

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.941/2015

Order Reserved on: 16.12.2016

Order pronounced on 30.01.2017

Hon'ble Shri V. Ajay Kumar, Member (J)

Hon'ble Shri Uday Kumar Varma, Member (A)

Raj Kumar Saini

S/o Late Sh. Shiv Prasad Saini

R/o A-706, Z.A. Nagar, CGHS Ltd. Plot No.14,

Sector-22, Dwarka

New Delhi-75.

(Aged about 44 years)

Presently Dy. Commissioner, Industries,

GNCT of Delhi)

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Applicant

(By Advocate: Sh. Ajesh Luthra)

Versus

1. Government of NCT of Delhi
Through the Chief Secretary
5th Floor, Delhi Secretariat
New Delhi.

2. Director-cum-Director of Vigilance
GNCT of Delhi. 4th Level, C-Wing
Delhi Secretariat, IP Estate
New Delhi – 110 002.

3. Commissioner (Industries)
Govt. of NCT of Ddelhi
419, Udyog Sadan
Patparganj, Delhi – 110 092.

4. Lieutenant Governor of Delhi
Raj Niwas, Rajpur Road
Delhi-54.

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Respondents

(By Advocate: Shri N.K.Singh for Mrs. Avnish Ahlawat)

ORDER

By V. Ajay Kumar, Member (J):

The applicant, who is presently working as Deputy Commissioner, Industries, Govt. of NCTD, filed the OA seeking to quash the Annexure A1-Charge Memorandum, dated 18.06.2014.

2. Brief facts, as narrated in the OA, are that the respondents vide the impugned Annexure A1-Memorandum dated 18.06.2014, issued a Chargesheet to the applicant containing two charges and the same read as under:

ARTICLE-I

That the said Shri Raj Kumar Saini while posted and functioning as Gr.II/Inspector in the office of Registrar Cooperative Societies, GNCTD, New Delhi during the period 1999 committed gross misconduct in as much as he submitted inspection/verification report dated 20.05.1999 in respect of 10% sample resignations verifying the genuineness of the resignations of 17 members of M/s Netaji Subhash Chander Bose CGHS Ltd., without physically verifying the genuineness of resignations from such members.

ARTICLE-II

That the said Shri Raj Kumar Saini while functioning in the aforesaid capacity and during the above said period, submitted dubious report, as he did not mention/confirm either in the physical verification report dated 20.05.1999 or in the verification reports on the respective resignation certificates of 17 resignation cases as to whether the share-money of the resigned members had been refunded to them either through cash or in the form of cheques, with proper acknowledgement/receipt."

3. On 18.03.2015, this Tribunal, directed the respondents not to proceed with the inquiry against the applicant, until further orders.

4. Heard Shri Ajesh Luthra, the learned counsel for the applicant and Shri N.K.Singh for Mrs. Avnish Ahlawat, the learned counsel for the respondents, and perused the pleadings on record.

5. Though various grounds were raised in the OA, such as, competency of the officer, who issued the impugned chargesheet, etc., but at the time of hearing, the learned counsel appearing for the applicant restricted his submissions by contending that the OA is liable to be allowed and the impugned charge memorandum deserves to be quashed on the ground of abnormal delay in initiation of the disciplinary proceedings. The learned counsel, to buttress his submission, placed reliance on the following decisions:

- a) **Union of India and Others v. J. Ahmed**, (1979) 2 SCC 286.
- b) **P.V.Mahadevan v. MD, T.N.Housing Board**, (2005) 6 SCC 636.
- c) **State of A.P. v. N. Radhakishan**, (1998) 4 SCC 154.
- d) **State of Madhya Pradesh v. Bani Singh and Another**, 1990 (Supp) SCC 738.

6. Per contra, the learned counsel for the respondents would submit that the charges levelled against the applicant are grave in nature and hence, the impugned charge memorandum cannot be quashed on the ground of delay in initiation of the disciplinary proceedings. The learned counsel further submits that there are valid and satisfactory reasons for the delay and hence, the contention of the applicant is unsustainable. The learned counsel also submits that the delay, may be abnormal, per se, cannot make the disciplinary proceedings invalid unless it is shown that the same caused any prejudice to the applicant. The learned counsel placed reliance on the following decisions in support of his submissions:

- a) OA No.2522/2011 [**Gulshan Kumar Batra v. Lt. Governor through Chief Secretary, Govt. of NCT of Delhi &**

Others], decided on 04.01.2012 by a Coordinate Bench of this Tribunal (PB).

- b) WP(C) No.6715-6716 of 2006 [**Lt. Governor of Delhi & Anr. v. Narain Singh**], decided on 04.07.2008 of the Hon'ble High Court of Delhi.

7. In view of the rival contentions, as aforesaid, it is to be seen whether there is any delay in initiation of the disciplinary proceedings and if there is delay, whether the same is abnormal and if the same is abnormal whether there are cogent and sufficient reasons for the same.

8. The charge levelled against the applicant is that the applicant while working as Grade-II Inspector in the Office of Registrar Cooperative Societies, GNCT, New Delhi during the period 1999, submitted inspection/verification report dated 20.05.1999, in respect of 10% sample resignations verifying the genuineness of the resignations of 17 members of M/s Netaji Subhash Chandra Bose, CGHS Limited, without physically verifying the genuineness of resignations from such members.

9. A bare perusal of the impugned charge memorandum dated 18.06.2014, clearly establishes that a delay of about 15 years has occurred in initiation of the disciplinary proceedings. The charge leveled against the applicant pertains to the year 1999 and whereas the impugned charge memorandum is issued in the year 2014.

10. The respondents in their counter affidavit explained the aforesaid delay of about 15 years, in initiating the disciplinary proceedings, as under:

"1. That DIG/CBI/EO-III, New Delhi vide letter dated 02.07.2007 furnished a self contained note mentioning therein that during the investigation of the case RC.8(E)/2005-EOU.VIII in the matter of Netaji Subhash Chander Bose CGHS Ltd, it was revealed that Sh. Raj Kumar Saini (hereinafter referred to as applicant), the then Gr.II(DASS)/Inspector, now Deputy Commissioner (Industries) had committed gross misconduct by giving false inspection/verification reports, certifying the genuineness of the resignations of the members of the society.

2. That CBI had recommended RDA for major penalty against the applicant on 02.07.2007 and the answering respondents immediately asked for authenticated copies of the documents on the basis of which enquiry proceedings against the applicant can be initiated.

3. That the authenticated copies of the relevant documents were supplied by CBI vide letter dated 26.02.2013, 07.02.2014 and 22.04.2014.

4. That thereafter the competent disciplinary authority i.e. Hon'ble Lt. Governor, Delhi after considering the relevant records/documents ordered for initiation of disciplinary proceedings against the applicant vide order dated 18.06.2014.

5. That a chargesheet under Rule 14 of CCS (CCA) Rules, 1965 dated 18.06.2014 under the signatures of Special Secretary (Vig.), by the order and in the name of Hon'ble Lt. Governor was issued"

11. Even as per the respondents counter itself, the CBI had recommended to the respondents for initiation of disciplinary proceedings against the applicant on 02.07.2007 itself. Though it is stated that they received the relevant documents from CBI during 2013 and 2014 it is not coming forth from the pleadings of the respondents when they have requested the CBI for supply of the relevant documents, and if they requested the CBI for the same immediately after its recommendation for initiation of disciplinary proceedings against the applicant, when the CBI has supplied the same.

12. On the directions of this Tribunal, the respondents filed a statement of chronology of events in the disciplinary proceedings case of the applicant by enclosing the relevant documents. The letter No.6160 RC 8(E)/2005/CBI/ND dated 08.08.2007 of the CBI addressed to the respondents indicated that the CBI has furnished all the relevant documents along with their letter dated 02.07.2007, under which they have recommended for initiation of disciplinary proceedings against the applicant. The said letters dated 02.07.2007 and 08.08.2007 read, as under:

Letter of 02.07.2007:

"No.4227 RC.8(E)/2005/CBI/N.D.
O/o the Superintendent of Police
Central Bureau of Investigation
Economic Offences Unit.VII
Block No.3, 5th Floor, CGO Complex,
Lodhi Road, New Delhi – 110 003.

Dated 2/7/07

The Chief Secretary,
Delhi Secretariat,
Govt. of Delhi,
I.P.Estate
New Delhi.

**Sub: Investigation of CBI Case RC.8(E)/2005, EOU.VIII
involving Netaji Subhash Chaner Bose CGHS
(Registration no.1382).**

Sir,

Please find enclosed herewith a self contained note containing the brief facts revealed during the investigation of the above mentioned case. During investigation it is revealed that Shri R.K.Saini the then Dr.II Inspector of RCS (Now Tehsildar Sabzi Mandi) had committed misconduct by giving false inspection report. RDA for major penalty is recommended against him for the said misconduct. The copies of relevant documents and statement of witnesses are also enclosed for initiating RDA proceedings against him.

Sd/-
(P.V.Ramashastry)
DIG/CBI/EO.III
New Delhi"

Letter of 08.08.2007:

"Sir,

May please refer to your letter no.F-7/A/39/2007/DOV/6091 dt. 24.07.07 on the above mentioned subject.

In this regard it is to inform that as per policy decision of the CBI, the practice of sending draft charge sheet and draft statement of imputations for departmental action have been discontinued. The department concerned has to prepare the same on the basis of the SCN sent. The copies of documents have already been forwarded along with the SCN vide this office letter dt. 2.7.2007. The I.O. of the case will authenticate the copies of the documents, which are finally selected by the department after preparation of the draft charge sheet. The services of the I.O. for this purpose are always available and the officer concerned may be directed to contact the I.O. Shri R.L.Yadav, Inspector, CBI, EOU.VII in this regard.

This issues with the approval of DIG EO.III."

13. The letter dated 18.01.2011 of the respondents addressed to the CBI shows that though the CBI in 2007 itself furnished the relevant documents to them, after a delay of four years, the respondents again asked the CBI to supply another set of authenticated/original copies of the relevant documents.

14. Even thereafter, the respondents further delayed in issuing the impugned Charge Memorandum by some more years.

15. As rightly contended by the learned counsel for the respondents, it is true that mere delay, may be abnormal, itself cannot be the sole ground for quashing of the disciplinary proceedings.

16. The Hon'ble Apex Court in **U.P.State Sugar Corporation Ltd. and Others v. Kamal Swaroop Tondon**, (2008) 2 SCC 41 held as follows:

"30.No rigid, inflexible or invariable test can be applied as to when the proceedings should be allowed to be continued and when they should be ordered to be dropped. In such cases there is neither lower limit nor upper limit. If on the facts and in the circumstances of the case, the Court is satisfied that there was

gross, inordinate and unexplained delay in initiating departmental proceedings and continuation of such proceedings would seriously prejudice the employee and would result in miscarriage of justice, it may quash them. We may, however, hasten to add that it is an exception to the general rule that once the proceedings are initiated, they must be taken to the logical end. It, therefore, cannot be laid down as a proposition of law or a rule of universal application that if there is delay in initiation of proceedings for a particular period, they must necessarily be quashed."

17. In **M.V.Bijlani v. Union of India** (2006) 5 SCC 88, the Hon'ble Apex Court held that

"16.The Tribunal as also the High Court failed to take into consideration that the disciplinary proceedings were initiated after six years and it continued for a period of seven years and, thus, initiation of the disciplinary proceedings as also continuance thereof after such a long time evidently prejudiced to the delinquent officer.

18. In **State of Madhya Pradesh v. Bani Singh & Anr.** [(1990) Supp. SCC 738], it was held that:

"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 April 1977 there was doubt about the involvement of the officer in the said 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."

19. It is trite law that disciplinary proceedings should be conducted soon after the alleged mis-conduct or negligence on the part of the employee is discovered. Inordinate delay cannot be said to be fair to the Delinquent Officer and since it would also make the task of proving the charges difficult, it would also not be in interest of administration. If the delay is too long and remains unexplained, the court may interfere and quash the charges. However, how much delay is too long

would depend upon the facts of each and every case and if such delay has prejudiced or is likely to prejudice the delinquent in defending the enquiry ought to be interdicted.

20. In **P.V. Mahadevan Vs. M.D. Tamil Nadu Housing Board, JT 2005 (7) SC 417**, a charge memo was issued to the appellant on 8th January, 2000 for the irregularity in issuing a sale deed in the year 1990. There was no explanation for the unordinary delay of 10 years in initiating the proceedings. The respondent explained that the irregularities for which disciplinary action had been initiated had come to light only in the second half of 1994-95, when the audit report was released. The Hon'ble Supreme court did not accept the contentions of the respondent that the period from date of commission of the irregularities by the appellant to the date on which it came to the knowledge of the Housing Board cannot be reckoned for the purpose of ascertaining whether there was any delay on the part of the Board in initiating disciplinary proceedings. The Hon'ble Supreme court felt that allowing the respondent to proceed further with the enquiry would be very prejudicial to the petitioner and would cause unbearable mental agony and distress to the officer concerned. During the course of judgment the Hon'ble Supreme court observed as under:-

"The protracted disciplinary enquiry against a Government employee should, therefore, be avoided not only in the interests of the Government employee but in public interest and also in the interests of inspiring confidence in the minds of the Government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the

department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer."

21. Summarizing the entire case law on the subject, the Hon'ble Apex Court in in **Anant R. Kulkarni v. Y.P.Education Society and Others**, (2013) 6 SCC 515 held as follows:

"Enquiry at belated stage:

14. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is dehors the limitation of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question, must be carefully examined, taking into consideration the gravity/magnitude of charges involved therein. The Court has to consider the seriousness and magnitude of the charges and while doing so the Court must weigh all the facts, both for and against the delinquent officers and come to the conclusion, which is just and proper considering the circumstances involved. The essence of the matter is that the court must take into consideration all relevant facts, and balance and weigh the same, so as to determine, if it is infact in the interest of clean and honest administration, that the said proceedings are allowed to be terminated, only on the ground of a delay in their conclusion. (Vide: *State of U.P. v. Brahm Datt Sharma & Anr.*, AIR 1987 SC 943; *State of Madhya Pradesh v. Bani Singh & Anr.*, AIR 1990 SC 1308; *State of Punjab & Ors. v. Chaman Lal Goyal*, (1995) 2 SCC 570; *State of Andhra Pradesh v. N. Radhakishan*, AIR 1998 SC 1833; *M.V. Bijlani v. Union of India & Ors.*, AIR 2006 SC 3475; *Union of India & Anr. v. Kunisetty Satyanarayana*, AIR 2007 SC 906; *The Secretary, Ministry of Defence & Ors. v. Prabash Chandra Mirdha*, AIR 2012 SC 2250; and *Chairman, LIC of India & Ors. v. A. Masilamani*, JT (2012) 11 SC 533)."

(Emphasis supplied)

22. The decisions, on which the learned counsel for the respondents placed reliance, did not lay any different law. They followed the aforesaid decisions of the Hon'ble Apex Court.

23. Admittedly, with respect of the charge, which pertains to the year 1999, the respondents issued the Charge Memorandum, after an abnormal delay of 15 years, i.e., on 18.06.2014. The charge is that the applicant, without physically verifying the genuineness of resignations of certain members, submitted the inspection/verification report dated 20.05.1999. The reasons given by the respondents for such an abnormal delay are unacceptable in view of the specific stand of the CBI in furnishing the relevant documents to the respondents, way back in 2007, itself. As held by the Hon'ble Apex Court, in the circumstances of the case, allowing the respondents to proceed further with the inquiry would be very prejudicial to the applicant and would cause unbearable mental agony and distress to the officer concerned.

24. In the circumstances and for the aforesaid reasons, the OA is allowed and the impugned order is quashed. No costs.

(Uday Kumar Varma)
Member (A)

(V. Ajay Kumar)
Member (J)

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