

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.392/2016

Dated this Friday the 5th day of May, 2017

CORAM: HON'BLE DR. MRUTYUNJAY SARANGI, MEMBER (A)

Shri Chandrashekhar V. Kuvalekar
 Retired Assistant Commissioner,
 Central Excise & Customs, Group 'A',
 R/at 54, Garupada,
 Taluka Alibag, Dist. Raigad 402 204.
(In Person)

... Applicant

Versus

1. Union of India, through
 The Secretary,
 Ministry of Finance,
 Department of Revenue,
 North Block, New Delhi -
 110 001.
2. The Chairman,
 Central Board of Excise & Customs
 Department of Revenue,
 North Block, New Delhi 110 001.
3. The Commissioner,
 Central Excise & Customs
 48, Administrative Area,
 Arera Hill, Hoshangabad Road,
 Bhopal (MP) – 462 011.

... Respondents

(Advocates Shri Rui Rodrigues)

ORDER

Per : Dr. Mrutyunjay Sarangi, Member (A)

The Applicant who is a retired Assistant Commissioner of Central Excise and Customs is aggrieved by the withholding of part of his retirement benefits due to pending disciplinary proceedings against him. He has filed this OA

praying for the following reliefs:

“8.a) This Hon'ble Tribunal may graciously be pleased to direct the respondents to produce Original case papers and record of the applicant before Hon'ble Tribunal.

8.b) This Hon'ble Tribunal may graciously be pleased to direct respondents to pay benefits arising out of VIth Pay Commission to the applicant with interest either @ 18% p.a. at the permissible rate on the amount due and payable from the date of actual payment thereof.

8.c) This Hon'ble Tribunal may graciously direct the respondents to pay amount of leave encashment to the applicant with interest either @18% p.a. or at the permissible rate on the amount due and payable from the date of actual payment thereof.

8.d) This Hon'ble Tribunal may graciously direct the respondents to pay full amount of gratuity to the applicant with interest either @ 18% p.a. or at the permissible rate on the amount due and payable from the date of actual payment thereof.

8.e) This Hon'ble Tribunal may graciously direct the respondents to pay arrears, arising out of increment, pay fixation promotion and C.G. E.I.S. etc. with interest either @ 18% p.a. or at the permissible rate on the amount due and payable from the date of actual payment thereof.

8.f) Any other relief.”

2. The facts of the case, as they appear from the OA, are as follows:

i) The Applicant had joined as Inspector of Central Excise & Customs on 05.07.1973. He was promoted as Superintendent of Central Excise & Customs on October, 1990 and as Assistant Commissioner of Central Excise & Customs in 2002.

He had applied for voluntary retirement w.e.f. 01.12.2006 through his application dated 23.08.2006. However, he was placed under suspension from 27.11.2006. A charge-sheet was issued to him on 22.08.2007 under Rule 14 of CCS (CCA) Rules, 1965 proposing major penalties. The disciplinary proceedings have not been completed so far. The Applicant claims that he has been wrongly charge-sheeted and there has been procedural infirmity in the conduct of the disciplinary proceedings. However, the applicant's notice for voluntary retirement was accepted vide Notification No.31/2010 dated 30.07.2010. The said Notification reads as follows:

“NOTIFICATION NO.31 OF 2010
INDIAN REVENUE SERVICE (CUSTOMS &
CENTRAL EXCISE) ESTABLISHMENTS

The President is pleased to accept the notice of Voluntary Retirement of Shri C.V. Kuvalekar, Assistant Commissioner of Customs and Central Excise with effect from 02.08.2010 (FN) under Rule 48 of the CCS (Pension) Rules, 1972. This is without prejudice to any departmental action or other action being taken and/or to be taken against Shri Kuvalekar.

Sd/

(Ratan Kumar Sharma)

Under Secretary to the Govt. of India”

iii) The suspension order issued against the applicant had already been revoked by the order

dated 02.02.2010. After granting of voluntary retirement the applicant has been paid his GPF contribution and provisional pension. However, the benefits of leave encashment, arrears of pay and allowances, gratuity and final pension have not been paid to the applicant.

iv) The Applicant submitted a representation on 14.04.2011 requesting the respondents to regularize his period of suspension, fix the pay under VIth Pay Commission, to pay arrears of pay and allowances, pension, leave salary and gratuity. On 03.02.2012 the order for sanctioning provisional pension to him was issued. The Applicant submitted another representation on 08.07.2014 with a request pay all terminal benefits. He received a reply on 22.08.2014 from the Respondent No.3 that the CBEC was being requested to issue vigilance clearance for sanctioning the terminal benefits of the applicant. The applicant submitted further representations on 17.07.2015 and again on 15.03.2016 for finalizing the disciplinary proceedings against him and to pay his retirement benefits. Aggrieved by the non-payment of his retirement dues, he has filed this OA praying for the relief as mentioned in para 1 above.

3. The grounds on which the applicant has based his prayer are at Para 5 of the O.A. and are reproduced herein below;

“5.A) The Applicant submits that the respondents have acted beyond the authority to cause harassment to the applicant. The charge-sheet issued to the applicant is illegal, invalid and has vitiated the enquiry drawn unlawfully against the applicant. The applicant submits that the charges deserves to be dropped in the interest of justice.

The Applicant states that he is entitled to receive leave encashment, gratuity and final pension besides arrears of pay and allowances. The action of respondents refusing to pay these dues to the applicant on the ground that the enquiry proceedings are pending against applicant is not tenable and surely would not sustain the legal scrutiny. The applicant is challenging the action of the respondents on the following amongst other grounds which are without prejudice to one another.

B) The applicant submits that the action of the respondent refusing pay, arrears of pay, leave encashment, gratuity etc. to the applicant is absolutely arbitrary, illegal and bad in law.

C) VIth Pay Commission

The applicant submits that he is entitled to receive arrears of pay and allowances arising out of VIth Pay Commission w.e.f. 01.01.2006.

Chronological events in the case of Shri Kuvalekar are as under;

Suspension	27/11/06
Suspension revoked	02/02/10
Voluntary Retirement	30/07/10

It clearly shows that the applicant was very well in service on 01.01.2006 and his pay ought to have been fixed as per the recommendation of VIth Pay Commission.

Respondent No.3 has no reason to call for any vigilance clearance. Any kind of clearance is not necessary in this regard.

D) LEAVE ENCASHMENT

The applicant submits that he is entitled to receive leave encashment on his retirement.

The issue stands clarified by instructions:

1) 14010/2/2010AD.V dated 181-2011

Copy of the said instructions is annexed hereto and marked as Annexure A-20.

The instruction clarifies rule 39(3) of CCS (Leave Rules) 1972, stating that leave encashment can be withheld only in case of the Officer who is charged with embezzlement of Government funds or loss of public money etc.

It may be taken into account that the applicant is not charged with any such allegations.

The Chairman and CVO themselves have observed in the minutes dated 17.01.2007 (Annexure A-7) that the charges against applicant do not attract a major penalty.

It is a regular practice all over the country to follow the contents of said instructions. One such case is that of Shri U.H. Jadhav, Joint Commissioner, who retired from Kolhapur Commissionerate CBI case was pending against him at the time of his retirement. He has been paid full amount of leave encashment by the Department/respondents.

E) GRATUITY

Respondents view expressed in their letter dated 04.08.2011 of not sanctioning terminal benefits is totally negated by the Hon'ble Supreme Court of India in the case of State of Zarkhand Vs. Jitendrakumar Shrivastav. Annexed hereto and marked as Annexure A-21 is copy of the order of the Hon'ble Supreme Court in Civil Appeal No.6770/2013. Also annexed hereto copy of respondents letter dated 4.8.2011 marked as Annexure A-22. The judgment amplifies Rule 27 and 43 of Bihar Pension Rules 1950. These rules are not only similar but are identical to Rule 9 and 69 of CCS (Pension) Rules, 1972. The applicant submits that the ratio of the Hon'ble Supreme Court judgment clearly applies of this case of non-payment of terminal benefits on the ground that

the disciplinary proceedings were pending against him at the time of retirement. The relevant important points in the said judgment are reproduced below for ready reference.

QUOTE

Crisp and short question which arises for consideration in these cases is as to whether in the absence of any provisions in the Pension Rules the State Government can withhold a part of pension and or gratuity during the pendency of departmental/criminal proceedings? The High Court has answered this question, vide an impugned judgment, in the negative and hence directed the appellant to release the withhold dues to the respondent. Not happy with this outcome, the State of Jharkhand has preferred this appeal.

Fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognized as right to property.

F) Article 300 A of the Constitution of India reads as under;

300-A: A person not to be deprived of property save by authority of law- No person shall be deprived of his property save by authority of law.

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of his pension without the authority of law, which is the Constitutional mandate enshrined in Article 300 A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

It hardly needs to be emphasized that the executive instructions are not having statutory character and therefore, cannot be termed as law within the meaning of aforesaid Article 300 A. On the basis of such a circular which is not having force of law, the appellant cannot withhold even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different.

We, accordingly, find that there is no merit in the instant appeals as the impugned order of the High Court is without blemish. Accordingly, these appeals are dismissed with costs quantified at Rs.10,000/- each.

g) A careful perusal of the above relevant extracts from the speaking order of the Hon'ble Supreme Court would reinforce the following submissions of the applicant-

i) The decision of the respondents to withhold payment of final pension arrears of VIth Pay Commission, gratuity and encashment of leave to the applicant is unjust and against the principles of natural justice, because the Pension Rules do not give the authority to the respondents to do so, in the instant case. This is made abundantly clear in the said judgment in the concluding remarks that a person cannot be deprived of his pension without the authority of law.

ii) Though the order of the Hon'ble Supreme Court, deals with & speaks about Rule No.43 of Bihar State Pension Rules, it is squarely applicable in respect of CCS Rule 69, as they are identical.

iii) Further, Rule 69 of CCS Rules also prescribes withholding of Pension, Gratuity in extreme cases of Grave misconduct. The Review Committee comprising of Chairman C.B.E.C., Member (P&A) & DG/CVO (Annexure A-5) has opined while recommending revocation of suspension of the applicant, in no uncertain words that the applicants misconduct did not call for proceedings to be drawn up for imposing major penalty. The view of the Committee is in reality the advice of Central Vigilance Commission and there is no ambiguity about the nature of misconduct. This clearly establishes the fact that the alleged misconduct cannot be classified or termed as grave misconduct.

iv) It is also pertinent to note that in the instant case there is no alleged pecuniary loss to the respondents which would necessitate monetary recovery from the applicant. The allegations are only of the nature of insubordination and indiscipline. Hence, the decision to withhold Pension, Gratuity etc is basically against the

existing Pension Rules and hence bad in law.

h) The Applicant submits that he is entitled to receive full pension and return of C.G.E.I.S etc.

From the foregoing the Hon'ble Tribunal would kindly observe that there are sound and sufficient grounds for the applicant to seek relief.

4. The Respondents in their reply dated 16.02.2017 have contested the claim of the applicant on the ground that Charge Memorandum has been issued against the applicant for serious lapses involving loss to the public ex-chequer. The Applicant has also been accused of insubordination and gross indiscipline and failure to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government servant. The Charge Memorandum No.22/2007 dated 22.08.2007 is for major penalty proceedings under Rule 14 of the CCS (CCA) Rules, 1965. The matter was referred to CVC for proposing major penalty proceedings and the Charge Memorandum was issued as per the CVC advice. The applicant's suspension order was revoked on 02.02.2010 with immediate effect and he joined back the Central Excise Hqrs., Nashik on 08.02.2010. He was subsequently transferred from Nashik Commissionerate to Bhopal Commissionerate vide order of CVC dated 17.03.2010. He did not join at Bhopal till his

application for voluntary retirement was accepted. The suspension period undergone by the applicant is yet to be regularized pending the completion of disciplinary proceedings. It is the respondents' contention that the rules permit withholding of gratuity and pension from a retired employee if disciplinary proceedings are pending against him/her. The Inquiry Officer had submitted his report on 23.06.2013. However, the matter was remitted back to him on 12.09.2013 for not following procedure and the Inquiry Report being not balanced and objective. The Inquiry Officer has submitted a fresh report on 19.08.2015 which is under consideration of the Disciplinary Authority for acceptance or otherwise of the finding of the Inquiry Officer. The respondents claim that arrangements are being made to conclude the proceedings against the applicant in the shortest possible time.

5. The Applicant filed a Rejoinder on 20.02.2017 in which he has specifically stated that the present OA is not on the issue of Charge Memorandum or disciplinary proceedings, it is only about the payment of the legitimate retirement benefits irrespective of whether the departmental proceedings are pending or not. The

relief sought in para 8 of the OA are only for monetary benefits. The Respondents have not adhered to the time schedule as prescribed in the CVC Circular dated 23.05.2000 and should not delay the release of his retirement benefits including the arrears arising out of VIth Pay Commission without further delay.

6. The Respondents filed a reply to the Rejoinder on 30.03.2017 reiterating that during the pendency of the disciplinary proceedings, full pension and other retiral benefits cannot be allowed to the applicant as per the CCS (CCA) Rules, 1965. During the pendency of disciplinary proceedings only provisional pension is admissible as per the CCS (CCA) Rule, 1965. It is the respondents' contention that the applicant did not cooperate with the authorities, he refused to accept the suspension order dated 27.11.2006 and also the Memo dated 29.11.2006 calling for his explanation, and such non-cooperation has resulted in delay of disciplinary proceedings.

7. I have heard the learned counsels from both the sides. During the arguments the applicant who argued in person laid emphasis on the judgment of the Hon'ble Supreme Court in State

of Jharkhand & Ors., Vs. Jitendra Kumar Srivastava & Anr., in Civil Appeal No.6770/2013 (arising out of SPL (C) No.1427/2009) pronounced on 14.08.2013.

The question that arose for consideration in the cited case was whether in the absence of any provision in the Pension Rules, the State Government can withhold a part of pension and/or gratuity during the pendency of departmental/criminal proceedings. The Hon'ble Supreme Court after detailed examination of the relevant Sections of the Pension Rules had held that a person cannot be deprived of his pension without the authority of law and in the case under consideration the Government of Jharkhand had no legal authority to withhold any part of pension or gratuity. The Hon'ble Supreme Court has also observed that had there been any such provisions in these rules, the position would have been different. The Respondents during their arguments countered the claim of the applicant on the ground that rules permit withholding of the pension and gratuity during the pendency of disciplinary proceedings. The Respondents claim that although the Bihar Pension Rule does not confer any power to Government to withhold gratuity and pension during the pendency of departmental proceedings or criminal

proceedings, the rules followed by the Central Government permit such withholding. They have quoted the rules to support their contention:

“ Rule 69(1) of the CCS (Pension) Rules, 1972:

“No Gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final order thereon.” Provided that where departmental proceedings have been instituted under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, for imposing any of the penalties specified in clause (i), (ii) and (iv) of Rule 11 of the said Rules, the payment of gratuity shall be authorised to be paid to the Government servant:

Rule 39(3) of the CCS (Leave) Rules, 1972:

“The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any.”

8. The Respondents have cited the judgment of the Three Judges Bench of the Hon'ble Supreme Court in **Jarnail Singh Vs. Secretary Ministry of Home Affairs and Ors., (1993) 1 SCC 47** in which the Hon'ble Supreme Court has taken note of Rule 69(1)(c) of CCS (Pension) Rules, 1972 and has observed that the said rule provides that “no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.

This provision is indicative of the power to withhold payment of gratuity and its payment being subject to the final outcome of any pending departmental or judicial proceedings against the Government servant."

9. After perusing the provisions enunciated under the CCS (Pension) Rules, 1972 and the judgment in *Jarnail Singh (supra)*, the legal validity of the withholding of the applicant's gratuity and leave encashment does not seem to be in doubt. Therefore, the principal issue that remains in this present OA is whether the respondents have got unlimited and unfettered powers to withhold the legitimate dues of the applicant indefinitely on the ground of pendency of disciplinary proceedings.

10. It is found that the Charge Memorandum was issued to the applicant on 22.08.2007. The Inquiry Officer's report was sent on 23.06.2013 after a gap of close to six years. This report was returned to the Inquiry Officer as certain deficiencies were noticed in the Inquiry Report by the CBCE. The Inquiry Officer did not re-submit the report despite reminders by the CBCE on 05.09.2014 and 08.12.2014. The CBCE had informed the applicant in its letter dated

06.05.2014 that Inquiry Officer's report was yet to be received by the Board. The Applicant claims that although the inquiry had ended on 20.03.2013, the Inquiry Officer's report has not been given to him nor he has received any order from the Disciplinary Authority till the filing of the OA. During the arguments, the learned counsel for the respondents has produced a letter from the office of the Chief Vigilance Officer, CBCE dated 06.04.2017 which reads as follows:-

“Sub: OA No.392/2016 in the case of Shri C.V. Kuvalekar, AC (Retd) Vs. Union of India & Ors, before CAT, Mumbai Bench.

Sir,

Please refer to your letter F.No.II/39(CAT)MZ-I/1/2017/271-272 dated 06.04.2017 on the above subject.

2. In this case the Inquiry Officer has already submitted his report on 15.08.2015. The disciplinary authority has already formed a tentative view and the case file has been referred to the Central Vigilance Commission for second stage advice on 02.02.2017. The advice of the Commission is awaited.

3. It may be possible to conclude the proceedings within a period of two months from the date of receipt of CVC's advice, provided it does not involve disagreeing with the advice of the Commission or consultation with UPSC.

Yours faithfully,

Sd/-

(Kabindra Joshi)

Deputy Secretary to Govt. of Inda.”

From a perusal of the above, it is quite

clear that in the present case the respondents have unjustifiably delayed the completion of disciplinary proceedings without any valid reason. It is quite clear that the time limit prescribed by the CVC in this respect has been grossly violated. The CVC in its letter to CVOs of all Ministries/Departments dated 23.05.2000 had laid down specific timeline for conducting investigations on departmental inquiry. The said letter reads as follows:

“Sub: Schedule of time limits in conducting investigations and departmental inquiries.

Sir,

Delays in disposal of disciplinary cases are a matter of serious concern to the Commission. Such delays also affect the morale of the suspected/charged employees and others in the organisation. The Commission has issued instructions, vide its communication No.8(1)(g)/99(3), that departmental inquiries should be completed within a period of six months from the date of appointment of Inquiry Officers. Regarding other stages of investigation/inquiry, the time-schedule, as under, has been laid down in the Special Chapters on Vigilance Management in Public Sector Banks/Enterprises, which are applicable to the employees of public sector banks/enterprises. The Commission desires that these time-limits should also be adhered to by the Ministry/Departments of Government of India, autonomous organisations and other Cooperative Societies, in respect of their employees, so as to ensure that the disciplinary cases are disposed of quickly.

Sr. No.	State of Investigation or inquiry	Time Limit
1	Decision as to whether the complaint involves a vigilance angle.	One month from receipt of the complaint.

2	Decision on complaint, whether to be filed or to be entrusted to CBI or to be taken up for investigation by departmental agency or to be sent to the concerned administrative authority for necessary action.	- do -
3	Conducting investigation and submission of report.	Three months.
4	Department's comments on the CBI reports in cases requiring Commission's advice.	One month from the date of receipt of CBI's report by the CVO/Disciplinary Authority.
5	Referring departmental investigation reports to be Commission for advice.	One month from the date of receipt of investigation report.
6	Reconsideration of the Commission's advice, if required.	One month from the date of receipt of Commission's advice.
7	Issue of charge-sheet, if required.	(i) One month from the date of receipt of Commission's advice. (ii) Two months from the date of receipt of investigation report.
8	Time for submission of defence statement.	Ordinarily ten days or as specified in CDA Rules.
9	Consideration of defence statement.	15 (Fifteen) days.
10	Issue of final orders in minor penalty cases.	Two months from the receipt of defence statement.
11	Appointment of IO/PO in major penalty cases.	Immediately after receipt and consideration of defence statement.
12	Conducting departmental inquiry and submission of report.	Six months from the date of appointment of IO/PO.
13	Sending a copy of the IO's report to the Charged Officer for his representation.	i) Within 15 days of receipt of IO's report if any of the Articles of charge has been held as proved; ii) 15 days if all charges held as not proved. Reasons for disagreement with IO's findings to be communicated.
14	Consideration of CO's representation and forwarding IO's report to the Commission for second stage advice.	One month from the date of receipt of representation.

15	Issuance of orders on the Inquiry report.	I) One month from the date of Commission's advice. ii) Two months from the date of receipt of IO's report if Commission's advice was not required.
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Yours faithfully,

sd/-

(K.L. Ahuja)

Officer on Special Duty”

11. Subsequently, the CVC has issued Circular No.02/01/2016 dated 18.01.2016 viewing with serious concern the practice by the administrative authorities in not adhering to the time schedule prescribed for completion of disciplinary proceedings. Mention has also been made in the said Circular of the judgment of the Hon'ble Supreme Court ***dated 16.12.2015 in Civil Appeal No.958/2010 in Prem Nath Bali Vs. Registrar, High Court of Delhi & Anr.*** The above mentioned circular No.02/01/2016 dated 18.01.2016 deserves to be quoted for reasons of clarity and emphasis:-

“The Commission has noted with serious concern that the administrative authorities are not adhering to the time-schedules prescribed for completion of disciplinary proceedings. In a recent study conducted by the Commission, it has been noticed that while the average time taken by the administrative authorities in finalisation of disciplinary proceedings is more than 2 years, the

maximum time taken in a particular case was eight (8) years and at least in 22% cases the inquiry took more than two years. The Commission vide its Circular No.8(1)(g)/99(3) dated 03.03.1999 and No.000/VGL/18 dated 23.05.2000 has laid down the time limits for various stages of disciplinary proceedings right from the stage of investigation to finalisation of the disciplinary case. The time-limit for completion of departmental inquiry is six months from the date of appointment of the IO. Thus, it appears that this time limit is not being adhered to by a majority of the Departments/Organisations. Such long delays not only are unjust to officials who may be ultimately acquitted, but help the guilty evade punitive action for long periods. Further, they have an adverse impact on others who believe that "nothing will happen". The Commission has been emphasising from time to time on the need for expeditious completion of disciplinary proceedings.

2. *Recently, the Hon'ble Supreme Court in its judgment dated 16.12.2015 in Civil Appeal No.958 of 2010 Prem Nath Bali Vs. Registrar, High Court of Delhi & Anr. has viewed the delay in handling of disciplinary cases adversely. The Hon'ble Supreme Court while allowing the said appeal in favour of the Appellant Employee has observed as follows:-*

"29. One cannot dispute in this case that the suspension period was unduly long. We also find that the delay in completion of the departmental proceedings was not wholly attributable to the appellant but it was equally attributable to the respondents as well. Due to such unreasonable delay, the appellant naturally suffered a lot because he and his family had to survive only on suspension allowance for a long period of 9 years.

30. *We are constrained to observe as to why the*

departmental proceeding, which involved only one charge and that too uncomplicated, have taken more than 9 years to conclude the departmental inquiry. No justification was forthcoming from the respondents' side to explain the undue delay in completion of the departmental inquiry except to throw blame on the appellant's conduct which we feel, was not fully justified.

31. Time and again, this Court has emphasised that it is the duty of the employer to ensure that the departmental inquiry initiated against the delinquent employee is concluded within the shortest possible time by taking priority measures. In cases where the delinquent is placed under suspension during the pendency of such inquiry then it becomes all the more imperative for the employer to ensure that the inquiry is concluded in the shortest possible time to avoid any inconvenience, loss and prejudice to the rights of the delinquent employee.

32. As a matter of experience, we often notice that after completion of the inquiry, the issue involved therein does not come to an end because if the findings of the inquiry proceedings have gone against the delinquent employee, he invariably pursues the issue in Court to ventilate his grievance, which again consumes time for its final conclusion.

33. Keeping these factors in mind, we are of the considered opinion that every employer (whether State or private) must make sincere endeavor to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of inquiry but not more than a year."

3. The Commission has observed that a number of factors contribute to the delay in the conduct of departmental inquiries and with prudent management this needs to be checked. The departmental inquiry is

often delayed due to laxity on the part of IO, lack of monitoring by DA & CVO, non-availability of listed or additional documents, delay in inspection of original or certified, documents, frequent adjournments, non-attendance of witnesses, especially private witnesses, faulty charge-sheets and frequent change of IO/PO and non-monitoring of progress of inquiry. The Commission suggests that the following steps may be ensured and complied strictly by the IOs/administrative authorities:

(i) In cases where investigation has been conducted by the CBI/other investigating agency and the documents have been seized by them for prosecution in courts and RDA is also contemplated, it is the responsibility of the CVO/DA to procure from the CBI/investigating agency legible certified copies of seized documents required for RDA. In cases investigated by CVOs it must be ensured that certified legible photocopies of all documents are made available at the time of preparation of draft charge sheet itself.

(ii) While drafting the charge sheet it may be ensured that all the relied upon documents as well as copies of relevant rules/instructions are in the custody of CVO. After issue of charge-sheet and submission of defence statement, the DA is required to take a decision within 15 days for appointment of IO/PO in major penalty cases.

(iii) As far as practicable, the IO should be chosen from amongst the serving officers/retired officers in the same station where the charged officer is posted, who is likely to continue till the conclusion of inquiry.

(iv) It may be ensured that the PO is appointed simultaneously. Changes in IO/PO be resorted to only in exceptional cases under intimation to the Commission (in respect of officers within the jurisdiction of the Commission).

(v) In cases involving more than one charged officer, it may be ensured that, as far as practicable, same IO/PO is appointed in all cases.

(vi) The PO must keep copies of relevant Rules/Regulations/Instructions etc. readily available with him. Departments/Organisations should also

ensure online availability of all their Rules/Regulations/Instructions etc. so that it can be downloaded during the inquiry proceedings without any loss of time.

(vii) It may be ensured that the defence documents are made available within the time allowed by the IO. Responsibility should be fixed on the custodian of such documents for any undue delay/not producing it in time or loss of these documents.

(viii) The IO should normally conduct Regular Hearing on a day to day basis and not grant more than one adjournment for appearance of witnesses. It may be ensured that all the prosecution or defence witnesses are summoned and examined in separate but simultaneous batches expeditiously.

(ix) If witnesses do not appear in response to notices or are not produced by PO/CO as the case may be, powers conferred under the Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1972 be exercised to request the Competent Court to pass orders for production of the witness through summons issued by the Court.

(x) The IO should, as far as practicable, desist from allowing interlocutory documents sought either by the PO or the CO as additional documents during the deposition of witnesses.

(xi) The time-limit for various stages of inquiry, as prescribed by the Commission vide its Circular No.8(1)(g)99(3) dated 03.03.1999, may be complied with strictly by the disciplinary authorities and the inquiry officers.

(xii) Where the CO or PO do not co-operate in the manner of attendance, production of documents, witnesses etc, IO may after affording reasonable opportunity, proceed to give a report ex-parte based on facts, documents, witnesses produced before him.

4. The suggested time limits for conducting departmental inquiries prescribed by the Commission for various stages is annexed for ready reference. Timely completion of departmental

inquiry/departmental proceedings is the prime responsibility of the Disciplinary Authority. Therefore, the disciplinary authorities in each Ministry/Department/Organisation may regularly monitor the progress of inquiry on regular basis and ensure that the inquiry/departmental proceedings are completed within the time limit prescribed as laid down by Hon'ble Supreme Court in the above cited case. The CVO concerned would assist the disciplinary authority in monitoring the progress of departmental proceedings. The Commission may recommend adverse action against the concerned disciplinary/administrative authority who is found responsible for any unexplained delay observed in any case. In appropriate cases wherein the IO delays the proceedings, DA may not hesitate to take necessary and appropriate action against the IO.

Annexure

Model Time Limit for Departmental Inquiries as laid down in Circular No.8(I)(g)99(3) dated 03.03.1999.

<i>Stage of Departmental Inquiry</i>	<i>Time Limit prescribed</i>
Fixing date of Preliminary Hearing and inspection of listed documents, submission of Defence documents/witnesses and nomination of a defence Assistant (DA) (if not already nominated)	Within four weeks
Inspection of relied upon documents/submission of list of DWs/Defence documents /Examination of relevancy of Defence documents/DWs, procuring of additional documents and submission of certificates confirming inspection of additional documents by CO/DA Issue of summons to the witnesses, fixing the date of Regular Hearing and arrangement for participation of witnesses in the Regular Hearing. Regular Hearing on Day to Day basis	3 months

<i>Stage of Departmental Inquiry</i>	<i>Time Limit prescribed</i>
Submission of Written Brief by PO to CO/IO	15 days
Submission of Written Brief by CO to IO	15 days
Submission of Inquiry Report from the date of receipt of written Brief by PO/CO	30 days

NB: If the above schedule is not consistent/in conflict with the existing rules/regulations of any organisation, the outer time limit of six months for completing the Departmental Inquiries should be strictly adhered to.

12. The Hon'ble Apex Court has taken serious adverse notice of delay in completion of disciplinary proceedings in a number of judgments. (**Govt. Of Andhra Pradesh & Ors. Vs. Appala Swami, 2007 (3) SCALE 1, B.L. Shridhar Vs. K.M. Munireddy AIR 2003 (SC) 578 and Provashchandra Dalui Vs. Bishvanath Banarjee, AIR 1999 SC 1834**). Some of the pronouncements by the Hon'ble Supreme Court on the subject of delay are quite strong and unequivocal. In **Secretary, Ministry of Defence & Ors. Vs. Prabhash Chandra Mirdha (2013) 1 SCC (L&S) 121** the Hon'ble Apex Court has laid down the principle of delay as a ground for quashing a charge-sheet in the following words:

“8. The law does not permit quashing of charge sheet in a routine manner. In case the delinquent employee has any grievances in respect of the charge sheet he must raise the issue by filing a representation and wait for the decision of the disciplinary authority thereon. In case the charge-sheet is challenged before a court/tribunal on the ground of delay in initiation of disciplinary proceedings or delay in concluding the

proceedings, the court/tribunal may quash the charge-sheet after considering the gravity of the charge and all relevant factors involved in the case weighing all the facts both for and against the delinquent employee and must reach the conclusion which is just and proper in the circumstance.

9. *In Forest Deptt. Vs. Abdur Rasul Chowdhury, (2009) 7 SCC 305 this Court dealt with the issue and observed tha delay in concluding the domestice inquiry is not always fatal. It depends upon the facts and circumstances of each case. The unexplained protracted delay on the part of the employer may be one of the circumstances in no permitting the employer to continue with the disciplinary proceedings. At the same time, if the delay is explained satisfactorily then the proceedings should not be permitted to continue.*

10. *Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the court.*

11. *In State of Orissa Vs. Sangram Keshari Misra (2010) 13 SCC 311 this Court held that normally a charge-sheet is not quashed prior to the conducting of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that to determine correctness or truth of the charge is the function of the disciplinary authority.*

12. *Thus, the law on the issue can be summarized to the effect that the charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not completent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues.*

Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings.”

*In yet another case of **State of Andhra Pradesh Vs N. Radhakishan, AIR 1998 SC 1833**, the Hon'ble Apex Court had observed;*

“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 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 that 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 fact 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. In the present OA, the applicant has not challenged the disciplinary proceedings. His grievance is about the non-payment of his retirement dues which has been withheld due to the long pendency of the disciplinary proceedings. As discussed in the paragraphs above, although withholding of the Gratuity as well as Leave Encashment is sanctioned by rules, there is no law which empowers the respondents to prolong the disciplinary proceedings indefinitely and keep the retirement dues of the applicant in suspension for years together. The power to withhold the retirement benefits and to delay the fixation of pay/pension is not an open-ended licence to the respondents to prolong the departmental inquiry indefinitely. The Charge-Memorandum against the applicant was issued on 22.08.2007 and even after 10 years the respondents have filed an open-ended reply dated 06.04.2017 during the course of the arguments in which the respondents have committed that "it may be possible to conclude the proceedings within a period of two months from the date of receipt of CVC's advice, provided it does not involve

disagreeing with the advice of the Commission or consultation with UPSC". After a gap of 10 years such an approach by the respondents shows a terrible degree of callousness and indifference. It is my considered view that the respondents should not delay the finalization of the disciplinary proceedings against the applicant any further and should pass final orders within a period of four months at the latest. It is perfectly within their powers and in the realm of possibility, if they pursue with the CVC and the UPSC, the disciplinary proceedings against the applicant can be finalized and orders passed within four months. Should they fail to do so, it will be unjust and arbitrary for them to continue to withhold the retirements benefits of the applicant in an open-ended manner just waiting for CVC or UPSC advice.

14. In view of the above discussions, the respondents are directed to finalise the disciplinary proceedings initiated against the applicant within a period of sixteen weeks from the date of receipt of this order. On passing of the final orders in the disciplinary proceedings, the respondents are directed to take a decision on the payment of arrears of pay and pensions,

leave encashment, gratuity and all other retirement dues of the applicant as per rules. The applicant will be entitled to the applicable rate of interest on payment of all arrears. Necessary orders on payment of all dues to the applicant should be passed within two weeks from the date of passing of the final order on the disciplinary proceedings. Should the respondents fail to finalise the disciplinary proceedings within the sixteen weeks stipulated as above, the applicant will have the liberty to approach the appropriate judicial forum for release of his withheld retirement dues forthwith.

15. The Original Application is disposed of with the above directions. No order as to costs.

(Dr. Mrutyunjay Sarangi)
Member (A)

dm.