

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 410/2012

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Mahendranath Sahu, aged 65 years, S/o Late Biswanath Sahu, At/PO-Bari-Thengada, Via-Dhanmandal, Dist-Jajpur.

.....Applicant

VERSUS

1. Union of India, represented through its Secretary cum Director General of Posts, Dak Bhawan, Sansad marg, New Delhi-110116.
2. Chief Post Master General, Odisha Circle, At/PO-Bhubaneswar, Dist-Khurda-751001.
3. Director of Accounts (Postal), Mahanadi Vihar, PO-Naya Bazar, Dist-Cuttack-753004.
4. Superintendent of Post Offices, Cuttack South Division, At-P.K.Parija Marg, Post-Cuttack GPO, Dist-Cuttack-753001.

.....Respondents

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.B.P.Nayak, counsel

Heard & reserved on : 9.9.2019

Order on : 18.9.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this OA seeking the following reliefs:-

"In view of the facts stated above, it is humbly prayed that Hon'ble Tribunal may be pleased to quash Annexure A/1 & A/6 and direct the respondents to release all retiral dues with due interest and cost.

And any other order(s) as the Hon'ble Tribunal deems just and proper in the interest of justice.

And for this act of kindness, the applicant as in duty bound shall remain ever pray."

2. The applicant claims that while working as Sub Postmaster (in short SPM) in Chatia post office under the respondent-department, he was issued a charge-sheet dated 22.2.2008 (Annexure-A/1) on the eve of his retirement on 29.2.2008. He represented the respondents to finalize the proceedings and on 19.5.2012 (Annexure-A/5), he represented for release of his leave salary since he had not been paid any retirement benefits due to the pending disciplinary proceedings. Being aggrieved by the delay in disposal of the proceedings, he has filed this OA with prayer to quash the charge-sheet and the letter dated 22.9.2014 (Annexure-A/6) by which the disciplinary authority has

communicated his disagreement note to the report of the Inquiry Officer (in short IO).

3. The grounds urged in the OA are that the charge-sheet was issued just before his retirement, for an incident which occurred more than 4 years prior to the date of charge-sheet. The applicant has relied on the judgment of the Principal Bench in OA No. 278/2002. In which, under similar circumstances, the charge-sheet was quashed. The delay and laches in the disciplinary proceeding violated the guidelines of the respondents to complete such proceedings within a stipulated period. It is stated that the applicant has not caused any delay and not objected to the inquiry to find out the truth. It is averred that the respondents have not finalized the same to harass the applicant.

4. The Counter filed by the respondents stated that the applicant while working as the SPM in Chatia Sub-Post Office (in short SO) from 4.7.2003 to 29.2.2008 did not attend to the duty and committed various irregularities as alleged in the charge-sheet. The applicant had sanctioned withdrawal of money from some of the savings bank account without verifying the passbook or checking the passbook balance with the ledger balance, as the passbook required to be accompanied with the proposal for withdrawals. It is stated that for such gross negligence and dereliction of duties, the applicant was proceeded against under the rule-14 of the CCS (CCA) Rules, 1965 read with the rule 9 of the CCS (Pension) Rules, 1972 after his retirement (in short 'Rules').

5. The applicant has not filed the Rejoinder. An additional affidavit has been filed by the applicant on 18.3.2019 informing that the principal offender for the misappropriation in Rudrapur BO i.e. the then GDSBPM, has been acquitted from the criminal cases against him in the year 2016.

6. Heard learned counsel for the applicant, who has also filed his written submissions. It was submitted by the learned counsel that the delay in this case has prejudiced the applicant. It is further stated in the written submissions that the allegations against the applicant in the charge-sheet in Article I and II of the charge-sheet pertained to the dates prior to 4.7.2003 when he first joined as SPM in Chatia SO, for which the charge-sheet can be termed as vague and false. It is also stated that there is inordinate delay in of more than six years on the part of the disciplinary authority on the report of the IO, which was received in the year 2008. Learned counsel for the applicant has enclosed a copy of the Government of India's decisions after the rule 15 to

substantiate his submission that there is a time limit of three months for taking a decision on the inquiry report, which has not been done in this case.

7. Learned counsel for the respondents was also heard. He broadly reiterated the grounds taken in the Counter stating that the applicant was responsible for the misappropriation in Rudrapur BO caused by the principal offender since he did not follow the procedure as laid down under the Manual or the guidelines of the DG, Posts.

8. We have perused the pleadings on record and considered the submissions by learned counsels for both the parties. It is seen that there was no interim order of the Tribunal to prevent the respondents to take any decision in the disciplinary proceeding against the applicant till 20.11.2014, when the respondents were directed not to take any further action on the basis of the notice dated 22.9.2014 (Annexure-A/7) without leave of the Tribunal. We are concerned to see that the report of the IO was kept pending at the level of the respondent no. 4 for about six years before he communicated the disagreement note on 22.9.2014 (A/7) and no reason for such delay has been furnished by the respondents in their pleadings. The applicant has raised the question of delay in para 4.4 and para 5.2 of the OA. In reply to these averments in the OA, the Counter filed by the respondents does not clarify the issue of delay or the issue of charge-sheet for the period prior to the posting of the applicant as Chatia SO, raised in para 4.4 and 5.2 of the OA.

9. Learned counsel for the applicant has enclosed copy of the instructions of Government of India dated 8.1.1971, which states as under:-

"(8) Time-limit for passing final orders on the inquiry report- The feasibility of prescribing a time-limit within which the Disciplinary Authority should pass the orders on the report of the Inquiry Officer, and requiring that authority to submit a report to the next higher authority in cases where the time-limit cannot be adhered to, explaining the reasons therefor, was examined. It is felt that, while both in the public interest as well as in the interest of employees no avoidable delay should occur in the disposal of disciplinary cases, it is necessary that sufficient time is available to the disciplinary authority to apply its mind to all relevant facts which are brought out in the inquiry before forming an opinion about the imposition of a penalty, if any, on the Government servant. While, therefore, it has to be ensured that fixing of any time limit on the disposal of the inquiry report by the disciplinary authority by making a provision in this regard in the CCS (CCA) Rules should not lead to any perfunctory disposal of such cases, taking all relevant factors into consideration it is felt that in cases which do not require consultation with the Central Vigilance Commission or the UPSC, it should normally be possible for the disciplinary authority to take a final decision on the inquiry report within a period of three months at the most. In cases where the disciplinary authority feels that it is not possible to adhere to this time limit, a report may be submitted by him to the next higher authority indicating the additional period within which the case is likely to be disposed of and the reasons for the same. In cases requiring consultation with the CVC and the UPSC also, every effort should be made to ensure that cases are disposed of as quickly as possible.

[GI, C.S. (Dept. Of Per.), O.M. No. 39/43/70-Ests.(A) dated the 8th January, 1971]."

10. From above, it is clear that the Government of India's instructions clearly stipulate a time-limit of three months after receipt of the Inquiry report. In this case, the IO's report was issued by the IO on 18.10.2008 and the disciplinary authority has passed subsequent orders under the rule 15(1) with the disagreement notes on 22.9.2014, i.e. after about six years from the date of issue of the IO's report, as revealed from the copy of the report at Annexure-A/6 of the OA. There is no whisper in the Counter about the reasons for such abnormal delay in taking a decision on the report of the IO, particularly when the applicant had retired and his retirement benefits had been withheld as per the rules due to pendency of the disciplinary proceedings. Although this OA was filed by the applicant on 21.5.2012 and by that time the report of the IO was with the disciplinary authority since October, 2008 and the applicant had retired since 2008, still no decision was taken by the disciplinary authority on the report of the IO till 22.9.2014 when the impugned order communicating the disagreement note to the applicant was issued. It is a clear violation of the instructions of Government of India vide the OM dated 8.1.1971 as stated above.

11. The question of delay in disciplinary proceedings was examined by Hon'ble Apex Court in the case of Prem Nath Bali vs. Registrar, High Court of Delhi & Anr. Civil Appeal No. 958/2010 and it was held as under:-

"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 emphasized 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."

12. In the case of State of Andhra Pradesh Vs. N. Radhakrishnan 1998 (4) SCC 154, on the question of delay in conducting the disciplinary proceedings, it was held by Hon'ble Apex Court as under:-

"It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. the essence of the matter is that the court has to take into consideration all relevant factors and to balance and weight them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. if the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse consideration."

13. Again in the case of P.V. Mahadevan Vs. M.D., T.N. Housing Board 2005 (6) SCC 636, it was held by Hon'ble Apex Court as under:-

"Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. 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."

14. In this case, apart from delay it is noticed that the charges also contain some transactions which related to prior to the date of joining of the applicant as SPM, Chatia SO on 4.7.2003 and the respondents have not explained in the charge-sheet or in their pleadings what is the involvement of the applicant in those transactions pertaining to the date prior to his joining as SPM, Chatia SO. Specific averments in para 4.4 of the OA in this regard, have not been

explained by the respondents in their pleadings. Hence, it is clear that the charges framed against the applicant are considered to be vague.

15. It is further noticed that the charge-sheet against the applicant was issued on 22.2.2008, which is about seven days prior to the retirement of the applicant from service on 29.2.2008. If the irregularities were found against the applicant from 2003 and 2004, nothing prevented the respondents to initiate the proceedings as per the rules within a reasonable time from the date of the alleged misconduct. As observed in the judgments of Hon'ble Apex Court in different cases, delay in initiating and conducting the disciplinary proceedings can prejudice the charged officials and it will not ensure reasonable opportunity to the charged officials to defend the charges. Such delay in initiating the proceedings and the delay of about six years from the date of submission of the report of the IO by the disciplinary authority have not been explained by the respondents. As observed by Hon'ble Apex Court in the case of N. Radhakrishnan (supra), the unexplained delay in passing order on the inquiry report for about six years has caused prejudice to the applicant, who had retired since 2008.

16. In the facts and circumstances and applying the ratio of the judgments as discussed above, we have no hesitation to hold that the applicant has been prejudiced due to conduct of the disciplinary authority, who did not pass any order on the report of the IO received by him in October, 2008 till September, 2014, in spite of the fact that the applicant represented repeatedly for finalizing the disciplinary proceedings and to disburse his retirement benefits and such action of the disciplinary authority has vitiated the disciplinary proceedings. Hence, the impugned charge-sheet dated 22.2.2008 (Annexure-A/1) and the impugned order dated 22.9.2014 (Annexure-A/6) communicating the copy of the IO's report with the disagreement note are not sustainable and hence, these are set aside and quashed. The respondents are directed to release the retirement benefits payable to the applicant as per the rules alongwith an interest at the rate of 9% per annum on the outstanding DCRG due to be paid to the applicant from 1.3.2008 till the date of actual payment within three months from the date of receipt of a copy of this order. The respondents are also directed to recover the interest paid to the applicant from the concerned officer who will be found to be responsible for delay in passing the order on the inquiry report of the IO, by following due process of law.

17. The OA is allowed as above. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

