

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No. 7694/2009**

% **Date of Decision:08.02.2010**

DELHI DEVELOPMENT AUTHORITY Petitioner

Through: Mr. Arun Birbal, Advocate

Versus

DHARAM SINGH Respondent

Through: Mr.Piyush Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

: **MOOL CHAND GARG, J.**

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1. The petitioner by way of the present writ petition has assailed the order passed by the Central Administrative Tribunal (hereinafter referred to as "the Tribunal") in TA No. 95/2007 whereby the Tribunal has quashed the charge sheet issued to the respondent on the ground of delay in issuing the charge sheet, non-furnishing of listed documents to the charged official besides refusing permission for engaging a defence assistant by observing that such conduct of the petitioner has prejudiced the rights of the respondent for self defence.

2. The learned counsel for the petitioner while assailing the impugned order has submitted that information was received by the

Finance Department, DDA regarding the respondent having engaged himself in a civil contractor business through his minor son Shri Mahesh Kumar without intimating the registration of his son to the petitioner. After this information came to the notice of the petitioners on 9.1.1998 a memo was issued to the respondent and on 14.9.1998 the case was referred to Vigilance Department for further investigation. The statement of the respondent was recorded during investigation on 16.8.1999 where he admitted that his son was working in DDA as civil contractor though denied that he was either minor or was living with him. On the basis of this statement correspondence was made by the petitioner with various independent departments such as Contractor Registration Board, Income Tax Department and other divisions where the alleged contractor i.e. minor son of respondent executed works. During the course of such investigation it came to the light of the department that the date of birth of the son of the respondent Shri Mahesh Kumar was 15.8.1977 which prima facie establishes that at the time of execution of the work he was about 15-16 years of age. Being a minor he was not eligible to take any professional occupation. This gave strength to the allegation made against the respondent that the registration of his son with CPWD as a contractor was actually obtained by the respondent on fictitious grounds. It is alleged that this information was not given by the respondent to DDA. It was submitted that on the basis of the evidence collected it was opined that prima facie it discloses a misconduct on the part of respondent and accordingly a

charge sheet was issued to him which was replied to by the respondent on 16.11.2004.

3. Against the initiation of the departmental enquiry the respondent filed a writ petition before this court which was transferred to the Tribunal. However, the enquiry was concluded during the course of those proceedings and the enquiry officer submitted its report. The Tribunal set aside the charge sheet and the enquiry report vide order dated 8.5.2008. Hence this petition.

4. The respondent filed the writ petition before this Court which became TA after the transfer of the proceedings by the Tribunal assailing the issuance of charge memo on the ground of delay, non-supply of documents listed in the charge sheet and permission not granted to him for engaging a defence assistant. The discussion had by the Tribunal on these issues is in paragraphs 8,9, 10 and 11 of the impugned order, which are reproduced hereunder for the sake of reference:-

8. We also had opportunity to go to the further details as were made available to us. In view of the long pendency of the matter, we think it would be appropriate to deal with the matter comprehensively without limiting ourselves to superficial examination. While considering such cases, the judicial review essentially focuses its scrutiny that due processes have been observed and there has been nothing to even remotely affect principle of natural justice. In course of scrutiny of the records an important omission has come to our notice. This is regarding non-supply of copies of the documents listed in support of the charges framed. It appears that despite repeated representations by the applicant (P-1 and P-4), copies of the listed documents were not supplied at all to the Charged Official or if they were supplied, it was much later. The picture revealed on this point is rather blurred. The Counter mentions that the applicant was issued a Memo dated 4.11.2004 stating that the rules do not permit for making available the same to the Charged Official at that stage. Further it is stated that "copies of the documents

were supplied to the Presiding Officer on 31.12.2004. There was stay in operation and respondents were precluded from enforcing the Enquiry Report. Along with the Counter statement, a copy of the Enquiry Report has also been made available.

9. However, a reading of Departmental Enquiry Report (R-1) reveals many loose ends. Relevant portion of the Counter are extracted below:-

“The Preliminary Hearing in the case was held on 31.12.2004 in which the Charged Official remained absent despite the notice for this hearing. In the Preliminary Hearing, the PO was asked to supply a set of photocopies of all the listed documents to the CO immediately and Shri Dharam Singh was required to apply for additional documents/defence witnesses if any within a fortnight. The PO supplied the documents to the Charged Official on 14.4.05 but the CO did not apply for additional documents.”

Even if these contentions are accepted on their face value, the furnishing of documents on 14.4.2005 may not really be adequate to provide the CO an opportunity for self-defence. In any case, this has been rebutted by the applicant in the Rejoinder. Relevant portion of the Rejoinder are extracted below:-

“6&7.....It is strange that the charged officer is not being supplied the documents which form part of the allegations against him. In any case the petitioner submits that there exists no such rule which debars the charged officer from getting the documents which is forming part of the alleged charges against him.”

The Enquiry Report also reveals that the request of the Charged Official for permission for being allowed some time for engaging Defence Assistant (as per Rule 25 sub rule 8) was also turned down on the ground of delay. Ultimately, the enquiry in question was conducted ex parte.

10. To conclude in this case, the delay of 12 years in issuing the Charge Memo is not entirely explainable. Even if we take into account the fact that the initial report was received by the authorities only in 1998 and subsequently investigations had to be made before the cause for action in this proposed disciplinary proceedings was identified, the delay of 6 years post 1998 does not appear to be justified. The fact remains that in this case, where charge-sheet is being issued after 12 years, copies of the listed documents have not been supplied at all/have not been supplied in time despite repeated requests and Charged Official's request for some time to engage a Defence Assistant is also rejected on the ground of delay and the fact that the proceeding proposed to be initiated is for major penalty further makes the issue more grave.

11. We, therefore, reach the conclusion that the delay of 12 years in issuing the impugned Charge Memo coupled with non-furnishing of listed documents to the Charged Official and non-permission for engaging a Defence Assistant have prejudiced the latter's right for self defence. Although there was no specific prayer incorporated for setting aside the Enquiry Report, now that we have had opportunity to advert to all aspect, we think it would be in the fitness of thing to give quietus to the issue. The Original Application is allowed. The impugned order No. F27(a)99/A.O.Vig/MJ-1/1 9227 dated 1.10.2004 as well as Enquiry Report No. Inq./VS/229/DDA/2004/361 dated 4.7.2005 are set aside.

5. The learned counsel for the petitioner has submitted that in accordance with DDA Conduct, Disciplinary and Appeal Regulations, 1999 (for short "the Regulations") the documents referred to in the charge memo were not required to be supplied to the delinquent along with the charge memo. However, he was granted an opportunity of inspection which is the sufficient compliance of natural justice. The relevant regulation reads as under:-

25. Procedure for imposing major penalties.- 1. No order imposing any of the penalties specified in clauses (f) to (j) of Regulation 23 shall be made except after an inquiry held, as far as may be, in the manner provided in this Regulation and Regulation 26 or in the manner provided by the Public Servant (Inquiries) Act, 1850 (37 of 1850) where such inquiry is held under that Act.

2. Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against an employee, it may itself inquire into, or appoint under this rule or under the provision of the Public Servant (Inquiries) Act, 1850 as the case may be, an authority to inquire into the truth thereof.

Explanatoin.- Where the disciplinary authority itself holds the inquiry, any reference in sub-regulation (7) to sub-regulation (20) and in su-regulation (22) to the inquiring authority shall be construed as reference to the disciplinary authority.

3. Where it is proposed to hold an inquiry against an employee under this Regulation and Regulation 26 the disciplinary authority shall draw up or cause to be drawn up-

- (i) the substance of the imputations of misconduct or misbehavior into definite and distinct articles of charge;
 - (ii) a statement of the imputations of misconduct or misbehavior in support of each article of charge, which shall contain:
 - (a) a statement of all relevant facts including any admission or confession made by the employee;
 - (b) a list of documents by which, and a list of witness by whom the articles of charge are proposed to be sustained.
4. The disciplinary authority shall deliver or cause to be delivered to the employee a copy of the articles of charge, the statement of the imputations or misconduct or misbehavior and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the employee to submit, within such time as may be specified, a written statement of his defence and state whether he desires to be heard in person.

6. It will also be relevant to take note of Rule 8 of the aforesaid

Regulations which reads as under:-

8. (a) The employee may take the assistance of any other employee posted in any officer either at his headquarter's or at the place where the inquiry is held, to present the case on his behalf, but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or the disciplinary authority, having regard to the circumstances of the case, so permits.

Provided that the employee may take the assistance of any other employee posted at any other station, if the inquiring authority having regard to the circumstances of the case, and for reasons to be recorded in writing so permits.

Note : The employee shall not take the assistance of any other employee who has 3 pending disciplinary cases on hand in which he has to give assistance.

(b) The employee may also take the assistance of a retired employee to present the case on his behalf, subject to such conditions as may be specified by the Authority from time to time by general or special order in this behalf.

7. It may not be true that the non-supply of documents would not have caused any prejudice to the respondent who was to answer as to whether Shri Mahesh Kumar was his minor son or whether he was living with the respondent or not at the time when the departmental

proceedings were initiated. The other fact which is also relevant is that the petitioners have also not allowed the respondent to engage a defence assistant. This is also in violation of Regulation 8 of the Regulations and this is also violative of the principles of natural justice.

8. The delay which has been caused in this matter in issuing charge sheet i.e. after a period of 12 years is writ large. Even if it is presumed that some time was taken by the Department in investigating the complaint which was received on 9.1.1998 such time cannot be extended for a period of more than 6 years. Moreover, the registration as a contractor by the son of the respondent pertains to the year 1977.

9. Counsel for the petitioner has relied upon the following judgments:-

(i) *State of U.P. Vs. Shatrughan Lal*, AIR 1998 SC 3038;

(ii) *State of U.P. Vs. Ramesh Chandra Mangalik*, AIR 2002 SC 1241;

(iii) *U.P. State Sugar Corporation Ltd. Vs. Kamal Swaroop Tondon*, AIR 2008 SC 1235;

(iv) *Punjab Water Supply Sewerage Board and Anr. Vs. Ram Sajivan and Anr.*, AIR 2007 SC (Supp) 243;

(v) *The Government of Andhra Pradesh and Ors. Vs. Appala Swamy*, 2007 (3) Scale 1;

(vi) *W.P.(C) No. 7982/2007* titled as *P.K.Mathur Vs. Union of India & Anr.* decided on 04.06.2008;

(vii) *Syndicate Bank Vs. Venkatesh Gururao Kurati*, AIR 2006 SC 3542;

(viii) *South Bengal State Transport Corporation Vs. Swapan Kumar Mitra and Ors.*, AIR 2006 SC 3533; and

(ix) *State of U.P. Vs. Shatrughan Lal*, AIR 1998 SC 3038.

10. Counsel for the respondent has relied upon the following judgments:-

(i) *State of Madhya Pradesh Vs. Bani Singh Anr.*, 1990 (Supp) SCC 738;

(ii) *State of A.P. Vs. N. Radhakishan*, (1998) 4 SCC 154;

(iii) *P.V. Mahadevan Vs. MD. T.N. Housing Board*, (2005) 6 SCC 636; and,

(iv) *State of U.P. Vs. Shatrughan Lal and Anr.*, (1998) 6 SCC 651.

11. The crux of the judgments cited on behalf of the petitioner is that non-supply of documents and delay in initiating the proceedings must have caused prejudice to the charged official for judicial intervention into initiation of enquiry even if there was delay in initiating the same. It is stated that nothing has been shown as to what prejudice has been caused.

12. However, in the case of *U.P. State Sugar Corporation Ltd. Vs. Kamal Swaroop Tondon (supra)* relied upon by the petitioner, the Apex Court has been pleased to observe that:

26. 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.

13. Similarly, in the case of *Punjab Water Supply Sewerage Board Vs. Ram Sajivan (supra)* it was held:-

25. A question as to whether a long delay by itself would be sufficient ground for not directing initiation of a departmental proceeding came up for consideration before this court in P.D. Agrawal Vs. State Bank of India and Ors. [2006 (5) Scale 54], wherein the doctrine of prejudice was considered stating that if there exists a satisfactory explanation for delay, same may not be a bar in directing initiation of a fresh proceedings. We, however, are not oblivious that in a different situation, this court in M.V. Bijlani v. Union of India [(2006) 5 SCC 88] took the factor in regard to delay in initiating a departmental proceedings as one of the relevant factors amongst others to determine the question as to whether a misconduct has been proved or not.

14. From the judgments relied upon by the respondents, it is apparent that the delay in initiating the enquiry itself causes prejudice. In the *State of Madhya Pradesh Vs. Bani Singh and Anr. (supra)* it has been held:-

4. The appeal against the order dated December 16, 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 1975-77. 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 investigation 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.

15. In the case of *State of A.P. Vs. N. Radhakishan (supra)* the Apex

Court has been pleased to hold:-

19. 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 that matter is that the court has to take into consideration all the relevant factors and to 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 initiated 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 the 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 their 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 the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.**

16. Taking into consideration all the facts of this case including the nature of allegations, judgment cited at bar, the period taken in initiating the proceedings, non-permitting the respondent to engage a defence assistance besides non-supplying of documents along with the charge memo, it can be held that it certainly caused grave prejudice to the respondent inasmuch as after 12 years expecting the respondent to produce on record the documents such as information given to the Department about the registration of his son as a contractor may not be

possible, thus, we find no infirmity in the judgment of the Tribunal which calls for an interference by this Court under Article 226 of the Constitution of India. The writ petition is accordingly dismissed.

CM No. 3882/2009 (Stay)

In view of the orders passed above, this application has become infructuous and is accordingly disposed of.

MOOL CHAND GARG, J.

FEBRUARY 08, 2010

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ANIL KUMAR, J.