

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.21900 OF 2003

ORDER:

Heard Sri D.Ramalinga Swamy, learned counsel for petitioner and learned Assistant Government Pleader for Higher Education.

The petitioner prays for Mandamus directing the respondents to drop further action pursuant to the article and basis of charges described in Annexure-I of proceedings dated 25.08.2003 of 2nd respondent in Rc.No.Ser.I-2/2570/2003-1 and declaring that further action against petitioner is not unjust, invalid, and contrary to law, fundamental rights etc.

Briefly noted, in the instant writ petition the petitioner challenges initiation of departmental enquiry under Rule 20 of the Andhra Pradesh Civil Services (CC & A) Rules, 1991 (for short 'the Rules') through proceedings Rc.No.Ser.I-2/2570/2003-1 dated 25.08.2003. The proceedings propose to hold enquiry against petitioner into the alleged misconduct when the petitioner was working as Principal of Mahatma Gandhi Government Junior College, Narayanapuram and at the time of issuing charge memo, was working at SDS Government Junior College, Jangareddygudem, West Godavari District. The Article of Charge against petitioner reads thus:

“that the said Sri D.L.Kantha Raju, the then Principal, M.G.Junior College, Narayanapuram during the year 1983-84 actuated with corrupt motive and in abuse of his official position connived with Sri D.Satyanarayana, Junior Lecturer in Civics, M.G.Junior College, Narayanapuram, Warden of the Students Managed Hostel of the said Junior College, exhibited lack of integrity, devotion to duty and conduct,

unbecoming of a member of service and hereby contravened Rule 3(1) of the A.P. Civil Services (Conduct) Rules, 1964”.

The proposed enquiry relates to the incidents allegedly happened during the academic year 1983-84.

The circumstances necessary for disposal of the writ petition are stated thus:

Mahatma Gandhi Junior College and Sri Aravinda Satajayanthi Degree College at Narayanapuram, West Godavari District were established and run by private management known as ‘Bapiraju Dharma Samstha’. These two colleges for brevity are respectively referred as ‘junior college’ and ‘degree college’. The junior and degree colleges were admitted to grant-in-aid in the year 1977. The degree college was taken over by Government of A.P. through G.O.Ms.No.939 Education (J) Department dated 20.09.1978, whereas the junior college was taken over through GOMs.No.615, Education (I.E) Department dated 30.12.1998. However, the management of junior college was with Government from 08.03.1984. One D.R.Patnaik was working as Principal of the degree college.

The Social Welfare Department, for the welfare of SC, ST, BC students studying in these colleges, established a common students’ managed hostel at Narayanapuram. The hostel was run by the Warden and admittedly not under the direct or indirect control of junior or degree colleges. The function of Principals of junior and degree colleges was to forward the applications of students interested in seeking admission into the hostel run by the

Social Welfare Department to the Warden, with remarks on the study in the college, social and economic status. On the applications forwarded by the Principals, a final decision was taken by the Social Welfare Department to sanction scholarships towards mess and lodging charges for eligible students. According to petitioner, the Warden of the Social Welfare Department was running the hostel and mess. The finances were completely looked after by the Social Welfare Department and the Principals have nothing to do with either the finances or the day-to-day management of the hostel run by the Social Welfare Department.

It is further alleged that Narayanapuram is a tiny village with a population of 4000 to 5000 people and rented buildings were not available for locating hostel to cater to the needs of all the students. The Warden of the hostel had taken a small building on rent which can accommodate about 20 students. The students who were not properly accommodated in the hostel building used to stay in private houses and have mess facility in the hostel. These details are stated only to explain that in the scheme of disbursement of scholarship to SC/ST/BC students, the Principals have no role to play at all. It is further stated that for the academic year 1983-84, students were recommended by the Principals of junior and degree colleges. They have completed the academic year and no issue was pointed out till 1988, when the Regional Joint Director of Higher Education, Rajahmundry i.e., Dr.K.S.R.Sarma visited Narayanapuram Village and forwarded a report to the Director of Higher Education, who was Head of the Department for

both the Junior and Degree Colleges in the State of A.P. The Director, basing on the preliminary report, through order dated 22.06.1988, directed departmental enquiry by appointing Dr.S.Vishwanadham, the then Regional Joint Director of Higher Education to enquire into the misconduct against the Principals of junior and degree colleges.

The categorical statement of petitioner is that the report of Dr.K.S.R.Sarma and the subsequent decision of Director of Higher Education are on the same, similar and identical circumstances and charges against both the Principals. The Enquiry Officer issued identical proceedings dated 01.09.1988 calling for explanation from the Principals of junior and degree colleges. On 24.11.1998, the petitioner submitted explanation to the charge memo dated 01.09.1988. Dr.S.Vishwanadham/Enquiry Officer (EO) conducted enquiry under the A.P Private Institutions Employees (Disciplinary Control) Rules 1983 (for short 'the 1983 Rules') into the charges levelled against the Principals of junior and degree colleges.

It is contended by petitioner that according to Rule 7(2) of the 1983 Rules, the petitioner is entitled for copy of the report of the Enquiry Officer. The grievance in this behalf is that Dr.S.Vishwanadham submitted enquiry report relating to D.R.Patnaik, Principal of Degree College, through covering letter dated 16.06.1990 and against petitioner through covering letter dated 30.07.1990, which were not communicated to the charge sheeted Principals.

In the year 1992, the Directorate of Higher Education was bifurcated into Directorate of Intermediate Education and Commissionerate of Collegiate Education for the junior and degree colleges respectively. According to petitioner, the enquiry report submitted by Dr.Viswanadham through letter dated 30.07.1990 did not find that petitioner misappropriated scholarship funds, except that a few procedural lapses were found on Principals of junior and degree colleges while recommending the case of students for residential scholarships. It is further reported that the mistake, if any, could have been effectively checked at the level of sanctioning authority i.e., the Social Welfare Department and that, therefore, the delinquent officers cannot be blamed solely for the indiscriminate recommendations or availing of scholarship by students of junior and degree colleges. On 03.02.1993, the Commissioner of Collegiate Education basing on the report and also that the Principal of Degree College was at the fag end of his service, even the omissions are held as proved and amount to misconduct, still passed final orders dropping proceedings against D.R.Patnaik, Principal, Degree College. The petitioner places strong reliance on order dated 03.02.1993 of the Commissioner of Collegiate Education. Therefore, to avoid repetition, the paragraph relied on is excerpted hereunder:

“The accused officer has submitted his reply in his letters dt.29.11.88 and 10.12.88. The Regional Joint Director of Higher Education, Rajahmundry who conducted enquiry has reported that there is no trace of misappropriation of funds except procedural lapses on the part of the Accused Officer. Though it is a lapse on the part of the A.O. to recommend indiscriminately for

residential scholarships, at the same time it could have been effectively checked at the level of the sanctioning authority also. Therefore, the A.O cannot be blamed solely for the indiscriminate recommendations and irregular sanction of residential scholarships. However, since the A.O has already retired from the service, the administrative lapse committed by him is condoned on humanitarian grounds and the action against him is dropped.”

The Regional Joint Director of Higher Education, on the basis of enquiry report submitted along with covering letter dated 30.07.1990, issued show cause notice dated 21.06.1993, reducing the basic pay of the petitioner to the minimum time scale of pay applicable to his post. The petitioner complains that when the disciplinary proceeding was initiated, the junior and degree colleges were under the management of Directorate of Higher Education. It continued to be under the Directorate of Higher Education when the reports were submitted, however, with the bifurcation into two separate departments in 1992, the authorities, who can take disciplinary action, changed. Therefore, though action against Principal, Degree College was dropped on 03.02.1993, show cause notice is issued proposing to impose the punishment of reduction of basic pay to the minimum of the time scale. On 23.12.1993, 25.08.1995 and 22.02.1996, the petitioner filed explanations/reply before the Regional Joint Director of Higher Education. Admittedly, the department did not take further action in this behalf and it is relevant to excerpt the conclusions recorded by the Regional Joint Director in proceedings dated 21.06.1993:

“After obtaining the defence statement from D.Kanta Raju, Principal, M.G.Junior College, Narayanapuram, the Regional Joint Director of Higher

Education, Rajahmundry conducted detailed enquiry at Narayanapuram in two phases i.e., on 17.2.1989 and 5.10.89 and submitted his report to the Director who in turn submitted the same to the Govt. The Govt in their Memo No.1628/IE1/89-9 Edn, dt: 4.2.1991 have accepted the enquiry report and permitted the Director of Intermediate Education, Andhra Pradesh, Hyderabad to initiate disciplinary action against Sri D.L.Kanta Raju, Principal, M.G.Junior College, Narayanapuram. The Director of Intermediate Education, Andhra Pradesh, Hyderabad has in turn authorised the Regional Joint Director of Higher Education, Rajahmundry vide Proc.R.C.No.1931/JC5-3/84 dt: 11.8.92 to take disciplinary action against the Principal Sri D.L.Kanta Raju. As per the report of the Enquiry Officers, Sri D.L.Kanta Raju, Principal, MG Junior College, Narayanapuram is guilty of indiscriminately recommending and obtaining sanction of residential scholarships from Social Welfare Dept., in respect of about 108 students in flagrant violation of the rules and regulations and with the connivance of the Hostel Warden knowing fully well that it was quite impossible to accommodate all the residential scholarships holder in the SM Hostel at Chebrolu”.

While matter stood thus, on 08.03.1999, the Commissioner-cum-Director/2nd respondent orders fresh departmental proceedings under Rule 20 of the Rules. The Article of Charge reads thus:

“that the said Sri D.L.Kantha Raju, the then Principal, M.G.Junior College, Narayanapuram during the year 1983-84 actuated with corrupt motive and in abuse of his official position connived with Sri D.Satyanarayana, Junior Lecturer in Civics, M.G.Junior College, Narayanapuram, Warden of the Students Managed Hostel of the said Junior College, exhibited lack of integrity, devotion to duty and conduct, unbecoming of a member of service and hereby contravened Rule 3(1) of the A.P. Civil Services (Conduct) Rules, 1964”.

The petitioner through reply challenges the very disciplinary proceeding initiated under Rule 20 of the Rules. On 17.05.1999, the

petitioner filed explanation on the happenings from 1983-84 till that date. It is undisputed that no step was taken in terms of the show cause notice dated 08.03.1999 issued so far. While matter stood thus, the 2nd respondent, by referring to letter received from the Director General, ACB, Hyderabad dated 03.06.1998 and U.O.Note dated 14.08.2003, orders departmental enquiry under Rule 20 of the Rules. Hence, the writ petition challenging show cause notice issued after 20 years from the date of alleged misconduct happened during the academic year 1983-84.

The petitioner alleges that by relying on dates and events, no action whatsoever was taken on the report submitted by Dr.S.Viswadhanam, which has for all purposes given quietus to the show cause notice initiated through proceedings dated 01.09.1988. The contention is expanded by relying upon dropping of charges against B.R.Patnaiak, Principal, Degree College, on 03.02.1993. It is further contended that the show cause notice dated 21.06.1993 was issued basing on the report of the Enquiry Officer proposing to impose punishment of reducing the basic pay of petitioner to the minimum of the time scale applicable to the post. The petitioner has given explanation. Neither the proposed punishment nor any other punishment was imposed and thereby it is inferred that no further action whatsoever was taken up to 08.03.1999. Thereafter, another notice was issued on 08.03.1999. The petitioner has given explanation dated 17.05.1999 to the notice dated 08.03.1999 explaining the totality of circumstances and said series of enquiries cannot be initiated in respect of the alleged misconduct

happened during the academic year 1983-84. Admittedly, no action whatsoever is taken and now ordering disciplinary proceedings on the very same accusation is illegal, arbitrary and unconstitutional.

Mr.D.Ramalinga Swamy has substantially reiterated the above dates and events and he contends that initiation of disciplinary enquiry under Rule 20 of the Rules for the alleged misconduct happened when the institution was under private management is illegal and unconstitutional. There cannot be series of enquiries on the very same accusation. The action against Principal, Degree College was dropped and there is no reason for initiating enquiry afresh at this point. The proposed action is vitiated. In support of his contentions, he relied upon the following decisions:

1. PRABHATH KUMAR PAUL v. STATE OF WEST BENGAL¹
2. DAMODAR VALLEY CORPORATION v. BALLARI SARKAR²
3. HARISH KUMAR GUPTA v. STATE OF HARYANA AND ANOTHER³
4. SURENDRA PAUL SINGH v. STATE OF UP AND OTHERS⁴
5. ILA CHATARJEE v. STATE OF WEST BENGAL⁵
6. GOVT. OF DELHI AND OTHERS v. RAJUL KUMAR SINGH⁶

The 2nd respondent filed counter affidavit and none of the dates, events and circumstances stated in the affidavit is denied. To complete the narration, the gist of counter affidavit is stated hereunder.

¹ 2010(8) SLR 491 Calcutta (DB)

² 2010(8) SLR 496 Calcutta (DB)

³ 2012(7) SLR 701 (P & H)

⁴ 2013(3) SLR 142 (ALL) (DB)

⁵ 2011(4) SLR 346 Calcutta

⁶ 2015(4) SLR 263

It is alleged that on the surprise check conducted by the ACB, it revealed that some amount pertaining to scholarships has not been disbursed to the students and thereby caused wrongful loss to the Government, besides requesting the department to take departmental action against the responsible for loss to exchequer, including the Principals of junior and degree colleges. The Director General, Anti-Corruption Bureau, Hyderabad had furnished article of charges against the petitioner on the ground that he connived with one Lecturer and Hostel Warden of the students managed hostel of the college and recommended for renewals of old residential scholarship of several students belonging to SC/ST/BC during the year 1983-84. The petitioner since is in government service has no right to file writ petition before this Court and it is the Andhra Pradesh Administrative Tribunal which has the authority to deal with service matters of government employees. It is stated that the petitioner cannot take shelter of late D.R.Patnaik against whom further action has been dropped. Therefore, it is prayed for dismissing the writ petition.

The Court directed production of record and the record was produced for inspection by the Court. The Assistant Government Pleader relied upon the stand in the counter affidavit and prayed for dismissing the writ petition.

Now the point for consideration is—

Whether the proceedings Rc.No.Ser.I-2/2570/2003-1 dated 25.08.2003 initiating departmental proceedings under Rule 20 of the Rules is legal, valid and conforms

to the requirement of speedy trial of disciplinary proceeding?

The petitioner challenges initiation of departmental enquiry into the alleged misconduct by petitioner during the academic year 1983-84, admittedly when the junior college was under a private management. Further, a show cause notice was issued on 01.09.1988 by the Enquiry Officer appointed through order dated 22.06.1988. The Enquiry Officer vide letter dated 30.07.1990 submitted report and for the second show cause notice dated 21.06.1993 proposing to impose reduction of scale of pay, the petitioner filed explanation. It is not clear from the record produced in this behalf whether action was dropped or case is still kept pending. Notwithstanding the issuance of second show cause notice, further notice was issued on 08.03.1999 and the show cause notice was not followed as required by law. The 2nd respondent, without reference to these undisputed proceeding in the matter on the strength of a letter forwarded by the ACB, had issued the proceeding impugned in the writ petition. In this background, let me examine the decisions relied upon by petitioner to challenge of initiation of departmental enquiry after a lapse of 20 years from the happening of alleged misconduct.

In PRABHATH KUMAR PAUL's case (1 supra), the Division Bench of the Calcutta High Court observed:

"In the present case, we are to consider whether the respondent authorities should be allowed to proceed further with the disciplinary proceedings against the petitioner in view of the unexplained inordinate delay in initiating the said disciplinary proceedings.

The alleged misconduct of the petitioner in relation to the acquisition of assets disproportionate to the known sources of income amounting to Rs.1,12,275/- took place during the period 1990 to 1999. The petitioner apart from submitting statement of assets before the concerned authority each year, also submitted statement of assets for the aforesaid period on several occasions in compliance with the direction of the respondent authorities. If the authorities were of the opinion that the petitioner herein had acquired any asset disproportionate to his known sources of income then immediately after submission of the statement of assets or after submission of the relevant papers by the said petitioner on 27th June, 2000, necessary steps could have been taken by the Disciplinary Authority. Even after submission of the relevant documents and yearwise statement of income and expenditure for the period from January, 1990 to December, 1999 by the petitioner on 27th June, 2000, no adverse decision was ever taken by the Disciplinary Authority. Subsequently, again in the month of October, 2004 in compliance with the direction of the District Magistrate, Nadia, petitioner herein submitted relevant documents before the Enquiry Officer relating to the acquisition of assets during the aforesaid period in question.

The Disciplinary Authority unfortunately, after lapse of further six years decided to initiate disciplinary proceedings against the petitioner by issuing charge sheet on 22nd February, 2010.

The learned Senior Counsel of the petitioner submitted that only to harass the petitioner on the verge of retirement, aforesaid disciplinary proceeding was initiated against the petitioner on the basis of the stale charge after lapse of several years.

The identical issue was considered by a Division Bench of this Court in the case of Sri Ranabir Saha vs. Union of India & Ors. reported in 2008 (1) CLJ (Cal) 15. In the aforesaid decision, Division Bench of this court has specifically observed as follows:

"13. In the present case, delay is admittedly, too long in view of initiation of the disciplinary proceeding after almost 22 years and there is no reasonable and satisfactory explanation for the aforesaid inordinate delay in issuing the charge-sheet. In our opinion, there was no valid justification for the aforesaid inordinate delay in initiating the disciplinary proceeding after issuing the charge-sheet to the appellant herein. May be, after submission of the representation dated 25th August, 1982 by the appellant herein, concerned respondents were not inclined to initiate any disciplinary proceeding. After lapse of almost 22 years since the said respondents decided to proceed against the said appellant herein, this Court cannot permit the said respondents to do so as the aforesaid inordinate delay in initiating the disciplinary proceeding would seriously prejudice the officer concerned."

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"15. At this stage, therefore, we are of the opinion that the respondent authorities should not be allowed to proceed further with the disciplinary proceeding against the appellant herein and it is a fit case where the Court should interfere and quash the charges on the ground of inordinate delay alone."

In the case of [The State of Madhya Pradesh vs. Bani Singh and another](#) reported in AIR 1990 SC 1308, Hon'ble Supreme Court held:

"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 1975-77. 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 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 the case of [M.V. Bilani vs. Union of India and others](#) reported in (2006) 5 SCC 88, Hon'ble Supreme Court observed:

"16.....The Tribunal as also the High Court failed to take into consideration that the disciplinary proceedings were initiated after six years and they continued for a period of seven years and, thus, initiation of the disciplinary proceedings as also continuance thereof after such a long time evidently prejudiced the delinquent officer."

In the case of [P.V. Mahadevan vs. MD, T.N. Housing Board](#) reported in (2005) 6 SCC 636, Hon'ble Supreme Court held:

"11. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. 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 decision cited by Mr. Mitra, learned Counsel of the State-respondents in the case of [Union of India and another vs. B.C. Chaturvedi](#) reported in (1995) 6 SCC 750: [1995(5) SLR 778 (SC)] cannot be of any assistance to the said respondents in view of the facts of the present case. In Paragraph 11 of the aforesaid judgment, Hon'ble Supreme Court held:

"11.....Each case depends upon its own facts. In a case of the type on hand, it is difficult to have evidence of disproportionate pecuniary resources or assets or property. The public servant, during his tenure, may not be known to be in possession of disproportionate assets or pecuniary resources. He may hold either himself or through somebody on his behalf, property or pecuniary resources. To connect the officer with the resources or assets is a tardy journey, as the Government had to do a lot to collect necessary material in this regard. In normal circumstances, an investigation would be undertaken by the police under the Code of Criminal Procedure, 1973 to

collect and collate the entire evidence establishing the essential links between the public servant and the property or pecuniary resources. Snap of any link may prove fatal to the whole exercise. Care and dexterity are necessary. Delay thereby necessarily entails. Therefore, delay by itself is not fatal in these type of cases....."

In the present case, it has not been claimed that the delay in initiating the disciplinary proceedings against the petitioner was on account of consumption of time for collecting evidence in relation to the assets of the said petitioner. All the relevant papers and documents relating to the income and expenditure and also in connection with the assets were regularly submitted before the concerned authority by the petitioner. Furthermore, all informations relating to the assets and statement of income and expenditure for the period from January, 1990 to December, 1999 were also submitted before the Inspector, Anti-Corruption Unit as far back on 27th June, 2000.

The respondent authorities never alleged that the petitioner herein was in any way responsible for the delayed initiation of the disciplinary proceedings. Therefore, after lapse of more than 10 years, this Court cannot permit the respondent authorities to proceed with the disciplinary proceedings as the aforesaid unexplained inordinate delay in initiating the disciplinary proceedings would seriously prejudice the petitioner.

For the aforementioned reasons, we are of the opinion that the respondent authorities should not be allowed to proceed further with the disciplinary proceedings against the petitioner herein on the basis of the stale charge and as such it is a fit case where the charge should be quashed only on the ground of inordinate delay alone.

This Court cannot permit the respondent authorities to harass an employee on the verge of his retirement by initiating disciplinary proceedings on the basis of stale charge and without furnishing satisfactory explanation for the inordinate delay to issue the charge-sheet for initiating the disciplinary proceedings.

The learned Tribunal, in our opinion, should not have allowed the respondent authorities to proceed with the disciplinary proceedings on the basis of the alleged misconduct which took place during the period between 1990 and 1999. By refusing to pass an interim order and allowing the respondent authorities to proceed with the disciplinary proceedings against the petitioner herein, learned Tribunal has committed serious error which cannot be approved by this Court.

For the aforesaid reasons and following the decision of this Court in the case of Ranabir Saha (Supra) and also the decisions of the Supreme Court mentioned hereinabove, we are of the opinion that the charge-sheet issued to the petitioner under Memo dated 22nd February, 2010 should be quashed on the ground of unexplained inordinate delay alone. Therefore, we quash the aforesaid charge-sheet and also the disciplinary proceedings initiated against the petitioner on the basis of the said charge-sheet on the ground of unexplained inordinate delay".

(emphasis added)

In DAMODAR VALLEY CORPORATION's case (2 supra), the Division Bench of the Calcutta High Court held thus:

"In the present case, the charge sheet was issued on 17th July, 1996 in respect of the events of 1989 i.e. after lapse of more than 7 years.

The delay in issuing the charge sheet and initiation of the disciplinary proceedings in respect of the respondent/writ petitioner has not been explained. The disciplinary proceedings should be conducted immediately after commission of the alleged irregularities or soon after discovering the same. The disciplinary proceedings cannot be initiated after lapse of considerable period as sought to have been done in the present case.

No satisfactory explanation for the inordinate delay in issuing the charge memo has been given and, therefore,

disciplinary proceedings are liable to be quashed on the aforesaid ground of unexplained delay in issuing the charge sheet.

In the case of [State of Madhya Pradesh vs. Bani Singh](#) reported in AIR 1990 SC 1308, Supreme Court held that the disciplinary proceedings are liable to be quashed if no satisfactory explanation has been given for the inordinate delay in issuing the charge sheet”.

(emphasis added)

In HARISH KUMAR GUPTA’s case (3 supra), the Division Bench of the Punjab and Haryana High Court observed:

“In view of the above noted law, it may have to be examined that whether the action of the respondents in issuing charge sheet after lapse of over 12 years can be held justified? It is no fault of the petitioner that the proceedings have been prolonged against him. The petitioner had faced all these proceedings for over 12 years. His contention raised in the appeal were held justified and the appellate Authority granted him relief. The case was remanded for following a proper procedure whereas the Punishing Authority decided to start de novo and issued a fresh charge sheet to the petitioner. These reasons can by no stretch of imagination be held justified in law, equity or otherwise. The petitioner has suffered enough and had earned acquittal in number of charges. He has even questioned the view taken by the Punishing Authority that some of the charges were established. The petitioner certainly was denied opportunity to properly defend him. He was not provided with sufficient material and documents to which he was entitled to as per the Rule and procedure. Even the enquiry report was not supplied, obviously, because the respondents had converted the action from major to minor penalty without any justification, which is a mode which would sound impermissible. The action of the respondents in acting in this manner, thus, is unsustainable in law, equity, fairness and justice. I am, thus, of the considered view that a case is made out for

quashing the charge sheet on account of various reasons noticed above”.

In SURENDRA PAUL SINGH’s case (4 supra), the Allahabad High Court, held thus:

“The other question to be decided is as to whether the as per the U.P. Pension Cases (Submission, Disposal and Avoidance of Delay) Rules, 1995, the pending departmental proceeding as against the retired employee must be completed within six months after retirement.

The admitted position is that the petitioner retired from service on 31.3.2009. Prior to that the petitioner had been exonerated in 5 out of 6 charges vide the enquiry report dated 19.12.2007. In respect of one charge, it was said to be partly proved against the petitioner, to which the petitioner submitted his reply on 14.2.2008 and no order has been passed by the Disciplinary Authority. The additional charge-sheet dated 8.10.2009 was not with regard to same instances on which the initial charge-sheet dated 13.6.2007 had been issued.

As such the contention of the Learned Counsel for the petitioner that the same amounts to initiation of fresh departmental proceedings against the petitioner, has force. Rule 351-A of the Civil Service Regulations provides that no departmental proceedings can be instituted against the officer after his retirement without the sanction of the Governor.

It further provides that no such departmental proceedings can be instituted in respect of an event which took place not more than four years before the institution of such proceedings.

In the present case the additional charge-sheet was issued to the petitioner after his retirement on 8.10.2009 whereas the sanction of the Governor for continuance of the disciplinary proceedings dated 13.3.2007 was obtained on 18.12.2009, which was more than two months after the issuance of the charge-sheet.

A perusal of the additional charge-sheet dated 8.10.2009 goes to show that all the charges against the petitioner related to the year 2002-2003, which were of more than four years prior to retirement of the petitioner or

the issuance of the additional charge-sheet dated 8.10.2009.

(emphasis added)

Further the U.P. Pension Cases (Submission, disposal and Avoidance of Delay) Rules, 1995 provides for the time schedule in which the inquiry is to be completed. As per Rule 17, the pending departmental proceeding against the retired employee must be completed within six months after his retirement. As such, the disciplinary proceedings or enquiry, if any, on the basis of the charge-sheet dated 13.6.2007 should have been concluded up to six months after the retirement of the petitioner, which would be up to 30th September, 2009. Further the sanction was granted by the Governor after the said date on 18.12.2009, which was in contravention of the aforesaid Rules.

In view of what has been stated in the foregoing paragraphs, the issuance of the additional charge-sheet dated 8.10.2009 is liable to be quashed, being violative of Rule 351-A of the Civil Service Regulation. Further the order dated 18.12.2009 is also liable to be quashed being in contravention of Rule 17 of U.P. Pension Cases (Submission, Disposal and Avoidance of Delay) Rules, 1995.

Accordingly the writ petition is allowed. The additional charge-sheet dated 8.10.2009 and the order dated 18.12.2009 are hereby quashed. In view of the fact that the proceedings in pursuance of the charge-sheet dated 13.6.2007 have not been concluded even after six months from the date of retirement of the petitioner, the same shall stand dropped. The respondents are directed to pay the entire retiral dues to the petitioner within three months from the date of filing of a certified copy of this order before them. The respondents are also liable to pay interest to the petitioner at the rate of 10% on the amount when it actually falls due till the actual payment is made. Respondents are also directed to pay pension to the petitioner regularly, month by month".

In ILA CHATARJEE v. STATE OF WEST BENGAL (5 supra), the High Court of Calcutta held as follows:

“This principle is to apply to all establishments- government, non- government, private and public sector undertakings. Therefore the respondents have acted in violation of the principles of Natural Justice. A copy of the Enquiry Report was to be furnished before issuance of the show-cause Notice to the delinquent more so as the disciplinary authority and the Enquiry Officer are not the same person.

A representation was made by the petitioner. No reason has been given in the Order dated 9.9.2006 for rejecting the petitioner's representation.

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For all the said reasons the Order dated 9th September 2006 is set-aside, so also the 2nd show-cause Notice as it has been issued with a closed mind.

This however will not preclude the respondent authorities from proceeding with the enquiry from the stage of issuance of 2nd show-cause Notice after considering the petitioner's representation to the Enquiry Report but prior to doing so a copy of the Board Resolution be handed to the petitioner. In view of the aforesaid this application is disposed of”.

In RAHUL KUMAR SINGH'S case (6 supra), the Division Bench of the High Court of Delhi held as follows:

“We agree with the conclusion of the Tribunal in para 7 of the impugned order, which reads as under:

"7. We have heard the learned counsel for the applicant Shri Saurabh Ahuja and the learned proxy counsel for respondents Sh. Madhurendra Jha. In our considered view, when the case of the team mate of the applicant SI Dharmender Kumar who was similarly placed was allowed by this Tribunal vide order dated 05.09.2011 in OA 557/2011 (supra) and the respondents have implemented the same vide their order dated 14.10.2011, there is no justification to deny the same benefit to the applicant herein. Otherwise, it will amount to invidious discrimination. We, therefore, allow this OA. Consequently, the respondents shall grant ad hoc promotion on out of

turn basis to the next higher rank of Inspector (Exe.) under Rule 19 (ii) of the Delhi Police (Promotion and Confirmation) Rules, 1980. The date of such promotion shall be from the due date as determined in the case of promotion given to SI Dharmender Kumar to the rank of Inspector. Consequently, the applicant's promotion to the aforesaid rank already granted w.e.f. 13.01.2009 shall stand pre-poned. The respondents shall pass appropriate orders in compliance of the aforesaid directions within two months from the date of receipt of a copy of this order. There shall be no orders as to costs".

In view of our discussion, we do not see any merit in the writ petition. The same is dismissed".

The alleged misconduct dates back to 1983-84. The petitioner was working as Principal in junior college under a private management. The junior college was run by Bapiraju Dharma Samstha. The scholarships are provided by the State Government through the Social Welfare Department. It is not disputed by 2nd respondent that the role of Principal of a College is recommendatory in nature and is confined to the registration or admission of a student in the college, submission of social and economic status of such student and it was for the Social Welfare Department to take a decision according to the priority keeping in view the amenities available at a particular facility. In other words, the Principals of junior and degree colleges have forwarded the applications of students from SC/ST/BC categories for consideration by the department. Hence, the adequacy of facility run by the Social Welfare Department under one roof provide mess etc., to the students or any other arrangement is made cannot and could not be treated as forming part of the responsibility and obligation of Principals of these two colleges. Further, on the report submitted by the Regional Joint Director, Higher Education, Dr.S.Viswanadham was appointed as Enquiry Officer and through separate covering

letters dated 16.06.1990 and 30.07.1990, the enquiry report against the Principals of junior and degree colleges respectively was sent to the Director of Higher Education. On 03.02.1993, the report against the Principal Degree College was accepted and further proceedings were dropped.

The petitioner, according to Rules applicable to the employees working under private management, is entitled to copy of report of Enquiry Officer. Admittedly, in spite of request and objection, the copy of Enquiry Officer's report was not furnished to petitioner. The 2nd respondent issued second show cause notice, but no punishment was imposed. For all purposes, the alleged misconduct and departmental enquiry are treated as closed by competent authority. Again after a lapse of 15 years from the date of alleged misconduct, a notice to conduct departmental enquiry was issued and no steps have been initiated. Again in respect of the very same misconduct, the proceeding impugned in the writ petition is issued after a lapse of 20 years from the date of alleged misconduct. The petitioner is now sought to be proceeded with under the Rules for alleged misconduct when he was working under private management. The long and inexplicable delay, apart from the steps already taken, *prima facie* vitiates the decision to conduct enquiry at the fag end of petitioner's service and is illegal and unconstitutional. Further, it is not the case of 2nd respondent that the petitioner is in any way responsible for the delay in either initiating the departmental action or in completing the enquiry already initiated by 2nd respondent. The procedure, it appears,

is again set in motion on the letter addressed by the ACB. Therefore, the decision and impugned proceeding are vitiated as illegal. In respect of similar charges, action against the Principal of Degree College was dropped. There should be equality before law and equal treatment to similarly situated persons. The petitioner was subjected to departmental enquiry, however, no final decision was taken and the matter was allowed to lay over for nearly a decade. Thereafter another show cause notice was issued, however, no further steps were initiated and now initiating departmental enquiry on the letter addressed by the ACB after a lapse of nearly two decades from the date of alleged misconduct cannot but be held as arbitrary and unconstitutional. Further, the respondents are not referring to the report submitted by the Enquiry Officer Mr. Vishwanadham and still are proposing to initiate departmental proceedings afresh. For all the above reasons, the impugned proceeding is liable to be set aside and is, accordingly, set aside.

The writ petition is allowed. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any pending, stand closed.

26th April, 2017

Lrkm

S.V.BHATT,J