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

% W.P.(C) 3051/2015

Date of Judgment : 7th October, 2015

UNION OF INDIA

..... Petitioner

Through : Mr. Sanjeev Narula and
Mr. Ajay Kalra, Advocates.

Versus

YUVRAJ GUPTA & ORS.

..... Respondents

Through : Mr. Sachin Chauhan, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J.

1. By way of the present writ petition, the petitioner has challenged the order dated 17.02.2014 passed by the Central Administrative Tribunal, Principal Bench at New Delhi (hereinafter referred to as 'the Tribunal') in O.A. No.1529/2012 whereby the Tribunal has quashed and set aside the memorandum dated 30.10.2008 issued against the respondent No.1 under Rule 14 of CCS (CCA) Rules, 1965 and directed the petitioner to release the withheld terminal/pensionary benefits which have been withheld.
2. The brief facts necessary for considering this writ petition are that the respondent No.1 was served with the following Articles of

Charge along with 39 documents and Nil witnesses to sustain them as under:-

“Articles of Charge:

Shri Yuvraj Gupta, Commissioner, while working in different capacities in Customs and Central Excise Department, during the period 01.01.1987 to 01.03.2004 had received gifts in the name of his family members, i.e., wife, children and Yuvraj Yashash Gupta (HUF), as detailed in Annexure-A and failed to intimate the transactions in respect of said gifts to the prescribed authority within the prescribed period.

Thus, Shri Yuvraj Gupta, Commissioner failed to maintain absolute integrity and acted in a manner unbecoming of a public servant. By the above acts of omission and commission, Shri Yuvraj Gupta, Commissioner committed gross misconduct and contravened provisions of Rules 3(i) & (iii) and Rule 13 of CCS (Conduct) Rules, 1964.”

3. The Statement of Imputation of Misconduct and Misbehaviour in support of the Articles of Charge was also framed against respondent No. 1, which is reproduced as under:-

“It is revealed during the course of investigation conducted by the CBI against Shri Yuvraj Gupta, Commissioner that in respect of gifts received in the name of his wife, children and Yuvraj Yashash Gupta (HUF), no intimation was filed or reported to the prescribed authority as required under the CCS (Conduct) Rules, 1964.

2. Gifts received in the name of his children from his mother and relatives were deposited in HUF account. The said HUF had two adult co-parceners namely Smt. Anjana Gupta and Shri Yuvraj Gupta and the other co-parceners being their three minor children. Shri Gupta claimed that over a period of time gifts amounting to Rs.4,32,868/- were given by various relatives to three minor co-parceners of HUF. Details of amount received as gifts are as under:-

- (i) Smt. Raksha Gupta (mother of Yuvraj Gupta)
Rs.1,90,000/-

- (ii) Shri J.K. Mittal (uncle of Sh. Yuvraj Gupta) Rs.1,50,000/-
- (iii) Smt. Puspawati Anand Rs. 20,000/-
- (iv) Satyavrata(Maternal Uncle) Rs. 14,468/-
- (v) Shri A.K. Anand (Maternal Uncle) Rs. 6,100/-
- (vi) Shri Santosh Kumar (grandfather) Rs. 28,100/-
- (vii) Cash received from friends and relative on birth of Yashash Gupta Rs. 25,200/-

2.1 These gifts were placed in individual SB A/c of the minor children and were later transferred to fixed deposit in their name. Subsequently, all these accounts were transferred to the said HUF account. Thus, total balance in the said account was Rs.8,14,032.57. All the gifts were received vide cheques. Major amount, i.e., Rs.1,90,000/- and Rs.1,50,000/- were received from Smt. Raksha Gupta (mother of Yuvraj Gupta) and from Shri J.K. Mittal (Grandfather, i.e., uncle of Shri Yuvraj Gupta).

2.2 At the time of receipt of the gifts, all the three children of Shri Yuvraj Gupta were minor and hence he was required to give intimation to the department under the CCS (Conduct) Rules, 1964. Shri Yuvraj Gupta being, Karta of HUF has not intimated the receipt of the said gifts to the Department as is mandatory under CCS (Conduct) Rules, 1964.”

4. Mr. Sanjeev Narula, learned counsel appearing on behalf of the petitioner submits that the impugned order passed by the Tribunal is based on wrong facts which deserves to be quashed in the interest of justice. The counsel further submits that the present case is an off-shoot of the CBI investigation in case No. RC AC I 2004 A 0001 registered against the respondent No. 1 wherein, he was found in possession of assets worth approximately Rs.29 Lakh disproportionate to his known sources of income. Simultaneously, Regular Disciplinary Action (RDA) for major penalty proceedings

was also initiated against him vide Charge Memo dated 30.08.2008 for not providing the office with the information about the cheques/DDs received as gifts by his family members in violation of the provisions of Rule 13 of the CCS (Conduct) Rules, 1964.

5. The counsel for the petitioner further contended that the delay in issuing the chargesheet to the respondent is neither wilful nor deliberate. He further added that the respondent No. 1 has failed to prove any prejudice caused to him due to such delay.
6. On the converse, Mr. Sachin Chauhan, learned counsel appearing on behalf of the respondent No. 1 submits that the Disciplinary Authority has deliberately issued the aforesaid Memorandum of Charges only to deprive respondent no. 1 of his terminal benefits due to him and after issuing the aforesaid Charges, the Disciplinary Authority simply abandoned further proceedings in the enquiry and left the respondent No. 1 in suspended animation.
7. The counsel for the respondent contended that as per the Articles of Charge, the alleged incidents pertain to the years 1995, 1996, 1997, 1998, 1999 and 2000 but the Disciplinary Authority took more than 8 years to 13 years to frame charges against the respondent No. 1 for which they failed to tender any explanation and even after issuing the aforesaid Articles of Charge, there were no efforts whatsoever on the part of the Disciplinary Authority to proceed with the enquiry.
8. Counsel for the respondent has also contended that the Disciplinary Authority has no evidence to prove the allegations made against the respondent No. 1 as not even a single prosecution witness has been

cited to prove the 39 documents annexed with the Articles of Charge.

9. We have heard learned counsel for both the parties and considered their rival submissions. We have also carefully examined the impugned order passed by the Tribunal dated 17.02.2014. The short issue which arises in this petition is whether the Tribunal was justified in quashing the disciplinary proceedings and in issuing a direction to the petitioner to pay all pensionary benefits to respondent No. 1 on the ground of delay in concluding the departmental proceedings or not.
10. Before we proceed further, it would be useful to reproduce paras 9 and 10 of the judgment of the Tribunal, which read as under:

“9. We have heard the learned counsel for the Applicant Shri Sachin Chauhan and the learned counsel for the Respondents Shri R.V. Sinha. Admittedly, the charge against the Applicant is that while he was working in different capacities in Customs and Central Excise Department during the period from 01.01.1987 to 01.03.2004, had received gifts in the name of his family members, i.e., wife, children and Yuvraj Yashash Gupta (HUF). The Respondents issued the aforesaid charge sheet after several years ranging from 4 to 23 years after occurrence of the alleged incidents. Moreover, they have chosen to issue the Articles of Charge just one day before the date of superannuation of the Applicant. Even after issuing the charge sheet, the Disciplinary Authority did not bother to bring it to its logical conclusion. It was only after the Applicant has filed this OA, the Disciplinary Authority has just woken up from its slumber and appointed the Enquiry Officer and the Presenting Officer. As rightly argued by the learned counsel for the Applicant, there is inordinate and unexplained delay not only in initiating the

disciplinary proceedings against the Applicant and in also holding the enquiry and bring it to a logical conclusion. As far as prejudice caused to the Applicant is concerned, it is seen that the Applicant being a retired employee has been deprived of the DCRG and other retirement benefits for all these over five years.

10. *In fact the conduct of the Disciplinary Authority shows that it was not at all interested in holding the enquiry but it was interested only to keep the Applicant under the cloud of disciplinary proceedings thereby denying him his retirement dues. While 39 documents are listed along with the Articles of Charge to sustain them, the Disciplinary Authority failed to list even a single witness to prove the charge against the Applicant. It is a well settled position of law that unless the charge is proved in the disciplinary proceedings, giving an opportunity to the delinquent employee to cross-examine the witnesses, the enquiry cannot be held as proved. As held by the High Court in the case of Hari Singh (supra) that mere tendering of documents is not sufficient but they have to be proved during the enquiry. Further, as held by the Apex Court in Roop Singh Negi Vs. Punjab National Bank and Others 2009 (2) SCC 570 without examining and cross-examining the witness, his statement cannot be taken into consideration.”*

11. At the outset, before delving into the merits of the submissions made by the counsel for both the parties, it would be relevant to firstly examine the principles of law which would govern the consideration of the issues raised herein. So far as the delay in disciplinary proceedings is concerned, a similar issue was dealt by the Hon'ble Supreme Court in ***State of Madhya Pradesh v. Bani Singh & Another*** reported at ***1990 (Supp) SCC 738***, wherein the State had appealed against the order of the Tribunal on the ground

that it ought not to have quashed the proceedings merely on the ground of delay and laches. The alleged irregularity had taken place in the years 1975-77 and the department was aware of the same. The Hon'ble Supreme Court held that inordinate delay of more than 12 years in initiating the disciplinary proceedings was beyond comprehension and inexplicable. The claim was rejected by the Apex Court and held as follows:-

“4. The appeal against the order dated December 16, 1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned counsel. The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April, 1977 there was doubt about the involvement of the officer in the said irregularities and the investigation were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal.”

12. It has been repeatedly held by the Hon'ble Supreme Court that in public interest, it is necessary to hold departmental proceedings against the erring officer. They are essential in inculcating a sense

of discipline and efficiency. The proceedings should not be protracted. In ***P. V. Mahadevan v. M.D. Tamil Nadu Housing Board*** reported in (2005) 6 SCC 636, a charge memo had been issued to the appellant on the 08.01.2000 pertaining to alleged irregularity in issuing a sale deed in the year 1990. There was no explanation for the inordinate delay of ten years in initiating the proceedings. The respondent had tried to explain that the irregularities for which the disciplinary action had been initiated had come to light only in the second half of 1994-95, when the audit report was released. This explanation was not accepted by the Hon'ble Supreme Court and noted the unbearable mental agony and suffering caused to the officer concerned. The relevant part of the judgment reads as under :

“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.”

13. In ***State of Andhra Pradesh vs. N. Radhakishan*** (1998) 4 SCC 154, the Hon'ble Supreme Court, in para 19, has observed as follows:

“19. It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all relevant factors and to balance and weight them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.”

(Emphasis supplied)

14. The Hon'ble Supreme Court has, therefore, reiterated the well settled principles that proceedings initiated at a belated stage would be quashed, if the delay creates prejudice to the delinquent employee.
15. Learned counsel for the respondent No. 1 has also drawn our attention to the judgment dated 03.07.2009 passed by High Court of Delhi in **WP(C) No.4757/2007** titled as ***Union of India v. V.K. Sareen*** wherein the petitioner had proposed to commence disciplinary action against the respondents for imposition of major penalty with regard to his functioning between 12.06.1990 to 12.04.1993. An Enquiry Officer was appointed on the 22.04.2003 and the report of the inquiry was submitted on the 01.07.2005. The charge sheet and the proceedings were quashed by the Central Administrative Tribunal by an order passed on 20.03.2007 which was questioned by way of writ petition filed before this court. In the judgment dated 03.07.2009, this court had culled out the principles as follows:

“13. It is trite law that disciplinary proceedings should be conducted soon after the alleged misconduct or negligence on the part of the employee is discovered. Inordinate delay cannot be said to be fair to be Delinquent Officer and since it would also make the task of proving the charges difficult. It would also not be in interest of administration. If the delay is too long and remains unexplained, the court may interfere and quash the charges. However, how much delay is too long would depend upon the facts of each and every case and if such delay has prejudiced or is likely to prejudice the delinquent in defending the enquiry ought to be interdicted.”

16. After perusing the above case laws, we are of the considered view that it is trite that delay which is unexplained and unreasonable would cause prejudice to the delinquent employee. Such delay clearly manifests the lack of seriousness on the part of the disciplinary authority in pursuing the charges against the employee. In the event of any employee deviating from path of honesty, efficiency and diligence, action should be taken expeditiously as per the prescribed procedure. The Hon'ble Supreme Court has laid down the principles holding that unexplained and unreasonable delay *per se* results in prejudice to the charged officer except when the employer can show that the employee was responsible for delay or is otherwise able to explain the delay. While evaluating the impact of delay, the court must consider the nature of the charge, its complexity and for what reason the delay has occurred.
17. In the instant case, even though the respondent was served with the Memorandum dated 30.10.2008 which proposed to hold an enquiry against him under Rule 14 of the CCS (CCA) Rules, 1965, the Disciplinary Authority failed to take any steps to initiate the enquiry proceedings and to conclude the same for a period of over 5 years. The conduct of the Disciplinary Authority shows that it was not at all interested in holding the enquiry, but it was interested only to keep the respondent under the cloud of disciplinary proceedings, thereby denying him his retirement dues.
18. In view of the facts and circumstances of the present case, we are of the considered view that the delay in initiation of the proceedings certainly has lent room for allegations of bias, mala fide and misuse

of powers against the respondent by the petitioners. Furthermore, we are of the view that the delay in initiating disciplinary proceedings would constitute denial of reasonable opportunity to defend the charges resulting in violation of principles of natural justice.

19. For the reasons stated hereinabove, we do not find any infirmity in the order of the Tribunal impugned before us and accordingly, the present writ petition being devoid of any merit, is dismissed. No order as to costs.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

OCTOBER 7, 2015

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