

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

+ Judgment delivered on: July 19, 2016

% **W.P.(C) No.6167/2016**

GOVERNMENT OF NCT OF DELHIPetitioner

Through: Mr. Satyakam, Additional Standing
Counsel.

versus

PREM CHAND SHARMARespondent

Through: Mr. V.S.R. Krishna, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S.MEHTA

G. S. SISTANI, J.(ORAL)

1. Challenge in this writ petition is to the order dated 24.04.2015 passed by the Central Administrative Tribunal (hereinafter '*the Tribunal*') in O.A. No. 837/2013. The Tribunal has quashed the charge sheet dated 17.09.1996 and the penalty order dated 15.06.2012 and had further allowed consequential benefits accruing therefrom in favour of the respondent.

2. The brief facts stated are that the respondent was appointed as a 'Welfare Officer' in the Department of Social Welfare on 19.06.1962 and thereafter, he was promoted as Supervisor/ Superintendent on

05.03.1970. The respondent was placed under suspension from 04.08.1989 to 20.12.1992. Thereafter, his suspension was revoked. The respondent was again placed under suspension on 04.06.1996 and remained under suspension until his superannuation on 30.09.1996. Few days prior to his superannuation, the respondent issued a charge sheet dated 17.09.1996, which reads as:

“

Article-I

That the said Shri P.C. Sharma while functioning as Superintendent of Rehabilitation Centre for Leprosy Affected Persons in the Social Welfare Department committed misconduct in as much as he applied for leave in piece meal in unauthorised manner and failed to report for duty despite being asked to do so and also avoided the Audit Party to cover up several financial irregularities committed by him. He did not handover the records of the institution and also failed to report to the Staff Surgeon in response to the various Memos, issued to him.

Article-II

That the said Shri P.C.Sharma while functioning in the aforesaid capacity in the Rehabilitation Centre for Leprosy Affected Persons under the Social Welfare Department acted beyond his financial powers and made expensive purchases without obtaining approval from the Competent Authority.

Article-III

That the said Shri P.C.Sharma while functioning as Supdt. of Rehabilitation Centre for Leprosy Affected Persons was found to have issued bogus ration cards in the name of beggars who were either not eligible or died or shifted with the intention to defraud the Govt. money by raising false bills of dietary articles, fire woods, vegetables and shoes, etc.

The above acts on the part of Shri P.C.Sharma, Superintendent reflects lack of devotion to duty and integrity and conducted in

a manner unbecoming of a Govt. servant thereby violating rule 3 of CCS (Conduct) Rules, 1964.”

3. Since the respondent denied the charges leveled against him, an inquiry was conducted which continued from 1996 to 2003 and the Inquiry Officer finally submitted his report on 31.10.2003 finding that the charges stood proved against the respondent. Thereafter, the matter was referred to the Central Vigilance Commission (briefly ‘CVC’) for advice. The CVC gave its second stage advice on 04.12.2003 wherein it advised an imposition of cut in pension.

4. The Inquiry Report and the advice of the CVC were communicated to the respondent on 15.12.2003 and the respondent submitted his representation on 04.02.2004. After a delay of more than 7 years on 29.12.2011, the matter was referred to the Union Public Service Commission (briefly ‘UPSC’) for its advice. On 01.06.2012, the advice of the UPSC was received. The UPSC gave its advice that the charges stood proved and stated as follows:-

“In view of the findings as discussed above and after taking into account all the other aspects relevant to the case, the Commission is of the view that the charge proved against the CO constitutes grave misconduct and ends of justice would be met in this case if the penalty of withholding of 50% (fifty percent) of pension otherwise admissible to Shri P.C. Sharma (the CO) for a period of 10 (ten) years, is imposed upon him. The gratuity admissible to him may be released, if not required otherwise. They advise accordingly.”

5. The advice of the UPSC was accepted and a penalty order dated 15.06.2012 was issued, wherein a penalty of withholding of 50% of monthly

pension for a period of 10 years was imposed. Admittedly, the advice of the UPSC was not communicated to the respondent prior to the imposition of the penalty order.

6. Aggrieved by the penalty order, the respondent approached the Tribunal seeking the quashing of the penalty order and the charge-sheet. The Tribunal, by the impugned Order dated 24.04.2015, allowed the OA, quashed both the charge sheet and the penalty order and directed the release of consequential benefits. Aggrieved by the order of the Tribunal the present writ petition has been filed.

7. Mr Satyakam, learned counsel for petitioner, submits that the Tribunal failed to appreciate the true import of the penalty order and the charge sheet. He submits that the entire enquiry was conducted as per the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (briefly '*CCS (CCA) Rules*'). The learned counsel further submits that the Tribunal has erroneously quashed the entire proceedings on technical grounds and failed to appreciate that serious allegations stood proved against the respondent warranting an imposition of major penalty.

8. The learned counsel for petitioner submits that the Tribunal has exceeded its jurisdiction and quashed the penalty order on the ground of non-supply of UPSC advice prior to the issue of the penalty order. In this regard, he submits that the penalty was imposed in 2012, while the Office Memorandum dated 01.06.2014, which mandates the giving of a copy of the UPSC Advice, was issued later on. Attention of the Court is also drawn to an order of the Tribunal in *P.K. Mehrav.UOI and Ors., OA 1602/2014*, wherein the Tribunal had remanded the matter back to the disciplinary

authority as the advice of the UPSC was not communicated to the charged officer. More particularly he relies on Para 4 of the Order which reads as:

“4. We, therefore, set aside the impugned order of punishment dated 05.12.2013 and remit back the matter to the disciplinary authority with the direction to provide a copy of the opinion of the UPSC to the applicant within a period of two weeks from the date of production of certified copy of this order. The applicant shall thereafter give reply, if any, within a period of fifteen days. The Disciplinary Authority after considering the reply of the applicant and other materials on record shall take final decision in the matter within four weeks thereafter. If the reply of the applicant is not found satisfactory and punishment is imposed, it would be open to the applicant to avail such remedy as may be available to him under the law, and raise other points which have been raised in this Application but not adjudicated upon, as the same is being disposed of on the short question of supply of UPSCs advise to the applicant.”

9. Relying upon the aforesaid order, the learned counsel submits that, even if the Tribunal was of the view that the intimation of UPSC advice was necessary, the matter should have been remanded back to the Disciplinary Authority for fresh orders and the proceeding should not have been quashed.

10. Per contra, learned counsel for the respondent submits that there is no infirmity in the order passed by the Tribunal which would require interference in proceedings under Article 226 of the Constitution of India. He further submits that the Tribunal had rightly noticed numerous infirmities in the manner the proceedings were conducted and it cannot be said that the proceedings were quashed merely on a technical ground.

11. Counsel for the respondent further submits that there was a gross delay in the conducting of the inquiry which has caused great prejudice to the

respondent and consequently, the proceedings were rightly quashed. Counsel points out that the entire proceedings had taken 23 years to culminate into a final order and the petitioner has failed to give any reasonable explanation for the delay.

12. We have heard the counsel for the parties and perused the material placed before us. There is no dispute as to the facts as enumerated above by us. Upon going through the impugned order it is evident that the Tribunal had allowed the OA for various reasons including:

- (i) The findings of the enquiry were not sustainable upon the evidence placed before it;
- (ii) The Disciplinary Authority failed to consider as to whether the unauthorized absence was willful or not;
- (iii) The documents were not shown to the respondent nor the evidence of the witnesses was examined;
- (iv) List of witnesses was not provided with the charge sheet;
- (v) There was a gross delay in the conducting of the inquiry which was prejudicial to the respondent; and
- (vi) Non-communication of the advice of the UPSC.

13. Coming to the contentions of the learned counsel for the petitioner, we are unable to accept the contention that prior to the OM dated 01.06.2014, there was no requirement of communicating the advice of UPSC to the charged officer. Admittedly, the advice of the UPSC was not communicated to the respondent prior to the penalty order. The advice of the UPSC was received on 01.06.2012. We note that the law in relation to communication of the advice of the UPSC has been settled in 2011 with the *dictum* of the

Supreme Court in ***UOI and Ors. v. S.K. Kapoor***, (2011) 4 SCC 589. Prior to the judgment there were contradictory opinions of the Supreme Court in ***S.N. Narula v. Union of India***, (2011) 4 SCC 591 and ***Union of India v. T.V. Patel***, (2007) 4 SCC 785; but after the pronouncement of ***S.K. Kapoor (Supra)*** on 16.03.2011, it is no longer *res integra* that the advice of the UPSC should be communicated prior to imposing of penalty order in order to allow the charged officer to properly defend himself. The OM dated 01.06.2014 was merely a clarification issued by the authorities. The OM was in consonance with the judgment in ***S.K. Kapoor (Supra)*** and was merely clarificatory in nature. We are fortified by the following observations of the Supreme Court in ***Union of India v. R. P. Singh***, (2014) 7 SCC 340:

“23. We have referred to the aforesaid decision in B. Karunakar case in extenso as we find that in the said case it has been opined by the Constitution Bench that non-supply of the enquiry report is a breach of the principle of natural justice. Advice from UPSC, needless to say, when utilised as a material against the delinquent officer, it should be supplied in advance. As it seems to us, Rule 32 provides for supply of copy of advice to the government servant at the time of making an order. The said stage was in prevalence before the decision of the Constitution Bench. After the said decision, in our considered opinion, the authority should have clarified the Rule regarding development in the service jurisprudence.”

24. We have been apprised by Mr Raghavan, learned counsel for the respondent, that after the decision in S.K. Kapoor case, the Government of India, Ministry of Personnel, PG & Pensions, Department of Personnel and Training vide Office Memorandum dated 6-1-2014 has issued the following directions:

“4. Accordingly, it has been decided that in all disciplinary cases where the Commission is to be consulted, the following procedure may be adopted:

(i) On receipt of the inquiry report, the DA may examine the same and forward it to the Commission with his observations;

(ii) On receipt of the Commission's report, the DA will examine the same and forward the same to the charged officer along with the inquiry report and his tentative reasons for disagreement with the inquiry report and/or the advice of UPSC;

(iii) The charged officer shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the inquiry report/advice of UPSC is in his favour or not.

(iv) The disciplinary authority shall consider the representation of the charged officer and take further action as prescribed in sub-rules (2-A) to (4) of Rule 15 of the CCS (CCA) Rules, 1965."

25. After the said office memorandum, a further office memorandum has been issued on 5-3-2014, which pertains to supply of copy of UPSC advice to the charged officer. We think it appropriate to reproduce the same:

"The undersigned is directed to refer to this Department's OM of even number dated 6-1-2014 and to say that it has been decided, in partial modification of the above OM that a copy of the inquiry report may be given to the government servant as provided in Rule 15(2) of the Central Secretariat Services (Classification, Control and Appeal) Rules, 1965. The inquiry report together with the representation, if any, of the government servant may be forwarded to the Commission for advice. On receipt of the Commission's advice, a copy of the advice may be provided to the government servant who may be allowed to submit his representation, if any, on the Commission's advice within fifteen days. The disciplinary authority will consider the inquiry report, advice of the Commission

and the representation(s) of the government servant before arriving at a final decision.”

26. In our considered opinion, both the office memoranda are not only in consonance with S.K. Kapoor case but also in accordance with the principles of natural justice which has been stated in B. Karunakar case.

27. In view of the aforesaid, we respectfully agree with the decision rendered in S.K. Kapoor case and resultantly decline to interfere with the judgment and order of the High Court. As a result, the appeal, being devoid of merit, is dismissed without any order as to costs.”

(Emphasis Supplied)

14. After **S.K. Kapoor (Supra)**, the law is well settled and therefore, we cannot accept the argument that since the UPSC advice relates to a period prior to the OM dated 01.06.2014, there was no requirement to communicate the same. The law in this respect had been settled in the year 2011, while the UPSC advice was received in 2012.

15. Learned counsel for the petitioner also contends that Tribunal should of remanded the matter back to the disciplinary authority for passing a fresh order thereon after intimation of the advice of the UPSC. In this regard, he has also relied upon the order of the Tribunal in **P.K. Mehra (Supra)**. It is true that the courts have generally remanded the matters back to the disciplinary authority, but we do not deem it appropriate to remand the present case for the reason that the present case has already lingered on for more than 23 years. The respondent has already retired on 30.09.1996. The Tribunal had also noted that the proceedings were deemed to be vitiated due to gross delay in the conduct of the proceedings.

16. The law in respect of delay in conducting disciplinary proceedings is well settled. We may note the judgment of the Supreme Court in ***State of M.P. v. Bani Singh and Anr.***, AIR 1990 SC 1308, the relevant portion of which reads as:

“4. The appeal against the order dated 16.12.1987 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 1975-1977. 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 investigations 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.”

(Emphasis Supplied)

17. Further, in ***State of Andhra Pradesh v. N. Radhakishan***, AIR 1998 SC 1833, the Supreme Court observed as under:

“19. 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 to balance and weigh

them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the 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 the 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 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 this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their 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)

18. The Supreme Court summarized the law in respect of delay in disciplinary proceedings in its judgment in ***Ministry of Defence v. Prabhash Chandra Mirdha***, (2012) 11 SCC 565 as under:

“12. Thus, the law on the issue can be summarised to the effect that the 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.”

(Emphasis Supplied)

19. In view of the foregoing judgments, it is clear that the law in this regard is well settled. Simply put, the proceedings are liable to be vitiated owing to delay if it creates prejudice to the charged officer. While doing so the courts must take into account the gravity of the charges against the charged officer. Further the department may either reasonably explain the delay occasioned and show that no prejudice has been caused to the charged officer. In such circumstances, the proceedings must not be interfered with.

20. Coming to the case at hand, the charges relate to the period 1987-89, while the charge sheet was issued on 04.06.1996 after a delay of about 7 years. Meanwhile, the respondent superannuated on 30.09.1996. Then the inquiry was conducted and its Report was submitted on 31.10.2003. Thereafter, there is a second period of delay of 7 seven years from 2004 to 2011 when the matter was referred to the UPSC for its advice. The whole proceedings have taken about 23 years to culminate. It would thus appear that the total time taken in deciding the disciplinary proceedings after the charge sheet had been issued on 19.09.1996 was 16 years and nearly the same period elapsed between the superannuation of the respondent on 30.09.1996 and the issuance of the penalty order dated 15.06.2012. No reasonable

explanation was given for the delay before the Tribunal nor has the learned counsel for the petitioner produced any reason before us. We also do not find merit in the contention of the counsel for the petitioner that the charges against the respondent were of such a grave nature that would disentitle the respondent to the relief sought for.

21. Looking into the foregoing, there are no grounds to interfere.

22. The writ petition is dismissed. No order as to costs.



G.S.SISTANI, J

I.S.MEHTA, J

JULY 19, 2016
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