

DDR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 103 OF 2013

Smt. Sunanda Vijay More

...Petitioner

Vs.

Union of India & anr.

...Respondents

WITH

WRIT PETITION NO. 851 OF 2013

Vishnu Babu Mule

...Petitioner

Vs.

Union of India & anr.

...Respondents

.....

Ms. Madhavi Chavan i/by Mr. Anand Gugale, Advocate for the petitioner in W.P.No. 103/2013.

Mr. Vinod Joshi along with Mrs. Lata Patne, Advocate for the respondent Nos. 1 and 2 / UOI.

Mr. Vishal Kanade i/by Mr. Satish Raut, Advocate for the petitioner in W.P.No. 851/2013.

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**CORAM : SMT. V.K. TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

DATE : 24th JANUARY, 2018.

ORDER (PER M.S.KARNIK, J.) :-

The petitioners by these petitions filed under Article 226 of the Constitution of India challenge an order dated 23rd August, 2012 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai ('the Tribunal' for short) in O.A. No. 184 of 2010 and O.A.No. 243 of 2010.

2. The petitioners are the retired employees of the respondents – Ministry of Defence, Canteen Stores Department. The incident in question took place on 10th January, 2002. Briefly stated the incident in question related to the consignment of 310 cases of Government stores worth Rs.25.61 lakhs. The goods were dispatched vide Transfer Invoice Nos. 10561 and 10546 from CSD, Mumbai to Bareilly by road through approved transport contractor M/s. Adarsh Parivahan. The consignment did not reach the destination. This incident came to light through the auditor's report dated 28/3/2003. A preliminary inquiry was conducted in June 2004. A show cause notice dated 24th December, 2004 was issued for initiating

disciplinary proceedings against the petitioners. The petitioners filed their reply on 21st December, 2004. The respondents filed a Summary Suit No.2870 of 2004 in this Court for the recovery of money against M/s. Adarsh Parivahan. The suit was decreed on 27th February, 2006.

3. A chargesheet came to be issued against the petitioners on 18/12/2009 nearly 8 years from the date of the incident. The petitioners filed O.A. No. 184 of 2010 and O.A.No. 243 of 2010 before the Tribunal for quashing of the charge-sheet dated 4th December, 2009 on the ground of inordinate and unexplained delay in instituting the departmental proceedings against the petitioners.

4. The Tribunal by the impugned order dated 23rd August, 2012 was pleased to dismiss O.As.

5. Learned Counsel for the petitioners assailing the order of the Tribunal invited our attention to the affidavit-in-reply filed by the respondents. In the said reply, it is mentioned

that though there is a delay in serving the charge-sheet against the delinquent but it was due to official procedure. The respondents mentioned about the suit initiated by the respondents for recovery. The affidavit further mentions that charge-sheet has been issued to the applicants by carefully examining all relevant facts.

6. Learned Counsel for the petitioners contend that it is only the petitioners who are charge-sheeted but other high ranking officers were not proceeded against with. This according to the learned Counsel for the petitioners is discriminatory.

7. Learned Counsel for the petitioners further contend that the Tribunal while holding that the delay is satisfactorily explained took into consideration the synopsis submitted by the respondents at the stage of arguments which synopsis is beyond the pleadings. The explanation for the delay mentioned in the synopsis does not form part of the affidavit-in-reply filed by the respondents nor supported by any documents which form part of the record.

8. Learned Counsel for the respondents on the other hand supported the order passed by the Tribunal. He invited our attention to the findings recorded by the Tribunal and particularly chronology of the events submitted by the respondents about action taken by them ranging from January 2004 till date of issuance of the charge-sheet to explain the delay in issuing the charge-sheet.

9. Heard learned Counsel. We find some substance in the contention of the learned Counsel for the petitioners that the Tribunal has relied upon the brief synopsis and the events mentioned therein while arriving at the finding that the delay is satisfactorily explained. We further find that in the reply filed by the respondents there is no mention of the details which are set out in the brief synopsis. It is also the submission of the learned Counsel for the petitioners that the brief synopsis which is at Exh.M to the petitions was tendered after completion of the pleadings and when the arguments were in progress. We find that it is on the basis of the sequence of events and the action

taken by the respondents as mentioned in the synopsis but which are not part of the pleadings that the Tribunal proceeded to hold that the delay has been satisfactorily explained. In our opinion the Tribunal could not have relied upon the events mentioned in the synopsis which events were clearly beyond the pleadings or the materials on record.

10. In this view of the matter, in our opinion, the matter needs to be remitted back to the Tribunal for a fresh decision on merits and in accordance with law. Hence the following order :-

ORDER

1. Impugned order dated 23/8/2012 passed by the Tribunal in O.A. No. 184 of 2010 and O.A.No. 243 of 2010 is quashed and set aside.

2. O.A. No. 184 of 2010 and O.A.No. 243 of 2010 are remitted back to the Tribunal for a fresh decision on merits and in accordance with law.

3. The Tribunal is requested to hear and decide the O.As. as expeditiously as possible and preferably within the period of six months from today.

4. Interim order granted by this Court is continue for a period of 10 weeks from today.

5. The question of grant of interim relief may be considered by the Tribunal on its own merits, if an application is so made.

6. All contentions on merits are kept open.

7. Writ Petitions are partly allowed.

8. Rule is partly made absolute with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)