

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

Date of decision: 15th December, 2011

+ W.P.(C) 8723/2011

% SH. CHANDER DEV Petitioner
Through: Mr. Rama Shankar, Adv.

Versus

MCD & ANR Respondents
Through: Mr. Dev. P. Bhardwaj, Adv.

AND

+ W.P.(C) 8742/2011

% SH. CHANDER DEV Petitioner
Through: Mr. Rama Shankar, Adv.

Versus

MCD & ANR Respondents
Through: Mr. Dev. P. Bhardwaj, Adv.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

J U D G M E N T

RAJIV SAHAI ENDLAW, J.

1. The petitions impugn the common order dated 7th September, 2011 of the Central Administrative Tribunal, Principal Bench dismissing TA

No.1239/2009 and TA No.1292/2009 preferred by the petitioner herein. The counsel for the respondent MCD appears on advance notice and considering the nature of the controversy and with the consent of the counsels we have heard the petitions finally.

2. The undisputed facts are that, the petitioner was on 7th January, 1983 appointed as a School Inspector in the respondent MCD against a vacancy reserved for Scheduled Tribe candidates; the petitioner was placed under suspension and an FIR was lodged against him for the offence of having fabricated the Scheduled Tribe Certificate on the basis whereof he was appointed; W.P.(C) no.4081/1994 was filed by the petitioner seeking revocation of suspension and promotion which was held up on account thereof; the said writ petition was disposed of with liberty to the petitioner to agitate the matter after the outcome of the criminal case; the suspension of the petitioner was on 22nd November, 1995 revoked; salary for the period 17th December, 1999 to 24th August, 2000 was however not paid to the petitioner; another writ petition being W.P.(C) No.7979/2005 was filed by the petitioner seeking mandamus for payment of salary of the said

period with interest; in response to the said writ petition the respondent MCD averred that the petitioner was issued a transfer order dated 17th December, 1999 transferring him from the Central Zone to R&D Shakti Nagar and he was relieved on the same day but did not join the new place of posting till 25th August, 2000 and salary was not paid to him for the said reason – that the transfer order dated 17th December, 1999 was modified vide order dated 25th August, 2000 and the petitioner was transferred to the Head Office instead of R&D Shakti Nagar and where the petitioner so joined duty on 25th August, 2000 - that since he was unauthorizedly absent from duty he was not paid the salary; that after the filing of the said writ petition the respondent MCD also issued a charge sheet dated 17th March, 2006 to the petitioner for the unauthorized absence aforesaid; that the petitioner filed another writ petition being W.P.(C) No.3344/2007 challenging the charge sheet aforesaid issued to the petitioner; that this Court vide interim order dated 7th May, 2007 in W.P.(C) No. 3344/2007 restrained the respondent MCD from holding any inquiry pursuant to the said charge sheet and the inquiry proceedings so remained stayed.

3. W.P.(C) No.7979/2005 & W.P.(C) No. 3344/2007 were transferred to the Tribunal and registered as TA No.1292/2009 & TA No.1239/2009 supra respectively.

4. The narration of facts may be completed further by stating that the petitioner was acquitted in the criminal case aforesaid. The petitioner filed OA No.1184/2010 in the Tribunal seeking consequential benefits. In the meanwhile, on attaining the age of superannuation he retired from service on 31st December, 2010. The Tribunal vide order dated 5th July, 2011 in OA No.1184/2010 (supra) directed the respondent MCD to give all promotions accrued to the petitioner since the year 1993 and till the date of his retirement. The said order has not been challenged by the respondent MCD and has attained finality.

5. Though ideally speaking the TAs aforesaid also ought to have been taken up for hearing by the Tribunal along with the OA aforesaid preferred by the petitioner but the same were taken up separately and decided vide common order dated 7th September, 2011 (supra) impugned in these petitions. The Tribunal has rightly held that the fate of the TA demanding

salary from 17th December, 1999 to 24th August, 2000 was dependent on the outcome of the TA challenging the charge sheet. The challenge by the petitioner to the charge sheet was on the ground of the same having been issued after six years of the alleged unauthorized absence and being stale. The Tribunal however relying upon *UOI v. Upendra Singh* (1994) 3 SCC 557 and *Transport Commissioner, Madras-5 v. A. Radha Krishna Moorthy* (1995) 1 SCC 332 had held that no case for quashing of charge sheet was made out and accordingly dismissed the TAs. However noticing the petitioner having retired and the facts aforesaid, the Tribunal has also directed the appropriate authority of the respondent MCD to consider whether inquiry was at all required to be continued and further directed the appropriate authority of the respondent MCD to, if in favour of holding the inquiry, to complete the same expeditiously.

6. We have enquired from the counsel for the respondent MCD the reason for the delay of six years in issuing the charge sheet for alleged unauthorized absence from 17th December, 1999 to 24th August, 2000. The counsel for the respondent MCD has invited our attention to para 5 of the

impugned order of the Tribunal where the explanation of the respondent MCD for delay is recorded. The respondent MCD attributes the delay to the failure of the petitioner to explain the default inspite of repeated reminders. As per the said explanation, on 15th September, 2004 decision to take major disciplinary proceedings against the petitioner for unauthorized absence aforesaid was taken.

7. We have enquired from the counsel for the respondent MCD as to why after the decision on 15st September, 2004 also, charge sheet was not issued till 17th March, 2006 i.e. for another 1 ½ years. The counsel for the respondent MCD states that there is no explanation whatsoever therefor in the records of the respondent MCD.

8. To us, it appears that the charge sheet was issued only when the petitioner filed the writ petition demanding the salary for the aforesaid period.

9. The Supreme Court in *State of Punjab Vs. Chaman Lal Goyal* MANU/SC/0628/1995 held that disciplinary proceedings must be

conducted soon after the irregularities are committed or discovered; they cannot be initiated after lapse of considerable time; it is not fair to the delinquent officer and such delay also makes the task of proving the charges difficult. It was further held that if the delay is too long and is unexplained, the Court may interfere and quash the charges. In ***State of Andhra Pradesh Vs. N. Radhakishan*** MANU/SC/0278/1998 it was held that it is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay and each case has to be examined on its own facts and circumstances; 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 therefor . It was further held that delay causes not only mental agony but also monetary loss to the employee. It was yet further held that 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 delay has occurred, and how much the Disciplinary Authority is

serious in pursuing the charge, whether how much the delinquent employee is to be blamed for the delay; the Court is to balance these diverse considerations.

10. A Division Bench of this Court in judgment dated 29th October, 2003 titled **DDA Vs. D.P. Bambah** LPA 39/1999 also held that speedy trial is a part of the facet of fair procedure to which every delinquent is entitled to and the sword of Damocles cannot be allowed to be kept hanging over the head of the employee.

11. Seen in the aforesaid content, the charge against the petitioner of unauthorized absence is not found to be serious one. We also find the said charge to be requiring elaborate evidence inasmuch as it is the plea of the petitioner that he was never served with the transfer order at 17.12.1999 and there is no proof of service thereof on him; it is also the case of the petitioner that he was attending the place of his posting; it is also inexplicable as to why within eight months the petitioner was transferred again on 25.08.2000. It is felt that all this evidence may not be available now after 12 years and serious prejudice may be caused to the petitioner by

allowing the inquiry to go on at this stage. We are also not satisfied with the explanation given for the delay. The failure if any of the petitioner to respond to the show cause notices, does not justify such long delay on the part of the respondent to commence disciplinary proceedings. If the petitioner was failing to respond to the show cause notice, the respondent ought to have proceeded to the next step of issuing the charge sheet as was ultimately done. All this shows that there was no seriousness in proceeding against the petitioner for the unauthorized absence and the charge sheet appears to have been issued only when the petitioner filed the writ petition aforesaid demanding the salary for the aforesaid period. As aforesaid no case of the delay being attributable to the petitioner is made out.

12. We also find that the respondent MCD did not show any promptitude thereafter also even though the interim stay against inquiry was till the next date only and the Tribunal in the impugned order has noted that the same was not continued but the respondent MCD even then did not take any initiative to commence the inquiry proceedings and

allowed the petitioner to retire on 31st December, 2010. Even while **passing** the order in OA No.1184/2010 filed by the petitioner, the respondent MCD did not take care to have the TAs filed by the petitioner also adjudicated.

13. We may also notice that normally no disciplinary proceedings can be initiated after retirement. Though in the present case charge sheet was served prior to retirement but was highly belated and no follow up action thereon was taken by the respondent MCD. In the entirety of the facts, we are of the view that no purpose would be served in now proceeding against the petitioner. The Tribunal also though of the same view and having recommended so to the appropriate authority of the respondent MCD has till left the discretion to the respondent MCD. However in view of the legal position aforesaid, we are of the view that no case of leaving the discretion to the respondent MCD is made out.

14. The judgments supra in *Upendra Singh* and in *A. Radha Krishna Moorthy* relied upon by the Tribunal are not on the aspect of delay. What was for consideration therein was whether the Tribunal can go into the correctness or truth of the charges before the inquiry. IN the light of the

view taken by us, the same have no application. Though we may notice that in ***Radha Krishna*** also the apex Court took into consideration the fact of imminent superannuation for upholding the order of the Tribunal of quashing of the charge sheet

15. The petitions are accordingly allowed. The charge sheet dated 17th March, 2006 is quashed. Accordingly the respondent MCD is directed to release the salary for the period 17th December, 1999 to 24th August, 2000 of the petitioner within ten weeks hereof. In the facts of the case however we are not inclined to grant any interest on the arrears of salary to the petitioner. However if the salary for the aforesaid period is not paid within ten weeks as aforesaid, the respondent MCD shall be liable for interest thereon @ 9% per annum from the expiry of ten weeks and till the date of payment. No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

DECEMBER 15, 2011

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