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Delhi Development Authority

through :

VERSUS

C.D. Sharma

through :

CORAM :-

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

THE HON'BLE MR. JUSTICE SURESH KAIT

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. It is not in dispute that on the allegations that the respondent herein, while working as Junior Engineer (Civil) in Construction Division – I during the period 1.3.1985 to 20.12.1995, failed to get the defective work rectified, charge sheet was issued only on 6.1.2004, i.e. after almost 17 years from the date of the alleged lapse committed by the respondent. The Inquiry Officer was appointed 2½ years thereafter, i.e. on 7.7.2006. On the appointment of Inquiry Officer, the respondent approached this Court and filed the writ petition, in which show-cause notice was issued. However, in the meantime, Notification under Section 14 of the Administrative Tribunal Act was

passed covering DDA under the jurisdiction of the Central Administrative Tribunal (CAT) and, therefore, the said writ petition was transferred to the Principal Bench of CAT, New Delhi.

2. Vide its impugned judgment dated 15.5.2008, the Tribunal has allowed the petition of the respondent herein on the ground of delay of 17 years in serving the charge sheet. It is opined by the learned Tribunal that the delay has not been properly explained and, therefore, in view of the judgment of the Supreme Court in *State of M.P. v. Bani Singh*, AIR 1990 SC 1309 as well as of this Court in *R.P. Panda v. DDA & Anr.*, 2004 (73) DRJ 23, this would amount to violation of principles of natural justice and it would not be possible for the respondent to defend the charge effectively after a gap of 17 years.
3. Learned counsel for the petitioner submits that delay was duly explained by the Department and, therefore, the charge sheet should not have been quashed. In this behalf, he has referred to the reply filed by the petitioner in the said writ petition (para 4) in which chronological sequence of events are stated as under :-

“4. The chronological sequence of events starting from the date of inspection upto the issue of charge sheet dated 02.05.2006 are as under.

- i) The site was inspected by CE (QC) on 30.04.87.
- ii) Observation memo was issued to EEND-1 vide CE(QC) letter No. F.72(N-21)CE(QC)/Insp/DDA/87/2104-2109 dated 21.05.87.
- iii) On examining the replies and repeated clarification sought by CE (QC) through various rejoinders the case was finally referred to the Vigilance Department by CE (QC) vide

letter No. EE/QC-IV-I-57/87/DDA/1277-78 dated 29.11.2000 addressed to CE (NZ) and copy endorsed to CVO/DDA. The letters state that defects in the work could not be rectified and finally RIS No. 1 & 2 amounting to Rs.3881/- and Rs.1,87,509/- respectively were sanctioned by SE/CC7 on dated 30.8.91 and conveyed vide letter No. F9/(97)89/ND1/S/E-7/QC/3164 dated 05.09.96. As the final bill of the contractor was in minus and therefore the recoveries could not be affected from the contractor. To add further it was informed by CE(NZ) vide his letter dated 28.04.99 that the recovery is no more feasible as the arbitrator has rejected the department's claim.

iv) In response to CE (QC) letter dated 29.11.2000 a clarification was sought from CE (QC) vide letter No. PA/EE (Vig) IV/2000/372 dated 07.12.2000 by the Vigilance Cell/DDA and required clarification was received from CE (QC) vide EE (QC)IV/I-57/87/DDA/292 dated 22.03.2001 stating that investigation from vigilance angle is required to be taken up in this case as the concerned staff has failed to take timely action for making recoveries from the contractor, putting the department to financial loss.

v) Based on observation of CE (QC), a letter dated 28.03.01 addressed to CE (NZ) was sent by SE (Vig)-II/DDA seeking explanation and asking for the name of all the erring officials. Also records relevant to the work were collected. Accordingly memo dated 06.01.04 was issued to the Petitioner as well as to other officials.

vi) In the meantime, it was gathered that Shri Dalip Guha AE(C) is retiring on 30.4.2004 hence his individual role in the case was taken up at the first instance. The CVC advice was sought in this case and after obtaining the CVC's advice the disciplinary authority, i.e. EM/DDA was requested to accept the CVC advice and to approve the proposed memorandum which was finally approved on 16.3.04 by EM/DDA, Sh. Dalip Guha AE(C) was accordingly conveyed in the matter.

vii) The officers responsible for various lapses were identified and briefing in the matter was prepared, lapse-wise naming the responsible officer in consideration to the replies filed by the delinquent officer."

4. As per the aforesaid events mentioned by the petitioner itself, it is clear that though the site was inspected on 30.4.1987 and observation memo was also issued on 21.5.1987, thereafter, matter was referred to the Vigilance Department only on 29.11.2000, i.e. it took more than 13 years to refer the matter. There is no explanation

of any developments taking place between 1987-2000 which caused delay. The events only after 2000 are explained. It is further revealed that though based on observation of CE (QC), a letter dated 28.3.2001 was addressed to CE (NZ) but thereafter charge memo was issued to the respondent only on 6.1.2004. There is no explanation given even for the period from March 2001 to January 2004. Again, there is a delay of 2 ½ years in appointing the Inquiry Officer.

5. Learned counsel for the petitioner relied upon para 30 of the judgment of the Apex Court in *U.P. State Sugar Corporation Ltd. & Ors. v. Kamal Swaroop Tondon*, (2008) 2 SCC 41 wherein the Court observed as under :-

“30. In our opinion, *Mahadevan*¹⁰ does not help the respondent. No rigid, inflexible or invariable test can be applied as to when the proceedings should be allowed to be continued and when they should be ordered to be dropped. In such cases there is neither lower limit nor upper limit. If on the facts and in the circumstances of the case, the Court is satisfied that there was gross, inordinate and unexplained delay in initiating departmental proceedings and continuation of such proceedings would seriously prejudice the employee and would result in miscarriage of justice, it may quash them. We may, however, hasten to add that it is an exception to the general rule that once the proceedings are initiated, they must be taken to the logical end. It, therefore, cannot be laid down as a proposition of law or a rule of universal application that if there is delay in initiation of proceedings for a particular period, they must *necessarily* be quashed.”

6. He also referred to another judgment of the Supreme Court in *Secretary to the Government, Prohibition & Excise Department v. L. Srinivasan*. Reliance is also placed on the judgment of the Punjab & Haryana High Court in *Bachan Singh v. State of Haryana & Anr.*, 2005 (1) Service Cases Today 544.

7. The principles dealing with delay in departmental action are well-settled. No doubt, mere delay in holding the inquiry would not be fatal if the department is able to give reasonable explanation for such an action. It is also necessary for the employee to prove that because of the delayed action prejudice is caused to the delinquent employee.
8. In *Kamal Swaroop Tondon* (supra), the department was able to explain the delay. It was also found that the show-cause notice in that case was issued on 13.1.2000 and thereafter charge sheet was served upon the respondent therein on 31.1.2000, i.e. on the last date of his service. But inquiry was completed and in the inquiry no prejudice was proved by the delinquent employee. In these circumstances, the Supreme Court held that the inquiry could not have been quashed on the ground of delay. Same was the position in *Bachan Singh* (supra). From the perusal of the judgment in *L. Srinivasan* (supra), we are not able to discern any facts or detailed reasoning, on the basis of which the judgment of the Tribunal in setting aside the inquiry on the ground of delay was set aside.
9. When we apply the aforesaid principles to the facts of this case, following position clearly emerges :-
 - (a) The period for which the respondent is charge sheeted is of the year 1985.
 - (b) As per the respondents themselves, site was inspected on 30.4.1987 and observation memo was also issued on 21.5.1987.

10. Thus, the purported irregularity came to the notice of the petitioner/DDA in the year 1987 itself. However, there is no explanation as to why the department took 13 years in referring the matter to the Vigilance Department. It is, however, revealed that even when the Vigilance Cell had made its observation in the year 2001, charge sheet was issued three years thereafter on 6.1.2004. There is no explanation for consuming abnormal period in serving the charge sheet. Thus, it is amply borne from the record that no explanation for taking up such a delayed action is coming forth.
11. As pointed out above, charge against the respondent was that he was responsible for defective work, as pointed out by the CE(QC). The respondent was working as Junior Engineer at that time. Leveling the allegation of defective work and asking the employee to defend such an action 17 years after the execution of the work would itself create prejudice.
12. We are, thus, satisfied that in the facts and circumstances of this case and having regard to the nature of charges leveled against the respondent, delay has caused prejudice to the respondent and, therefore, it would amount to denial of principles of natural justice. We, therefore, do not want to interfere with the impugned judgment in exercise of our extraordinary jurisdiction under Article 226 of the Constitution. Accordingly, this writ petition is dismissed *in limine*.

(A.K. SIKRI)
JUDGE

(SURESH KAIT)
JUDGE

January 21, 2009
nsk