

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 27.09.2012

+ **W.P.(C) 2656/03**

PROF. P.N. BHAT

... Petitioner

versus

UNION OF INDIA & ORS.

... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Dinesh Singh

For the Respondent : Mr Gagan Mathur

AND

+ **W.P.(C) 5695/03**

UNION OF INDIA & ORS.

... Petitioners

versus

PROF. P.N. BHAT

... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Gagan Mathur

For the Respondent : Mr Dinesh Singh

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. These writ petitions arise out of a common set of circumstances and are therefore being taken up for disposal together. W.P. (C) 2656/2003 has

been filed on behalf of Prof. P.N. Bhat challenging the order dated 17.12.2002 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 3223/2002. W.P. (C) 5695/2003 has been filed on behalf of Union of India (UOI) against the very same order passed by the Tribunal on 17.12.2002.

2. Insofar as Prof. P.N. Bhat is concerned, his case is that the charge memos dated 25.09.1997 and 31.10.1997 ought to be quashed as also further proceedings based thereon on the sole ground of inordinate unexplained delay. This plea was taken on behalf of Prof. P.N. Bhat before the Tribunal. The Tribunal, however, did not agree and directed the Indian Council of Agricultural Research (ICAR) to complete the departmental proceedings within a period of six months from the date of receipt of the certified copy of the impugned order dated 17.12.2002.

3. The plea taken by the UOI/ICAR in its Writ Petition being W.P. (C) No. 5695/2003 is that such a direction ought not to have been given in the absence of the Commissioner of Departmental Inquiries of the Central Vigilance Commission (CVC). It was contended that since the direction for completing the inquiry within six months was mandatory in nature, the same

could not have been issued in the absence of CVC as a party before the Tribunal.

4. The petitioner was working as Director-cum-Vice Chancellor of IVRI which is an Institute/Deemed University under the ICAR. The charges levelled in the two charge memos referred to above relate to the period when the said Prof. P.N. Bhat was working as Director-cum-Vice Chancellor of IVRI during 1987 to 1990. It is relevant to note that a show cause notice was issued to Prof. P.N. Bhat on 27.06.1990 containing as many as 97 allegations. Thereafter, a transfer order was passed on 25.01.1990 followed by a suspension order dated 17.05.1990. Both these orders were challenged by Prof. P.N. Bhat by way of an Original Application being O.A. No. 105/1990. The Tribunal by an order dated 31.10.90 quashed the transfer order as also the suspension order. However, the Tribunal gave liberty to the respondents namely ICAR to continue with the investigation/Inquiry.

5. Being aggrieved by the said order dated 31.10.1997 passed by the Tribunal, the ICAR filed a Special Leave Petition before the Supreme Court being SLP Civil No. 1899/1991. By an order dated 07.08.1991 the said SLP petition was disposed of with the following directions:-

“It has been brought to our notice that the disciplinary proceedings against the respondent are contemplated on a number of charges, but till today no charge sheet has been issued and the formal inquiry has not commenced. If the petitioner intends to take disciplinary action against the respondent, they should complete the enquiry at an early date preferably within three months. With these observations, the special leave petition is disposed of.”

(underlining added)

From the said order passed by the Supreme Court, it is apparent that the Supreme Court desired that the inquiry be concluded expeditiously and preferably within three months. That, however, did not happen. More than two years later a charge memo containing 13 Articles of Charge was served upon Prof. P.N. Bhat on 22.12.1993. That charge memo has ultimately been quashed by this court by virtue of this court’s order dated 20.09.2012 in WP(C) 8245/2008. That charge memo is not the subject matter of the present writ petition. Four years thereafter, that is, on 25.09.1997 another charge memo containing three Articles of charge was served upon Prof. P.N. Bhat. This was followed by yet another charge memo dated 31.10.1997 containing a further Article of charge. At this stage itself we may point out that insofar as the latter charge memo of 31.10.1997 is concerned, no Inquiry Officer has been appointed till date and no further steps have been taken in respect thereof after the issuance of the said charge memo.

6. It is also pertinent to mention at this juncture itself that the Articles of Charge comprised in these two charge memos of 25.09.1997 and 31.10.1997 related to the period 1987 to 1990 and were part of the subject matter of the show cause notice dated 27.06.1990 which, as we have already pointed out above, contained as many as 97 allegations.

7. Prof. P.N. Bhat retired on 31.10.1997, that is, the date on which the second of the charge memo which has been impugned in the present writ petition was issued and served upon him (Prof. P.N. Bhat). Thereafter, two years went by and on 31.08.1999 two corrigenda were issued in respect of both the charge memos dated 25.09.1997 and 31.10.1997. These corrigenda expanded and substantially altered the charge memos.

8. On 03.07.2000, that is, almost a year after the corrigenda were issued, an Inquiry Officer, Mrs. Meeta Nambiar (CDI), was appointed. It appears that she resigned on 21.09.2001 and in her said letter she, inter alia, stated as under:-

“Appointment orders of the undersigned were received in the above mentioned cases on 3.7.2000 and preliminary hearing was held on 27.7.2000. More than one year has passed and the inspection of listed documents has not been given by the PO to the COs despite reminders dated 24.10.2000 and 7.12.2000. According to CVC’s instructions we have to complete the case

within six months of opening the case.”

(underlining added)

9. It is apparent that she could not complete the inquiry within six months inasmuch as Prof. P.N. Bhat had not even been given inspection of the listed documents for over a year.

10. The matter did not end here. A further delay of one year took place whereafter the second Inquiry Officer, Mr J.K. Prasad (CDI), was appointed on 14.08.2002.

11. On account of this inordinate delay in the departmental inquiry pursuant to the above mentioned charge memos, the petitioner, sometime in December 2002, filed O.A. No. 3223/2002 seeking, *inter alia*, the quashing of the charge memos. As pointed out above, that Original Application has been decided by virtue of the impugned order dated 17.12.2002 whereby the petitioner's plea for quashing of the charge memos has not been accepted and on the contrary the Tribunal has directed the respondent ICAR to complete the inquiry within six months. As pointed out above, Prof. P.N. Bhat is aggrieved by the fact that the departmental proceedings were not quashed and the UOI/ICAR is aggrieved by the fact that the Tribunal has directed that the inquiry be completed within six months and that such a

direction has been given in the absence of the CDI of the CVC being made a party before the Tribunal.

12. The learned counsel appearing on behalf of Prof. P.N. Bhat placed reliance on the following decisions of the Supreme Court:-

1. **State of Andhra Pradesh v. N. Radhakishan**: JT 1998 (3) S.C. 123
2. **P.V. Mahadevan v. Md. T.N. Housing Board**: (2005) 6 SCC 636
3. **M.V. Bijlani v. Union of India and Others**: (2006) 5 SCC 88

13. The only ground urged by the learned counsel appearing on behalf of Prof. P.N. Bhat was that the delay was inordinate and the delay was unexplained. As such, in view of the decisions referred to above the departmental proceedings had to be quashed.

14. The learned counsel appearing on behalf of UOI/ICAR submitted that it was not a case of unexplained delay and therefore the decisions cited by the learned counsel appearing on behalf of Prof. P.N. Bhat would not be applicable. He also submitted that the decision of the Supreme Court in the case of **B.C. Chaturvedi v. Union of India and Another**: AIR 1996 SC 484, would be relevant and would be applicable. According to him that decision entails that delay would not be fatal to the departmental proceedings. The learned counsel for the respondent also sought to explain the delay in not completing inquiry proceedings even after the passing of the impugned order

dated 17.12.2002 whereby the Tribunal had directed that the inquiry be completed within six months.

15. Insofar as the explanation for the delay in the proceedings are concerned the only purported explanation that we find in the counter affidavit is as follows:-

“2. That the case was registered against the petitioner and others by the CBI, Lucknow in the year 1991. In its report dated October, 1995, the CBI had recommended launching of prosecution of the petitioner. After scrutiny of record, the matter was referred to CVC for advice. The CVC had sent its comments in May, 1996 wherein departmental proceedings were recommended. Since the recommendation of the CVC was different from the proposal of the CBI, the matter was brought to the notice of CBI. After several reminders the CBI agreed to accept the advice of CVC for initiating departmental proceedings against the petitioner. Thereafter Charge Sheet was issued vide O.M. (s) dated 25.9.97 and 31.10.1997 (copies enclosed as Annexure R-1 and R-2 respectively).

In the meantime the petitioner retired from service on attaining the age of superannuation. But proceedings continued in terms of Rule 9 of the CCS (Pension) Rules, 1972. Preliminary inquiry was held on 27.7.2000. Thereafter CDI reverted the case back to ICAR due to non-inspection of the documents. The delay in inspection of the documents was because of frequent change of PO / CBI officials.

The respondent took up the matter with CBI to facilitate inspection of the documents. Subsequently Shri R.R. Tripathi was appointed as Presenting Officer vide order dated 28.2.2002.

CBI, Lucknow fixed 9th April, 2002 onwards for inspection of the documents. The charge officer inspected the available documents. On 3.7.2002, Mrs. Meeta Nambiar, CDI, DVC was appointed as Inquiry Officer to inquire into the charges against the petitioner. Since Mrs. Nambiar was no longer available to hold the inquiry due to administrative reason, CVC nominated Shri J.K. Prasad, CDI, CVI to hold the inquiry in this case. Accordingly Shri Prasad was appointed as Inquiry Officer vide order dated 19.8.2000. Since the charges against the petitioner are of very serious nature, this Hon'ble Court would not like to stay / quash the proceedings which have been started against the petitioner pursuant to the charge sheet. The writ petition as such merits dismissal."

16. In our view, this is no explanation for the delay of almost 13 years, that is, till the writ petitions were filed before this court and Rule DB and Stay of proceedings were granted by virtue of an order dated 24.09.2003.

17. The decisions of the Supreme Court need to be considered at this stage. First of all, we shall consider the decision in ***State of Andhra Pradesh v. N. Radhakishan*** (*supra*) which was cited on behalf of Prof. P.N. Bhat.

That decision contains the following observations:-

"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 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 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 fact 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.”

(underlining added)

A plain reading of the said extract makes it clear that if there is unexplained delay, that by itself causes prejudice to the delinquent employee and such unexplained delay would vitiate the disciplinary proceedings.

18. In ***P.V. Mahadevan*** (*supra*), the Supreme Court as under:-

“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. x x x x x

10. x x x x x

11. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with 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 the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. 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.

12. We, therefore, have no hesitation to quash the charge memo issued against the appellant. The appeal is allowed. The appellant will be entitled to all the retiral benefits in accordance with law. The retiral benefits shall be disbursed within three months from this date. No costs.”

(underlining added)

This decision also supports the submissions made by the learned counsel appearing on behalf of Prof. P.N. Bhat.

19. In **M.V. Bijlani** (*supra*) the Supreme Court observed as under:-

“ 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.”

(underlining added)

From the above decisions it is clear that whenever there is unexplained delay in concluding the inquiry proceedings it causes prejudice to the charged officer. And, because of this, the disciplinary proceedings are vitiated.

20. The decision in the case of **B.C. Chaturvedi** (*supra*) and, in particular, paragraph 11 thereof, on which strong reliance was placed by the learned counsel for the UOI/ICAR, is clearly distinguishable. Paragraph 11 of the said decision reads as under:-

“11. The next question is whether the delay in initiating disciplinary proceeding is an unfair procedure depriving the livelihood of a public servant offending Article 14 or 21 of the Constitution. Each case depends upon its own facts. In a case of the type on hand, it is difficult to have evidence of disproportionate pecuniary resources or assets or property. The

public servant, during his tenure, may not be known to be in possession of disproportionate assets or pecuniary resources. He may hold either himself or through somebody on his behalf, property or pecuniary resources. To connect the officer with the resources or assets is a tardious journey, as the Government has to do a lot to collect necessary material in this regard. In normal circumstances, an investigation would be undertaken by the police under the Code of Criminal Procedure, 1973 to collect and collate the entire evidence establishing the essential links between the public servant and the property or pecuniary resources. Snap of any link may prove fatal to the whole exercise. Care and dexterity are necessary. Delay thereby necessarily entails. Therefore, delay by itself is not fatal in this type of cases, it is seen that the C.B.I. had investigated and recommended that the evidence was not strong enough for successful prosecution of the appellant under Section 5(1) (e) of the Act. It had, however, recommended to take disciplinary action. No doubt, much time elapsed in taking necessary decisions at different levels. So, the delay by itself cannot be regarded to have violated Article 14 or 21 of that Constitution.”
(underlining added)

A reading of the said extract would show that the Supreme court in that case made the observation that it did in the context of a situation where a lot of time was taken to collect the necessary material. However, that is not the situation which prevails in the present case. All the material was available with the UOI/ICAR when it issued the show cause notice containing 97 allegations on 27.06.1990. Nothing new has been included in the charge memos which were the subject matter of the Original Application before the Tribunal. Therefore, the decision of the Supreme Court in the case of **B.C.**

Chaturvedi (*supra*) would be of no help to the learned counsel for the UOI/ICAR.

21. In view of the fact that we do not find any plausible explanation for the inordinate delay in concluding the inquiry proceedings, the same would have to be held as having been vitiated because of that. Consequently, the impugned order passed by the Tribunal is set aside and so, too, the charge memos dated 25.09.1997 and 31.10.1997 as also all proceedings pursuant thereto.

22. The Writ Petition No. 2656/2003 is allowed to the aforesaid extent. In so far as Writ Petition No. 5695/2003 is concerned, the only ground urged therein is that the CDI should have been made a party before the Tribunal. That, in our view, is untenable, as the CDI is only a nominee of the Disciplinary Authority. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

SEPTEMBER 27, 2012
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