

Unreportable
* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ WP (C) No. 6715-6716 of 2006

% *Reserved on : May 09, 2008*
Pronounced on : July 04, 2008

Lt. Governor of Delhi & Anr.

. . . Petitioners

through :

Ms. Avnish Ahlawat with
Ms. Latika Chaudhary, Advocates

VERSUS

Narain Singh

. . . Respondent

through :

Mr. Ashwani Bhardwaj, Advocate

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. The respondent worked as Sales Tax Officer/SREO in the Sales-Tax Department of the Govt. of NCT of Delhi (petitioners herein). He has since retired from service. In his capacity as Sales Tax Officer, he was passing assessment orders in respect of sales tax returns filed before him by different assesses. The assessment orders passed in respect of one dealer, namely, M/s. New Friends and Company (Pvt.) Ltd., recoiled on him inasmuch as it led to the issuance of charge sheet dated 22.4.2004 by the petitioner under Rule 14 of the CCS (CCA) Rules. Investigating Officer was appointed, who initiated

the proceedings sometime in November 2004. While this inquiry was still in progress, the respondent filed OA before the Central Administrative Tribunal challenging the order of holding inquiry against him on the ground of delay. This application has been allowed by the Tribunal vide its orders dated 7.2.2006 and challenging that order the present petition has been filed by the employer.

2. Before proceeding with the respective contentions, it would be necessary to take stock of the facts in some detail.
3. The respondent herein was appointed in Grade-II of Delhi Administration Subordinate Services with effect from 27.8.1969. In May 1993, he was promoted as DANICS (Delhi and Andaman Nicobar Islands Civil Services) Officer and was posted in Sales Tax department as Sales Tax Officer. While functioning as such in Ward No. 69, Delhi, the respondent assessed the sales tax returns of M/s. New Friends & Company (Pvt.) Ltd. in the assessment years 1990-91, 1991-92, 1992-93 and 1993-94. Though no specific dates of passing these assessment orders are given, it is clear that these assessment orders were passed between the year 1991 and 1994. Further, on 21.11.1996, he also prescribed a surety of Rs.1 lakh under each enactment, i.e. Delhi Sales Tax Act etc., compliance whereof was to be made by the assessee by 3.12.1996. As per the department, the respondent did not take timely action to get the surety or cancel the registration certificate of the assessee/dealer.

4. After a lapse of some years, the respondent was issued memo dated 28.5.2003 asking him to explain his conduct in respect of the aforesaid assessments as well as inaction for failure to give the security. Insofar as assessments are concerned, the allegation was that in connivance with the said dealer the respondent allowed him to change his returns by submitting revised returns resulting in huge losses to the public exchequer with respect to sales tax. As far as order of surety of Rs.1 lakh under each Act is concerned, as already pointed out above, allegation was that he did not take action against the surety nor took any steps to cancel the registration certificate of the dealer. He was asked to explain this conduct. At that time he was working as Asst. Commissioner, Rohini-I, Municipal Corporation of Delhi. The respondent submitted his reply on 13.6.2003, which was not found satisfactory and, therefore, the disciplinary authority decided to hold full-fledged inquiry against the respondent. Accordingly, charge memo dated 22.4.2004 was issued leveling the following charges :-

“Article I

While functioning as Sales Tax Officer in ward No. 69, Shri Narain Singh committed misconduct and irregularities in assessing the dealer, M/s. New Friend & Co. (P) Ltd., 5, Bhama Shah Marg, Delhi for the assessment years 1990-91 to 1993-94, in as much as he failed to safeguard the government revenue by allowing the dealer to revise the returns at the time of assessment, each year, by reducing the sales to registered dealers and by enhancing taxable sale at the time of assessment, in violation of section 21(4) of DST Act, 1975.

Article II

Shri Narain Singh framed the assessment order with malafide intention and ulterior motive for the year 1992-93, as

he failed to take cognizance of rate of tax revised from 10% to 12% w.e.f. 9.2.93 on watches (*sic*). The dealer was re-assessed by another Assessing Authority and a demand of Rs.1,34,434/- under DST Act was created.

Article III

Shri Narain Singh prescribed a surety of Rs.1 lac under each Act on 21.11.96 and compliance was to be made by 3.12.1996. Showcause notices under section 18 of DST Act were also issued to the dealer but no timely action was taken by him to get the surety or cancel the Registration Certificate of the dealer. Later on the dealer filed surety dated 1.9.97 and after accepting the surety, he issued statutory forms to the dealer.

Thus, Shri Narain Singh, former Sales Tax Officer had shown negligence and dereliction to duty and worked with malafide intention and ulterior motive. He acted in a manner unbecoming of a government servant and in violation of provisions of rule 3 of the CCS (Conduct) Rules, 1964.”

5. The respondent submitted his reply dated 27.5.2004 denying the charges. After considering the said reply, the disciplinary authority chose to proceed with the inquiry and issued orders dated 30.6.2004 appointing the Investigating Officer to conduct the inquiry as well as the Presenting Officer. The Investigating Officer fixed date of hearing on 30.11.2004 with the direction that inquiry would be conducted on day-to-day basis. At this stage, the respondent approached the Tribunal by means of an application under Section 19 of the Administrative Tribunal Act, 1985 challenging the holding of the inquiry, *inter alia*, on the ground that such an inquiry at this belated stage could not be conducted. It was pleaded that the petitioners could not reopen these assessments after 8-10 years of making those assessments and no reason whatsoever was communicated to explain abnormal delay which prompted the petitioners to reopen the assessment and initiate disciplinary proceedings and such an act was

in violation of the judgments of the Supreme Court in *State of Madhya Pradesh v. Bani Singh & Anr.*, 1990 (2) SLR 798, *State of Andhra Pradesh v. N. Radhakrishnan*, JT 1998 (3) SC 123, etc.

6. The Tribunal has accepted the plea of the respondent herein vide its judgment dated 7.2.2006. Relying upon and referring to the aforesaid judgments as well as some other judgments of the Apex Court, the Tribunal opined that there was no explanation given by the petitioner herein to initiate the proceedings at such a belated stage. On this ground, while quashing the decision of the petitioner to hold the inquiry proceedings, the Tribunal observed as under :-

“14. We do not dispute that if it is a case of alleged detection, like that of the Central Bureau of Investigation or any investigating agency was looking into the matter and that they found only after inordinate delay of the acts, it would be a different matter. But, in the present case, there is no such indication in the written statement as to when the same was detected. It is not explained certainly when it was detected and as to why it took years to do the needful. Acts of the applicant pertains for the periods from 1991 to 1994 and 1996 and the chargesheet has been issued in the year 2004. He is therefore, justified in complaining that his claim is prejudiced because after such a long time, it is difficult for him to contest the matter. Not only that the respondents themselves had not tried to explain as to how the delay occurred and at what stage it occurred. Accordingly, merely stating that after detection the Central Vigilance Commission had to be consulted will not be a good explanation. We are of the considered opinion that in the peculiar facts, delay has not at all been explained. After 7 years of the alleged misconduct, it would be improper for us to allow the departmental proceedings to continue.

15. At this stage, the learned counsel for the applicant has relied on the Judgement passed by this Tribunal in OA No. 2386/2004 (**Sh. B.S. Yadav v. Lt. Governor, Govt. of NCT of Delhi & Others**) where an identical explanation had been offered by the respondents to condone the delay in initiation of the disciplinary proceedings and the same was rejected. We respectfully agree with the view taken by the learned Division Bench and are of the considered opinion that the present case is squarely covered by the said decision by a recent decision of

the Hon'ble Supreme Court in the case of **P.V. Mahadevan (supra).**"

Impugning this judgment, the present writ petition is filed by the petitioners.

7. The main contention advanced by learned counsel for the petitioner is that there is no hard and fast rule to the effect that delay is to be fatal in all such cases. Each case has to be examined on its own facts and only where the employer is not able to explain the delay or there is a prejudice caused to the delinquent official in defending himself in the inquiry that the action to hold inquiry is to be interdicted. It was also submitted that there were very serious charges against the respondent herein and, therefore, the respondent could not have been let off. Learned counsel for the petitioner also submitted that due and proper explanation was in fact given by the petitioner for initiating the action after some years. In this behalf it was submitted that it was only in the year 1997 that lapse on the part of the respondent came to the notice of the Deputy Secretary (Vigilance), Directorate of Vigilance, who directed on 10.9.1997 that the matter be examined at the level of Deputy Commissioner (Sales Tax). The Deputy Commissioner submitted his report on 17.4.1998. On the basis of this report, the matter was got re-assessed to determine the extent of involvement of the respondent. Re-assessment by the Assessing Authority and the process of examination of the case took some time. After the re-assessment was done, matter was sent to the Central Vigilance Commission for its opinion.

It took some time in obtaining this opinion. In this manner, almost five years passed in collecting the complete data, re-assessing the report of each year and ascertaining the losses and, therefore, on 28.5.2003, memo was issued to the respondent to explain his conduct. After his explanation was found to be unsatisfactory, charge memo dated 22.4.2004 was issued. According to Ms.Ahlawat, it furnished sufficient explanation in a case like this where the investigation was bound to take some time as there was manipulation in the records causing loss to the public exchequer and, thus, in-depth inquiry, re-assessment of all the cases of four years to pinpoint the fault of the delinquent official took some time.

8. Learned counsel for the respondent, on the other hand, countered the aforesaid submissions on the basis of reasoning given by the Tribunal. He also pointed out that the Tribunal had relied upon its earlier judgment dated 28.7.2005 passed in OA No. 2386/2004 in the matter of *B.S. Yadav v. Lt. Governor of Delhi & Ors.*, wherein identical explanation offered by the department was rejected. He submitted that WP (C) No. 409-11/2006 challenging the said decision of the Tribunal was dismissed by this Court vide its judgment dated 24.9.2007. He, therefore, submitted that there is no reason to take a contrary view in this case.

9. The legal principles dealing with such cases of belated inquiries have now been settled by catena of judgments. In a recent judgment pronounced by a Division Bench of this Court, of which one of us

(A.K. Sikri, J.) was a Member, dealt with this aspect in detail. The case in question was *P.K. Mathur v. Union of India & Anr.*, decided on 4.6.2008. Our purpose would be served in reproducing the following extracts from that judgment which contain law on this issue :-

“15. The issue again cropped up before the Supreme Court in a recent judgment in the case of **The Government of Andhra Pradesh and Ors. Vs. V. Appala Swamy, 2007(3)SCALE 1**. It was observed in the said case that no hard and fast rule can be laid down in respect of those enquiries where delay has occurred. Each case will be considered on its own facts. In that case the Inquiry Officer submitted his report dated 8.1.1992 and before any action could be taken thereupon the delinquent officer had retired on 30.6.1992. The show cause notice was issued as to why 50% of the provisional pension be not withheld. During the pendency of these proceedings the respondent had filed application before the State Administrative Tribunal which directed the State Govt. to conclude the departmental proceedings within a period of three months. This order was challenged by the respondent/employee before the High Court and the High Court directed the State Government to release full pension with interest @ 12% per annum. This direction of the High Court was set-aside by the Supreme Court. In the process, after taking note of various judgments and distinguishing its earlier judgment in **M.V.Bijlani case (supra)**, the Court held as under:

"It may be true that there was some delay on the part of the appellants to conclude the departmental proceedings. The Tribunal did not accept the contention raised on behalf of the respondent that only by reason thereof the entire departmental proceedings became vitiated. The High Court thus, in our opinion, was required to consider the question as to whether, in the facts and circumstances of this case, particularly in view of the nature of the charges levelled against the respondent as also the explanation offered by the appellants in this behalf, it was a case where the entire proceedings should have been quashed. The High Court in its impugned judgment did not address itself the said question.

It, as noticed hereinbefore, from the very beginning proceeded on the premise that the pension was payable to the respondent on his retirement. The High Court furthermore did not determine the question as to whether a proceeding could have been initiated against the respondent in terms of Rule 9 of the Andhra Pradesh

Civil Service (CCA) Rules, 1963. If it is held that the second proceeding was maintainable in terms of the extant rules, ordinarily, the Tribunal or the High Court should not have interfered therewith.

So far as the question of delay in concluding the departmental proceedings as against a delinquent officer is concerned, in our opinion, no hard and fast rule can be laid down therefore. Each case must be determined on its own facts. The principles upon which a proceeding can be directed to be quashed on the ground of delay are: (1) where by reason of the delay, the employer condoned the lapses on the part of the employee; (2) Where the delay caused prejudice to the employee. Such a case of prejudice, however, is to be made out by the employee before the Inquiry Officer".

16. We may also quote a passage from Supreme Court judgment in the case of **State of A.P. Vs. N.Radhakishan (1998) 4 SCC 154** wherein the Supreme Court held that it was 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. The delinquent employee challenging enquiry on the ground of delay has to make out a case that delay has caused prejudice to him in defending the case before the Inquiry Officer/Disciplinary Authority. Observations in this respect are contained in the following passage:

"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 the relevant factors and 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 the 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 the 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 disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.”

17. At this stage we may also note Division Bench judgment of this Court in the case of **Airports Authority of India Vs. M.A.Khan, 2006 (4) AD (Delhi) 693** and the judgment in the case of **Municipal Corporation of Delhi and Anr. Vs. R.V.Bansal, 2006 IV AD (Delhi) 185** cited by counsel for the respondent before us. These judgments reiterate the principle that delaying in issuing charge would not be fatal if charges are of serious nature. However, the present case is not of that nature.”

10. In fact, it cannot be disputed that the learned Tribunal also was not unmindful of the aforesaid principle of law as some very judgments have been discussed by the learned Tribunal as well in explaining the position in law. It is the application of these principles to the facts of this case which calls for consideration and we have to decide as to whether the principles are rightly applied by the Tribunal or not.
11. It is clear from the observations made by the learned Tribunal contained in para 14 of the judgment, which has already been reproduced above, that the petitioner did not furnish any explanation as to when the alleged irregularity was detected and why it took years to do the needful. The explanation which is given in reply to the OA filed by the respondent, gist whereof we have noted above while taking note of the submission of learned counsel for the petitioner, is as follows :-

“...The lapses on the part of the applicant was notified only on 10.9.1997 when the Dy. Secretary (Vigilance) Directorate of Vigilance suggested that the matter be got examined at the level of Dy. Commissioner, Sales Tax. Accordingly, the matter was entrusted to Dy Commissioner (L&J) who gave his report only on 17.04.1998. After receipt of the report role of the answering authority is concerned to determine the extent of his involvement was examined. The cases were got reassessed by other Assessing Authorities. This process and examination of cases took time and thus there is no delay on the part of Department in initiating charge sheet to the applicant. It is submitted that after detection of any irregularities/lapses committed by the delinquent, processing of the case takes some time. For this purpose, documents are collected, version of the delinquent is obtained and examined by the concerned department and advice of CVC is taken before issuing the charge-sheet. It is submitted that completion of aforesaid formalities took time.”

12. In view of the aforesaid specific averments made in the reply to the OA, it cannot be said that no explanation was given by the petitioner. Though we feel that the petitioner should have given specific details as to how much time was consumed at each stage, i.e. after the receipt of the report on 17.4.1998; when the cases were got re-assessed; when the re-assessment proceedings concluded by the assessing authorities; thereafter when the disciplinary authority sent the matter to the CVC; and date on which the report of CVC etc. was received. It would have been better if these details are given, more so when from the date of report, i.e. 17.4.1998, till the date of issuing the memo, i.e. 28.5.2003, period of five years is consumed. At the same time, it cannot be said that the aforesaid process would have consumed considerate time. The Tribunal has only observed that the only explanation furnished by the petitioner was that the matter was sent to CVC for advice, which was not sufficient explanation as per the Tribunal. However, what is ignored is that

after the report dated 17.4.1998, assessments were re-opened. Re-assessment in respect of four years was to be undertaken. Such re-assessment cannot be done without notice to the assessee and, therefore, this process would consume some time. Keeping in view all the steps which are required to be taken before issuing the charge sheet, we are of the opinion that it is not a case where delay is not explained. Furthermore, the respondent has not alleged that because of such a delay any prejudice would be caused to the respondent in conducting his defence.

13. Still, we may not have interfered with the discretion exercised by the Tribunal, as explanation for delay furnished by the petitioner is lacking in precise details. However, coupled with the fact that some explanation is offered (as narrated above), the more glaring reason, viz. charges leveled against the respondent are of very serious nature. There is an allegation that he allowed the dealer to revise the sales tax returns at the time of assessments, each year, by reducing the sale to registered dealers and by enhancing taxable sale at the time of assessment. It is also alleged that he framed the assessment order with *mala fide* intention and ulterior motive for the year 1992-93. Charge No.3 is also not less serious. As noted below, a Division Bench of this Court has held that when the charges are of serious nature, inquiry should not be quashed on the ground of delay. In *R.V. Bansal* (supra), this Court observed as under :-

“13. Thus, in **Secretary to Government and another Vs. K. Munniappan**, (1997) 4 SCC 255 (vide paragraph 7), the Supreme Court observed that even though there is a delay in

issuing the charge-sheet, the charge-sheet should not be quashed where it was a case of embezzlement of public funds and a threadbare investigation was required.

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16. In **Deputy Registrar, Cooperative Societies, Faizabad Vs. Sachindra Nath Pandey and Others**, (1995) 3 SCC 134, the Supreme Court observed that where the charges are very serious, viz., misappropriation etc., mere lapse of a long period (16 years in this case), from the date of commencement of the enquiry was not a sufficient ground to quash the inquiry.

17. In **State of Punjab and others Vs. Chaman Lal Goyal**, (1995) 2 SCC 570, even though there was a delay of 5½ years in issuing the charge-sheet, the Supreme Court held that same should not have been quashed. One of the reasons for holding this as mentioned in paragraph 10(ii) of the aforesaid judgment was that the charges were very grave. Another reason as mentioned in paragraph 10(iii) of the said judgment was that there was no allegation in the writ petition that any of the defence witnesses were dead or unavailable. In the present case also, there is no allegation that any of the witnesses which the petitioner wanted to produce in the enquiry were dead or unavailable.

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21. In our opinion, ordinarily a charge sheet should not be quashed, particularly when the charges relate to financial irregularities or other serious misconduct and the writ petition challenging the same should be dismissed as premature. Whatever the accused employee has to say in his defence, he can say during the enquiry. It is not proper for the Court to exercise its writ jurisdiction at this stage, particularly when there are serious allegations of financial irregularities, such as passing of bills beyond limit within a period of 1½ month, when the petitioner was in charge and in supervision of the work. In fact, it has been stated that though as per the terms of the contract the date of starting was to be 27.11.1984, the petitioner had made payment to the contractor of amount of Rs.15,58,514/- even before that date. In cases where there are charges of financial irregularities it usually takes a long time to collect the evidence, and in fact very often the misconduct comes to light after several years of the said irregularities. Hence in such cases a charge-sheet should not be quashed on the ground of delay.”

14. Insofar as the judgment of the Tribunal in the case of **B.S. Yadav** (supra) and dismissal of writ petition thereagainst by this Court is concerned, that may not come to the rescue of the petitioner in the

instant case. While dismissing the writ petition in that case, this Court observed that the Tribunal had found, as a matter of fact, that there was no explanation for delay and even in the writ petition the delay in serving the charge sheet had not been explained. It was also not argued that charges are of serious nature. That was the reason that this Court refused to exercise its power of judicial review under Article 226 of the Constitution of India.

15. We, therefore, set aside the judgment of the Tribunal and as a consequence thereof dismiss the OA filed by the respondent herein. There shall, however, be no order as to costs.

(A.K. SIKRI)
JUDGE

(J.R. MIDHA)
JUDGE

July 04, 2008
nsk