Division Bench of this Tribunal stayed the disciplinary proceedings in pursuance of the order impugned. Notwithstanding the technical reasons for delay in concluding the disciplinary proceedings put forth by the respondents, the unexplained delay of about 03 years in initiation of the inquiry in pursuance of the charge memo and thereafter, delay of another 05 years on the technical grounds for not concluding the disciplinary proceedings certainly does not go well in law in the given set of facts. It is seen that on different occasions, both the IOs and POs appointed to conduct the disciplinary proceedings against the applicant, were not the same and, therefore, it cannot be presumed that they might have favoured the applicant. We are also of the view that the applicant is being harassed unnecessarily by the respondents for the reasons best known to them particularly when the applicant is at the verge of retirement.

11. In view of proposition of law mentioned in preceding paragraphs, continuing the disciplinary proceedings for 09 years is held to be illegal and the impugned orders dated

07.11.2007 and 14.10.2014 are quashed. Accordingly, the OA is allowed and the respondents are directed to release all consequential benefits withheld on account of pending disciplinary proceedings in pursuance of charge sheet dated 07.11.2007 and 14.10.2014, to the applicant within 03 months from the date of receipt of certified copy of this order. The MA for early hearing is also disposed of accordingly. No costs.

(Praveen Mahajan)
Member (A)

(Raj Vir Sharma)
Member (J)

/Ss/