

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

+ **W.P. (C.) No. 3638/2010**

% **Date of Decision: 25.05.2010**

UNION OF INDIA .... PETITIONER

Through Mr.Sewa Ram, Advocate

Versus

P. K. MATHUR ....RESPONDENT

Through Mr.G.D.Gupta, Sr.Advocate with  
Mr.S.K.Sinha, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE ANIL KUMAR**

**HON'BLE MR. JUSTICE MOOL CHAND GARG**

- |    |                                                                       |     |
|----|-----------------------------------------------------------------------|-----|
| 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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Caveat No.95/2010

Since counsel for the caveator has put in appearance, the caveat stands disposed of.

WP(C)No.3638/2010

1. This writ petition has been filed by the Union of India under Article 226/227 of the Constitution of India assailing the order dated 27.08.2009 passed by the Central Administrative Tribunal (hereinafter referred to as "the Tribunal") in OA No.1600/2007 and MA No. 1152/2008, whereby the original application filed by P.K.Mathur, the respondent herein, was allowed.

2. Briefly stating, the facts of this case are that the respondent is an officer of 1975 batch of the Central Engineering Service (CES). He was posted as Executive Engineer at Bhopal from 24.06.1991 to 31.03.1995. On 05.06.2003 the respondent received a show cause notice, the gist of which was that the respondent passed and paid the 4<sup>th</sup> RA Bill amounting to Rs. 95,618/- on 23.10.1991 to M/s Veena Construction on 23.10.1991, in which excess length of 1616.66 metre of barbed wired fencing was wrongly taken into account and excess payment of Rs.1,61,666/- was made to the Contractor. It was further alleged that in the bill submitted to the respondent through the Divisional Accounts Branch contained many cuttings and corrections and even the length of an item in the agreement, which was originally 621.25 metre was made 1621.5 metre by adding "1" in red ink. It was alleged that because of the overwriting, cutting and crossings etc. the amount of the bill was increased by rupees one lakh. Further, it was alleged that while making payment of the 4<sup>th</sup> RA Bill, a secured advance of Rs. 35,100/- on some quantity of barbed wire allowed in the 3<sup>rd</sup> RA Bill, was allowed to continue and was not recovered from the contractor. Lastly, it was alleged that the respondent exhibited gross negligence while conducting test checks during his visit to the site after the receipt of the bill in the Divisional Office and paid provisional rates which did not commensurate with the quantum of work done at site.

3. The respondent by his letter dated 01.09.2003 asked for the Measurement Books (MBs) numbers 1483, 1549, 1906, 1649 and 1539

and the Third RA Bill paid to the Contractor. The Vigilance Unit of the Central Vigilance Department informed the respondent by its letter dated 30.09.2003 that “(T)he records demanded by you for inspection are not considered relevant for the explanation called”. On 05.12.2003 the respondent gave a reply to the Central Vigilance Department, in which, inter alia, the following was mentioned:

**“At the very outset it is submitted that it is a 12 years old case and that too of a very small work.** During my incumbency as EE (Civil) in the department, an innumerable number of bills were passed and **it is not possible to remember the details of such small bill after such a long time.** The added factor in this particular case is that I was incharge of BCD, Bhopal for a very short period of about four months....**It is now not possible for me to recall all facts and details by memory. Only a study of the relevant and crucial records basic to the case such as Measurement Book, in which the measurement of the work were recorded, could help but unfortunately that has not been shown to me.** The following arguments are, therefore, based on the incomplete records to which I could have access with the EE (Vig.)-II of your office. I reserve the right to add or modify any of the following statements/argument/details after the records are made available to me.” (emphasis supplied)

4. In the meantime, the respondent had been promoted as Superintending Engineer on 31.03.1994. It is a matter of record that it was after ten years, the respondent was served with the Memorandum of Charge dated 30.09.2004 levelling the following charges:-

#### **ARTICLE I**

The 4<sup>th</sup> R/A bill of M/s Veena Construction for the work of “C/o Navodaya Vidyalaya at Pawar Kheda; SH: C/o Compound, Fencing, Gate” was submitted by the Assistant Engineer, Hoshangabad Central Sub-Division-II to Executive Engineer, Bhopal, Central

Division-I for gross amount of Rs. 1,58,437/-. The bill along with its enclosures, which was passed and paid by Shri P.K. Mathur, contained too many fraudulent cuttings/corrections/over-writings/tampering. The said cuttings/corrections/over-writings/tampering were resulting into increase in gross amount of the said 4<sup>th</sup> R/A bill making it Rs.2,58,437/- and thus, approx. Rs.1.00 lakh were overpaid to contractor, M/s Veena Construction.

Shri P.K.Mathur not only overlooked the fact of too many cuttings/corrections/over-writings/tampering in the bill which were not authenticated by any official but also he did not make any effort to bring these tampering to the knowledge of Shri D.P. Singh, Assistant Engineer and Shri A.K.Jain, Junior Engineer for their authentication. Thus, the said Shri P.K. Mathur violated the provisions of Para 7.21 of CPWD Manual, Vol.II (1988 Edition).

After getting the payment of 4<sup>th</sup> R/A bill, M/s Veena Construction abandoned the work and the quantum of work as subsequently found at site was much less than the quantum of work as fraudulently shown by tampering the entries in Bill and its enclosures in the 4<sup>th</sup> R/A bill which was passed and paid by Shri P.K. Mathur which resulted in overpayment of about Rs. 1.00 lakh to the contractor and corresponding loss to the Govt.

Thus, Shri P.K.Mathur exhibited gross negligence and lack of integrity while discharging his duties, which resulted in overpayment of about Rs.1.00 lakh to the contractor and correspondent loss to Govt.

## **ARTICLE II**

In view of Para 4.2.2 (c) of CPW Account Code, Divisional Accountant was to be given fullest opportunity by the Executive Engineer to act as Internal Auditor, which was not ensured by the said Shri P.K.Mathur before giving "pass and payment" order on the bill while Shri R.S. Bais, JAO, was present in Division Office on the days when the said 4<sup>th</sup> R/A bill was passed and paid. The lapses on the part of Shri P.K.Mathur eliminated the possibility of preventing the overpayment to M/s Veena Construction and corresponding loss to Govt.

By the above stated acts of omission and commission, the said Shri P.K.Mathur, Superintending Engineer, failed to maintain absolute integrity and exhibited lack of devotion to duty, thereby

contravening Rule 3(1)(i) and 3(1)(ii) of the CCS (Conduct) Rules, 1964.

5. Again a request was made by the respondent for supplying the Measurement Book (MB) No. 1483/BC containing the measurement of work done by the contractor. However, as the documents were not available, the respondent by his letter dated 24.10.2005 requested the petitioner to quash the charge sheet due to non-availability of basic documents like the M.B. but it was not responded to.

6. Finally, the Enquiry Officer gave its report dated 07.03.2006 in which he held the first Article of Charge to be proved and the second to be not proved. The Report of the Enquiry Officer was served upon the respondent to which he gave his representation dated 21.08.2006.

7. The respondent has superannuated on 31.01.2008. Thereafter, he approached the Tribunal by filing the present OA with respect to the report of the Enquiry Officer and seeking restrain order against the petitioners from proceeding further. The said OA was dismissed at the initial stage but on an order passed by this Court in WP(C)No.7982/2007 dated 23.10.2007, the Tribunal was directed to decide the OA on merits. Accordingly, the OA has been decided by the impugned order in favour of the respondent.

8. In the OA the case of the respondent was that serving of show cause notice after 12 years with respect to the alleged misconduct committed in the year 1991 has caused a serious prejudice to the case of the respondent inasmuch as the matter was very old and it was not

possible for the respondent to remember the facts of the case. He also submitted that the crucial Measurement Book (MB) in which the work done by the contractor was recorded was also not given to him despite specific requests. The Memorandum of Charge was served on him in the year 2004 i.e. 13 years after the incident. Even though some explanation was given about the non-availability of Measurement Book, the petitioners wanted to proceed with the enquiry. The respondent filed the present OA with the following prayers:

1. To quash and set aside Memorandum dated 30.09/2004 of Respondent No.1 proposing to hold Inquiry against the applicant for imposing Major Penalty being violative of Articles 14 and 16 of the Constitution and also to quash and set aside findings of the Enquiry Report dated 07.03.2006 on the ground of inordinate and unexplained delay of 16 years in initiating and concluding the Proceedings for an incident relating to the year 1991.
2. To declare the holding of departmental proceedings before the IA against the Applicant void and non-est being in disregard and violation of Principles of Natural Justice and provisions in para 7.21 of CPWD Works Manual and Rule 14(18) and Explanation to Rule 14(23) Central Civil Services (Classification, Control and Appeal) Rules, 1965.
3. To declare that there is error apparent on the face of record in Respondent NO.1's decision to initiate departmental proceedings after a lapse of about 12 years against applicant as there is procedural irregularity/infirmity in the manner enquiry was concluded by IA in about more than 1 year is violative of well-settled norms set by the Hon'ble Supreme Court that delay in departmental enquiry causes prejudice to the employee (P.V. Mahadevan Vs. MDTN Housing Board (2005) 6 SCC 636, State of M.P. Vs. Bani Singh and Anr. 1990 (Supp.) SCC 738, G.K. Sabharwal Vs. DTC decided on 4.9.2006 by Delhi High Court W.P.(C) No.3233/1994, V.K. Sareen Vs. UOI & Ors. O.A. No.205/2007 dt. 30.03.2007, State of A.P. Vs. N. Radhakrishnan, 1998 (4) SCC 154, R.S. Sagar Vs. UOI 2002 (2) ATJ 367 (Delhi. H.C.), B.L. Sharma

Vs. UOI & Ors. (O.A. 683/2007) decided on 05-06-2007.

4. To declare that delayed initiation of Disciplinary Proceedings has given room for bias, mala fides and misuse of power and has caused prejudice to the Applicant.

5. To declare that the delay on the part of the Respondents in initiating and concluding the proceedings in unexplained and DA was not at all serious in pursuing the charges against the Applicant.

6. To declare that the Applicant is not guilty of misconduct from reading of Charges and Annexures appended.

7. To declare that act or omission done by the applicant is of trivial nature and the alleged misconduct is to be kept outside the purview of the Departmental proceedings.

8. To declare that holding of Inquiry proposing to impose Major penalty on the Applicant is not in proportion to alleged misconduct as the degree of culpability on the part of the Applicant is negligible.

9. To declare that the Applicant cannot be held vicariously liable for the acts and omissions of the Divisional Accountant in accordance with the findings of the IA as recorded in Para 6.3.3.

10. Any other relief which this Hon'ble Tribunal may deem fit and proper in circumstances of the case may be awarded in favour of the applicant and against the Respondents.

9. The matter was contested by the petitioners. However, the Tribunal taking note of all the facts of this case as can be inferred from the detailed order passed by the Tribunal came to the conclusion that it was a case where there was abnormal delay on the part of the petitioners in having served the Memorandum of Charge upon the respondent after more than 12 years of the incident and as it was a case where the relevant documents were not supplied to the respondent

when show cause notice was issued to him and accordingly, the Tribunal has been pleased to pass the following directions:-

20. The Applicant has been deprived of consideration for promotion. He has retired from service. All these factors, on balance, go in the Applicant's favour that his trauma should not last any longer. The inordinate and unexplained delay in issuing the Charge Memorandum, the non-supply of the most crucial piece of evidence, i.e., the MB, very slow progress of the inquiry and the tone and tenor of the Inquiry Officer's report, on balance, go against the Respondents. In the specific facts and circumstances of this case, we are of the clear view that the inquiry should come to a final stop now and the Memorandum of Charge and the inquiry report should be quashed.

21. The OA is allowed in the above terms. The Applicant would be eligible for consequential relief, which may accrue as per rules to him e.g. payment of retirement benefits in full to him. There will be no order as to costs.

10. As regard the effect of delay in issuing the Memorandum of Charge after such a long time, the Tribunal has taken note of various judgments delivered by the Apex Court such as the case of *State of Madhya Pradesh Vs. Bani Singh and Anr.* (1991) 16 ATC 514, *Secretary to Government, Prohibition and Excise Department Vs. L.Srinivasan* (1996) 3 SCC 157, *Food Corporation of India Vs. V.P.Bhatia*, JT 1998 (8) Supreme Court 16, *State of Andhra Pradesh Vs. N.Radhakrishnan*, JT 1998 (4) SCC 154 as well as in the case of *State of Punjab and Ors. Vs. Chaman Lal Goyal* (1995) 2 SCC 570. Reference has also been made to the case of *P.V.Mahadevan Vs. M.D., T.N. Housing Board*, (1005) 6 SCC 636.

11. It would be appropriate to take note of some of the judgments. In the case of *N.Radhakrishnan (supra)*, the Apex Court has made the following observations-

19. 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 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.

12. In the case of *P.V.Mahadevan (supra)* the Apex Court made the following observations:-

8. Our attention was also drawn to the counter-affidavit filed by the respondent Board in this appeal. Though some explanation was given, the explanation offered is not at all convincing. It is stated in the counter-affidavit for the first time that the irregularity during the year 1990, for which disciplinary action had been initiated against the appellant in the year 2000, came to light in the audit report for the second half of 1994-95.

9. Sections 118 and 119 of the Tamil Nadu State Housing Board Act, 1961 reads thus:

“118. At the end of every year, the Board shall submit to the Government an abstract of the accounts of its receipts and expenditure for such year.

119. The accounts of the Board shall be examined and audited once in every year by such auditor as the Government may appoint in this behalf.”

10. Section 118 specifically provides for submission of the abstracts of accounts at the end of every year and section 119 relates to annual audit of accounts. These two statutory provisions have not been complied with at all. In the instant case the transaction took place in the year 1990. The expenditure ought to have been considered in the accounts of the succeeding year. In the instant case the audit report was ultimately released in 1994-95. The explanation offered for the delay in finalising the audit account cannot stand scrutiny in view of the above two provisions of the Tamil Nadu Act 17 of 1961. It is now stated that the appellant has now retired from service. ***There is also no acceptable explanation on the side of the respondent explaining the inordinate delay in initiating departmental disciplinary proceedings.*** Mr. R. Venkataramani, learned Senior Counsel is appearing for the respondent. His submission that the period from the date of commission of the irregularities by appellant to the date on which it came to the knowledge of the Housing Board cannot be reckoned for the purpose of ascertaining whether there was any delay on the part of the Board in initiating disciplinary

proceedings against the appellant has no merit and force. The stand now taken by the respondent in this Court in the counter-affidavit is not convincing and is only an afterthought to give some explanation for the delay.

***11. 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 government employee.... 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. (emphasis supplied)***

13. In *Rajbir Singh Gill Vs. State of Punjab and Anr.* 1999 (7) SLR 422, the Hon'ble Punjab and Haryana High Court observed as follows:-

“In peculiar circumstances detailed above, we have no hesitation, whatsoever, to hold that the initiation of the departmental proceedings in the instant case after the lapse of a period of 11 years was clearly arbitrary, specially in the light of the fact that the alleged incident came to the knowledge and notice of the authorities immediately on its occurrence. We are also of the opinion ***that holding of a departmental enquiry at such a belated stage would deprive the***

***petitioner of a reasonable opportunity to defend himself, as with the passage of time, he would have certainly forgotten various vital issue connected with the aforesaid incident. (emphasis supplied)***

14. The Tribunal, therefore, rightly culled out the principle which requires the State to explain the delay in issuing the Memorandum of Charge. Applying the principle so laid down, following observations have been made by the Tribunal in paragraph 17 of the impugned order, which is reproduced hereunder:-

17. We have no doubt in our mind that the Measurement Book (MB) is the most crucial document in determining the controversy in this case. A perusal of the MB would immediately establish the Charged Officer's guilt on innocence. The issue is regarding measurements. The applicant cannot by any stretch of even superhuman memory recall the measurements recorded in the MB, especially after 13 years of the incident. The Respondent's reliance on Syndicate Bank (supra) and Ramesh Chandra Manglik (supra) is misplaced. In the latter case, the respondent before the Honourable Supreme Court had not been able to establish that non-supply of document had caused any prejudice to him. In the former case also, the Honourable Supreme Court held in paragraph 18 of the judgment that prejudice caused by non-supply of documents must be established by the Charged Officer. In the OA in hand, the Applicant has at every stage raised this issue of prejudice caused by non-supply of the MB and some of such pleas have been reproduced in this order at paragraph 9 above. We have also adverted to the remarks of the Inquiry Officer in paragraph 6.1 of his findings that prejudice has been caused to the Applicant due to non-supply of MB. This prejudice has mounted a thousand-fold because of inordinate and unexplained delay of 13 years. There cannot be any manner of doubt that delay in issuing the Memorandum of Charge has caused manifest prejudice to the Applicant. The attempt of the Respondents in explaining the delay in

paragraph 4(ix)(v) of the counter affidavit, already adverted to above, has been effectively repelled by the Applicant to which also advertence has been made.

15. The learned counsel for the petitioners has tried to argue that the explanation was furnished by the petitioners regarding the reason for delay in the proceedings but he is unable to tell us as to how the judicious result in the enquiry would be possible if the record, which is the basis of the enquiry, is not traceable and has not been supplied to the delinquent official at the relevant time. He is unable to explain the delay of more than 12 years even for serving the Memorandum of Charge upon the respondent. His further submission that the question of taking a final decision in the matter should have been left by the Tribunal upon the disciplinary authority is again misconceived. In the facts and circumstances of this case where an enquiry could not be conducted fairly in the absence of relevant material on record and on account of abnormal delay caused in the proceeding, we find that there is no reason to dispel the contentions of the respondent, as has been rightly accepted by the Tribunal that the entire process is vitiated on account of abnormal delay and a serious prejudice has already been caused to the interest of the respondent. It would not be out of place to mention that the procedure adopted by the petitioners is even in violation of the guidelines issued by the Central Vigilance Commission (CVC) as quoted by the Tribunal in paragraph 19 of the impugned order.

16. In view of the above, we do not find any illegality or irregularity in the order of the Tribunal which would entail any interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

17. The writ petition is, therefore, dismissed.

CM No. 7278/2010 (Stay)

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

**MOOL CHAND GARG, J.**

**MAY 25, 2010**

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**ANIL KUMAR, J.**