IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6551 OF 2015

Union of India and another. … Petitioners.
V/s.
Shri A. Mallikarjun Reddy. … Respondents.

Mrs.Neeta Masurkar with Mr.Dhanesh R. Shah and Mrs.Purnima Awasthi for the petitioners.
Mr.Arnav K. Misra i/b. Mr.L.S.Shetty for the respondent.

CORAM : A.S.OKA AND M.S.SONAK, JJ.

DATE : 10th October 2018.

P.C.:

The respondent who was the applicant in the original application filed before the Central Administrative Tribunal (for short "Tribunal") was posted as Junior Engineer (Civil) in S.A.P Stores from 29th November 1996 to 30th September 1998. The respondent was relieved from his duty on 30th September 1998 and was transferred to the Income Tax Department. On 29th January 2003, a chargesheet was served upon the respondent alleging major misconduct. The only allegation levelled in the articles of charge was that the materials from the store were found to be short while handing over of the charge by the respondent to one Shri V.P.Gupta, Junior Engineer on 30th September 1998. As stated earlier, the chargesheet was served on 29th January 2003 i.e. after more than three years from the date on which the respondent surrendered the charge of his post. The Enquiry Officer submitted enquiry report to the disciplinary authority on 18th July 2005. The respondent filed Original Application for quashing of disciplinary proceedings on the ground that the disciplinary authority failed to serve enquiry report to the respondent and failed to drop the proceedings even after a long span of seven years. The original application seeking quashing of the disciplinary proceedings on the ground of non-supply of enquiry report was filed on 28th June 2012. Only after the original application was filed, on 2nd July 2012, a copy of the enquiry report was served upon the respondent. Thus, the enquiry report was served after lapse of seven years from the date on which the Enquiry Officer submitted the same to the disciplinary authority. By the judgment and order impugned in this petition under Article 226 of the Constitution of India, the Tribunal came to the conclusion that there was a gross and unexplained delay of more than 15 years and, therefore, the Tribunal proceeded to quash the disciplinary proceedings by allowing the original application. The Tribunal observed that, in fact, the plea of prejudice due to delay was specifically urged by the petitioner even before the disciplinary authority.

2. The learned counsel appearing for the petitioner (respondent in the original application) relied upon the decision of the Apex Court in the case of the ***Secretary, Min. of Defence and others v. Prabhash Chandra Mirdha***[1] and submitted that the Apex Court has held that a chargesheet or a show cause notice in the disciplinary proceeding should not be arbitrarily quashed by the Court. She pointed out that though the respondent handed over charge of his post on 30th September 1998, there was a correspondence made by the Department till 14th March 2001 and

1 2012 (4) SLR 722 (SC)

only after the respondent failed to return the material, that on 29th January 2003, a chargesheet was served upon the respondent. She submitted that there is no delay in serving the chargesheet. Inviting our attention to further correspondence, she submitted that as a result of confusion created in the minds of various authorities that there was a delay in serving the enquiry report. She submitted that in any case, the respondent has not established prejudice, especially, because he was promoted in the meanwhile. She would, therefore, submit that the view taken by the Tribunal is completely erroneous.

3. We have carefully considered the submissions. We have perused the impugned judgment. It is an admitted position that the respondent handed over the charge of his post on 30th September 1998. In reply filed to the original application, a stand was taken by the petitioner that actual process of handing over of charge was completed in June 1999. The Tribunal has noted that the correspondence was made in years 1999 and 2000 seeking clarification regarding the failure of the respondent to hand over the material. We may note that a specific contention raised before the Tribunal is recorded in paragraph-7.2 of the judgment in which it is stated that the delay in serving enquiry report is attributed to Valuation Section of the Income Tax Department where the respondent was transferred.

4. The Tribunal has noted the material allegations in the chargesheet which read thus:

> "That the said Shri A.M.Reddy, J.E., while functioning as Junior Engineer during the period 29.11.1996 to 30.09.1998

> it was found that the materials from the Stores listed in attached statement were found short during the handing over of charges by him to Shri V.D. Gupta, JE, on his relief on 30.09.1998 on transfer to Appropriate Authority, Income Tax, Mumbai."

It is true that by a letter dated 13th June 2000 addressed to the respondent, the Executive Engineer recorded that certain material has not been handed over by the respondent. There is a similar letter issued in the year 2000 (Exhibit-B). The third letter relied upon which is the letter dated 14th March 2001 exchanged between the Executive Engineer and the Superintending Engineer. Therefore, even assuming that a letter was addressed on 13th June 2000 to the respondent for handing over the material, there is absolutely no explanation forthcoming as to why there was a delay in serving chargesheet which was eventually served on 29th January 2003. In fact, the allegation in the chargesheet quoted above shows that on 30th September 1998 itself, the concerned authorities were aware that there was a shortage of material. This is not a case where there is delay of only three years. The three years' delay is only in serving the chargesheet. Further delay is most material. Admittedly, after completing the enquiry, the Enquiry Officer submitted a report to the disciplinary authority on 18th July 2005. According to the case of the petitioner, on 5th March 2008, the disciplinary authority forwarded the report to the Superintending Engineer of the Income Tax Department to which the respondent was transferred. A clarification was sought by the Income Tax Department from the disciplinary authority which was submitted on 29th September 2009. The Tribunal has held that even assuming that the delay up to 29th September 2009 can be explained, there is absolutely no explanation as to why a copy of the enquiry report was not furnished to the respondent within a reasonable time from 29th September 2009. As stated earlier, the enquiry report was submitted on 18th July 2005. It was admittedly served upon the respondent for the first time on 2nd July 2012. Thus, the long delay of seven years has to be considered in the context of fact that when on 30th September 1998 the respondent handed over the charge of his post, the authorities were aware that certain materials were not handed over by the respondent. It is, in this context of the fact that in the year 1998 itself the concerned authorities were having the knowledge, the Tribunal has commented that the disciplinary proceeding took a long period of fifteen years. Therefore, the ultimate finding recorded by the Tribunal is that delay in serving chargesheet upon the respondent as well as delay in serving a copy of the enquiry report on the respondent has not been explained. Even taking the case of the petitioner as correct, at highest, the delay up to June 2000 can be unexplained.

5. The Tribunal considered the decision of the Apex Court in case of ***State of Andhra Pradesh v. N.Radhakishan***[2]. In the said decision, the Apex Court observed that a delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously an he is not made to undergo agony and monitory loss in disciplinary proceedings when there is no fault on his part. The Apex Court observed that delay in completing disciplinary proceedings certainly causes prejudice to the charged officer unless it is shown that he is to blame for the delay or when proper explanation for delay in conducting disciplinary

2 1998 (4) SCC 154

proceeding comes from the concerned officer. In the present case, a finding of fact is recorded that no such material or explanation is forthcoming. On the contrary, there is a finding recorded by the Tribunal that this a glaring case of negligence on the part of the petitioner in conduct of the disciplinary proceeding. No material to explain the delay is shown to us even in this writ petition.

6. In writ jurisdiction under Article 226 of the Constitution of India, it is not possible for us to interfere with the findings of fact recorded by the Tribunal which are well supported by the admitted facts on record. The fact that the promotion was granted to the respondent by order dated 5th November 2005 has no nexus to the prejudice. The prejudice is caused because of the long unexplained delay of about twelve to thirteen years in completion of disciplinary proceedings. We find no error in the view taken by the Tribunal. Accordingly, the writ petition is dismissed. There shall be no order as to costs.

(M.S.SONAK, J.) (A.S.OKA, J.)