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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C).8726 /2015**

% ***Judgment dated 11th September, 2015***

UNION OF INDIA

..... Petitioner

Through : Mr. Ruchir Mishra with Mr. Somjiv
Kumar Saxena, Mr. Mukesh Kumar
Tiwari and Mr. Ramneek Mishra,
Advocates

versus

SHAMEEM AKHTAR

..... Respondent

Through : Mr.R.V. Sinha, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

CAV.PET.951/2015

1. Mr. R. V. Sinha, Advocate enters appearance on behalf of the respondent.
Accordingly, caveat petition is disposed of.

CM APPL. Nos.19243/2015 and 19244/2015

2. Exemption allowed subject to all just exceptions.
3. Applications stand disposed of.

CM.APPL.19245/2015(filing of synopsis)

4. By this application, the petitioner wishes to file lengthy synopsis and list of dates. The application is allowed.

W.P.(C).8726/2015

5. Challenge in this writ petition is to the order dated 20.04.2015 passed by the Central Administrative Tribunal(hereinafter referred to as 'the Tribunal'), wherein challenge was made to the Memorandum dated 02.04.2011 issued under Rule 14 of the CCS (CCA) Rules, 1964. The

Tribunal has allowed the OA primarily on two grounds, firstly, gross delay in filing the Articles of Charge and secondly, absence of list of witnesses to prove the charge.

6. The learned counsel for the petitioner submits that the Tribunal has exceeded its jurisdiction as the law is well settled that the scope of judicial review at the stage of issuance of Memorandum of Charge is limited. Counsel also strongly urged before this Court that the delay in issuing of Article of Charges was on account of a procedural delays as the matter had been sent to the Central Vigilance Commission(CVC) and only after the clearance was granted, the Article of Charges were framed. Counsel also submits that quashing of Memorandum of Charge is against the settled principles of law as mere issuing of Memorandum of Charge does not give rise to any cause of action and the cause of action would arise only when an order of penalty is passed. Counsel further submits that the grounds raised by the respondent before the Tribunal that Article-I does not amount to any misconduct has been declined and it has been observed by the Tribunal that it was for the applicant (respondent herein) to prove before the Inquiry Officer that the charges levelled against him is illegal, wrong and would amount to misconduct. Counsel further submits that the petitioner could have cured the defect of providing witnesses as per Rule 14(3)(ii)(b) of the CCS(CCA) Rules, 1964 and also it was open for the petitioner to have only relied upon oral evidence.
7. Mr. Sinha, learned counsel for the respondent submits that no grounds have been urged by the petitioner which would require interference by this Court under Article 226 of the Constitution of India. He submits that even if another view is possible, yet this Court would not substitute a different view from the view taken by the Tribunal, unless the order of the Tribunal is perverse and patently illegal. Mr. Sinha further submits that the Tribunal

has placed reliance on settled law laid down by the Supreme Court of India in the case of *Roop Singh Negi v. Punjab National Bank*, reported at 2009(2) SCC 570 as also *State of U.P. & Ors. v. Saroj Kumar Sinha*, reported at 2010(2) SCJ 59 while allowing the OA.

8. We have heard the learned counsel for the parties and also carefully examined the order passed by the Tribunal. The sequence of event would show that as per the charge sheet, the petitioner was functioning as GMTD, Muzaffar Nagar during the period 01.11.2000 to 18.06.2003. During this period, he had floated an NIT with respect to manning of exchanges and operating generators in the year 2002 for providing guarding and manning of exchanges/offices and operating generators set in the case of power failures in Muzaffar Nagar SSA. The Articles of Charges were framed in the year 2011. It is the case of the petitioner that the CVC advice report was received only in the year 2010 and thus it cannot be said that there was unexplained delay in filing the Articles of Charge. While the counsel for the respondent has submitted that there is unexplained delay for not filing the Article of Charge between the years 2002 to 2011.
9. In the case of *State of Madhya Pradesh v. Bani Singh and Another*, reported at 1990(Supp) SCC 738, it was held as under:

“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 latches 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.”

10. It would be also useful to refer to the case of *State of Andhra Pradesh v. N. Radhakrishnan*, reported at 1998(4) SCC 154, wherein the Supreme Court laid down the following principles:

“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 of weight them to determine if it is 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.”

11. In the present case, it is not in dispute that the misconduct alleged was during the period 2000-2003 and the impugned memo of charges was issued after delay of eight years in the year 2011. The only explanation rendered for the delay is that the CVC advice report was received in the year 2010. In our view, this cannot be said to be a satisfactory explanation for the delay. There is no explanation as to why the CVC rendered its advice after such a long time. Accordingly, we feel that the Tribunal has taken a correct view in the matter and rightly reached the conclusion that the Articles of Charge are liable to be quashed on the ground of delay.
12. Another ground which was raised by the respondent before the Tribunal for quashing of the charge sheet was that the same was in violation of Rule 14 of sub-Rule (3) of CCS(CCA) Rules, 1965. The said Rule reads as under:

“(3) where it is proposed to hold an inquiry against a Government servant under this rule and Rule 15, the Disciplinary Authority shall draw up or cause to be drawn up –

 - (i) the substance of the imputation of misconduct or misbehaviour into definite and distinct articles of charge;
 - (ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-
 - (a) a statement of all relevant facts including any admission or confession made by the Government servant;
 - (b) a list of documents by which, and a list of witnesses by whom the articles of charge are proposed to be sustained.”
13. A reading of the aforesaid Rule would show that the substance of the imputation of misconduct or misbehavior in support of Articles of Charge shall contain the list of documents and list of witnesses by whom the

Articles of Charge are proposed to be sustained. In the present case, no list of witnesses was provided to prove the charges leveled against the respondent herein. In the case of ***Kuldeep Singh v. The Commissioner of Police and Others***, reported at JT 1998(8) SC 603, it was held as under:

“.....there was absolutely no evidence in support of the charge framed against the appellant and the entire findings recorded by the Enquiry Officer are vitiated by reasons of the fact that they are not supported by any evidence on record and are wholly perverse. Again, in its judgment in Roop Singh Negi Vs. Punjab National Bank and Others 2009(2) SCC 570 the Apex Court held that mere production of documents is not enough but their contents have to be proved by examining the witnesses. The relevant part of the said judgment is as under:-

14. Indisputably, a departmental proceedings is a quasi judicial proceedings. The Enquiry Officer must be performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a find upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof.

Again the Apex Court in Modula India Vs. Kamakshya Singh Deo (1988) 4 SCC 619 held that in a disciplinary proceedings documents are the tools for the delinquent employee for cross-examining the witnesses who deposed against him. Further, the Apex Court in its judgment in the case of Hardwari Lal Vs. State of U.P.& Others 1999 (8) SCC 582 held that in a departmental enquiry proceedings examination of the material witnesses is a must. We are, therefore of the considered view that the disciplinary proceedings initiated against the Applicant vide the impugned Memorandum dated 22.02.2011 is an exercise in futility.

8. In view of above position, we allow this OA and quash and set aside the impugned Memorandum dated 22,12,2011 with all consequential benefits. As the Applicant has already retired from service, the Respondents shall pass appropriate orders in favour of the Applicant positively within a period of 2 months from the date of receipt of a copy of this order.”

14. Similar view was taken by the Supreme Court in the case of *State of U.P. and Ors. v. Saroj Kumar Sinha*, reported at 2010 (2) SLJ 59, wherein it was observed as under:

“26....Even such circumstances it is incumbent on the enquiry officer to record the statement of witnesses mentioned in the charge sheet. Since the Government servant is absent, he would clearly lose the benefit of cross examination of the witnesses. But nonetheless in order to establish the charges the department is required to produce the necessary evidence before the enquiry officer. This is so as to avoid the charge that the enquiry officer has acted as a prosecutor as well as a judge. Enquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the department even in the absence of the delinquent official to see as to whether the unrebated evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could have been taken into consideration to conclude that the charges have been proved against the respondents.

27. Apart from the above by virtue of Article 311(2) of the Constitution of India the departmental inquiry had to be conducted in accordance with rules of natural justice. It is a basic requirement of rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceeding which may culminate in a punishment being imposed on the employee.

28. When a department enquiry is conducted against the Government Servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules

of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate/removal from service in the case of *Shaughnessy Vs. United States* 345 US 206 (1953) (Jackson J), a judge of the United States Supreme Court has said procedural fairness and regularity are of the 20 indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied.”

15. It is settled law that the charges leveled against a delinquent official is to be proved in the inquiry before any penalty is imposed. Sub-Rule (3) of Rule 14 provides that the Articles of Charge are to be supported with documents and proved by witnesses during the hearing. In our view, this in-built safeguard has been provided to allow a delinquent employee to cross-examine the witnesses and to rebut the allegations against him. In the absence of any witness and in the absence of any opportunity to cross-examine a witness would be against the canon of natural justice and the same cannot be treated as a mere formality.
 16. The writ petition, in our view, is without any merit; there is no ground to entertain the same.
 17. The writ petition is accordingly dismissed. No costs.
- CM.APPL 19242/2015(stay)**
18. Since the present writ petition has been dismissed, the application also stands disposed of.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 11 , 2015/pst