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

Judgment Dated: 9th January, 2017

+ W.P.(C) 2094/2003

S.K.DAS

..... Petitioner

Through Mr. P.J. Mehta and Mr. Jitender Kumar
Kranti, Advocates

versus

UNION OF INDIA & ORS.

..... Respondents

Through Mr. Malaya Kumar Chand, Senior
Panel Counsel with Ms. Rashmi
Malhotra, Mr. Himanshu Kaushik and
Mr. Shivam Pandey, Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE VINOD GOEL

G.S.SISTANI, J (ORAL)

1. With the consent of the parties, writ petition is set down for final hearing and disposal.
2. Challenge in this writ petition is to the order dated 17.09.2002 passed by the Central Administrative Tribunal (hereinafter the '*Tribunal*') in O.A. No. 637/2001 and O.A. No. 198/2000 by which the applications filed by the petitioner herein have been dismissed.
3. Necessary facts which are required to be noticed for disposal of this writ petition are that the petitioner was appointed as an Assistant Inspector of Works by the Central Railway on 16.09.1963. Petitioner was promoted from time to time and lastly promoted to the post of Chief Inspector of Works in June 1988. While working at the aforesaid post, on 01.10.1991

a charge sheet was issued. A representation was made by the petitioner on 16.10.1991 seeking leave to inspect certain documents, however, inspection was allowed of only three documents supplied to the petitioner. In the year 1992, the petitioner was informed that the original documents pertaining to the case had been handed over to Railway Sectional Officer, CBI, Dehradun on 31.07.1990 and were not available on record. Reply to the charge sheet was filed on 24.02.1992. Meanwhile, the petitioner kept making representations for inspection of documents on 20.03.1992, 06.08.1992, and 03.09.1992. By a representation dated 25.07.1996, the petitioner requested that the case be finalized as he was due to retire on 31.07.1997. Further representations were made on 07.09.1996 and 04.10.1996. The petitioner also brought to the notice of the respondents that one Sh. Ram Das against whom identical charges were issued had approached the Chandigarh Bench of Central Administrative Tribunal and the O.A. filed by him was allowed on the ground of delay and the said order has attained finality. On 13.11.1996, the respondents appointed an Inquiry Officer. The petitioner was thereafter called upon to submit his list of documents. Accordingly, the petitioner supplied a list of additional documents to the respondents in July, 1997.

4. During the pendency of the disciplinary proceedings, the petitioner retired on 31.07.1997 and the retiral benefits accrued in his favour were withheld.
5. Initially, the petitioner filed an application, being O.A. No. 2303/1997, before the Tribunal on 10.09.1997 (hereinafter referred to as the '*First OA*'). In this OA, the petitioner primarily prayed for a direction to the respondents to complete the inquiry within a period prescribed in Railway Board's Letter dated 30.05.1985 and also sought release of his

pension and other dues with interest. This OA was decided by the Tribunal by an order dated 12.05.1998 with a direction to the respondents to complete the inquiry within six months. The inquiry report was submitted on 01.09.1998, but the respondents filed an M.A. No. 2553/98 in November 1998 in the First OA seeking extension of time for implementation of the order dated 12.05.1998. This M.A. was filed after the inquiry officer had already submitted his report on 01.09.1998. Copy of the inquiry report was supplied to the petitioner on 23.01.1999. He submitted his defence to the Disciplinary Authority. In the meantime, M.A. No.2553/98 was allowed on 02.02.1999, time was extended till the end of February, 1999. On 24.02.1999, yet another Miscellaneous Application was filed by the respondents, being M.A. No. 501/99, seeking extension which was rejected by an order dated 04.05.1999. Since the proceedings were not completed by the end of February, 1999, a contempt petition, being CP 162/1999, was filed by the petitioner herein which was dismissed on 31.08.1999. The petitioner then requested the respondents for release of his outstanding amounts. In this regard, various reminders were sent, including reminders dated 26.09.1999, 02.10.1999, 08.10.1999, 15.10.1999, 28.10.1999 and 28.01.2000. Being aggrieved by the inaction on the part of the respondents, the petitioner filed O.A. No. 198/2000 on 28.01.2000. Notice was issued. During the pendency of the O.A., the respondents passed an order on 02.05.2000 imposing major penalty whereby the gratuity of the petitioner was forfeited and 25% of his pension was cut for a period of five years. This led to the filing of another O.A. being O.A. No. 637/2001. Both these OAs were dismissed by a common order dated 17.09.2002 which has been impugned before us.

6. The submissions of learned counsel for the petitioner are as under:

- (i) Gross unexplained delay between the date of the incident, i.e., between 1988 to June 1990, issuance of charge sheet in the year 1991 and the inquiry officer having been appointed on 20.11.1996. The entire proceedings would stand vitiated on the ground of delay.
 - (ii) The second ground which has been urged is that once the Tribunal had declined further extension on 04.05.1999, the inquiry proceedings would stand abated.
 - (iii) The third ground raised by the learned counsel for the petitioner is that since a senior officer has been exonerated by the Tribunal on the ground of delay and the respondents having allowed the order to attain finality, the petitioner cannot be discriminated. It is contended that the superior officer had a higher role to play than the petitioner. The petitioner had to only fill up the measurement book, whereas the superior officer had allowed and sanctioned the payment.
 - (iv) The final ground raised by the learned counsel for the petitioner is that the respondents have not been able to establish the case on merits.
7. Learned counsel for the respondents submits that there is no infirmity in the order passed by the Tribunal. As far as the delay is concerned, it is contended that the Central Bureau of Investigation (CBI) was seized of the matter. Original documents were not in their possession as they had been handed over to the RSO, CBI. It is further contended by the learned counsel for the respondents that the respondents had sought extension only by way of abundant caution which is evident upon reading of the application seeking extension and this submission is also recorded in the order dated 02.02.1999 of the Tribunal. Counsel further

submits that a second extension was sought which was declined without assigning any cogent reasons by the Tribunal which is evident upon reading of the order dated 04.05.1999.

8. Counsel submits that in the application seeking extension it was clearly mentioned in the application before the Tribunal that the inquiry against the petitioner was duly completed and the report of the inquiry officer was received by the respondent by his letter dated 01.09.1998. Counsel submits that for taking further action on the inquiry report by the respondents, approval of the President of India was required and as such the case was sent by the respondents to Railway Board for seeking approval of the President.
9. Mr. Chand further submits that in the absence of the order of the President, the respondents could not pass any order in the disciplinary proceedings and, as such, it was felt expedient to file an MA for further extension of time. Counsel further submits that the order fixing a time to conclude the proceedings firstly referred only to conclusion of the inquiry and even otherwise the order was only directory in nature and not a mandatory order suggesting that the proceedings would abate if they are not concluded within the time-frame.
10. On the question of parity, learned counsel for the petitioner has relied upon the judgment of the Supreme Court in the case of ***Pawan Kumar Agarwala v. General Manager-II & Appointing Auth., State Bank of India & Ors***, 2016 LLR 159 (SC): (2015) 12 SCC 184, more particularly paragraphs 23, 24 and 26. While learned counsel for the respondents has relied upon the judgment of this Court in the case of ***Chanderpal v. Government of NCT of Delhi & Ors.***, 2002 8 AD (Delhi) 252. The counsel for the respondent has also relied upon the judgment in the case of ***Sub Inspector Rajinder Khatri v. Govt. of NCT***

of Delhi & Ors., [W.P.(C) 4961/2011] decided on 29.02.2012, more particularly paragraphs 8 and 9, which are reproduced as under:

“8. In Chanderpal v. NCT of Delhi & Ors.: 2002 VIII AD (Delhi) 252 a Full Bench of this Court was of the view that awarding different punishments to different officials, who were served charge-sheets on the same allegations would not amount to discrimination. The issue referred to the Full Bench in that case was as to whether an order of the Appellate Authority had to be set aside only on the ground that on purported similar charges, the Appellate Authority himself had set aside the order of punishment. After considering various judgments of Supreme Court on the subject, the Full Bench, inter alia, held as under:

"A writ of mandamus can be sought for by a person when there exists a legal right in himself and a corresponding legal obligation on the respondents.

Equality clauses enshrined in Articles 14 and 16 of the Constitution of India would apply only when the petitioner has been deprived of a legal right. A delinquent officer in no circumstances can based his claim invoking equality clause where its foundation is based on illegality."

He cannot be permitted to urge that although he is guilty of commission of a misconduct he should not be punished only because others have been let off either by mistake or otherwise.

x x x x x Article 14 speaks of equality before law and equal protection of law. The claim of equality and the claim of equal protection thus must be claimed within the four corners of law. Furthermore, it is well settled that two wrongs do not make one right."

9. The decision of the Full Bench was relied upon by this Court in WP(C) 4211-4213/2006 decided on 24.9.2007. In that case the charge against the respondent was that he had misappropriated money-order payments, particulars of which were mentioned in the charge-sheet. Penalty of dismissal from service was imposed upon the respondent. The appeal filed by him was dismissed. He filed OA before the Tribunal challenging the order of dismissal from service. The Tribunal interfered with the punishment on the ground that the same was discriminatory. In taking this view, the

Tribunal noted that similar charge-sheets containing these very allegations were served upon two other employees, but in those cases punishment imposed was much lesser i.e. reduction of pay by 05 stages. The Tribunal accordingly quashed the penalty and remitted the case back to the Disciplinary Authority, to pass fresh order of penalty after taking into consideration the penalty imposed on Shri Biri Singh and Shri Prem Singh into consideration. The order passed by the Tribunal was challenged before this Court and it was contended on behalf of the petitioner that such comparison cannot be made in the matter of disciplinary proceedings and the Tribunal could not have held the punishment to be discriminatory only on the ground that two other persons had been given milder punishment. Accepting the contention, this Court held that the approach of the Tribunal was not correct in law. The Court was of the view that if the Disciplinary authority in case of other two officials decided to impose a particular punishment that would not mean that same punishment is to be meted out to the respondent as well. The order passed by the Tribunal was accordingly set aside by the Court and the punishment awarded to the respondent was restored.

(Emphasis Supplied)

11. With regard to the argument raised by the learned counsel for the petitioner as to the proceedings have been abated, counsel for the respondents submits that the directions of the Tribunal to conclude the inquiry within six months were adhered to and the inquiry proceedings were completed within six months of the order dated 12.05.1998 as the inquiry was concluded on 01.09.1998.
12. We have heard the learned counsel for the parties and given our thoughtful consideration to the matter. We notice that in the grounds mentioned in the writ petition, the petitioner has not assailed the judgment of the Tribunal on the merits of the matter.
13. While the petitioner was working as Chief Inspector of Works, a chargesheet dated 01.10.1991 was issued to him, in which the following Article of Charges were framed:

“i) That he entered false measurement of item NO.5/16/NS-I in the measurement Book. Thereby making wrong payment to the contractor to the tune of Rs.3.28 lakhs.

ii) That subsequently he allowed use of 2nd hand/scrap materials (approx. 30%) in the work even without getting any test certificate for the quality of raw steel material used in fabrication and without being passed by the engineering incharge.

By the above act of omission and commission Shri S.K. Dass allegedly has failed to maintain absolute integrity, devotion to duty and acted in a manner of unbecoming of a Railway Servant, contravening Rule 3(1), (i), (ii) & (iii) of Railway service (Conduct) Rules, 1966.”

14. The law is well-settled that delay in concluding the inquiry proceedings can vitiate the proceedings provided the delay is unexplained and further in case the delinquent officer is able to show that the officer has suffered prejudice on account of delay. It may be noticed that when the first O.A. was filed, the petitioner had prayed for concluding of the inquiry expeditiously. At that stage, the petitioner did not seek a prayer for quashing the inquiry proceedings on account of delay. Although, we may note that this, by itself, cannot deprive the petitioner to raise the ground of delay after passing of the order by the Disciplinary Authority. The request of the petitioner to conclude the inquiry expeditiously was considered by the Tribunal and six months time was granted to the respondents to conclude the inquiry. Even though the Inquiry Officer submitted his report 01.09.1998, the entire proceedings were admittedly not concluded in the said period.
15. To say that since the entire proceedings were not concluded and thus the inquiry proceedings would stand vitiated is not acceptable to this Court. Firstly, for the reason that the order was open ended, six months time

was granted to the respondents to conclude the inquiry, but the Tribunal did not specify the implication of not concluding the inquiry within the time allowed. Para 4 of the order dated 12.05.1998 reads as under:

“4. In view of the above, this OA is disposed of with a direction to the respondents to complete the inquiry within a period of six months from the date of receipt of a copy of this order. The applicant shall co-operate with the enquiry without putting any unnecessary hurdles.”

(Emphasis Supplied)

16. A reading of the aforequoted paragraph 4 of the order would show that the Tribunal had directed the respondents to complete the inquiry as per Office Memorandums issued by the Government of India under Rule 15 of the CCS (CCA) Rules, 1965, more specifically OM 39/43/70-Ests. (A) dated 08.01.1971 and OM 11012/21/98-Ests (A) dated 11.11.1998. As per the OMs, a time limit has been prescribed for passing the final order on the inquiry report. A full reading of the said OMs under Rule 15 would show that concluding the inquiry and concluding the entire proceedings would have a different effect. In the subsequent order of extension order dated 02.02.1999 also, the Tribunal noted that the inquiry had already been completed and the inquiry report has been given. The Tribunal also noted that the MA seeking extension has been made by way of abundant caution. Paras 4 and 5 of the order dated 02.02.1999 read as under:

“4. The learned counsel for the applicant in this OA has vehemently contended that a request for such extension is not maintainable and, further, that the respondents had been granted sufficient time to enable them to finalise the enquiry. In reply, the learned counsel for the respondents states that the direction of the Tribunal was only for completing the enquiry which has already been completed when the enquiry report was given by the Inquiry Officer. He further submits that the respondents have as a measure of abundant caution sought extension of time for

finalization of the matter and that therefore, the applicant is not justified in opposing the MA.

5. Having carefully considered the rival contentions of the learned counsel for the parties, more particularly the fact that a period of two months has already passed, hence the filing of this MA, we allow the MA and hereby extend the time for implementation of the judgment till the end of February, 1999.”

(Emphasis Supplied)

17. In our view, to hold that since the time was not extended in the facts of this case would lead to entire inquiry proceedings being vitiated would have far-reaching consequences and can easily be misused by a delinquent officers facing grave and serious charges and the proceedings cannot be allowed to abate specially in the absence of a clear-cut order by the Tribunal giving directions of concluding the entire proceedings with the specific direction that the proceedings will be abated if the proceedings are not concluded in the time-frame.
18. Even otherwise, the law in delay in concluding enquiry proceedings is not longer *res integra*. The learned counsel for the petitioner has relied upon a decision of a Full Bench of Punjab and Haryana High Court in the case of **Jagir Singh v. State of Punjab, 1993 (1) SLR 1**, more particularly paragraphs 3, 4 and 5. Reliance is also placed on **Prem Nath Bali v. Registrar, High Court of Delhi & Anr., (2015) 16 SCC 415**, more particularly paras 30 to 34, which read as under:

“25. We are constrained to observe as to why the departmental proceeding, which involved only one charge and that too uncomplicated, have taken more than 9 years to conclude the departmental enquiry. No justification was forthcoming from the respondents' side to explain the undue delay in completion of the departmental enquiry except to throw blame on the appellant's conduct which we feel, was not fully justified.

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.

29. Now coming to the facts of the case in hand, we find that the respondent has fixed the appellant's pension after excluding the period of suspension (9 years and 26 days). In other words, the respondents while calculating the qualifying service of the appellant for determining his pension did not take into account the period of suspension from 6-2-1990 to 1-3-1999."

(Emphasis Supplied)

19. A coordinate bench of this Court, in which one of us (G.S. Sistani, J.) was member, in ***Government of NCT of Delhi v. Prem Chand Sharma***, MANU/DE/2779/2016 had considered the various judgments of the Supreme Court in respect of delay in concluding departmental proceedings and observed as follows:

"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.”

(Emphasis Supplied)

20. Further, it is settled law in service jurisprudence, ‘prejudice’ has to be considered on the touchstone of probable defence of the delinquent officer to meet the charges against him, i.e. in respect of delay, whether the same has inhibited the capacity of the charged officer to defend his case. To avoid prolixity, one may only refer to the judgment of the Supreme Court in *State Bank of Patiala and others v. S.K. Sharma*, AIR 1996 SC 1669: (1996) 3 SCC 364.
21. Counsel for the respondents submits that there is no quarrel with the proposition that the inquiry proceedings should conclude at the earliest, but he submits that in this case as Central Bureau of Investigation (CBI) was seized of the documents, i.e. the original documents were not in their power and possession, the proceedings could not be initiated expeditiously. He submits that after the direction of the Tribunal, the inquiry was concluded within a prescribed period of six months and thereafter, the delay in passing the documents occurred as the petitioner had retired in the meanwhile. As per the relevant Rule, the advice of UPSC was to be obtained and upon receipt of the advice, approval of President of India was to be obtained, which was brought to the notice of the Tribunal but the Tribunal overlooked the same.
22. We have examined the applications filed by the respondents seeking extension. The respondents had brought to the notice of the Tribunal that after the inquiry proceedings were completed, further action on the inquiry report required approval of President of India and prior thereto,

the Railway Board had sought approval of the President which was causing delay. Thus, the delay for holding the inquiry and post inquiry has been specifically explained. In the case of ***Prem Nath Bali (supra)***, the Supreme Court had laid stress that it is the duty of the employer to ensure that the departmental inquiry initiated against the delinquent employee is concluded within a shortest possible time by taking priority measures. At the same time, the Supreme Court had recognized that there may be unavoidable circumstances which may delay the inquiry proceedings. In this case, we are satisfied that the delay was caused on account of the CBI being seized of the matter and thereafter, on account of the fact that advice from UPSC had to be obtained and approval of the President as the petitioner had retired by then. The petitioner has also failed to show any prejudice having being caused to him. Accordingly, we are unable to accept the submission that the proceedings stood vitiated on account of inordinate delay.

23. At this stage, learned counsel for the petitioner submits that having regard to the fact that no action has been initiated against the superior officer, the petitioner retired in the year 1997, he has been through four rounds of litigation and that he has been deprived the fruits of his retirement as his pension was released after much delay, the order of punishment should be modified and the petitioner would not press the matter on merits.
24. In this case, the Disciplinary Authority had awarded forfeiture of entire gratuity and 25% cut in pension for five years. Having regard to the fact that the proceedings against the superior officer were quashed by the Chandigarh Bench of the Central Administrative Tribunal and the respondents decided to accept the order of the Tribunal and even promoted the said officer for the charge sheet arising out of the same

incident, we feel that ends of justice would be met if we modify the order of punishment as far as release of gratuity is concerned.

25. We may notice that the Supreme Court has time and again held that the Courts must not interfere in the quantum of punishment unless it shocks the conscience of the Court. At the same time, the courts must refrain from stepping into the shoes of the disciplinary authority and remand the matter back for reconsideration of the penalty imposed, unless there are overbearing reasons for modifying it themselves. (See *S.R. Tewari v. Union of India*, (2013) 6 SCC 602)
26. We feel that in this case, the incident pertains to the year 1990, the petitioner has gone through four rounds of litigations, the petitioner is more than 77 years of age and is ailing, to remand the matter back would not serve the ends of justice. While we uphold the order passed by the Disciplinary Authority, we modify the order of punishment only to the extent that the petitioner would be entitled to 50% of his gratuity. In case the amount is released within six weeks from the receipt of the order, the petitioner would not be entitled to any interest. In case, the amount is not released within the period specified, the petitioner would be entitled to interest @ 8% p.a.
27. The writ petition is disposed of in above terms.

G.S.SISTANI, J

VINOD GOEL, J

JANUARY 09, 2017

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