

Reportable
* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ WP (C) No. 6793 of 2007

% Reserved on : April 29, 2008
Pronounced on : July 04, 2008

Dhanai Prasad . . . Petitioner

through : Mr. M.K. Bhardwaj with
Ms. Priyanka Bhardwaj, Advs.

VERSUS

Commissioner, Kendriya Vidyalaya Sangathan & Anr. . . . Respondents

through : Mr. S. Rajappa, Adv.

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 inquiry started against the petitioner, pursuant to the charge sheet issued to him vide memo dated 16.5.1989, remains inconclusive till date. As would be noted hereafter, after the said charge sheet the respondent department showed slackness in completing the inquiry and after 20.2.1992 no date was fixed for almost 8 years. When the respondent sought to resume the inquiry proceedings in the year 2000, the petitioner resisted this move of the respondent in continuing with the inquiry on the ground that it is over-delayed. For this purpose, the first OA was filed in the year 2000, then in the

year 2004 and again in the year 2007. In the last mentioned OA, order dated 27.7.2007 is passed directing the respondents to complete the inquiry within three months. Challenging this order, the present writ petition is filed.

2. The aforesaid opening paragraph gives the flavour of issue involved. With these introductory remarks, we now proceed to stake stock of the facts in some detail.
3. In the year 1989, when the petitioner was working as Head Clerk at Kendriya Vidyalaya, Kanpur Cantt., he was served with charge sheet dated 16.5.1989. The allegation in the said charge sheet was that a requisition sent to the Employment Exchange for certain Group C & D posts carried certain amendments, which corrections were in no manner against the qualifications, etc. prescribed for the said post. Allegations were made on the basis of such requisitions. The precise nature of charges in this behalf, as contained in the said charge memo, reads as under :-

“ **ARTICLE I**

That the said Sh. Dhanai Prasad while functioning as Head Clerk, Kendriya Vidyalaya, No.2, Chakori-Kanpur was given the work pertaining to preparation of requisitions of vacant posts of UDC, LDC and Group ‘D’ employees and handling of establishment work of Vidyalaya. While Shri Dhanai Prasad prepared the requisitions for the employment exchange – Kanpur for the posts of LDC against the post of UDC on adhoc basis, Group ‘D’ night watchman, Peon and sweeper on adhoc basis in his own handwriting and got it signed by the Principal, KV No.2, Chakori on 26.10.88. But before sending the said requisitions after obtaining the signature of the Principal, Sh. Prasad made certain additions, alterations and interpolations in column 7 of the requisition forms sent to the employment exchange Kanpur on 31.10.88

keeping the office copy of the said requisition in its original shape. In this way following alterations additions interpolations were committed by Sh. Dhanai Prasad.

S.No.	Details of Requisition Forms	Column	Original Recording	Altered Recording
1.	LDC against the post of UDC adhoc basis	7 (qualification required) 7.1 Essential 7.2 Desirable	High school/High secondary/BA Including age 10-25 Hindi/Engl. Typing speed 25 and 30 words p.m. Official Exp. If any Govt. office will be preferred on due consideration.	High school/High secondary preference BA or MA Including age 18-25, 5 year will be relaxed in case of SC/ST candidate Hindi/Eng. Typing speed 30 and 40 words p.m. Official Exp. If any Central Govt. office will be preferred on due consideration.
2.	Group 'D' (Night watchman) on adhoc basis	7.2 Desirable	-	Working knowledge of in KVs will be preferred most or educational any institution of 2 years experience.
3.	Gropu 'D' (Peon) on adhoc basis	7 7.1 Essential 7.2 Desirable	Including age 18-25 Institutional knowledge -	Including age 18-30 Working knowledge in any educational institution of peon work at least 2 years experience. Experience of in KVs will be preferred most or any educational institution.
4.	Group 'D' (sweeper)	7.2 Desirable	-	At least one year experience from

Thus, Sh. Dhanai Prasad committed an act of unbecoming behavior and failed to maintaining absolute integrity violating the rules 3(1)(i)(iii) of CCS (Conduct) Rules 1964 as applicable to Kendriya Vidyalaya Sangathan employees as per article 55 of the Education Code of Kendriya Vidyalaya Sangathan.

ARTICLE II

That during the aforesaid period and while functioning in aforesaid office the said Sh. Dhanai Prasad made certain additions alternations and interpolations in two letters marked S.No. 5 and 7 in annexure 3 one in Hindi & an other in English sent to the employment exchange-Kanpur. Sh. Prasad changed

the date of both the letters from 19.11.88 to 9.12.88 and made additions in the last line of Hindi letter regarding “.....” (*typed in Hindi*) along with the forged initials of Principal. He also made certain changes in the English letter viz. cutting LDC and altering Nov. 25 to Dec. 15, whereas there is no change in the office copies of the said letters. The said letters were also delivered to Employment Exchange on 16.12.88. Thus he is responsible for lack of integrity negligence to duty and unbecoming behaviour violating rule 3(1)(i)(ii)(iii) of CCS (Conduct) Rules, 1964 as applicable to the Kendriya Vidyalaya Sangathan Employees as per article 55 of the Education Code of Kendriya Vidyalaya Sangathan.

ARTICLE III

That during the aforesaid period and while functioning in the aforesaid office the said Sh. Dhanai Prasad sent a totally altered letter dated 23.1.89 under forged signature of Principal Sh. SS Sharan on 30.1.89 containing different contents to employment exchange-Kanpur, when compared with the original document. According to the original letter dated 23.1.89, 2 years experience qualification for the post of group ‘D’ was asked to be deleted against column No.1. Age limit was fixed from 18 years to 25 years relaxable to SC/ST candidates. Sh. Dhanai Prasad in his forged letter wrote that only those candidates who had worked in Central School Organisation for any period even for one week should be sent. The original letter marked S.No. 8 of Annexure 3 had been delivered to the employment exchange on 23.1.89 whereas the forged letter had been delivered to Employment Exchange on 30.1.89. Thus he is responsible for negligence of duty & lack of integrity and unbecoming behaviour violating rule 3(1)(i)(ii)(iii) of CCS (Conduct) Rules, 1964 as applicable to the Kendriya Vidyalaya Sangathan Employees as per article 55 of the Education Code of Kendriya Vidyalaya Sangathan.”

We may note that even before issuance of this charge sheet, the petitioner was placed under suspension with effect from 2.2.1989 by the Principal of the School. Suspension of the petitioner was, however, revoked vide orders dated 16.11.1989 by the Assistant Commissioner to whom he had appealed against the order of suspension. During the course of inquiry, the petitioner was also promoted to the post of Superintendent with effect from 19.12.1989.

4. Though charge sheet was served on 16.5.1989, for almost 1½ years no Inquiry Officer was appointed and, therefore, the inquiry proceedings did not commence till 11.10.1990, when one Shri P.K. Tiwari, Education Officer, was nominated as Inquiry Officer. It is not clear as to what happened between 1990 and 1992. But it appears that no progress worth the name was made during this period and the Inquiry Officer fixed the hearing at Kanpur on 19/20.2.1992 vide his OM dated 27.1.1992, which was still of preliminary nature. On this date, the petitioner pressed his request for supply of documents. However, only three documents were supplied to him. We may note that the petitioner had made request in this behalf way back on 29.5.1989 vide his application to the disciplinary authority. He had demanded, amongst other, statement of witnesses and copy of preliminary fact finding inquiry report. Since no documents were supplied, he had sent reminder dated 3.7.1989, which also remained unresponded.

No hearing was fixed after 19/20.2.1992 for more than 8 years. It is only vide order dated 31.7.2000 another Inquiry Officer was appointed to proceed further with the inquiry. By that time, 11 years had passed since the issuance of charge sheet and the case was yet to make any progress. The petitioner, in these circumstances, felt that there could not have been an inquiry after 11 years. He, therefore, filed an appeal dated 13.8.2000 against the resumption of the said inquiry which, according to him, had become time barred. When no reply was received, OA No. 1986/2000 was filed. In this OA, the

Tribunal passed interim order dated 27.9.2000 staying the inquiry. Vide order dated 18.11.2000, the said OA was dismissed with liberty to the petitioner to move again.

5. It is further stated by the petitioner that when he was posted at Udhampur as Superintendent, another letter dated 18/19.3.2004 was served upon him by the Assistant Commissioner, Jammu reviving the same inquiry and this time one Shri Jaideep Das was nominated as Investigating Officer. This move of the respondent propelled the petitioner to file another OA being OA No. 877/2004. This OA was disposed of on 12.4.2004 whereby the Tribunal directed the disciplinary authority to take into consideration the facts raised by the petitioner and provide redressal in accordance with law. The petitioner accordingly, through his counsel, made representation before the disciplinary authority. His grievance was that no action was taken thereupon. In the meantime, the petitioner was also deprived of promotion, which had become due, and thus another representation was made by him on 31.3.2005 to know justification in not giving him promotion while his juniors were promoted in the year 2003-04. As this representation was ignored, he filed another representation dated 7.12.2006 reiterating his earlier request. He then moved application taking resort to the provisions of Right to Information Act and only then he came to know that DPC has considered his case and kept the result in *Sealed Cover* on account of pendency of the disciplinary proceedings. According to the petitioner, as no steps were taken for all these years, the inquiry had

stood abandoned and, therefore, his result could not have been kept in *Sealed Cover*. He, therefore, approached the Tribunal again by filing OA No. 264/2007. In this OA his prayer was to quash the departmental proceedings which were pending for more than 17 years and to open the sealed cover giving effect thereto.

6. This OA is disposed of vide impugned judgment dated 27.7.2007 by one paragraph order. The order, in its entirety, is reproduced below:-

“Heard the learned counsel.

2. Protracted disciplinary proceedings are being challenged in this OA. In the light of the fact that the proceedings have been continuing since 1992, we direct disposal of this OA with a direction to the respondents to expeditiously, not more than three months, complete the inquiry, subject to utmost cooperation extended by the application. We also impress upon, as a direction, to the respondents to consider the claim of the applicant for *ad hoc* promotion as Section Officer in view of Government of India’s instructions issued by the DOPT. No costs.”

7. It is manifest that the learned Tribunal, while giving three months’ time to the respondent to complete the inquiry, has not dealt with any of the submissions of the parties. It is notwithstanding the fact that the petitioner had argued that such an inquiry had vitiated after a lapse of such a long period and he had even cited judgments in respect of his submission, as is clear from the reading of the OA itself. The Tribunal is the first adjudicatory authority which undertakes judicial review of the administrative action. It is supposed to deal with the arguments of the parties and pass speaking order. Thus, it was not appropriate for the Tribunal to dispose of the OA by such a

cryptic order, giving direction without taking note of or dealing with the submissions advanced by the parties. We, thus, heard counsel for both the parties after eliciting counter affidavit to the writ petition from the respondents.

8. The principle which governs the issue of belated inquiries hardly needs any elaboration. In nutshell, we may refer to few judgments, which have been taken note of in a judgment rendered by a Division Bench of this Court, of which one of us (A.K. Sikri, J.) was a Member, in WP (C) No. 7982/2007 decided on 4.6.2008 :-

“13.....In the case of **State of Madhya Pradesh Vs. Bani Singh, AIR 1990 SC 1308**, the Supreme Court quashed disciplinary proceedings when it found that there was delay and laches in initiating such proceedings inasmuch as the department though aware of involvement of officer in alleged irregularities, initiated the proceedings against delinquent officer more than 12 years thereafter and no satisfactory explanation for inordinate delay in issuing the charge memo was provided by the State. The relevant observations of the Apex Court in the said judgment are extracted below:

“4. The appeal against the order dt. 16-12-1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned Counsel. The irregularities which were the subject-matter of the enquiry is said to have taken place between the years 1975-1977. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April, 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with

the Tribunal's orders and accordingly we dismiss this appeal.

14. The aforesaid judgment is followed and explained in number of cases. Instead of citing all these cases, it would suffice that we refer to few of them. One such case is **M.V.Bijlani Vs. Union of India and others, (2006) 5 SCC 88**. In that case delay of initiation of disciplinary proceedings by six years and continuance thereof for a period of seven years was held to have resulted in prejudice to the delinquent officer and enquiry was quashed making following observations:

"So far as the second charge is concerned, it has not been shown as to what were the duties of the appellant in terms of the prescribed rules or otherwise. Furthermore, it has not been shown either by the disciplinary authority or the Appellate Authority as to how and in what manner the maintenance of ACE-8 Register by way of sheets which were found attached to the estimate file were not appropriate so as to arrive at the culpability or otherwise of the appellant. The Appellate Authority in its order stated that the appellant was not required to prepare ACE-8 Register twice. The appellant might have prepared another set of register presumably keeping in view the fact that he was asked to account for the same on the basis of the materials placed on records. The Tribunal as also the High Court failed to take into consideration that the disciplinary proceedings were initiated after six years and they continued for a period of seven years and, thus, initiation of the disciplinary proceedings as also continuance thereof after such a long time evidently prejudiced the delinquent officer".

9. In view of the aforesaid legal position, it was for the respondent to at least justify the delay of almost 20 years in dragging the inquiry. We may note that it is not a case where the charge related to some very old period for which inquiry was initiated belatedly. It is a case where act of misconduct attributed to the petitioner relates to the period December 1988 and January 1989, for which charge sheet was given to him in May 1989. Promptness was shown in serving the charge sheet. However, thereafter complete lull is exhibited by the respondents. There is hardly any movement in proceedings with the

inquiry. At every stage there is delay, which can be attributed only to the employer, as is clear from the following :-

- (a) Though the charge sheet was issued on 16.5.1989, it took the disciplinary authority 1 year and 5 months in appointing the Inquiry Officer (IO) and Presenting Officer (PO), which step was taken only vide order dated 11.10.1990.
- (b) Though the first date fixed by the Inquiry Officer vide his letter dated 22.11.1990 for 18th and 19th December 1990 and these dates were postponed on the demand of the petitioner that Scheduled Caste IO/PO be appointed as the petitioner belongs to the Scheduled Caste category, it took 10 months thereafter for the disciplinary authority to appoint another IO and another PO, inasmuch as, the Inquiry Officer and the Presenting Officer were changed vide orders dated 5.9.1991.
- (c) The new Inquiry Officer took four months in fixing the first date by issuing notice dated 15.1.1992. Inquiry was fixed for 18.2.1992, which was adjourned to 19/20.2.1992.
- (d) We have already narrated as to what transpired on that date, namely, on the request of the petitioner he was allowed to inspect three documents, copies whereof were also supplied. After this one date, no further date was fixed for 8 years. In the counter affidavit, no justification at all is given. However, at the time of arguments, learned counsel for the respondent made an attempt to offer an explanation. He pleaded that in a

major development, Kendriya Vidyalaya Sangathan (KVS), AFS Agra was shifted to regional office at Gwalior from the original office at Lucknow. Accordingly, disciplinary records were sent to Gwalior region. Another development took place whereby KVS, AFS Gwalior was shifted to Lucknow region after the closure of Gwalior region during the year 2000. Because of this reason, the Inquiry Officer could not take up the inquiry proceedings.

We have two comments to make while rejecting this plea. First, as pointed out above, no such plea is taken in the counter affidavit. It appears to be an afterthought plea and we get the impression that some excuse is sought to be presented to cover the abnormal delay of 8 years. We are compelled to make these observations because of the reason that no such explanation was put forth even before the Tribunal; Secondly, in any case, we do not find the aforesaid explanation worthy of any credence or justification for delaying the inquiry. The explanation is totally vague as no specific dates are given pointing out when the offices were shifted. We also fail to understand as to how merely shifting of the offices could prevent the respondent from proceeding further in the inquiry for such a long period. Whether entire administration had come to standstill? It is, thus, clear that the delay upto the year 2000 is entirely attributable to the respondents.

- (e) Even after the year 2000, the laxity on the part of the respondent is more than visible. No doubt, there was stay of the enquiry proceedings for some time. However, the period is only from 27.9.2000 to 11.10.2000. The first OA was dismissed on 18.11.2000 with liberty to the petitioner to move again. Thus, the respondent could start the inquiry thereafter, but no steps were taken at all in this behalf till 19.3.2004 when fresh appointments of IO and PO were made. There is no explanation for the period from 18.11.2000 to 19.3.2004. At the time of hearing, it was sought to be contended that the petitioner was transferred from KVS, AFS Agra to KVS Udhampur on 10.10.2001 and due to his transfer the disciplinary authority also changed. However, how the said transfer would be a reason for not proceeding with the inquiry is again a mystery, which only the respondent would know how to solve. This Court has failed to appreciate this reason, which again appears to be an afterthought and make belief.
- (f) The new Inquiry Officer appointed in 2003. He fixed hearing, *albeit* without any progress. Even as per the respondent's own showing, the only hearing fixed by him was 22.4.2004. Nothing happened thereafter till February 2007, when another set of IO and PO were appointed vide order dated 6.2.2007. The explanation offered, that too at the time of hearing and not in the counter affidavit, is that it was because of the

transfer of the petitioner to KVS, Zeit Chandigarh on 7.9.2004 and closure of the school on 24.1.2005.

(g) Though it is stated that the petitioner was transferred to KVS Headquarters on 24.1.2005, even from this date more than 2 years are taken by the respondent in appointing another IO and PO.

10. The aforesaid facts speak for themselves. There is gross negligence, inaction, laxity and lack of due diligence on the part of the respondents. It gives a clear indication that the respondents are not at all interested in proceeding with the inquiry. Their only interest is to keep the matter alive on papers by changing the Inquiry Officers from time to time at regular intervals. None of the Inquiry Officers attempted to make any progress in the inquiry worth the name. The facts of the case, therefore, leave no manner of doubt that it is the dead horse which the respondents are flogging with the sole aim to deny the petitioner his promotion, even when he is recommended by the DPC for this purpose. Juniors of the petitioner were promoted to the next higher post in the year 2003-04. On the *alibi* that the petitioner is facing departmental proceedings, which are lying dormant for 20 years and are practically dead, the petitioner is denied his aforesaid right.

11. No doubt, each case has to be decided on its own facts. The Court is also required to decide the case by balancing process, i.e. weighing the factors for and against and taking decision on the totality of

circumstances {See – *State of Punjab & Ors. v. Chaman Lal Goyal*, (1995) 2 SCC 570}. When we take the facts of the present case in totality and weigh the factors for and against, as done above, balance clearly tilts in favour of the petitioner herein. Asking a person to defend the charge after a period of 20 years is making too much of a demand. Prejudiced would be writ large in a case like this.

12. For all the aforesaid reasons, we allow this writ petition, set aside the impugned order of the Tribunal and give the following directions :-

‘OA of the petitioner herein stands allowed. The charge sheet dated 16.5.1989 and inquiry proceedings are hereby quashed. The respondents are directed to open the *Sealed Cover* and if the petitioner is found fit for promotion, he should be promoted from the date his juniors got promotion with all consequential benefits, including arrears of salary, etc. The petitioner shall also be entitled to costs, which are quantified at Rs.10,000/-.”

(A.K. SIKRI)
JUDGE

(J.R. MIDHA)
JUDGE

July 04, 2008
nsk