

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

+ **WRIT PETITION (CIVIL) No. 11019/2015**

% **Reserved on : 12th April, 2017**
Date of decision : 24th August, 2017

PREM CHAND Petitioner
Through: Mr. M.K. Bhardwaj, Advocate.

Versus

UNION OF INDIA AND OTHERSRespondents
Through: Ms. Suparna Srivastava & Mr. Kavinder
Gill, Advocates for respondent Nos. 1 and 2.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE ANU MALHOTRA

SANJIV KHANNA, J.

Prem Chand, the petitioner, impugns the order dated 22nd September, 2014 passed by the Principal Bench of the Central Administrative Tribunal, New Delhi (Tribunal, for short) by which his Original Application No. 2877/2012 has been dismissed.

2. The petitioner, who was working as Deputy General Manager in Bharat Sanchar Nigam Limited, was chargesheeted on 30th May, 2003 on the following articles of charge:-

“That the said Shri Prem Chand while functioning as DE (Internal), Brahampuri, E-10B Exchange, Meerut during the period from 16.6.1999 to 10.2.2000 committed grave misconduct by showing

negligence and irresponsibility in the discharge of official duties, causing disclosure of confidential password for Translation Management due to which two unauthorised routes, viz. 85800 and 8590 were created from Brahampuri E-10B Exchange towards DTAX, Karol Bagh, New Delhi with Rank of Digit-4 Charging Parameter- 'No Metering' and with open numbering scheme. These unauthorised routes were in operation up to 4.2.2000. With the help of these unauthorised routes any subscribers of Brahampuri E-10B Exchange could make STD/ISD calls without any charge recording in the Exchange Meter causing huge loss of revenue to the Government. The loss of revenue for 45 lakhs units (approx) of call was observed during an observation period of 16 days.

Thus by his above acts the said Shri Prem Chand committed grave misconduct, showed lack of devotion to duty and acted in a manner which is unbecoming of a Government servant thereby contravening Rule 3(1)(ii) and (iii) of CCS (Conduct) Rules, 1964.”

3. The petitioner contested the charge and an enquiry officer was appointed. The Enquiry Officer vide report dated 26th June, 2008 held that the charge was not proved. The Disciplinary Authority while tentatively agreeing with the inquiry officer, had sought advice of the Central Vigilance Commission vide letter dated 9th April, 2010. The Central Vigilance Commission (CVC, for short) advised imposition of suitable minor penalty. The Disciplinary Authority upon consideration issued a disagreement note dated 28th May, 2010, which was served on the petitioner with the letter of the General Manager, U.P West Circle dated 28th June, 2010. Copy of the enquiry report as well as CVC's advice was made available to the petitioner, who was asked to submit his representation within fifteen days. The petitioner submitted his representation dated 14th July, 2010. On consideration, the Disciplinary Authority formed the view that a suitable

minor penalty needs to be imposed on the petitioner. Thereafter, the case was submitted to the Union Public Service Commission with the relevant documents for their advice. The Union Public Service Commission vide advice dated 23rd February, 2011 opined that the charge proved against the petitioner constituted grave misconduct and that the ends of justice would be met if penalty of reduction of pay by two stages in the time scale of pay for a period of two years without cumulative effect was imposed. The Disciplinary Authority also consulted Department of Personnel and Training (DoP&T).

4. Thereafter upon consideration, the Disciplinary Authority vide order dated 29th June, 2012 imposed penalty of reduction of pay by one stage in the time scale of pay for a period of three years without cumulative effect. The order was not to adversely affect pension.

5. The petitioner filed OA No. 2877/2012 for setting aside and quashing the punishment order dated 29th June, 2012 with consequential relief, including promotion to the Junior Administrative Grade (JAG) and grant of Non-Functional Selection Grade (NFSG) from PB-3 to PB-4 from the date when granted to his juniors with all consequential benefits and without loss of seniority. Another prayer made was to declare the proceedings initiated vide memorandum dated 30th May, 2003 as illegal and unjustified.

6. The primary contention of the petitioner before us pertains to the delay in completing the departmental proceedings and the adverse effect thereof. It is highlighted that the charge sheet was issued on 30th May, 2003 and the punishment order was passed on 29th June, 2012, i.e., after a gap or delay of nine years. The charge itself pertained to the period 16th June, 1999 to 10th February, 2000. It is submitted that during this period, the respondents had

followed sealed cover procedure and as minor penalty has been imposed, the petitioner has been denied the benefit of NFSG as also the benefit of promotion to JAG. In other words, the contention is that in addition to the penalty of reduction of pay by one stage in the time scale of pay for a period of three years without cumulative effect and without the punishment adversely affecting pension, the petitioner has been denied NFSG as well as promotion to JAG.

7. The petitioner's challenge to the enquiry proceedings on merits and findings on facts was considered and rejected by the Tribunal as untenable. As noticed below, this challenge was rightly rejected.

8. The charge against the petitioner was serious and grave. As per the said charge, due to disclosure of confidential password for translation management, two unauthorised routes were created from Brahampuri Exchange towards DTAX, Karol Bagh, New Delhi. The effect thereof was that calls made therefrom remained unmetered. As a result of which, the clandestine users were able to make STD and ISD calls without charge. As per the data analysis, the total revenue loss was to the tune of 4500000 units. These two routes had remained operational upto 4th February, 2000. In this context, it was held that the petitioner had committed grave misconduct and had shown a lack of devotion to duty and acted in a manner, which was unbecoming of a public servant. The Disciplinary Authority has observed that translation management, password management, and special commands were under the charge of the petitioner, who was in charge of the Exchange. These could be operated by the petitioner. Further, the petitioner should have checked the unauthorised routes on the basis of printout of log files from time

to time. The petitioner had also failed to install one terminal in his chamber, which was mandatory for every Divisional Engineer as it enabled daily review. As per the instructions, the Divisional Engineer was required to change the password regularly and at least once a fortnight. The lapse, which had allowed illegal activity to be carried out under the nose of the petitioner, was therefore established and proved, beyond doubt.

9. Our attention was drawn to the report of the Enquiry Officer and the findings recorded therein. He had held that during the course of investigation done by the Department, it could not be exactly found as to who had created the unauthorised routes and even users of the unauthorised routes could not be penalised. Official negligence and dereliction of duty was certainly established, but the question was who was responsible and should be penalised. The Enquiry Officer held that while documents had indicated that translation management commands were grouped under the password of Divisional Engineer, i.e., the petitioner; it also indicated that the translation management command was to be used and available with the Assistant Engineer. In practice, for smooth operation and maintenance, these passwords were operated by the Assistant Engineer, who were two in number. As per instructions, the password management commands were solely under the Divisional Engineer, while other commands were to be operated by various functionaries depending upon the requirements. Thus, if there was an allegation of misuse of password management commands, the Divisional Engineer alone would be responsible, but for other commands concerned functionary to whom the work was allocated would be responsible. Ergo, the allegation against the petitioner could not be sustained on the basis

of the evidence produced during the enquiry. The Enquiry Officer further held that the charged officer, i.e., the petitioner was in charge of the two Exchanges.

10. As per the findings recorded by the Disciplinary Authority, instructions issued by the Department of Telecommunication on 26th February, 1991, command class 8 (translation management), command class 12 (password management) and command class 16 (special commands) were under the password of the Divisional Engineer of the Exchange and could be operated only by him. These were to be operated by the Divisional Engineer in charge. Further, the unauthorised use or unmetered use, which permitted the callers to make unmetered ISD calls without charges had continued over a long period. The petitioner had failed to check the unauthorised use over a substantial and long period. If the petitioner had examined route analysis printout as well as the logs file printouts, the illegality would have been checked. Further, the petitioner had failed to install a terminal in his room for daily review.

11. In our opinion, it was in equanimity held that the irregularities showed and established negligence on the part of the petitioner. The aforesaid findings and conclusions are cogent and credible. No error or lapse in the decision making process could be elucidated and highlighted. We do not see any reason and cause to upset and set aside these factual findings. The first ground fails.

12. The delay in conducting the departmental proceedings is a matter of concern. DoP&T has issued a number of office memorandum/circulars against tardy and sluggish approach leading to delay in the decision making,

which causes harassment. The CVC vide Circular No. 02/01/2016 dated 18th January, 2016 has expressed serious concern as administrative authorities were not adhering to the time schedule prescribed for completion of departmental enquiries. Average time was more than two years and maximum time taken was eight years. Reference was made to earlier circulars dated 3rd March, 1999 and 23rd May, 2000, which has laid down time limits for various stages of the disciplinary proceedings, i.e., from the stage of investigation to finalisation of the disciplinary case. Six months' time limit has been fixed from the date of appointment of the Inquiry Officer for completion of the departmental enquiry. Long delays are not only unjust to the officers who may be acquitted or served with minor penalties, but can help the guilty evade punitive action for long periods and may have an adverse impact on others who would believe that nothing would happen. This circular refers to the reasons for the delay and has suggested steps to ensure strict compliance of the directions.

13. This circular makes reference to the decision of the Supreme Court in ***Prem Nath Bali versus Registrar, High Court of Delhi and Another***, (2015) 16 SCC 415 in which it has been held as under:-

“**24.** One cannot dispute in this case that the suspension period was unduly long. We also find that the delay in completion of the departmental proceedings was not wholly attributable to the appellant but it was equally attributable to the respondents as well. Due to such unreasonable delay, the appellant naturally suffered a lot because he and his family had to survive only on suspension allowance for a long period of 9 years.

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.”

14. In *M.V. Bijlani versus Union of India and Others*, (2006) 5 SCC 88, the Supreme Court was examining a case wherein departmental proceedings

were initiated five years after the officer had handed over the charge and the Enquiry Officer took more than seven years to complete the inquiry. The appellate authority took seven years in disposing of the appeal. In this case, referring to several facets, it was observed that the evidence recorded by the Enquiry Officer and inferences drawn by him did not commensurate with the charges. M.V. Bijlani succeeded.

15. Consequences and effect of delay in departmental proceedings have engaged the attention of the Supreme Court in several other cases as well. We begin with the decision in ***Government of Andhra Pradesh & Ors. Vs. V. Appala Swamy*** (2007) 14 SCC 49. In the said case, the Supreme Court reversed the decision of the High Court quashing the disciplinary proceedings and directing payment of all pensionary benefits to the delinquent employee on the ground of delay in conclusion of departmental proceedings. The Supreme Court observed that the nature of charges levelled against the delinquent employee as also the explanation offered, have to be considered and kept in mind. The issue cannot be decided on the premise that pension was payable on retirement. Specifically adverting to the issue of delay in concluding departmental proceeding, it was observed that principles upon which the proceedings could be directed to be quashed on the said reason were; (i) where by reason of the delay, the employer had condoned the lapses and; (ii) where delay had caused prejudice. In the latter case, the employee must make out the said position before the enquiry officer. The said position in law was covered by the earlier decisions of the Supreme Court in ***Secretary to the Government, Prohibition and Excise Department Vs. L. Srinivasan***, (1996) 3 SCC 157, ***P.D. Agrawal Vs. State Bank of India*** (2006)

8 SCC 776 and *Registrar Cooperative Societies Vs. Sachindra Nath Pandey* (1995) 3 SCC 134. Decision in the case of *M.V. Bijlani* (supra) was distinguished on the ground that it was decided on peculiar facts. In the factual matrix, in *M.V. Bijlani* (supra) the Supreme Court had held that the delinquent employee was prejudiced. Reference was made to the decision in *P.D. Agrawal* (supra) to observe that *M.V. Bijlani's case* (supra) had not laid down the ratio that on delay alone, the proceedings could be quashed without considering other relevant factors.

16. In *V. Padmanabham Vs. Government of Andhra Pradesh & Ors.* (2009) 15 SCC 537, upholding the departmental proceedings even after retirement in view of the statutory provision, the contention that there was delay and, therefore, the departmental proceedings should be quashed, was rejected. *M.V. Bijlani's case* (supra) was again distinguished on the ground that there were compelling factors for the said decision. These observations are reproduced below:

"16. In *Bijlani case*, the disciplinary proceedings were initiated five years after the appellant therein had handed over charge. It was opined that he was not having possession of any document. Seven years' time was taken to complete the enquiry. The appellate authority also took five years in disposing of the appeal. None of the authorities had taken into consideration as to whether the procedure laid down under the Rules has been followed or not. It is in the aforementioned fact situation, such a direction was issued. ..."

In the facts and position in *V. Padmanabham's case* (supra) it was observed that continuation of the disciplinary proceedings was not illegal and, therefore, delay alone in a case of said nature should not be held to be

fatal in the matter of continuing the departmental proceedings as the charges were serious in nature and a large sum of money was to be recovered.

17. In *Secretary, Ministry of Defence & Ors. Vs. Prabhash Chandra Mirdha*, (2012) 11 SCC 565, it was observed that law does not permit quashing of charge-sheet in a routine manner. When the charge-sheet is challenged before a court/tribunal on the ground of delay in concluding the proceedings, the relevant factors to be considered include gravity of charges, and it is only after weighing all the factors for and against the delinquent employee, a decision, which is just and proper in the circumstances should be reached. Referring to *Forest Department Vs. Abdur Rasul Chodhury*, (2009) 7 SCC 305, it was held that mere delay is not fatal to departmental proceedings and quashing would depend upon facts and circumstances of each case. Delay if explained satisfactorily, the proceedings should be permitted to continue. It must be shown that the delay in departmental proceedings had caused prejudice to the delinquent employee. The gravity of alleged misconduct is a relevant factor to be taken into consideration.

18. In *Chairman, Life Insurance Corporation of India & Ors. Vs. A. Masilamani* (2013) 6 SCC 530, it was held as under:-

“17. The second question involved herein is also no longer res integra. Whether or not the disciplinary authority should be given an opportunity to complete the enquiry afresh from the point that it stood vitiated depends upon the gravity of delinquency involved. Thus, the court must examine the magnitude of misconduct alleged against the delinquent employee. It is in view of this, that courts/tribunals are not competent to quash the charge-sheet and related disciplinary proceedings, before the same are concluded on the aforementioned grounds.

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].”

19. In ***Prem Nath Bali*** (supra), the Supreme Court was compelled to observe that every employer, whether State or private, must make sincere endeavours to conclude departmental proceedings once initiated against the delinquent employee within a reasonable time 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 circumstances, efforts

should be made to conclude the proceedings within the reasonably extended period, depending upon the cause and the nature of the inquiry, not later than a year. In the said case, the suspension had continued for over 9 years. However, the departmental proceedings were not quashed. The Supreme Court held that the penalty of compulsory retirement was justified and rightly inflicted, emphasising that it was for the disciplinary authority to decide as to what punishment should be imposed. The punishment imposed depends upon nature and gravity of charges, findings of the enquiry officer, entire service record of the delinquent employee, and other relevant factors, which have to be taken into account while exercising discretion on the imposition of penalty. In the final outcome, while upholding the order of penalty, it was held that the period of suspension should be taken into account by the respondents for determining the employee's pension.

20. The impugned order is a detailed one and on the said aspect has referred to the decision of the Supreme Court in *State of Madhya Pradesh Vs. Bani Singh and Another*, AIR 1990 SC 1308, *Food Corporation of India Vs. V.P. Bhatia* 1998 (9) SCC 131, *State of Andhra Pradesh Vs. N. Radhakrishnan* 1998 (4) SCC 154, *State of Punjab and Ors. Vs. Chaman Lal Goyal* JT 1995 (2) SC 18 and *P.V. Mahadevan Vs. M.D, T.N. Housing Board* 2005 (6) SCC 636 and *Anant R. Kulkarni Vs. Y.P. Education Society and Ors.* (2013) 6 SCC 515. Many of these decisions relate to delay in initiation of the departmental proceedings and not directly with the question of delay in the conduct of the said proceedings. Nevertheless, the Tribunal has reached the right conclusion after making reference to *Appala Swamy* (supra) and *A. Masilamani* (supra) and as to the legal ratio that generally enquiry proceedings should not be quashed on the ground of delay in the

departmental proceedings. Facts of each case have to be seen to determine whether it would be in the interest of justice of clean and honest administration that the departmental proceedings should be quashed or not. This requires consideration on the gravity and magnitude of the charges involved, which must be then balanced and weighed with other circumstances which would justify termination of proceedings. Prejudice caused due to delay has to be made out. The prejudice must relate to inability to lead defence as also the allegations which the charged employee has to meet. The Tribunal in the impugned order has recorded that the petitioner did not, at any stage, claim prejudice to his defence on account of such delay. The plea taken was that the delay had deprived the petitioner to promotion and financial upgradation, which is a different aspect and does not relate to the prejudice in the conduct of proceedings and meeting the allegations. The Tribunal observed that this was a case of huge loss of revenue to the Government due to the negligence of the petitioner. It would not be in the interest of justice or honest and clean administration if the penalty imposed and the proceedings were quashed on the ground of delay in proceedings. This would lead to condonation of the misconduct and petitioner would go unpunished.

21. We are in agreement with the finding of the Tribunal that non-examination of the persons (subscribers of calls), who were the real beneficiaries being untraceable, would not be a ground to quash the chargesheet, holding that the charges are not proved. It is obvious that there were some beneficiaries as no payments of the STD/ISD calls were made. But for the raids by the Vigilance Department, misuse would have remained uncovered and unchecked. The fact is that the Vigilance Department had learnt about same and had information about the misuse, whereas the

petitioner, the Divisional Engineer stationed at the said exchange, professes complete ignorance, is a compelling factor and circumstance against the petitioner. The finding of the authorities as upheld by the Tribunal would show that the abuse could not have happened had the petitioner holding the post of Divisional Engineer discharged his duties as mandated and required. His negligence, failure to check and supervise is apparent and categoric. The unlawful and illegal act had occurred without challenge and check, right under the petitioner. His condemnation is justified. The Tribunal has rightly referred to in ***Ravi Yashwant Bhoi Vs. District Collector Raigarh & Ors.***, 2012 (4) SCC 407, to repel the contention that this negligence was not sufficient to hold and show misconduct. It is not a case of innocent or inadvertent mistake.

22. Again returning to the question of delay, we do observe that there was a delay in conclusion of the departmental proceedings. Yet, the charges against the petitioner were grave and serious. The punishment imposed, we would observe, takes into account the mitigating factor i.e. the delay in completion of the departmental proceedings. If and had there been no delay, the quantum of punishment imposed and suffered may have been different. It is pertinent to state here that the petitioner, in the original application, had not raised or elucidated on the question of prejudice. He had not expressly blamed the respondents for the delay in the departmental proceedings. This is not an aspect and issue, which was raised and pleaded in the Original Application before the Tribunal.

23. In the aforesaid facts, we would refrain from interfering with the impugned order for the reason of delay in completion of the departmental proceedings.

24. The writ petition is accordingly dismissed without any order as to costs.

(SANJIV KHANNA)
JUDGE

(ANU MALHOTRA)
JUDGE

AUGUST 24th, 2017
VKR/ssn



नस्यमेव जयते