

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**ERNAKULAM BENCH**

**Original Application No.180/00952/2018**

Thursday, this the 10<sup>th</sup> day of January, 2019

**Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member**  
**Hon'ble Mr. Ashish Kalia, Judicial Member**

Manoj Kumar, IpoS  
 aged 43 years, S/o. The late Basudeo Upadhyay  
 Director Postal Services, Northern Region  
 Kozhikode 673 011, residing at DPS Quarters  
 West Hill PO Complex, Kozhikode 673 005

.....

**Applicant**

**(By Advocate – Mr. Shafik M.A)**

**v e r s u s**

1. Union of India, represented by the Secretary  
 Ministry of Communications, Department of Posts  
 Dak Bhawan, New Delhi -110001
2. Asstt. Director General (Vig-II)  
 Ministry of Communications & IT,  
 Department of Posts  
 Dak Bhawan, Sansad Marg  
 New Delhi – 110 016
3. The Chief Post Master General  
 Bihar Circle, Patna, Bihar 800 001
4. The Chief Post Master General & Inquiring Authority  
 Punjab Circle, Chandigarh 160017

.....

**Respondents**

**(By Advocate – Mr. Thomas Mathew Nellimoottil, Sr. PCGC)**

This Original Application having been heard and reserved for orders on 3.1.2019, the Tribunal on 10.1.2019 delivered the following :

**O R D E R**

**Per: Mr.E.K.Bharat Bhushan, Administrative Member**

Applicant is an officer of the Indian Postal Service (2005 batch). He is aggrieved by Annexure A-1 Charge Sheet, which proposes to hold an Inquiry against him on allegations relating to certain actions he undertook when he was working as SSRM, 'PT' Division, Patna. The reliefs sought in the Original Application are as follows:

“ (i) To call for the records relating to Annexure A-1 to A-20 and to quash A-1 being illegal and arbitrary.

(ii) To declare that the applicant cannot be proceeded against in A-1 charges after efflux of this much time.

(iii) To pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.”

2. Applicant is presently working as Director of Postal Services, Northern Region since 19.6.2018 as per Annexure A-17 order. After completion of his probation, he had been posted as SSRM 'PT' Division, Patna about 8 years ago. This matter relates to a set of incidents in 2009 when recruitment had been made in Bihar Circle for filling up the vacancies of Postal Assistants/Sorting Assistants (PA/SA for short) for the years 2006, 2007 and 2008 relating to various Postal Divisions and RMS Divisions falling within the Circle.

3. The applicant contends that while working as Senior Superintendent RMS, 'PT' Division, Patna, he was assigned the duties of the Chairman of the PA/SA Recruitment Committee in respect of 5 Divisions in the recruitment process. He maintains that he had reservations about the procedural instructions issued by the Circle office on 5.11.2009 and was of the view that the process could be vitiated by corrupt and unprincipled elements. He had brought his apprehensions to the knowledge of his official superiors and requested the third respondent to re-examine the instructions ordered by the Circle office. He also went so far as to suggest certain measures to ensure fool proof selection. These were allegedly conveyed through a letter sent by the applicant to the third respondent – Chief Postmaster General on 10.11.2009 (Annexure A-2).

4. Applicant maintains that the said letter was not taken in the right spirit by the concerned authority and he was mercilessly targeted by the higher authorities for his exertions. In view of the adversarial attitude of his official superiors, he was transferred out of Bihar Circle in February 2010. While working in Kolkata, he earned two regular promotions, one from JTS to STS and the other from STS to JAG in the Indian Postal Services Group-A and managed to obtain 'Outstanding' ratings in all his APARS. He also goes to the extent of pointing out that one of the applicant's official superiors while working at Bihar Circle, happens to be the present authority managing the affairs of the Postal Department in the Ministry, which is a clear reference to

respondent no.1.

5. He goes on to describe various difficulties he faced in trying to resist corrupt practices in recruitment of personnel under Bihar Circle. He minces no words in calling it a “big scam”. He had come across wide-spread instances of the number of candidates coming up for written examination being just the number of actual vacancies for which notification has been made, clearly a result of a crooked procedure. He also came across an instance where the seal on the question paper cover had been tampered with. The applicant claims that he brought these instances to the immediate attention of his official superiors and the then PMG Shri.A.N.Nanda, who happens to be the present Secretary, Department of Posts now. At Annexure A-3 certain newspaper news items which appeared on the alleged malpractices which were going on under the nose of the P.M.G Muzaffarpur Region (Presently first respondent) and the CPMG Bihar Circle. This hastened his departure from the post of SSP Patna to the post of SSRM 'PT' Division in June 2008 before completion of his normal tenure.

6. At his new post, he claims that he was repeatedly humiliated and given additional charges which were very difficult to discharge from the point of view of geographical location of his station. During this period the recruitment of PAs/SAs of various Postal and RMS Divisions under Bihar Circle was taken up for three consecutive years of 2006, 2007 and 2008. The

last date prescribed in the notification for receipt of applications was 26.10.2009. While there were no statutory Recruitment Rules governing the said recruitment, a set of detailed administrative instructions had been issued by the Postal Directorate on 10.11.2004 (AnnexureA-5). The applicant alleges that the third respondent issued certain clarificatory instructions on 5.11.2009 which were in conflict with Annexure A-5 revised instructions issued by the Directorate.

7. The applicant states that he studied the problem in detail and in an act befitting a whistle blower, wrote to the 3<sup>rd</sup> respondent on 10.11.2009 (Annexure A-2). The intention of this communication was to invite the attention of the authorities to probable incidents of corruption and malpractices, if the procedure was not further streamlined. He further states that Annexure A-2 letter appears to have enraged the concerned authorities for no conceivable reason.

8. In the meanwhile, the respondents ordered the constitution of Recruitment Committees for various Divisions as per which the applicant was made Chairman in respect of 5 Divisions apparently for the reason that he was senior among the Members of the Committee. As per Annexure A-7 Note Sheet, this had been done as late as on 31.12.2009 whereas the examination got over on 3.1.2010 and the results were declared on the same day. The 'Aptitude Test' was held on 3.1.2010 and the 'Computer Test' was

completed before the Recruitment Committee came to oversee the selection process. The answer papers of the candidates on the OMR sheets were evaluated by respondent no.1, the then PMG Muzaffarpur. The sheets were handed over to the Recruitment Committee for declaration of results after posting the data in Y Register and Z Register maintained by the concerned Divisional Superintendents.

9. The applicant submits that the task of the Recruitment Committee was only clerical in nature. The Chairman of the said Committee did not come into the picture in the evaluation of the respective merits of the candidates. Then a month and half afterwards, the applicant found himself transferred to West Bengal Circle. He went on to acquire two promotions while at Kolkata and then was posted as Director of Postal Services (HQ), Gujarat Circle, which is a sensitive post, that he joined on 16.7.2015.

10. Albeit, unconnected to the reliefs sought in the Original Application, the applicant states that he was falsely implicated in a case occurring during the demonetisation move and was arrested on 19.3.2017 and was released on bail on 23.8.2017. He claims that he was entirely innocent of any wrong doing and was arrested and incarcerated despite his name not being in the FIR lodged by the C.B.I. So far, no charge has been framed against him by the C.B.I.

11. It was at this stage, that the impugned Annexure A-1 Charge Memorandum dated 17.3.2017 came to be issued by the second respondent after a delay of more than 8 years from the declaration of results of the recruitment, where it is alleged that he has been guilty of misconduct. The Charge Memorandum itself was served by deputing a ASP to the prison where the applicant was kept in confinement. On seeing the Charge Memorandum, he filed Annexure A-9 representation on 19.12.2018 before respondent no.1 seeking copies of various documents enclosed in the gunny bag which had been handed over to him while he was in Jail and which came to be destroyed during the rainy season. The second respondent replied through a communication dated 17.1.2018 to the effect that Rules do not provide for inspection of the said documents by the accused officer for the submission of the written statement (Annexure A-10). Applicant goes on to describe how he has been denied relevant documents and he has been unable to put up the required defence. Respondents, in the meanwhile, went ahead with the appointment of the Inquiring Authority, which they did on 8.5.2018 (Annexure A-14), and the Presenting Officer (Annexure A-15). The first meeting of the Inquiry Authority was held in June 2016 at New Delhi where the applicant denied the charges. The applicant was reinstated after suspension and was posted to DPS Northern Region, Kozhikode where he joined on 19.6.2018 (Annexure A-17).

12. The applicant cites various details from the Charge Memorandum

which according to him reveal that the case has been one which had been trumped-up against him for extraneous reasons. He is in no position, at this far off point in time, to recall the details of individual applications referred to in the Charge Memorandum. For example, the instance of one Mr.Pankaj Kumar Yadav and Ms.Ranjana Kumari are mentioned with copies of their application bearing 21.12.2009 whereas the last date fixed as per Recruitment Notification was 26.10.2009. The documents enclosing over 2200 pages of recruitment records are replete with “forgeries and falsification”. Applicant claims that he was never in custody of any of these documents. The unhelpful attitude on the part of the respondents/Inquiry Authority continued with the applicant being obstructed in nominating his Defence Assistant.

13. As grounds, the applicant emphasises the long delay in instituting the Inquiry. He cites the decision of the Hon'ble High Court of Kerala in ***Meera Rawther v. State of Kerala*** reported in **2001(1) SLR 518** and the Hon'ble High Court of Delhi in ***Union of India & Anr. v. Hari Singh*** in Writ Petition © No.4245/2013 wherein it has been stated that delay in initiating disciplinary proceedings would be tantamount to denial of reasonable opportunity to the charged official to defend himself. In the 6 articles of charges, what is imputed is that the applicant, who was holding a supervisory post, had failed to take appropriate steps to ensure the integrity and devotion to duty of all the officials/officers under his supervision. He pleads that even

assuming that these articles are proved, the legal point to consider by the Tribunal is whether it can attract an infraction or contravention, punishable under Conduct Rules. There were many other officers involved in these processes and many senior officials were at work at various Divisions, who have all been acquitted or given minor punishments. The charges are vague and non-specific.

14. The respondents have filed a detailed reply statement to the Original Application in which the contentions of the applicant have been strongly countered. First and foremost, it is stated that there is no cause requiring the applicant to rush to the Tribunal for relief and the issuance of a notice/memorandum cannot be interpreted as a punishment *per se*. The Tribunal would be exceeding its jurisdiction if it were to interfere in the midst of a disciplinary proceeding for the reason that it cannot take over the functions of such an authority. The applicant is free to adduce whatever evidence that he wishes to during the course of the Inquiry. A catena of judgments is referred to reiterating this point.

15. In so far as the details of the case are concerned, it is stated that the irregularities in the examination conducted for selection of PAs/SAs under Bihar Circle came to light with a report dated 21.1.2010. The Type/Computer Test were conducted from 21 – 24 December, 2009 and 29 Dec to 2<sup>nd</sup> Jan, 2010 followed by Aptitude Test on 3.1.2010. The Supervisors of the

examination reported very poor attendance. This resulted in a fact finding Inquiry being ordered.

16. The guidelines issued on 10.11.2004 by the Directorate clearly laid down various stages which govern the recruitment process. Recruitment Committee had been constituted for various Divisions with senior officers in-charge. They were given detailed instructions as to the process involved such as receipt of applications, maintenance of X, Y & Z registers etc. and necessary steps towards effective surveillance of the process. The applicant was holding the charge of SSRM 'PT' Division from 5.6.2008 to 19.2.2010. He was also holding the additional charge of SSPOs, Gaya Division, Gaya from 19.8.2009 to 4.11.2009 and SSRM 'P' Division from 4.8.2009 onwards. Thus, although he was appointed as Chairman of Recruitment Committee only through communication dated 31.12.2009, he had clear and defined responsibilities in the other positions referred to.

17. The Inquiry undertaken by the Vigilance Officer, Office of the CPMG, Bihar circle pointed out several lapses in the recruitment process of 5 Divisions on the part of the applicant. It was revealed that the *modus operandi* in respect of 'P', 'PT' and Gaya Divisions was one and the same. There was a flood of applications on the last date of receipt of application. As the candidates admitted for the test were limited to 10 times vacancies, non-appearance of the candidates in Type/Computer Tests, return of Admit

Cards and their poor appearance in test are seemingly engineered with a view to debar the applicants who applied earlier i.e, upto 23.10.2009 in all these three divisions and to confirm the selection of the candidates who applied after 23.10.2009. Number of such applications received on 26.10.2009 being the last date has been given in the reply statement. They were all found to be drafted in identical manner and enclosed in identical envelopes with the address being written in the same handwriting. It was indeed unusual that all candidates with higher marks submitted the application on the very last date, that too with suspicious similarities. Clearly, there had been an attempt to corrupt the system in its entirety.

18. On the question of delay in initiating the Inquiry, it is maintained that several necessary and inevitable procedures had to be met and detailed statement explaining the stages have also been produced. Every attempt was being made by the applicant to delay the process. For example, the CPMG Bihar circle had directed to give every opportunity to the applicant to inspect whatever documents were available and he was asked to present himself by 30.12.2012. However, the applicant did not visit the Circle Office, Patna and he took more than 1 ½ years in submitting his explanation. It is maintained by the respondents that there was a calculated scam at work and the applicant cannot deny that he was unaware of the same nor can he claim that he himself was a whistle blower after the Inquiry Proceedings were initiated. It is also not true that his responsibility began only when he was

appointed as Chairman of the Recruiting Committee. In fact major departures from procedure as well as several suspicious circumstances occurred when he was the administrative head of the concerned Divisions.

19. Shri.Shafik M.A, learned counsel for the applicant argued at length about the incongruity of an officer being pursued for having pointed out the weaknesses and corrupt possibilities under the recruitment process. Mr.Shafik maintains that the charges framed are non-specific and repetitive with charges 3 to 6 being mere replications of charges 1 and 2. The officer had an "Outstanding" service record otherwise and the fact that he had 'Outstanding' ratings on all his APARS go to prove that the present issue was deliberately set up to embroil the applicant. It is maintained by the learned counsel that the applicant had angered his official superiors, at least one of whom is now in a pivotal position and it is the efforts of the applicant to cleanse the system which has worked against him.

20. Shri.Shafik M.A, Advocate dealt at length on the delay question. The misconduct referred to in the charge memorandum occurred in 2009 and the applicant was being proceeded against in March 2017. There has been no clear justification for this kind of extraordinary delay. After 2009 the applicant had earned two promotions and nothing had stood in the way of these promotions. At this point in time, the applicant naturally is unable to mount an appropriate defence from his side as his memory is inadequate in

respect of such far off incidents. Besides, he has been denied access to several important documents which are referred to in the charge memorandum.

21. Shri.Thomas Mathew Nellimoottil on behalf of the respondent pointed out that, the applicant being a directly recruited All India Service Officer, has been found wanting in discharging his duties. A very serious scam in recruitment had occurred when he was in-charge of the relevant Divisions. Several unusual circumstances have been referred to in the reply statement filed by the respondents, which invariably point to serious professional deficiencies on the part of the applicant. He has failed to discharge his duties as is seen from several incidents mentioned in the Charge Memorandum. The officer has merely been charge sheeted and a detailed Inquiry had been ordered. As such, it would be premature at this time for the applicant to seek relief from the Tribunal. What he has to do is to answer the charges made and wait for the conclusions to be arrived at. There has been some delay in initiating the Inquiry. This has occurred on account of unavoidable procedural reasons. For example, the applicant is a Group A officer and the first stage advice of CVC had to be taken before proceeding further. Besides, the applicant has also been utilising every opportunity to delay the Inquiry from proceeding and his resorting to filing of the Original Application is another effort in this direction.

22. We have considered the arguments of learned counsel from both sides and also examined the documents on record.

23. The first point made in the Original Application is that the applicant had no role in the process until he was appointed as Chairman of the Recruiting Committee by orders dated 31.12.2009, by which time, every procedure except the last test had been completed. This does not appear to be the actual position. On a scrutiny of the dates involved, we see that he was holding the charge of SSRM 'PT' from 5.6.2008 to 19.2.2010. He was also holding the additional charge of SSPOs, Gaya Division, Gaya from 19.8.2009 to 04.11.2009 and SSRM 'P' Division from 4.8.2009 to 15.11.2009. 'P' Divisions being merged in 'PT' Divisions with effect from 6.11.2009. While it is true that he came to be appointed as Chairman of the Recruitment Committee in respect of 5 Divisions viz; 'PT' , 'P', 'U', 'NB' and 'Munger' only by order dated 31.12.2009, he had clearly defined administrative duties to discharge in respect of the Divisions referred to. To show the extent of involvement of the officer, the details provided in the date wise check list referring to 26.10.2009and 11.1.2010 may be quoted:

**“26.10.2009:**

As per fact-finding inquiry Report dated 12.1.2010, the receipt of applications were started in the Divisional office Gaya since 5.10.2009. The last date of receipt of applications was 26.10.2009 and on the last date 481 applications were received. Initially the application forms were used to enter in the Register as per date wise receipt and it was continued upto 20.10.2009, but by the order of the then SSPOs, Gaya Dn (Sh. Manoj Kumar), the system was discontinued and all the applications were entered again by the system administrator

Sh.Rajesh Kumar and Md. Shahnawaz, PA Arwal Sub Post Office in Computer and its hard copy was pasted on the said Register. There was every possibility that the applications received upto 23.10.2009 (24.10.2009 & 25.10.2009 were Saturday and Sunday) and the marks obtained by the candidates with ref.to their application received upto 23.10.2009 were not kept confidential and passed on to some vested interested persons, because on 26.10.2009, 146 and 216 applications in U/R and OBC category respectively were received on 2.10.2009 and the candidates in both the categories selected for (10)times were among the candidates who submitted their application on 26.10.2009 except only (04) four in U/R and that too because in course of rechecking by Shri.B.C.Singh, new SSPOs, Gaya Dn., Gaya.

As per the written statement witnesses mentioned in the Annexure – IV of the Charge Sheet dated 17.3.2017 it has been alleged that Sh.Manoj Kumar, as Divisional Head of Gaya Dn, had interrupted normal entry process of the applications received from 5.10.2009 to 19.10.2009 with ulterior motive and kept all applications received from 20.10.2009 to 26.10.2009 in his own custody.

### **11.01.2010 :**

A fact finding Inquiry was conducted and a report dated 11.1.2010 concluded that 'the modus operandi in respect of 'P','PT'and Gaya Divisions (where Sh.Manoj Kumar was the head of division) was same in so far as the consideration of the applicants for (10) times list (i.e. List of shortlisted candidates), non appearance of the candidates for the Type/Computer Tests and Aptitude Test, return of Admit Cards and their poor appearance in Type/Computer and Aptitude Test. It had been alleged that the applicants managed their applications to be included in the recruitment process anyhow only with a view to debar the applicants who applied earlier i.e. upto 23.10.2009 in all these three divisions and to confirm the selection of the candidates applied thereafter. The applications were not scrutinized properly before arriving at to conclude the candidature of candidates in 10 times as some ineligible candidates were permitted."

24 Clearly, the officer cannot take recourse to the argument that he was exposed to the process only from the date he became Chairman of the Recruitment Committee. There has been delay in initiating the Inquiry, but on

going through the different stages which ought to be crossed, we are not of the view that the matter has been deliberately delayed. The case involves a good number of listed documents and voluminous exhibits as well as several witnesses who are presently in different locations. It is also alleged by the respondents that the applicant, for his own part, has not been co-operating with the Inquiry proceedings.

25. Learned counsel for the respondents cited several judgments pointing out that it would be premature on the part of this Tribunal to interfere with disciplinary proceedings. In **Criminal Appeal No.35/2004** the Hon'ble Supreme Court opined thus:

“ This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless, the High Court is satisfied that the show cause notice was totally non est in the eye of law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show cause notice and take all stands highlighted in the writ petition. Whether the show cause notice was founded on any legal premises is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the Court. Further, when the Court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is accorded to the writ petitioner even at the threshold by the interim protection, granted. “

26. In the case of *Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh & Ors.* reported in **1996 AIR 691**, the Hon'ble Supreme Court decried the action of the Hon'ble High Court of Patna in having interfered with a disciplinary proceedings at the point when a show-cause was issued by a competent authority and ordered as follows:

“ 2. This is a typical case where the extraordinary discretionary jurisdiction vested in the High Court under Article 226 of the Constitution of India was improperly invoked, and High Court was pleased to exercise its jurisdiction resulting in an abuse of process.”

27. Hon'ble Supreme Court of India in the case of *Secretary to Government and Another v. K. Munniappan* reported in **CDJ 1997 SC 1382** held thus:

“ Unless and until an in-depth investigation is done, there would be little scope to identify the persons involved in the crimes and to take follow up action as per law. If the officer is allowed to retire, there would be no occasion to take effective steps to satisfactorily tackle the enormity of the crime. It is true that there is time gap, but in a case involving embezzlement of public funds by several persons in a concerted away, a thread bare investigation is required to be undertaken by the investigation officer and, therefore, in the neuter of the situation, it would be difficult to find fault with the authorities for not completing investigation expeditiously. However, the appellant is directed to have the investigation completed as expeditiously as possible and take appropriate action on an urgent basis. The appeal is accordingly allowed. The OA is dismissed. No costs.”

28. Again the Hon'ble Supreme Court of India in ***H.B Gandhi,Excise and Taxation Officer-cum-assessing Authority, Karnal and Ors. v. Gopi Nath and Sons and Ors*** reported in **1992 Supp(2)SCC312** had the following to state on the question of judicial review in a disciplinary proceeding:

“ 8. But here what was assailed was the correctness of findings as if before an appellate forum. Judicial review, it is trite, is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself. “

29. With specific reference to delay, the Hon'ble Supreme Court of India in ***State of Punjab and Ors v. Chaman Lal Goyal* 1995 SCC (2) 570** ruled:

“ 10. 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 proceeding 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, malafides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how

long a delay is too long always depends upon the fact-, of the given case. Moreover, if such 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. Now, let us see what are the factors in favour of the respondent. They are: (a) That he was transferred from the post of Superintendent of Nabha Jail and had given charge of the post about six <http://JUDIS.NIC.IN> SUPREME COURT OF INDIA Page 5 of 7 days prior to the incident. While the incident took place on the night intervening 1st/ 2nd of January, 1987, the respondent had relinquished the charge of the said office. on December 26, 1986. He was not there-. at the time of incident. (b) The explanation offered by the government for the delay in serving the charges is unacceptable. There was no reason for the government to wait for the Sub-divisional Magistrate's report when it had with it the report of the Inspector General of Prisons which report was not only earlier in point of time but was made by the highest official of the prison administration, 24 Head of the Department, itself The Inspector General of Prisons was the superior of the respondent and was directly concerned with the prison administration whereas the Subdivisional Magistrate was not so connected. In the circumstances, the explanation that the government was waiting for the report of the Sub-divisional Magistrate is unacceptable. Even otherwise they waited for two more years after obtaining a copy of the said report. Since no action was taken within a reasonable time after the incident, he was entitled to and he must have presumed that no action would be taken against him. After a lapse of five and a half years, he was being asked to face an enquiry. (c) If not in 1992, his case for promotion was bound to come up for consideration in 1993 or at any rate in 1994. The pendency of a disciplinary enquiry was bound to cause him prejudice in that matter apart from subjecting him to the worry and inconvenience involved in facing such an enquiry. “

30. In a matter where the Central Administrative Tribunal had set aside the departmental inquiry and quashed the charge on the ground of delay in initiation of departmental proceedings, the Hon'ble Supreme Court ordered as

follows in *Secretary to Government, Prohibition & Excise Department v. L.Srinivasan* 1996 SCC (3) 157:

“ Suffice it to state that the Administrative Tribunal has committed grossest error in its exercise of the jurisprudence of the service law and exercised power as if he is an appellate forum dehorst the limitation of judicial review. This is one such instance where a member had exceeded his power of judicial review in quashing the suspension order and charges even at the threshold. We are coming across frequently such orders putting heavy pressure on this Court to examine each case in detail. It is high time that it is remedied.

The appeal are accordingly allowed and the order of the Tribunal is set aside. The controversy is at large the disciplinary authority would be free to proceed with the enquiry and trial also be proceeded in accordance with law.”

31. Finally, in *Municipal Corporation of Delhi & Another v. R.V.Bansal*, the Hon'ble High Court of Delhi held that:

“ 26. In our opinion, the ratio of the above cases also applies to a charge-sheet. Ordinarily, a writ petition against a show-cause notice or charge-sheet should be dismissed as premature because no cause of action arises at that stage. A cause of action will arise if some punishment is given to the employee, and it is only at that stage that he can file an appeal/revision, if provided under the rules, or a writ petition if it is not. A writ petition against a charge-sheet or show-cause notice should ordinarily be dismissed because at that stage the petition is premature, since no cause of action has arisen as no punishment has been given at that stage. It is quite possible that after the inquiry the employee may be exonerated. Hence the petition should not ordinarily be entertained at this premature stage. ”

32. Mr. Shafik M.A on his part produced the judgment of the Hon'ble

Supreme Court in ***Chairman, LIC of India & Ors v. A.Masilamani*** in Civil Appeal No.8263 of 2012, which ruled as follows:

“ 10. The second question involved herein, is also no longer res integra. Whether or not the disciplinary authority should be given an opportunity, to complete the enquiry afresh from the point that it stood vitiated, depends upon the gravity of delinquency involved. Thus, the court must examine, the magnitude of misconduct alleged against the delinquent employee. It is in view of this, that courts/tribunals, are not competent to quash the charge-sheet and related disciplinary 10 Page 11 proceedings, before the same are concluded, on the aforementioned grounds. 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 de hors 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, have to be examined, taking into consideration the gravity/magnitude of charges involved therein. The essence of the matter is that the court must take into consideration, all relevant facts and to balance and weigh the same, so as to determine, if it is infact in the interest of clean and honest administration, that the judicial proceedings are allowed to be terminated, only on the ground of 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 11 Page 12 1308; Union of India & Anr. v. Ashok Kacker, 1995 Supp (1) SCC 180; Secretary to Government, Prohibition & Excise Department v. L. Srinivasan, (1996) 3 SCC 157; 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; and The Secretary, Ministry of Defence & Ors. v. Prabash Chandra Mirdha, AIR 2012 SC 2250). ”

The emphasis here is on the need to be have a balanced approach and to be even-handed, qualities which we cannot over emphasise.

33. We have considered the various judgments of the Hon'ble Supreme Court and the context in which they have been issued. The facts of the case are that there has been a very serious scandal involving recruitment in several Divisions of a Postal Circle. A long period of time was expanded while the authorities put together the various pieces of the jig-saw puzzle, collating all the facts. They are still at the preliminary stage. The applicant's primary contention is that several years have gone by since the alleged misconduct had occurred. This by itself, as indicated in *State of Punjab and Ors v. Chaman Lal Goyal*'s decision, is not a reason to put a stop to the process. What is open to the applicant is to truthfully and systematically state his defences. The fact that he was incarcerated on an altogether different charges for a significant amount of time, though a development which is not helpful to his case, is by no means a confirmation of his guilt here. The various pronouncements of the Hon'ble Supreme Court also talks about a balanced approach which rules out any premature interference from the side of a Tribunal or Court in a disciplinary proceeding.

34. With due regard to the facts on record and arguments advanced by the contesting counsel, we are of the view that this is not a fit case for the Tribunal to interfere with. The Original Application fails. However, the respondents are hereby directed to complete the Inquiry within four months from the date of receipt of a copy of this order and proceed with suitable

action on the basis of the said Inquiry. The applicant should be afforded every opportunity for presenting his defence and the applicant on his part, shall sincerely co-operate with the proceedings. No costs.

**(ASHISH KALIA)**  
**JUDICIAL MEMBER**

**(E.K.BHARAT BHUSHAN)**  
**ADMINISTRATIVE MEMBER**

SV

**List of Annexures**

Annexure A1 - True copy of the Memorandum No.10-01/2010-Vig dated 17.3.2017 issued by the 2<sup>nd</sup> respondent

Annexure A-2 - True copy of letter dated 10.11.2009 of the applicant to 3<sup>rd</sup> respondent

Annexure A-3 - True copy of the extract of the news item appeared in "Sahara" daily dated 1.6.2008

Annexure A-4 - True copy of the Memo No.Staff/G-11/Class-I/P/Ch.V dated 3.6.2008 of the 3<sup>rd</sup> respondent

Annexure A-5 - True copy of the letter No.51-2/2005-SPB-I dated 10.11.2004 issued by the Postal Directorate

Annexure A-6 - True copy of the letter No.R&E-1/ADRP/2006-2007 & 2008 dated 31.12.2009 issued by the 3<sup>rd</sup> respondent

Annexure A-7 - True copy of the Office Memo note dated 5.11.2009 of the Bihar Circle

Annexure A-8 - True copy of the Memo No.Staff/G-11/Class1/P/Ch.VI dated 19.2.2010 of the Asst. Director (Staff & Rectt.) Bihar Circle, Patna

Annexure A-9 - True copy of the representation dated 19.12.2017 submitted before the 1<sup>st</sup> respondent

Annexure A-10 - True copy of the letter No.10-01/2010-Vig. Dated 17.1.2018 of the 2<sup>nd</sup> respondent

Annexure A-11 - True copy of the O.M No.F.30/5/61-AVD dated 25.8.1961 issued by the MHA, Government of India

Annexure A-12 - True copy of the representation dated 4.4.2018 submitted by the applicant

Annexure A-13 - True copy of the letter dated 19.6.2018 of the 2<sup>nd</sup> respondent

Annexure A-14 - True copy of the order No.10-01/2010-Vig dated 8.5.2018 issued by the ADG (Vigilance-III), Department of Posts

Annexure A-15 - True copy of the order No.10-01/2010-Vig dated

8.5.2018 issued by the ADG (Vigilance-III), Department of Posts

Annexure A-16 - True copy of the Daily Order Sheet No.1 dated 8.6.2018 of the Inquiry

Annexure A-17 - True copy of the order No.2-2/2017-SPG dated 3.7.2014 issued by the ADG (SGP), Department of Posts

Annexure A-18(a) - True copy of the application dated 21.12.2009 of Pankaj Kumar Yadav

Annexure A-18(b) - True copy of the application dated 21.12.2009 of Ms. Ranjana Kumari

Annexure A-19 - True copy of the request dated 9.11.2018 submitted by the applicant

Annexure A-20 - True copy of the letter No.CPMG/Con/IO-1/2018 dated 9.11.2018 issued by the 4<sup>th</sup> respondent

Annexure R1 - True copy of letter No.R &E/PA&SA/Rlg/2002 dated 10.12.2004

Annexure R2 - True copy of the common order dated 22.12.2010 in O.A No.128/2010 by the Hon'ble CAT Patna Bench

Annexure R3 - True copy of open advertisement dated 18.2.2010

Annexure R4 - True copy of the letter No.R&E-I/ADRP/2006, 2007 & 2008 dated 5.11.2009

Annexure R4(a) - Typed copy of the letter No.R&E-I/ADRP/2006, 2007 & 2008 dated 5.11.2009

Annexure R5 - True copy of the email letter No.R&E-I/ADRP/2006, 2007 & 2008 dated 19.11.2009 at 6.21 p.m

Annexure R6 - True copy of the letter No.R&E-I/ADRP/2006, 2007 & 2008 dated 4.12.2009

Annexure R7 - True copy of the note sheet containing orders of the competent authority

Annexure R8 - True copy of the letter No.60-16/2009-SPB-I dated 31.8.2009

Annexure R9 - True copy of the email dated 31.12.2009 at 5.57 pm

Annexure R10 - True copy of the D.O letter No.A-34020/02/2009-DE dated 17.2.2010

Annexure R 11 - Table showing action taken against officers/officials of Bihar Circle with assurance memo

Annexure A-21 - True copy of the Directorate order No.60-36/93-SPB-I dated 28.2.1995

Annexure A-22 - True copy of the Postal Assistants and Sorting Assistants) Recruitment Rules, 2002

Annexure A-23 - True copy of the receipt given by the applicant to the Vigilance Branch of Bihar Circle office on 20.11.2013

Annexure A-24 - True copy of the reply dated 4.12.2013 of the applicant to the 3<sup>rd</sup> respondent through proper channel-CPMG West Bengal

...