

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.484 of 2014

IN

Civil Writ Jurisdiction Case No. 15296 of 2012

- =====
1. The State Of Bihar, Through The Chief Secretary, Government Of Bihar, Patna
 2. The Principal Secretary, Public Health Engineering Department, Government Of Bihar, Patna
 3. The Departmental Enquiry, Commission, Personnel And Administrative Reforms (Now General Administrative Department) Department Government Of Bihar, Patna
 4. The Superintending Engineer, Public Health Engineering Department, Government Of Bihar, Patna
 5. The Executive Engineer, Public Health Division, Banka Cum Member Secretary District Water And Sanitation Committee, Banka
 6. The Deputy Development Commissioner Cum Chairman, District Water And Sanitation Committee, Banka

.... Appellants

Versus

1. Kumar Manoj Nath S/O Dr. Shambhu Nath Resident Of A.P. Colony, P.S. Rampur, District Gaya

.... Respondent

=====

Appearance :

For the Appellants : Mr. DEEPAK SAHAY JAMUAR

For the Respondent : MR. VIJAY KUMAR SINGH, ADVOCATE

MS. HANSA JHA, ADVOCATE

=====

CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

AND

HONOURABLE JUSTICE SMT. ANJANA MISHRA

C.A.V JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 17-04-2015

After a delinquent, who is proceeded against on serious charges of financial irregularities, stands punished, *must a Court,*

in exercise of extra-ordinary jurisdiction under Article 226 of the Constitution, interfere with such a punishment on the ground that there was delay in taking the department proceeding to its logical conclusion?

2. The above is the moot question that falls for determination in the present appeal, which has arisen out of the order, dated 18.12.2013, passed, in CWJC No. 15296 of 2012, by a learned single Judge of this Court, disposing of the writ application with certain directions, which we would take note of a little later.

3. The material facts which led to the present appeal, may, in brief, be, set out as under:

(i) The writ petitioner, whose initial appointment, in the Department of Public Health Engineering, Government of Bihar, was as an Assistant Engineer, went to be promoted, on 18.03.1997, to the post of Executive Engineer.

(ii) On 09.08.2004, the writ petitioner joined as Executive Engineer, Public Health Engineering Division, Banka. While the writ petitioner had been working there, Superintending Engineer, Public Health Engineering Division, Bhagalpur, submitted a *report*, dated 16.05.2007, regarding some irregularities committed by the writ petitioner.

(iii) Based on the said *report*, a show cause notice was issued, on 03.07.2007, to the writ petitioner calling upon him to

explain why a departmental proceeding shall not be initiated against him. The writ petitioner submitted, on 12.09.2007, his reply to the said show cause notice.

(iv) As the Disciplinary Authority was not satisfied with the writ petitioner's reply to the said show cause notice, a departmental proceeding was initiated against the petitioner by issuance of a memorandum, dated 29.10.2007, containing 8 (eight) charges framed against the writ petitioner, the charges being as follows:

(1) Neither the meeting of Governing Body nor that of District Water and Sanitation Committee was convened at fixed interval: -

The Superintending Engineer, Public Health Engineering Circle, Bhagalpur has reported through letter No. 428, dated 16.05.2007, that after sanction of total cleanliness campaign in the district of Banka, only one meeting of the Governing Body was held, on 16.08.2003, in the last five years in which two Hon'ble Members of Bihar Legislative Assembly besides the Chairman and Member Secretary participated whereas this meeting should have been held, at least, twice in a year. Likewise, the meeting of District Water and Sanitation Committee was held three time only, i.e. on 10.07.2004, 24.04.2006 and 25.01.2007 respectively, whereas its meeting should have been held in every month. Here the signature of Chairman-cum-Chief Executive Officer, District Water and Sanitation Committee, Banka was not found on the proceeding report of the technical meeting nor was it published among the members of the committee.

(2) Not selecting the voluntary organizations:

In spite of several reminders given to the Deputy Development Commissioner-cum-Chairman, District Water and Sanitation Committee and Executive Engineer-cum-Member Secretary, District Water and Sanitation Committee (Shri Kumar Manoj Nath) through letter no. P.H./B.W.S.M.-1011-64 dated 28.01.2005, letter no.-3185, dated 21.07.2005, letter no.-2152, dated 07.04.2006 and letter no.-231, dated 19.05.2006 of the Secretary-cum-Chairman, Bihar State Water and Sanitation Mission neither voluntary organizations have been selected till date nor details in this regard sent to the headquarter.

(3) To hold election of it without adopting any transparent process for benefiting some particular selected voluntary organization: - It has been detected in course of scrutiny of related records that some particular voluntary organizations have been selected not by giving on the file by Shri Kumar Manoj Nath, Executive Engineer and obtaining permission of the then Deputy Development Commissioner-cum-Chairman, District Water and Sanitation Commission, Bana and for which approval of District Water and Sanitation Committee was never obtained.

4) Defective process of making payments to voluntary organization: - After scrutiny of certificates in respect of payments made for construction of toilets in schools, it has been found that payment for constructions of 968 (nine hundred sixty eight) units of toilets have been made only to 4 to 5 voluntary organizations merely on the letter pad of N.G.O. without deducting the amount of contribution of beneficiaries the certificate neither mentions any measurement nor



there is any entry about it in the measurement-book. The quality of construction work has neither been examined by any Assistant Engineer nor even by you. Only "physically checked and found correct" is mentioned by Junior Engineer on the certificate. After perusal of concerned certificates it was also detected that attempt has been made to specially benefit voluntary organization named Gram Vikas Jyoti by making payment of approximately rupees 80 lakhs to 100 lakhs to it.

(5) In construction of school toilets neither any contribution from beneficiaries has been obtained nor their participation have been fixed. Even no action is taken for transfer after construction of toilets.

(6) Construction of toilets in schools without any standard estimate: - In this regard when random check was conducted after visiting premises of following three schools, it was found that toilets constructed in schools are in very pitiable condition, which are as follows:-

(a) Kharhara Middle School, Block Barahat- Here toilets were found in complete dilapidated condition.

(b) Primary School, Jogdiha Block, Banka- Though, toilet is constructed here but it is not compatible to any standard. This toilet was not found in use. Teachers Smt. Premlata Devi and Poonam Kumari of the concerned school informed that the school doesn't even no as to for whom this toilet is constructed and who has constructed it.

(c) Nemua Bhojpur, Block Barahat- The toilet has been constructed but one fails to understand the criteria of its construction. It is not in use either.

Besides this, it was found in course of enquiry that this situation prevails in the toilets constructed in the entire schools of the district.

(7) Withdrawal of amount by the single signature of the member secretary without obtaining consent of the New Deputy Development Commissioner-cum-Chairman-District Water and Sanitation Committee:-

On perusal of records regarding payment made to the voluntary organizations, it came to light that withdrawal of all type of amount before 23.11.2006, has been made after obtaining consent of the then Deputy Development Commissioner-cum-Chairman, District Water and Sanitation Committee, in the register but after arrival of the new Deputy Development Commissioner-cum-Chairman, District Water and Sanitation Committee, no consent regarding payment was obtained in the register from him but when the Deputy Development Commissioner sent the bills received from the voluntary organisations, to the different Block Development Officers, you made payment of the bills by your single signature after changing it into the amount below one lakh without obtaining consent of the Deputy Development Commissioner, after getting inquiry report.

(8) You had been directed vide letter no.-409 dated 10.05.2007 of the Superintending Engineer, Public Health Engineering Circle, Bhagalpur to submit explanation, record relating to amount of expenditure, certificate and measurement book till 15.05.2007 through your Accountant, but you did not comply with the order of your senior officer, nor you submitted any explanation. Thus, the charge of causing damage to

Government Treasury, embezzlement or misuse of Government money, dereliction of duty and lack of integrity is substantiated against you.”

(v) On conclusion of the *enquiry*, an *enquiry report* was submitted, on 04.03.2009, whereby the Enquiry Officer held the writ petitioner guilty of the charge Nos. 1, 2, 3 and 7, while exonerated the writ petitioner of the charge Nos. 4, 5, 6 and 8, whereupon the writ petitioner was served, on 26.04.2011, with a notice to show cause, if any, against the findings of the Enquiry Officer annexing, with the said notice to show cause, a copy of the said *enquiry report*.

(vi) The writ petitioner submitted, on 21.05.2011, his reply to the said shows cause notice served upon him on the basis of the finding of the Enquiry Officer.

(vii) Having not found the writ petitioner's reply to the said show cause notice satisfactory, the Disciplinary Authority passed an order, on 10.07.2012, contained in Memo No. 1017/07-382, holding the writ petitioner guilty of the charge Nos. 1, 2, 3 and 7, and imposing on him the penalty of (i) *stoppage of two annual increments with cumulative effect*, (ii) *censure to be entered into the character roll of the writ petition for the year 2006-07*, and (iii) *withholding of promotion for two years*.

(viii) After having been punished as indicated above, the order of punishment, dated 10.07.2012, and the memorandum of charges, were put to challenge by the writ

petitioner by making a writ petition, under Article 226 of the Constitution of India, which gave rise to CWJC No. 15296 of 2012.

4. Having heard the writ petition, the learned single Judge has passed the order, dated 18.12.2013, aforementioned quashing the memorandum of charges and also the penalty imposed on the petitioner, on two grounds, namely, (i) that the time schedule prescribed by Circulars, issued by the State Government, requiring a Disciplinary Authority to adhere to a such prescribed time schedule, has not been complied with and (ii) that there was, otherwise, also, delay in concluding the disciplinary proceedings culminating into imposition of penalty on the writ petitioner.

5. By the order under appeal, the learned single Judge, while disposing of the writ petition, has observed and directed as follows:

"28. Thus this court in the facts of present case is also of the considered opinion that due to no explanation whatsoever in continuing and concluding the departmental proceedings for a period of nearly five years, the same along with consequential impugned order of punishment is fit to be quashed on the ground of delay both in the light of the aforesaid circulars of the State Government and the law laid down by Apex Court in the case of Radhakishan (supra).

30. This Court in view of the findings arrived above is therefore also not required to go into the third submission of the petitioner that there is no evidence in support of the charges which were found to have been proved in the departmental proceeding.

31. Thus for the reasons indicated above the entire departmental proceedings arising out of memo of charges dated 29.10.2007 as well as the consequential impugned order of punishment dated 10.7.2012 are hereby quashed.

32. Having held so, this Court would also consider the remaining prayer for opening of sealed cover of relating to promotion of petitioner on the post of Superintending Engineer. In this regard it is the case of the petitioner that the Departmental Promotion Committee in its meeting held on 9.1.2008 had considered the case of the petitioner for his promotion and had kept the same under sealed cover awaiting the result of this departmental proceeding.

33. This Court has been informed by the learned counsel for the petitioner that juniors to the petitioner were promoted on the post of Superintending Engineer with effect from 12.3.2008. This has also been confirmed by Mr. Anjani Kumar learned A.A.G.-6 who has filed today a supplementary counter affidavit and has brought on record the order of promotion of Sri Kamal Kishore Sharma, who was the immediate junior to the petitioner in the cadre of Executive Engineer in the Public Health Engineering Department. In fact, Sri Kamal Kishore Sharma by a notification dated 23.12.2010 was promoted on the post of Superintending Engineer with effect from 12.3.2008.

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35. *In the result, this application is allowed and the departmental proceedings arising out of memo of charges dated 29.10.2007 and the impugned order of punishment dated 10.7.2012 are hereby quashed and the respondent Principal Secretary of the Public Health Engineer Department is hereby directed to take a firm decision with regard to the promotion of the petitioner in the manner indicated above within a period of one month from the date of filing of a representation by the petitioner enclosing a copy of this judgment.*

36. *Additionally this Court would also direct State Government to take appropriate disciplinary action against the erring officials and employees who had caused delay in either conducting the enquiry and/or passing the impugned order of punishment against the petitioner by flouting the time limit fixed and acting contrary to the instructions given in the circular issued by the Chief Secretary in the letter of Appointment Department No. III/R-1-1026-63A-10192 dated 23rd August 1963.*

37. *Let a copy of this judgment be also sent to the Chief Secretary Bihar for placing the matter relating to issuance of a fresh firm guideline by the State Government to all the concerned authorities for ensuring the speedy disposal of each and every departmental proceedings within a fixed time limit."*

6. Being aggrieved by the order, dated 18.12.2013, this appeal has been preferred by the respondents in the writ petition.

7. We have heard Mr. Deepak Sahay Jamuar, learned Counsel, appearing on behalf of the appellants, and Mr. Vijay Kumar Singh, learned Counsel, appearing on behalf of writ petitioner-respondent.

8. The submission, advanced on behalf of the appellants, is to the effect that the order, under appeal, has been passed on the sole ground of delay in concluding the departmental proceeding without taking into account the fact that the charges already stood proved and the order of penalty, in consonance with the guilt of the writ petitioner, has been passed. It is also submitted, on behalf of the appellants, that the delay, which had crept in, was not deliberate or intentional and, otherwise also, this issue pales into insignificance, when the charges have already been proved and the punishment has been validly imposed.

9. According to the appellants, so long as the finding of guilt reached against the writ petitioner-respondent are not held to be perverse and/or otherwise not sustainable in law, the punishment, which was already imposed, could not have been interfered with, but this aspect of the whole case appears to have escaped the notice of the learned single Judge.

10. It is further submitted, on behalf of the appellants, that as the writ petitioner was facing grave charges of financial irregularities, the same necessitated careful examination at every

stage and the same resulted into some delay.

11. The learned single Judge, according to the appellants, has erred in not noticing the fact that the writ petitioner was provided with full and effective opportunity to participate in the enquiry and no prejudice has been caused to the writ petitioner, because of the delay in concluding the departmental proceeding and/or in imposing the penalty, which has legitimately been imposed on the writ petitioner; more so, when the *enquiry report* is well-reasoned report holding the writ petitioner guilty of the charge Nos. 1, 2, 3 and 7.

12. It is contended, on behalf of the appellants, that the writ petitioner came to this Court against the penalty imposed following a duly held disciplinary proceeding without taking recourse to the remedy of departmental appeal available to him.

13. It is also contended, on behalf of the appellants, that the learned single Judge has erred in not taking into account the gravity of the charges and the fact that the writ petitioner agitated the question of delay only upon being punished on his having been found guilty of the serious charges of financial irregularities.

14. It is the further contention of the appellants that though there are guidelines issued by the Government prescribing the period for conclusion of the disciplinary proceeding, these guidelines are, as of right, not enforceable in

law and the mere omission to get keep to the guidelines will not vitiate the penalty imposed after a delinquent has already been found guilty of a charge as serious as the ones, which the writ petitioner had faced and has been found guilty of.

15. According to learned Counsel for the appellants, the reference made to **Andhra Pradesh v. N. Radhakrishnan**, reported in **1998 (4) SCC 154**, by the learned single Judge, in the facts and attending circumstances of the present case, is misplaced inasmuch as the case of **N. Radhakrishnan** (supra) relates to a situation, where the departmental proceeding had not yet been concluded, whereas the case at hand is one, where the departmental proceeding has been concluded by imposition of penalty on the delinquent on the basis of well-reasoned findings and the charges were of serious financial irregularities.

16. To the appellants' submissions noted above, it is submitted, on behalf of the writ petitioner-respondent, that the learned single Judge has rightly interfered with the penalty imposed on the writ petitioner, when there was inordinate delay in concluding the enquiry. It is further submitted, on behalf of the writ petitioner-respondent, that the reliance placed by the learned single Judge on the case of **N. Radhakrishnan** (supra) is also not untenable in law.

17. In order to ascertain and determine the question of delay in concluding the departmental proceeding, following aspect

are, indeed, noticeable and need to be borne in mind.

(a) On 16.05.2007, a report was forwarded to the Secretary, Public Health Engineering Department, by Superintendent Engineer, Public Health Department, Bhagalpur, alleging serious financial irregularities committed by the writ petitioner, while he was functioning as the Executive Engineer, Public Health Engineering Division, Banka.

(b) On 03.07.2007, a notice was issued to the petitioner directing the petitioner to show cause, if any, as to why departmental proceeding be not initiated against him with further direction that the writ petitioner shall file his response within one week.

(c) In the meanwhile, the Department concerned, on 07.06.2008, furnished its opinion on the charges levelled against the writ petitioner along with certain facts and figures.

(d) After lapse of about two-and-a-half months, the petitioner filed, on 12.09.2007, his reply to the said show cause, which was, however, found to be not satisfactory by the Disciplinary Authority.

(e) On 29.10.2007, the petitioner's show cause having been rejected, departmental proceeding was initiated against the petitioner and a memorandum of charge was accordingly served upon him in Form- K (Annexure-5). The departmental proceeding stood, thus, drawn, on 29.10.2007.



(f) Upon conducting the departmental enquiry and after considering the documents and other relevant materials, *enquiry report* was submitted, on 04.03.2009, by Departmental Enquiry Commissioner, Personnel and Administrative Reforms Department, Government of Bihar, Patna, as the Enquiry Officer. Since the charges against the petitioner were of grave nature involving financial irregularities, necessary particulars were required to be compiled and physically verified.

(g) The *enquiry report*, which was against the petitioner, reveals that out of eight charges, four charges, namely, charge Nos. 1, 2, 3 and 7, were found to have been proved against the petitioner.

(h) Consequent upon the submission of the *enquiry report*, dated 04.03.2009, the writ petitioner was served with a notice, dated 26.04.2011, directing him to show cause against the *enquiry report*.

(i) The petitioner, by way of writ petition, did not challenge the legality and validity of the show cause notice, dated 26.04.2011, on the ground that the said notice to show cause was belated and, therefore, deserved to be set aside and quashed. Far from this, the writ petitioner submitted, in response to the notice to show cause, dated 26.04.2011, his reply, on 11.05.2011, which came to be disposed of, on 10.07.2012, by imposing the penalties as indicated above.

(j) It may be pointed out that in his reply, dated 11.05.2011, to the notice of show cause, dated 26.04.2011, the writ petitioner did not file any documents in support of his contention.

18. What may, now, be noted is that it was the order, dated 10.07.2012, aforementioned imposing penalty against the writ petitioner, which the writ petitioner put to challenge by his writ petition, which gave rise to CWJC No. 15296 of 2012, seeking thereby the order of penalty to be quashed.

19. In his writ petition, the writ petitioner's case was, in brief, thus:

(a) The Circular, dated 27.08.1963, read with Circular, dated 17.07.1979, issued by the Government on the subject of conducting departmental enquiry, advise an enquiry to be concluded within the period as specified in the said circulars. The said circular has been supplemented by another Circular issued by the Department of Finance. By the latter Circular, issued by the Department of Finance, a time frame of 6 (six) months has been fixed for conclusion of a departmental proceeding in respect of a superannuated person. This Circular, dated 04.09.2003, relates to only superannuated employees and fixes a period of 6 (six) months for disposal of a departmental proceeding.

20. The learned single Judge, having taken the view that there was inordinate delay in concluding the disciplinary

proceeding, interfered with the disciplinary proceeding and set aside and quashed not only the penalty imposed on the writ petitioner, but also the memorandum of charges.

21. What, however, needs to be noted is that the Circulars, which have been issued, from time to time, providing guidelines are not enforceable rules and though they are required to be followed in letters and spirit, mere failure to adhere the period, prescribed by the Circulars aforementioned, would not *ipso facto* render the disciplinary proceeding bad in law.

22. What is of great importance to note is that in the present appeal, the delay, if any, took place only after the *enquiry report* was already submitted? By way of any writ petition, the writ petitioner did not put to challenge the *enquiry report* on the ground that the same was belatedly submitted; rather, in the reply to the show cause notice, dated 26.04.2011, which had been served on him, the writ petitioner put to challenge the *enquiry report* on merit.

23. What is, now, of paramount importance to note is that once the *enquiry report* had already come on the record, public interest demanded that the report be taken to its logical conclusion. When the allegations against the writ petitioner were of financial irregularities, the allegations were obviously against misappropriation of public fund and a person, who if found guilty of misappropriation of public fund, ought to be made answerable

and accountable for such financial irregularities.

24. Merely, therefore, on the ground that there was delay in concluding the enquiry, the gravity of the *enquiry report* cannot be lost sight of.

25. Had the writ petitioner come to the Court seeking relief against the *enquiry report* on the ground of delay, one could have, perhaps, be a little sympathetic to him. Far from this, the writ petitioner took the risk of giving response to the said show cause notice on the merit of the *enquiry report* and the Disciplinary Authority having found that the writ petitioner's reply was not satisfactory and the findings of the Enquiry Officer needed to be accepted, there was, in the public domain, really no option left with the Disciplinary Authority, but to take the law to its logical conclusion by imposing penalty as was permissible in law for unpardonable conduct of the writ petitioner. So long as the findings of the enquiry are not interfered with, the consequence flowing therefrom cannot be arrested and/or interfered with.

26. The delay could have, perhaps, been a ground for interference with the *enquiry report*, when the show cause notice was issued to the writ petitioner directing him to reply to the findings of the *enquiry report*. The writ petitioner did not challenge the belatedly issued notice to show cause along with the *enquiry report*.

27. By the order, under appeal, the learned single Judge has interfered with the penalty imposed on the writ petitioner by relying on the decision of the Supreme Court in **N. Radhakrishnan** (supra). The learned single Judge's view is that the decision, in **N. Radhakrishnan** (supra), is an authoritative for the proposition that delay, in concluding a departmental proceeding, is a good ground for quashing of a disciplinary proceeding.

28. There can be no doubt that inordinate delay in concluding a disciplinary proceeding may become a ground for quashing a departmental proceeding itself. What, however, appears to have escaped the attention of the learned single Judge is that once the enquiry is concluded and a delinquent's reply on the *enquiry report* has already been taken, the decision, in **N. Radhakrishnan** (supra), would have no application. This becomes clear if the observations made in, **N. Radhakrishnan** (supra) and the conclusions reached therein, are carefully read.

29. In fact, the above position would become clearer if we take note of the facts recorded in **N. Radhakrishnan** (supra), at paragraph 9, in the following words:

"9. The Tribunal did not go into the culpability of the respondent with respect to the charges as contained in memo dated 31-7-1995 and did not record any finding of guilt or otherwise on those charges. The Tribunal, however, said that the memo dated 31-7-1995 related to incidents that

happened ten years or more prior to the date of the memo and **that there was absolutely no explanation by the Government for this inordinate delay in framing the charges and conducting the enquiry against the respondent.** The explanation given by the State that for some reason or the other the Enquiry Officer was being changed from time to time and on that account enquiry could not be conducted, did not find favour by the Tribunal. It said **that there was no justification on the part of the State now conducting the enquiry against the respondent in respect of the incidents at this late stage. The Tribunal noticed that in the meanwhile the respondent had been promoted** as Senior Joint Director of Town and Country Planning notwithstanding the appointment of Enquiry Officer one after the other after Memo No. 1412 dated 22-12-1987 and plea of the State that when the respondent was promoted as Senior Joint Director of Town and Country Planning his file relating to enquiry against him was not brought to the notice of the administrative section in the year 1991 at the time of convening the DPC and which resulted in promoting the respondent, also did not find favour with the Tribunal. The Tribunal said that both the sections were within the Municipal Administration and this explanation, now offered, was without any merit. The Tribunal while quashing memo dated 31-7-1995 did not quash the memos dated 27-10-1995 and 1-6-1996 and said that the State, if so advised, might proceed against the respondent according to law for taking action against him. What the Tribunal said about the latter two memos was that they should not

be taken into consideration while promoting the respondent in pursuance of the recommendations of the DPC which was held on 16-8-1995."

(Emphasis is added)

30. The learned single Judge has, however, placed reliance on paragraph 20 of the decision, in **N. Radhakrishnan** (supra), which we reproduce hereinbelow.

*"In the present case **we find that without any reference to records merely on the report of the director General, Anti-Corruption Bureau, charges were framed against the respondent and ten others, all in verbatim and without particularizing the role played by each of the officers charged.** There were four charges against the respondent. With three of them he was not concerned. **He offered explanation regarding the fourth charge but the disciplinary authority did not examine the same nor did it choose to appoint any enquiry officer even assuming that action was validly being initiated under the 1991 Rules. There is no explanation whatsoever for delay in concluding the enquiry proceedings all these years.** The case depended on records of the Department only and the Director General, Anti-Corruption Bureau had pointed out that no witnesses had been examined before he gave his report. The Enquiry Officers who had been appointed one after the other had just to examine the records to see if the alleged deviations and constructions were illegal and unauthorized and then as to who was responsible for condoning or approving the same against the bye-laws. It is nobody's case that the respondent at*

any stage tried to obstruct or delay the enquiry proceedings. The Tribunal rightly did not accept the explanation of the State as to why delay occurred. In fact there was hardly any explanation worth consideration. **In the circumstances the Tribunal was justified in quashing the charge memo dated 31.07.1995 and directing the State to promote the respondent as per recommendation of the DPC ignoring memos dated 27.10.1995 and 01.06.1996. The Tribunal rightly did not quash these two latter memos."**

(Emphasis is supplied)

31. With regard to the above, it is necessary to refer to paragraph 19 of **N. Radhakrishnan** (supra), which reads,

"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 the matter is that the court has to take into consideration all the relevant factors and 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 proceeding 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 employees is writ large on the fact 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 his path, he is to suffer a penalty prescribed".***

(Emphasis is added)

32. In the present case, the delinquent has been found guilty of four out of eight charges. The learned single Judge has not held that the findings were perverse or not tenable in the face of the materials on record and the law relevant thereto. In fact, even we do not find that the findings are perverse inasmuch as nothing has been submitted, on behalf of the writ petitioner, to show that the findings of guilt, reached as against four of the proven charges, were without any materials on record or wholly against the weight of the materials on record or suffers from consideration of irrelevant materials or non-consideration of relevant materials.

33. It appears to have further escaped the attention of the learned single Judge, while relying on the decision of **N.**

Radhakrishnan (supra), that the decision in **N. Radhakrishnan** (supra), was a decision, where the charges were yet to be proved; whereas the case at hand is one, where four of the charges have been found to have been brought home by cogent, convincing and reliable materials. The enquiry was concluded and the *enquiry report* was submitted as far back as on 04.03.2009. The writ petitioner was directed to show cause, if any, against the *enquiry report*. The writ petitioner gave his reply and upon considering the *enquiry report* and other materials, including the reply of the writ petitioner, the Disciplinary Authority found that four of the charges aforementioned stood proved and accordingly passed the impugned order imposing penalty.

34. One cannot ignore the fact that the writ petitioner has been proved guilty of grave financial irregularities with regard to the duties entrusted to him and his conduct was highly unbecoming of a Government servant. As the writ petitioner has clearly proved to have deviated from his assigned power so as to benefit others and caused thereby loss to the State, the order of punishment, imposed on him, in a case of present nature, must be sustained even if there was some delay in arriving at the conclusion with regard to the guilt of the writ petitioner.

35. The decision, in **N. Radhakrishnan** (supra), is clearly distinguishable from the case at hand inasmuch as the case of **N. Radhakrishnan** (supra), if we may reiterate, is a



case, where enquiry had not been concluded, whereas present one is a case, where not only the enquiry stood concluded, but the *enquiry report* was furnished to the writ petitioner seeking to obtain his comments thereon and, having considered all relevant materials the Disciplinary Authority and having agreed with the findings reached by the Enquiry Officer, imposed the punishment as indicated above. It was only after the punishment was imposed on the writ petitioner that the writ petitioner woke up and come to this Court and challenged the finding of guilt and the resultant punishment on the ground of delay.

36. Though there has been a feeble attempt, on the part of the writ petitioner-respondent, to show that the impugned orders were non-speaking orders, we have carefully perused the same and we find that the Disciplinary Authority has, having considered the relevant materials, agreed with the findings arrived at by the Enquiry Officer and, hence, in such circumstances, we do not find that the order, impugned in the writ petitioner, warranted interference in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India.

37. Because of what have been discussed and pointed out above, we are clearly of the view that the interference with the impugned order, dated 10.07.2012, passed by the Disciplinary Authority, was incorrect and not sustainable in the facts and attending circumstances of the present case and the

law relevant thereto.

38. In the result, the appeal is allowed. The order, under appeal, is hereby set aside and the writ petition shall stand dismissed.

(I. A. Ansari, J.)

Anjana Mishra, J.: I agree.

(Anjana Mishra, J.)

Prabhakar Anand/

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