

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION NO.4856 of 2017

Between:

K.Samuel John, s/o. late Charles, Aged 52 years,
Occu: Assistant Commissioner of Labour,
Vikarabad, R.R. District.

..... Petitioner

And

The Commissioner of Labour, State of Telangana,
Anjaiah Bhavan, RTC 'X' Roads, Hyderabad and
another.

..... Respondents

JUDGMENT PRONOUNCED ON : 17.04.2017

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may : No
Be allowed to see the Judgments ? :
2. Whether the copies of judgment may be marked : **Yes**
To Law Reporters/Journals :
3. Whether Their Ladyship/Lordship wish to : No
See fair Copy of the Judgment ? :

***HON'BLE SRI JUSTICE P.NAVEEN RAO**

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% 17.04.2017

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another.

.... Respondents

!Counsel for the petitioner : Sri M.R.Tagore

Counsel for the Respondents: Government Pleader for Services-I
(TG) for Government Pleader for
Labour for respondents 1 & 2

<Gist :

>Head Note:

? Cases referred:

1. (2006) 12 SCC 28
2. (2012) 11 SCC 565
3. (2013) 6 SCC 530
4. (1995) 2 SCC 570
5. (1998) 4 SCC 154
6. (2005) 6 SCC 636
7. 1990 Supp SCC 738
8. (2007) 14 SCC 49
9. (2009) 7 SCC 305
10. (2013) 6 SCC 530

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.4856 of 2017

ORDER:

Petitioner is presently working as Assistant Commissioner of Labour. Complaint was filed before him under Section 48 (1) of A.P. Shops and Establishments Act, 1988, by a person, by name, Sri P. Appala Naidu against his termination from service. It appears an amount of 5000/- was deposited in the account of the petitioner by Appala Naidu. It appears, later Sri P.Appala Naidu complained against the petitioner. Petitioner was served charge memo dated 16.03.2016 containing the allegation on the said issue. Petitioner submitted his explanation on 25.04.2016. Petitioner contends that there is no further progress in the departmental enquiry. While so, Departmental Promotion Committee Meeting was held on 29.08.2016, but petitioner name was deferred for promotion until termination of the disciplinary proceedings. Ignoring the petitioner, juniors to him were promoted by order dated 12.09.2016. In this writ petition, petitioner challenges the charge memo and Government order in G.O.Ms.No.62, Labour, Employment Training & Factories (Labour) Department, dated 31.08.2016 approving the panel for promotion to the post of Deputy Commissioner of Labour for the panel year 2015-16 and seeks consequential declaration that petitioner is entitled to promotion as Deputy Commissioner of Labour in the existing vacancies.

2. It is vehemently contended by the learned counsel for petitioner that in the charge memo, there is reference to Rule 9 of

Andhra Pradesh Civil Service (Conduct) Rules, 1964, whereas Rule 9 has no application. The Rule 9 only deals with acquiring or disposing of immovable or movable property. It clearly shows non-application of mind and that since Rule 9 has no application to the facts of the case, the charge memo is liable to be set aside on that ground. He would further submit that according to the Government Policy, as reflected in G.O.Ms.No.679 General Administration (Services-C) Department dated 01.11.2008, time schedule is prescribed for completing departmental enquiry. According to this G.O., in simple cases enquiry should be completed within three months and in serious cases, enquiry should be completed within six months. Even assuming that the allegation made against petitioner is grave, since charge memo was issued on 16.03.2016, the enquiry ought to have completed by September, 2016. Petitioner submitted his explanation soon after he received the charge memo and petitioner is not responsible for delay in concluding the disciplinary proceedings. He would further submit that false allegation is levelled against petitioner. Without consent of the petitioner, Appala Naidu deposited the amount in his account. The said money was withdrawn and it was paid to the Advocate engaged by the complainant. On account of mischief committed by Appala Naidu, petitioner cannot be held responsible and on this false allegation, petitioner's claim for promotion was denied while granting promotions to his juniors.

3. In this writ petition, two issues that arise for consideration are, 1) whether writ petition is maintainable against the charge memo and 2) whether the disciplinary proceedings are liable to be set aside on the ground of delay.

ISSUE NO.1:

4.1. In **Union of India Vs Kunisetty Satyanarayana**¹ the employee challenged the charge memo dated 23.12.2003. In the said charge memo, it was alleged that the employee claimed reservation against ST roster point in the promotional post, though he did not belong to said category. Instead of replying to the aforesaid charge, the employee filed O.A., before the Central Administrative Tribunal. The Tribunal disposed of O.A. directing the employee to submit his reply to the charge memo. Instead of filing reply, he filed writ petition before the High Court and High Court allowed the writ petition. The Union of India preferred appeal before the Supreme Court.

4.2. On review of the precedent decisions, Supreme Court held as under:

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

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are

¹ (2006) 12 SCC 28

not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

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

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

5.1. In **Secretary, Ministry Of Defence and Others Vs Prabhash Chandra Mirdha**², the employee was served with charge memo alleging that he demanded and accepted bribe. Challenging the said charge memo, employee filed O.A. before the Central Administrative Tribunal, alleging that the charge memo was issued by authority subordinate to the appointing authority. The O.A was allowed by the Tribunal on the ground that the charge memo was issued by authority subordinate to the appointing authority. Writ Petition preferred on behalf of Union of India was dismissed. On behalf of Union of India, appeal was preferred before the Supreme Court.

5.2. Supreme Court held as under:

“10. Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies

² (2012) 11 SCC 565

when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the court. (Vide *State of U.P. v. Brahm Datt Sharma* [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , *Bihar State Housing Board v. Ramesh Kumar Singh* [(1996) 1 SCC 327] , *Ulagappa v. Commr.* [(2001) 10 SCC 639 : AIR 2000 SC 3603 (2)] , *Special Director v. Mohd. Ghulam Ghouse* [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] and *Union of India v. Kunisetty Satyanarayana* [(2006) 12 SCC 28 : (2007) 2 SCC (L&S) 304])

11. In *State of Orissa v. Sangram Keshari Misra* [(2010) 13 SCC 311 : (2011) 1 SCC (L&S) 380] (SCC pp. 315-16, para 10) this Court held that normally a charge-sheet is not quashed prior to the conducting of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that to determine correctness or truth of the charge is the function of the disciplinary authority. (See also *Union of India v. Upendra Singh* [(1994) 3 SCC 357 : 1994 SCC (L&S) 768 : (1994) 27 ATC 200] .)

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.”

6.1. In **Chairman, Life Insurance Corporation of India and others Vs M.Masilamani**³, it was alleged that there were irregularities and deviations in construction of house by the employee and the housing loan was obtained, upon non disclosure of the facts. Charge sheet was drawn on 6.1.1998; employee filed

³ (2013) 6 SCC 530

his reply; not satisfied with the reply, domestic enquiry was ordered. Based on the report of the enquiry, penalty of reduction in the basic pay was imposed on the employee. The appeal as well as memorial were rejected. Challenging the order of punishment, employee preferred writ petition. Writ petition was allowed observing that witnesses were examined in violation of the statutory rules and principles of natural justice; that employee was not accorded adequate opportunity to cross examine the witnesses; that appellate authority failed to observe that there were procedural violations by the enquiry officer as well as by the disciplinary authority. It was also held that mere concurrence by the appellate authority with the findings recorded by the enquiry officer and without adequate reasoning cannot be said to amount to adequate application of judicial mind by the appellate authority. The appeal filed by the corporation was dismissed. Aggrieved thereby, on behalf of LIC appeal was preferred before the Supreme Court.

6.2. Dealing with various contentions, the Supreme Court observed as under:

“18. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is de hors the limits of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show-cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by the court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question have to be examined taking into consideration the gravity/magnitude of charges involved therein. The essence of the matter is that the court must take into consideration all relevant facts and to balance and weigh the same, so as to determine if it is in fact in the interest of clean and honest administration, that the

judicial proceedings are allowed to be terminated only on the ground of delay in their conclusion. (Vide *State of U.P. v. Brahm Datt Sharma* [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , *State of M.P. v. Bani Singh* [1990 Supp SCC 738 : 1991 SCC (L&S) 638 : (1991) 16 ATC 514 : AIR 1990 SC 1308] , *Union of India v. Ashok Kacker* [1995 Supp (1) SCC 180 : 1995 SCC (L&S) 374 : (1995) 29 ATC 145] , *Prohibition & Excise Deptt. v. L. Srinivasan* [(1996) 3 SCC 157 : 1996 SCC (L&S) 686 : (1996) 33 ATC 745] , *State of A.P. v. N. Radhakishan* [(1998) 4 SCC 154 : 1998 SCC (L&S) 1044 : AIR 1998 SC 1833] , *M.V. Bijlani v. Union of India* [(2006) 5 SCC 88 : 2006 SCC (L&S) 919 : AIR 2006 SC 3475] , *Union of India v. Kunisetty Satyanarayana* [(2006) 12 SCC 28 : (2007) 2 SCC (L&S) 304] and *Ministry of Defence v. Prabhash Chandra Mirdha* [(2012) 11 SCC 565 : (2013) 1 SCC (L&S) 121 : AIR 2012 SC 2250] .)”

7. The principle deducible from the decisions referred to above, makes it clear that ordinarily writ does not lie against show cause notice/charge memo; issuance of show cause notice/charge memo, does not adversely affect/infringe the rights of the employee; does not amount to an adverse order. It would be premature to deal with the issues; the Court can interfere in exercise of power of judicial review at the stage of show cause notice/charge memo, only if it was issued by a person having no jurisdiction/competence.

8. In the instant case, it is not the case of petitioner that the Commissioner of Labour is not competent to initiate disciplinary proceedings. The proceedings are initiated on a complaint filed by a party, whose case was dealt by the petitioner as authority under the Andhra Pradesh Shops and Establishments Act, 1988. On preliminary assessment, it was noticed that an amount of 5,000/- was deposited by Appala Naidu in the account of the petitioner. Though petitioner sought to explain the reasons for such depositing of amount in his account, the fact remains that

such an amount is deposited in his account. It is for the disciplinary authority to consider the explanation and examine the complaint in the departmental proceedings. Thus, it cannot be said that initiation of disciplinary proceedings was made in arbitrary exercise of power only to deny the promotion to the petitioner.

9. Learned counsel sought to emphasize that charges framed by referring to Rule 9 of APCS (Conduct) Rules, 1964. No doubt in the instant case, Rule 9 is not attracted. However, Rule 3 of the Conduct Rules mandates that every Government employee should devote his duty, should maintain absolute integrity, discipline, impartiality and a sense of propriety; should not behave in a manner which is unbecoming of such employee or derogatory to the prestige of the Government; should not act in a manner which would place his official position under any kind of embarrassment. The requirements of Rule 3 are general in nature, encompass all activities of the employee. There are specific provisions in the Conduct Rules, which deal with various aspects of conduct of employee. Conduct Rules are comprehensive rules dealing with conduct of the Government servant and any of the violations of such Rules would amount to misconduct and liable for disciplinary action in accordance with the provisions contained in APCS (CCA) Rules 1991. In the instant case, power is traceable to Rule 3 of the Conduct Rules read with provisions of the CCA Rules.

10. When power is available, merely because a wrong provision is mentioned, does not vitiate the disciplinary action otherwise validly initiated. When disciplinary proceedings are validly initiated, as

held by the Supreme Court in the decision referred to above, this Court cannot interject the disciplinary proceedings at the threshold. Therefore, on this ground, the writ petition is liable to be dismissed.

ISSUE NO.2:

11.1. One of the major areas of litigation in service matters is inordinate delay in initiation/conclusion of disciplinary proceedings and on the ground of inordinate delay in initiation and conclusion of the disciplinary proceedings, not attributable to the employees, their entitlement for promotion is denied. Employees place reliance on the Government policy decision to conclude the departmental proceedings, in case of minor misconduct within three months and in case of major misconduct within six months. The said policy is notified in G.O.Ms.No.679, General Administration (Service-C) Department, dated 01.11.2008. The employees contend that when time limit is prescribed for completing the disciplinary proceedings and when employee is no way responsible for the delay in completion, there is no justification to keep the disciplinary proceedings pending and on that ground alone they are liable to be set aside.

11.2. In the following decisions, the Supreme Court considered this issue.

11.3.1. **State of Punjab and others v. Chaman Lal Goyal**⁴ was a case of inordinate delay in initiation and conclusion of disciplinary proceedings and denial of promotion on the ground that

⁴ (1995) 2 SCC 570

disciplinary proceedings are pending. The High Court quashed the memo of charges. This issue was considered in detail. Supreme Court placed reliance on the judgment of Constitution Bench in **A.R.Antulay** to hold that right of speedy trial is fundamental right and the same principle would apply to the domestic enquiries also. Supreme Court held that whenever there is delay in conclusion of the disciplinary proceedings, the Court has to resort to 'balancing test or balancing process' and determine in each case whether the right of speedy trial is denied and to pass appropriate orders.

11.3.2. Having regard to the delay in conclusion, though the Court declined to set aside the disciplinary proceedings, at the same time, directed consideration for promotion without reference to pending disciplinary proceedings. In the said case, there was delay of more than five years in initiation of the disciplinary proceedings.

11.3.3. Dealing with delay in initiation and conclusion of disciplinary proceedings and promotion, Supreme Court held as under:

“12. Applying the **balancing process**, we are of the opinion that the quashing of charges and of the order appointing enquiry officer was not warranted in the facts and circumstances of the case. It is more appropriate and in the interest of justice as well as in the interest of administration that the enquiry which had proceeded to a large extent be allowed to be completed. **At the same time, it is directed that the respondent should be considered forthwith for promotion without reference to and without taking into consideration the charges or the pendency of the said enquiry and if he is found fit for promotion, he should be promoted immediately. This direction is made in the particular facts and circumstances of the case though we are aware that the rules and practice normally followed in such cases may be**

different. The promotion so made, if any, pending the enquiry shall, however, be subject to review after the conclusion of the enquiry and in the light of the findings in the enquiry. It is also directed that the enquiry against the respondent shall be concluded within eight months from today. The respondent shall cooperate in concluding the enquiry. It is obvious that if the respondent does not so cooperate, it shall be open to the enquiry officer to proceed ex parte. If the enquiry is not concluded and final orders are not passed within the aforesaid period, the enquiry shall be deemed to have been dropped.”
(emphasis supplied)

11.4.1. In **State of A.P. v. N.Radhakishan**⁵ (supra), Charge memo was issued to the employee on 31.07.1995 on incidents relating to years 1978, 1979 and 1984. The Tribunal quashed the disciplinary proceedings on the ground of delay. It appears three different memos were issued, but only memo dated 31.07.1995 was quashed on the ground of delay and memos dated 27.10.1995 and 01.06.1996 were not disturbed but Tribunal directed consideration for promotion without reference to the said memos. Supreme Court upheld quashing of memo dated 31.07.1995 and directed the State to consider the claim of the employee for promotion ignoring the memo dated 27.10.1995 and 01.06.1996.

11.4.2. It is appropriate to extract paragraph 19 of the decision.

“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

⁵ (1998) 4 SCC 154

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)

11.5.1. In **P.V.Mahadevan v M.D., T.N.Housing Board**⁶, again the very issue of delay in initiation/conclusion of disciplinary proceedings has come up for consideration. Charge memo was issued in the year 2000 alleging irregularities in issuing the sale deed in the year 1990 i.e., delay of ten years. Supreme Court noticed that there was no acceptable explanation for the inordinate delay in initiating disciplinary proceedings by relying on the decision of Supreme Court in **State of M.P. v Bani Singh**⁷ and **State of A.P. v. N.Radhakishan** (supra). Supreme Court quashed the charge memo.

⁶ (2005) 6 SCC 636

⁷ 1990 Supp SCC 738

11.5.2. Supreme Court held, “the protracted disciplinary enquiry against a Government employee issued, therefore, be avoided not only in the interests of Government employee, but in the public interest and also in the interest of inspiring confidence in the minds of the Government employees (paragraph 11).

11.6.1. In **Government of Andhra Pradesh and others v. V.Appala Swamy**⁸, the High Court quashed the charge memo on the ground of delay in initiation and conclusion. Supreme Court observed that, merely on the ground of delay in concluding the proceedings, the disciplinary proceedings should not be quashed and set aside the decision of the High Court.

11.6.2. Supreme Court held as under:

“12. So far as the question of delay in concluding the departmental proceedings as against a delinquent officer is concerned, in our opinion, no hard-and-fast rule can be laid down there for. Each case must be determined on its own facts. ***The principles upon which a proceeding can be directed to be quashed on the ground of delay are:***

(1) where by reason of the delay, the employer condoned the lapses on the part of the employee;

(2) where the delay caused prejudice to the employee.

Such a case of prejudice, however, is to be made out by the employee before the inquiry officer.”

11.7. In **Secretary, Forest Department and others v. Abdur Rasul Chowdhury**⁹, Supreme Court observed that delay in concluding the disciplinary proceedings is not fatal to the proceedings. It depends on the facts and circumstances of a case.

⁸ (2007) 14 SCC 49

⁹ (2009) 7 SCC 305

The unexplained protracted delay on the part of the employer may be one of the circumstances in not permitting the employer to continue with the disciplinary enquiry proceedings. At the same time, if the delay is explained satisfactorily then proceedings should be permitted to continue (paragraph 16).

11.8.1. In **Chairman, Life Insurance Corporation of India and others v. M.Masilamani**¹⁰, it was alleged that there were irregularities and deviations in construction of house by the employee and the housing loan was obtained, upon non disclosure of the facts. Charge sheet was drawn on 6.1.1998; employee filed his reply; not satisfied with the reply, domestic enquiry was ordered. Based on the report of the enquiry, penalty of reduction in the basic pay was imposed on the employee. The appeal and memorial were rejected. Challenging the order of punishment, employee preferred writ petition. Writ petition was allowed observing that witnesses were examined in violation of the statutory rules and principles of natural justice; that employee was not accorded adequate opportunity to cross examine the witnesses; that appellate authority failed to observe that there were procedural violations by the enquiry officer as well as by the disciplinary authority. It was also held that mere concurrence by the appellate authority with the findings recorded by the enquiry officer and without adequate reasoning cannot be said to amount to adequate application of judicial mind by the appellate authority. The appeal filed by the corporation was dismissed.

¹⁰ (2013) 6 SCC 530

Aggrieved thereby, on behalf of LIC appeal was preferred before the Supreme Court.

11.8.2. Dealing with various contentions, the Supreme Court observed as under:

“18. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is dehors the limits of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show-cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by the court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question have to be examined taking into consideration the gravity/magnitude of charges involved therein. The essence of the matter is that the court must take into consideration all relevant facts and to balance and weigh the same, so as to determine if it is in fact in the interest of clean and honest administration, that the judicial proceedings are allowed to be terminated only on the ground of delay in their conclusion. (Vide *State of U.P. v. Brahm Datt Sharma* [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , *State of M.P. v. Bani Singh* [1990 Supp SCC 738 : 1991 SCC (L&S) 638 : (1991) 16 ATC 514 : AIR 1990 SC 1308] , *Union of India v. Ashok Kacker* [1995 Supp (1) SCC 180 : 1995 SCC (L&S) 374 : (1995) 29 ATC 145] , *Prohibition & Excise Deptt. v. L. Srinivasan* [(1996) 3 SCC 157 : 1996 SCC (L&S) 686 : (1996) 33 ATC 745] , *State of A.P. v. N. Radhakishan* [(1998) 4 SCC 154 : 1998 SCC (L&S) 1044 : AIR 1998 SC 1833] , *M.V. Bijlani v. Union of India* [(2006) 5 SCC 88 : 2006 SCC (L&S) 919 : AIR 2006 SC 3475] , *Union of India v. Kunisetty Satyanarayana* [(2006) 12 SCC 28 : (2007) 2 SCC (L&S) 304] and *Ministry of Defence v. Prabhash Chandra Mirdha* [(2012) 11 SCC 565 : (2013) 1 SCC (L&S) 121 : AIR 2012 SC 2250] . (Emphasis supplied)

11.9.1. In **Prem Nath Bali** (supra), employee was placed under suspension on 06.02.1990 and was served with charge memo dated 18.07.1990. The disciplinary proceedings continued for more

than 9 years. By orders dated 27.10.1999 and 28.10.1999, penalty of compulsory retirement was imposed and employee was held not entitled to any amount more than the allowance already paid. On appeal, the orders of disciplinary authority were confirmed. Challenge against the said order was rejected by the High Court. Supreme Court noted that on account of unreasonable delay in concluding the disciplinary proceedings, for no fault employee, was kept under suspension for long time, because of which employee and his family suffered a lot as they have to survive only on subsistence allowance. Supreme Court upheld the disciplinary action and imposing of punishment. However, taking note of the fact that there was inordinate delay in concluding the disciplinary proceedings, in the peculiar facts of the case, Supreme Court directed, to take into account the period of suspension of 9 years 26 days for determining the employee's pension.

11.9.2. Supreme Court emphasized conclusion of disciplinary proceedings within the fixed time frame, Supreme Court observed as under:

“26. Time and again, this Court has emphasised that it is the duty of the employer to ensure that the departmental enquiry initiated against the delinquent employee is concluded within the shortest possible time by taking priority measures. In cases where the delinquent is placed under suspension during the pendency of such inquiry then it becomes all the more imperative for the employer to ensure that the inquiry is concluded in the shortest possible time to avoid any inconvenience, loss and prejudice to the rights of the delinquent employee.

27. As a matter of experience, we often notice that after completion of the inquiry, the issue involved therein does not come to an end because if the findings of the inquiry proceedings have gone against the delinquent employee, he invariably pursues the issue in court to

ventilate his grievance, which again consumes time for its final conclusion.

28. Keeping these factors in mind, we are of the considered opinion that **every employer (whether State or private) must make sincere endeavour to conclude the departmental enquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time-frame then efforts should be made to conclude within the reasonably extended period depending upon the cause and the nature of inquiry but not more than a year.” (Emphasis supplied)**

12. Alleging illegalities in dealing with his case filed against illegal termination and that he had deposited an amount of 5,000/- to the account of the petitioner, P Appala Naidu gave a complaint on 29.5.2015; sworn statement was obtained from him before proceeding further. After ascertaining the *prima facie* truth in the allegations, charge memo was issued on 16.3.2016. Therefore, it is not a case of inordinate delay in initiation of the disciplinary proceedings warranting interference. As held by the Supreme Court in precedent decisions, each case has to be considered in the given facts. In the facts of this case, it cannot be said that there was inordinate delay in initiation. Though there is some delay in conclusion of the disciplinary proceedings, but having regard to the allegations levelled, the disciplinary proceedings cannot be set aside on that ground alone. Petitioner has not pleaded any prejudice caused to him on account of the delay in completing the disciplinary proceedings, except contending that on the ground of pending disciplinary proceedings,

he is ignored for promotion. It cannot be assumed that because of the delay in completing the proceedings that the Government has condoned the lapses on the part of the employee. Thus, parameters laid down by the Supreme Court in **V.Appala Swamy** are not attracted in the instant case.

13. In the facts of this case, it cannot be said that the allegation levelled against the petitioner is trivial in nature to ignore the proceedings to grant promotion. It is not in dispute that the post of Deputy Commissioner of Labour is a selection post. The charge memo was issued on 16.03.2016. After the charge memo was issued by virtue of the orders in G.O.Ms.No.62, panel was drawn for promotion for the first time, wherein the name of the petitioner was deferred due to pending disciplinary proceedings. In terms of the Government policy as reflected in G.O.Ms.No.257, General Administration (Ser.C) Department, dated 10.06.1999, an employee can be considered for *ad hoc* promotion only if disciplinary proceedings are not concluded within two years from the date of affecting promotions after disciplinary proceedings are initiated, subject of course to fulfillment of other requirements of G.O.Ms.No.257. Thus, approval of the panel for promotion and indicating against the name of the petitioner in the approved panel that his name is deferred from promotion cannot be faulted, since admittedly disciplinary proceedings are pending.

14. However, having regard to the principle laid down by the Supreme Court in precedent decisions, the disciplinary authority is directed to complete the disciplinary proceedings, by following the full gamut of the disciplinary action, as expeditiously as possible,

preferably within a period of six months from the date of receipt of copy of this order.

15. Subject to the above observations, Writ Petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 17.04.2017
Kkm/tvk



HON'BLE SRI JUSTICE P.NAVEEN RAO



WRIT PETITION No.4856 of 2017

Date: 17.04.2017

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