

GAHC010155742021



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5697/2021

1. Union of India,
Represented by the Secretary to the Government of India,
Ministry of Defence, South Block, New Delhi – 110001

2. The Engineer-in-Chief, Military Engineer Services,
Engineer-in-Chief's Branch,
Integrated Head Quarter, Ministry of Defence (Army),
Kashmir House, Rajaji Marg,
New Delhi – 110011

3. The Chief Engineer Pune Zone,
Dakshin Kaman Marg, Sir Maneckji Mehta Road,
Camp Pune, Pune-411001

.....Petitioners

-Versus-

MES No.439169
Sri Vinod Kumar Gupta,
Son of Sri Devata Deen Gupta,
Joint Director, office of the Additional Director General (NEI),
Narangi Military Station,
P.O.- Satgaon, Guwahati- 781027 (Assam).

.....Respondent

– B E F O R E –

HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

For the petitioners : Mr. B. Chakravarty, C.G.C.

For the respondent : Mr. S.C. Keyal, Advocate

Date of hearing : 07.11.2024

Date of Judgment : 20.11.2024

JUDGMENT & ORDER (CAV)

(Vijay Bishnoi, C.J.)

1. This writ petition is filed by the petitioners challenging the order dated 22.04.2021 passed by the Central Administrative Tribunal (hereinafter to be referred as 'CAT'), Guwahati Bench in O.A. No.216/2020 whereby the CAT allowed the application filed on behalf of the sole respondent herein and set aside the Memorandum of Charges dated 12.02.2018 issued by the petitioners in the disciplinary proceedings initiated against the respondent.

2. The brief facts, sans the details, are that the sole respondent was appointed on 05.11.2005 in the Military Engineer Services and initially he was posted as Assistant Director, Group 'A', Civilian Officer in the office of the Chief Engineer, Lucknow Zone under the Ministry of Defence, Government of India. After completion of his probation period on 04.11.2007, his service was confirmed w.e.f. 05.11.2007. He worked as AGE B/R (Project) under GE Dehu Road during the period from 23.05.2006 to 31.12.2009. The respondent was firstly promoted as Executive Engineer on 22.10.2010 and he was given second promotion w.e.f. 01.12.2015 as Executive Engineer (Non-Functional Selection

Grade).

However, while he was functioning as AGE B/R (Project) under GE Dehu Road, certain discrepancies were found in the execution of his work which involved construction of Explosive Storage House. As per the department, the said discrepancies were came into the knowledge of it in the year 2011 and the first Staff Court of Inquiry was conducted to fix the responsibility of the officers involved in the construction of the Explosive Storage House. Thereafter, the second and third Staff Court of Inquiry was conducted and ultimately the respondent was served with the memorandum of charges on 12.02.2018, which is reproduced hereunder:

Article-I

“That MES-439169 Shri VK Gupta, EE, while functioning as AGE B/R (Project) under GE Dehu Road during the period from 23.05.2006 to 31.12.2009 was responsible for execution for Job No. S/2502. He had allowed the contractor to execute the walls of 16xESHs with cavity instead of 60 cm thick solid walls and thus he had shown gross negligence and poor monitoring of construction of walls under CA No. CEPZ/MUM/53 of 2004-05.

Article-II

That during the aforesaid period and while functioning in the aforesaid office, the said MES439169 Shri VK Gupta, EE, had not done adequate supervision and physical monitoring of works which led to poor quality and incorrect construction of loading platforms, hard standing, fire breaks and ramps (Job No. S/2431 and S/2502).

Article-III

That during the aforesaid period the said MES439169 Shri VK Gupta, EE, while functioning as AGR B/R (Project) was responsible for poor layout of area drainage (Job No. S/2431 & S/2502).

Article-IV

That during the aforesaid period the said MES439169 Shri VK Gupta, EE, while functioning as aGE B/R (Project) was responsible for poor maintenance of site documents under Job No. S/2431 & S/2502.

Article-V

That during the aforesaid period the said MES439169 Shri VK Gupta, EE, while functioning as AGE B/R (Project) failed to bring to the notice of higher MES authorities, various user requirements omitted during planning stage like inadequate qtys of road network under Job No. S/2431 & S/2502, omission of loading platform under Job No. S/2431, wrong specification of 'Z' types ventilators under Job No. 2431 and Job No. S/2502 and omission of fire breaks under Job No. S/2431."

3. As per the petitioners, the respondent did not respond to the said charges within the prescribed time limit. However, he submitted a representation against the said Memorandum of Charges. When the said representation was not decided, the respondent preferred O.A. No.350/284/2019 before the CAT, Kolkata Bench. The said original application was disposed of by the CAT, Kolkata Bench on 05.03.2019 and, after that, disciplinary proceedings were resumed against the respondent.

At that stage, the respondent again preferred an original application before the CAT, Guwahati Bench and the said original application came to be decided by the impugned order which is under challenge in the present writ petition. The CAT has allowed the original application filed on behalf of the respondent mainly on the ground of delay in initiation of disciplinary proceedings against the respondent herein. The relevant portion of the impugned order passed by the CAT is reproduced hereunder:

"13. The stand of the respondent authorities for initiation of proceedings in delay is that the respondents came on notice of the irregularities and lapses on the part of the applicant during 2011-12 after his first promotion on 22 October 2010. Second promotion dated December 2015 was made to the applicant as there was no charge sheet issued and the charge sheet was issued based on the findings of the Staff Court of Inquiry conducted during the period of 2011-12. From the statement made by the respondents in Para 6 of their written statement, it is ample clear that the period if any allegations or

lapses on the part the respondents was in between 23.05.2006 to 31.12.2009 and the authority was sitting with the matter up to 2011-12 i.e. more than 5 years. Noticeably, the applicant got his two promotions. Thus it is explicit clear that the proceedings initiated by the Disciplinary Authority after 12 years on 12.02.2018. If the authorities have any doubt or found any irregularities or lapses on the part of the applicant, which was the subject matter of the enquiry stated to have taken place between 2006-2009 as aware in 2011- 2012, that too, no proceeding was initiated and awaited till 2018 and as per our opinion, it is a clear case of inordinate delay in initiating disciplinary proceeding against the applicant. The protracted disciplinary enquiry against a government employee should be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in minds of government employee.....”

4. The CAT, while setting aside the Memorandum of Charges dated 12.02.2018, has placed reliance on various decisions of the Hon’ble Supreme Court and Delhi High Court as well as the orders passed by the CAT, Guwahati Bench. The CAT has also taken note of the petitioners’ case that the alleged irregularities and lapses on the part of the applicant came to their notice in the year 2011-12 and in between he was promoted to the next higher post in the year 2010 and second time he was promoted in the year 2015 and after that only charge-sheet was issued against him.

5. Assailing the order passed by the CAT, Mr. B. Chakravarty, learned Central Govt. Counsel appearing for the petitioners has submitted that the CAT grossly erred in setting aside the Memorandum of Charges solely on the ground of delay. It is contended that it is settled that disciplinary proceedings against a government employee cannot be quashed or set aside solely on the ground of delay. It is submitted that in appropriate case, disciplinary proceedings can be set aside on the ground of delay but at the same time, the Court has to take

into consideration the severity of the allegations.

It is further contended that at the present moment, only a Memorandum of Charges is issued against the respondent to which he is free to file his response and therefore, it cannot be said that the respondent is prejudiced with the initiation of the disciplinary proceedings.

6. Learned counsel for the petitioners has submitted that it is true that there was delay in initiation of disciplinary proceedings against the respondent but the petitioners have sufficiently explained the said delay. However, the CAT, without appreciating the reasons cited by the petitioners has, in a mechanical manner, set aside the Memorandum of Charges.

7. It is contended that the respondent was entrusted with the work of construction of Explosive Storage House, which is very important for security purposes. However, due to negligence on the part of the respondent, the Explosive Storage House could not be put to use. It is further contended that in the defence establishment, any type of negligence on the part of the employees, particularly, in the work of construction of Explosive Storage House, the negligence may cause severe affect. Learned counsel for the petitioners has, therefore, contended that the charges leveled against the respondent are of serious nature but the CAT, without looking into the same, has illegally set aside the Memorandum of Charges solely on the ground of delay in initiation of disciplinary proceedings, which is against the settled principle of law.

In support of the above contentions, learned counsel for the petitioners has placed reliance on the following decisions of the Hon'ble Supreme Court;

- (i) ***Union of India and another vs. Kunisetty Satyanarayana***, reported in ***(2006) 12 SCC 28***;

- (ii) ***V. Padmanabham vs. Government of Andhra Pradesh and others***, reported in ***(2009) 15 SCC 537***;
- (iii) ***Secretary, Ministry of Defence and others vs. Prabhash Chandra Mirdha***, reported in ***(2012) 11 SCC 565***;
- (iv) ***Anant R. Kulkarni vs. Y.P. Education Society and others***, reported in ***(2013) 6 SCC 515***; and
- (v) the decision of the Gauhati High Court rendered in the case of ***Rabindra Nath Barman vs. Gauhati High Court and others***, reported in ***2017 (2) GLT 773***.

Learned counsel for the petitioners has, therefore, prayed that the writ petition be allowed and the impugned order passed by the CAT may kindly be set aside.

8. *Per contra*, Mr. S.C. Keyal, learned counsel for the respondent has vehemently opposed the writ petition and has argued that the CAT has not committed any illegality in setting aside the Memorandum of Charges dated 12.02.2018 issued against the respondent. It is submitted that there is inordinate delay in initiation of the disciplinary proceedings against the respondent and the CAT, considering the said delay, has rightly interfered in the matter.

Mr. Keyal has submitted that it is the case of the petitioners that they were aware about the so called irregularities in construction of Explosive Storage House by the respondent in the year 2011 itself. But, despite that, no satisfactory explanation has been provided by the petitioners for the delay caused in initiation of the disciplinary proceedings against the respondent.

Mr. Keyal has submitted that the construction work, for which the

department is alleging that the respondent committed supervisory negligence, was executed way back in the year 2008-2009 and, as a matter of fact, the delay in initiation of disciplinary proceedings against the respondent was of about more than 12 years. It is further submitted that the respondent, by way of filing a detailed representation in November, 2018, had explained in detail that he could not be held responsible for any fault in the construction of Explosive Storage House but the department did not take into consideration the said representation in its right perspective. It is further submitted that the delay of around 12 years in initiation of disciplinary proceedings against the respondent is highly prejudicial and this fact itself is sufficient to set aside the disciplinary proceedings initiated against him and therefore, the CAT has rightly interfered in the matter.

Learned counsel for the respondent has submitted that the respondent was accorded two promotions, of which the first was given in the year 2010 and the second was given in the year 2015 and this itself is sufficient to conclude that the respondent served to the satisfaction of the department, and looking to this fact also, there is no justification on the part of the petitioners to initiate disciplinary against him after inordinate delay. Learned counsel has, therefore, submitted that in the above facts and circumstances of the case, no case for interference is called for and the writ petition filed by the petitioners is liable to be dismissed.

In support of the above contentions, Mr. Keyal has placed reliance on the decisions rendered by the Hon'ble Supreme Court in the case of ***State of Madhya Pradesh vs. Bani Singh and another***, reported in ***1990 (Supp) SCC 738***, ***State of Andhra Pradesh vs. N. Radhakishan***, reported in ***(1998) 4 SCC 154***. Learned counsel has also placed reliance on the decision rendered by the

Division Bench of this Court in the case of ***Union of India and others vs. Shri Bamin Tari***, reported in ***(2016) 0 Supreme (Gau) 143*** and the decision dated 29.10.2024 passed in ***WP(C) 91/2022 (The Union of India and others vs. Vinay Kumar)***.

9. Heard learned counsel appearing for the parties and perused the material available on record.

10. On perusal of the impugned order, it is clear that the CAT has set aside the Memorandum of Charges solely on the basis of delay in initiation of proceedings against the respondent. Though the CAT has taken note of the Memorandum of Charges, no finding regarding severity of the allegations leveled in the Memorandum of Charges has been recorded by the CAT.

11. The Hon'ble Supreme Court in the case of ***Union of India and another vs. Kunisetty Satyanarayana (supra)*** has held that the discretionary jurisdiction under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet unless a very rare and exceptional case is made out. The relevant portion of the said decision is reproduced hereunder;

“12. In our opinion, the High Court was not justified in allowing the writ petition.

13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh, [(1996) 1 SCC 327: JT (1995) 8 SC 331, Special Director v. Mohd. Ghulam Ghouse [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 ; AIR 2004 SC 1467, Ulagappa v. Divisional Commr., Mysore [(2001) 10 SCC 639], State of U.P. v. Brahm Datt Sharma, [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943], etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ

petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. *Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.*

16. *No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.”*

12. The Hon’ble Supreme Court in the case of **V. Padmanabham vs. Government of Andhra Pradesh and others (supra)** has held in para 18 as under;

“18. We, therefore, are of the view that delay alone in a case of this nature should not be held to be fatal in the matter of continuing the departmental proceeding as the charges against the appellant are serious in nature.....”

13. The Hon’ble Supreme Court in the case of **Secretary, Ministry of Defence and others vs. Prabhash Chandra Mirdha (supra)** has held as under;

8. *The law does not permit quashing of charge-sheet in a routine manner. In case the delinquent employee has any grievance in respect of the charge-sheet he must raise the issue by filing a representation and wait for the decision of*

the disciplinary authority thereon. In case the charge-sheet is challenged before a court/tribunal on the ground of delay in initiation of disciplinary proceedings or delay in concluding the proceedings, the court/tribunal may quash the charge-sheet after considering the gravity of the charge and all relevant factors involved in the case weighing all the facts both for and against the delinquent employee and must reach the conclusion which is just and proper in the circumstance. (Vide: *State of Madhya Pradesh v. Bani Singh*, 1990 Supp SCC 738; *State of Punjab v. Chaman Lal Goyal*, (1995) 2 SCC 570; *Registrar, Coop. Societies v. Sachindra Nath Pandey*, (1995) 3 SCC 134; *Union of India v. Ashok Kacker*, 1995 Supp (1) SCC 180; *Prohibition & Excise Deptt. v. L. Srinivasan*, (1996) 3 SCC 157; *State of Andhra Pradesh v. N. Radhakishan*, AIR 1998 SC 1833; *Food Corporation of India v. V.P. Bhatia*, (1998) 9 SCC 131; *Supt. of Police v. T. Natarajan*, 1999 SCC (L&S) 646; *M.V. Bijlani v. Union of India*, AIR 2006 SC 3475; *P.D. Agrawal v. State Bank of India*, (2006) 8 SCC 776; and *Government of A.P. v. V. Appala Swamy*, (2007) 14 SCC 49).

9. In *Forest Department v. Abdur Rasul Chowdhury*, (2009) 7 SCC 305, this Court dealt with the issue and observed that delay in concluding the domestic enquiry is not always fatal. It depends upon the facts and circumstances of each case. The unexplained protracted delay on the part of the employer may be one of the circumstances in not permitting the employer to continue with the disciplinary proceedings. At the same time, if the delay is explained satisfactorily then the proceedings should not (sic) be permitted to continue.

10. Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show cause notice in disciplinary proceedings should not ordinarily be quashed by the court.

(Vide : *State of U.P. v. Brahm Datt Sharma*, AIR 1987 SC 943; *Bihar State Housing Board v. Ramesh Kumar Singh*, (1996) 1 SCC 327; *Ulagappa v. Commr.*, AIR 2000 SC 3603 (2); *Special Director v. Mohd. Ghulam Ghouse*, AIR 2004 SC 1467; and *Union of India v. Kunisetty Satyanarayana*, (2006) 12 SCC 28].

11. In *State of Orissa v. Sangram Keshari Misra*, (2010) 13 SCC 311, this Court held that normally a charge-sheet is not quashed prior to the conducting of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that to determine correctness or truth of the charge is the function of the disciplinary authority.

[See also: *Union of India v. Upendra Singh*, (1994) 3 SCC 357].

12. Thus, the law on the issue can be summarised to the effect that charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings.”

14. Relying on the above-referred decisions and other decisions, the Hon’ble Supreme Court in the case of **Anant R. Kulkarni vs. Y.P. Education Society and others (supra)** has held as under;

“14. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is de hors the limits of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of

judicial review at the very threshold. Therefore, a charge-sheet or show-cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by the court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question must be carefully examined taking into consideration the gravity/magnitude of the charges involved therein. The court has to consider the seriousness and magnitude of the charges and while doing so the court must weigh all the facts, both for and against the delinquent officers and come to the conclusion which is just and proper considering the circumstances involved. The essence of the matter is that the court must take into consideration all relevant facts, and balance and weigh the same, so as to determine, if it is in fact in the interest of clean and honest administration that the said proceedings are allowed to be terminated only on the ground of delay in their conclusion. [Vide : [State of U.P. v. Brahm Datt Sharma](#), AIR 1987 SC 943; [State of Madhya Pradesh v. Bani Singh](#), 1990 Supp SCC 738; [State of Punjab v. Chaman Lal Goyal](#), (1995) 2 SCC 570; [State of Andhra Pradesh v. N. Radhakishan](#), AIR 1998 SC 1833; [M.V. Bijlani v. Union of India](#), AIR 2006 SC 3475; [union of India v. Kunisetty Satyanarayana](#), (2006) 12 SCC 28, [Ministry of Defence v. Prabhash Chandra Mirdha](#), (2012) 11 SCC 565 and [LIC v. A. Masilamani](#), (2013) 6 SCC 530]

15. This Court in the case of *Rabindra Nath Barman vs. Gauhati High Court (supra)* has taken the same view as has been taken by the Hon'ble Supreme Court in the above discussed decisions.

16. In view of the above settled propositions of law, if we examine the present case, it appears that the allegations against the respondent are of committing gross negligence and poor monitoring in respect of construction of the Explosive Storage House. Any negligence in construction of Explosive Storage House cannot be taken lightly since it involves serious risk if the Explosive Storage

House is not properly constructed. True it is that the shortcomings in construction of Explosive Storage House came to the notice of the department in the year 2011-12 itself, but one has to understand that in the matters of construction of the buildings, which are important for security reasons, much technical expertise is required and in such cases much evidence and material is required to come to a conclusion what sort of shortcomings were there in construction of such important structure and at what level the shortcomings happened. To ascertain the same, much enquiry and probe is needed and in that process, it is natural that a long time is consumed.

Apart from that, it is settled that the disciplinary proceedings cannot be set aside on the ground of delay alone and the Court/tribunal is required to take into consideration the gravity and magnitude of the charges. It is not the case of the respondent that the charges leveled against him by the department are not grave or the magnitude of the said charge is less. As observed earlier, the tribunal has not troubled itself to look into the charges leveled against the respondent and has interfered in the matter solely on the ground that there was delay in initiation of proceedings.

So far as the fact of grant of two promotions to the respondent is concerned, we do not find the stand of the petitioners unrealistic because there was no reason to deny promotion to the respondent when the Memorandum of Charges have not been issued and disciplinary proceedings have not been initiated against him.

17. In *State of Andhra Pradesh vs. N. Radhakishan (supra)*, the Hon'ble Supreme Court has interfered with the charge memo taking into consideration that the charges were framed without any reference to records, merely on the

report of the Director General, Anti-Corruption Bureau. It is also considered by the Hon'ble Supreme Court that the charges were framed against 11 persons, all in verbatim and without particularising the role played by each of the officers charged. The Supreme Court has also observed that there was unexplained delay in initiation of disciplinary proceedings. However, in the present case, the situation is different. The charges against the respondent are precise and the department has also explained the delay in initiation of disciplinary proceedings.

18. In the case of the ***State of Madhya Pradesh vs. Bani Singh (supra)***, the Hon'ble Supreme Court has again interfered with the charge-sheet on the ground of delay while observing that it was not the case of the department that they were not aware of the irregularities which were committed around ten years before the initiation of the proceedings. As stated earlier, in the present case, though the department was aware of the irregularities committed in construction of the Explosive Storage House, as the irregularities are regarding the construction of Explosive Storage House, it requires deep probe and collection of evidence and in that matter obviously time consumes.

19. So far as the decision of the Gauhati High Court rendered in the case of ***Union of India and others vs. Shri Bamin Tari (supra)*** is concerned, the facts are quite distinguishable because the allegations against the officer are lack of integrity which resulted into loss of government exchequer. In the case, the Court found that the delay in initiation of disciplinary proceedings is fatal.

20. In the case of ***The Union of India and others vs. Vinay Kumar (supra)***, this Court has refused to interfere in the order of the tribunal whereby the tribunal has quashed the charge-sheet against an employee, who was working in the Income Tax Department, taking into consideration the fact that the basis

of initiation of disciplinary proceedings against the respondent was an order passed by the appellate authority while exercising appellate jurisdiction. However, the said order later on came to be set aside by the High Court of Calcutta and the matter was referred to the ITAT which in turn remanded the matter to the Assessing Officer and therefore, the gravity of the charges leveled against the said officer has been diluted. In such circumstances, the above referred judgments, on which learned counsel for the respondent has placed reliance, are of no help to the respondent.

21. In view of the above discussions, we are of the view that the learned CAT has grossly erred in interfering with the Memorandum of Charges dated 12.02.2018 issued by the petitioners against the respondent solely on the ground of delay. Hence, the writ petition is allowed and the impugned order dated 22.04.2021 passed by the CAT, Guwahati Bench in O.A. No.216/2020 is hereby set aside.

22. However, in the facts and circumstances of the case, it is expected that the department shall conclude the disciplinary proceedings initiated against the respondent expeditiously preferably within a period of 9 (nine) months from today.

JUDGE

CHIEF JUSTICE

Comparing Assistant