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

\+ **W.P.(C) 1331/2018 and CM APPL. 33180/2019**

UNION OF INDIA ..... Petitioner

Through: Mr. Kirtiman Singh, CGSC.

versus

RATAN LAL & ANR ..... Respondents

Through: Ms. Richa Kapoor with Mr. Kunal Anand, Ms. Ayushi Rajput and Ms.Saloni Jain, Advocates along with R1 in person.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **20.11.2019**

1. The Union of India has filed the present petition challenging an order dated 18th August, 2017 passed by the Central Administrative Tribunal ('CAT'), Principal Bench, New Delhi allowing OA No.2243 of 2017 filed by Respondent No.1 and quashing the charge sheet dated 9th September, 2004 and the entire disciplinary proceedings against Respondent No.1.

2. Respondent No.1 was appointed as Assistant Executive Engineer (Electrical) in the CPWD by way of direct recruitment on 8th July, 1985 and promoted as Executive Engineer (Electrical) ('EE') on 27th October 1989. The Chief Engineer ('CE'), PWD Zone-3 in a note dated 5th April, 1998,

addressed to the CE, PWD Zone-2 made the following allegations against Respondent No.1, while the latter was working as EE in Electrical Division (ED) No.4:

> "1) Sodium vapour lights in working condition mounted on the street light poles in the central verge of the Ring Road and the flyover of the ISBT have been replaced by the EE (E), PWD Elect Divn. 4.
>
> 2) Even the fittings mounted on the high masts have been changed without undertaking any structural study of doing so.
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> 3) The reaches of road where fittings were replaced were not in the jurisdiction of PWD Elec. Div. Division, Divn. No. IV.
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> 4) The replacement was undertaken without obtaining administrative approval and expenditure sanction of the competent authority. The expenditure was charged to revenue head which was against financial propriety.
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> 5) The dismantled fittings which were otherwise in working order have become total waste."

3. Another complaint was made in relation to the street lights between Bus Terminal (Maharana Pratap and Shastri Park) maintained by the PWD ED-IV regarding non-working of some fittings; theft of bulbs and fittings, providing two poles instead of lights on the ITO bridge and so on.

4. The Vigilance Unit ('VU') of the CPWD carried out an investigation and submitted its report to the Engineer In-Charge, CPWD stating that the justification for replacement of old fittings was that they were installed in the late 1980's and that if replaced, then there would be substantial improvement in the road illumination level, savings on account of

rectification of load violation charges and saving of energy consumption charges. However, the CE opined as under:

> "even though there was reasonable justification for replacement of old fittings but the replacement was not carried with proper authorization and according to codal provisions."

5. According to the CE the following irregularities were noticed:

> "1) Work has been carried out without obtaining A/A, E/S and T/S of the competent authority. Permission of S.E. for carrying out the work has also not been obtained.
>
> 2) Expenditure has been charged to 'maintenance' instead of 'Capital' Head of Account."

6. Thereafter, the ADG (S&P), CPWD constituted a committee to take stock of the dismantled material, seize relevant records and sent a comprehensive report. The report of the committee is stated to have brought out a number of irregularities committed by Respondent No.1 and recommended that the matter needed detailed investigation by the VU.

7. The VU then called for an explanation from Respondent No.1, as well as of the other AEs on the lapses. As regards the allegation pertaining to causing loss to the Government by replacing the old fittings, the Respondent No.1 explained that there was heavy pressure to inaugurate the ITO bridge within a certain time frame even if it involved relaxation of Codal Rules. He pointed out as under:

> "Due to delay in opening of Bridge caused a blockage of funds to the tune of Rs. 40 Crores approximately, and there was a recurring loss of Rs. 1 Lac per day to the Exchequer due to non utilization of bridge. In view the emergency for inauguration of

> ITO Bridge by Hon'ble Prime Minister (Union Home Minister, he was directed by SE (E), PWD EC-II, Sh. Anil Purl, to call the quotation/ tender, accordingly under provision of Para 17.4.1 of CPWD-MAN VOLUME-II, he got executed the required works of ITO Bridge for which permission was already granted to predecessors Sh. Prem Nath."

8. He further pointed out:

> "the existing high mast-fittings were installed during 1985-86 through M/s. Genelec Ltd. The firm does not exist in India today with the result the Department was facing difficulty in the day to day maintenance. Besides, M/s. Bajaj Electrical Ltd. had reported that these fittings of high mast have become unsuitable for emitting proper illumination and the existing fittings were consuming high power resulting in load violation in the area."

9. On the aspect of alleged loss to the Government he stated that:

> "the PWD Delhi suffered a loss of Rs.25,95,632/- by way of load violation and on account of low power factor for the year 1992-98 before rectification work. His action has resulted in substantial saving to the government to the tune of Rs.18,89,802/-."

10. However, the stand of the CPWD was that works to the tune of Rs.25 lacs had been awarded by Respondent No.1 without authorisation or technical sanction of the competent authority. This itself was the second lapse pointed out. Respondent No.1, however, denied this charge. As regards charge of Respondent No. 1 having "invited tenders by splitting up original/ addition and alteration works", the explanation offered by the Respondent No.1, again, was that there was pressure to get the new ITO bridge inaugurated prior to the 1998 general elections being declared.

11. It will be noticed that there was no allegation, as such, of corruption against the Respondent No.1 or that he made any illegal gain to himself or any other person. Be that as it may, a detailed note was prepared, recommending the initiation of a disciplinary enquiry not only against Respondent No.1 but two other AEs as well. It appears that such a move was made for the first time nearly 6 years after the incidents on 17th May 2004. After the advice of the Central Vigilance Commission, a note was put up again on 9th June, 2004 for requesting the DG (CPWD) to send a draft charge-sheet in respect of Respondent No.1 and to take necessary action in respect of the two AEs, one of whom was to retire on 30th June, 2004.

12. There is a noting of 17th August, 2005 in the file regarding the draft charge-sheet in respect of Respondent No.1 having been submitted. This was then placed before the Deputy CVO, who placed the file in turn before the Disciplinary Authority ('DA'), who was the Union Minister for Urban Development. After noting the above lapses allegedly committed by Respondent No.1, the investigation report, and the first stage advice of the CVC, the DA noted that he agreed with the advice that major penalty proceedings may be initiated against Respondent No.1.

13. Before the CAT, on the strength of the decision of the Supreme Court in ***Union of India v. B.V. Gopinath (2014) 1 SCC 351*** it was submitted that the entire disciplinary enquiry stood vitiated for failure to obtain the specific approval of the DA to the charge-sheet issued to Respondent No.1. The CAT discussed Rule 14 (2) of the CCS (CCA) Rules, 1965 which require the following of the DA:

> "to formulate an opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against a Government servant, and if the authority is of such an opinion, it may itself inquire into, or appoint an authority to inquire into the truth thereof."

14. Further, Rule 14(3) of the CCS (CCA) Rules provides that:

> "where the Disciplinary Authority proposes to hold an inquiry against a government servant after an opinion is formulated in this regard under sub rule (2) of Rule 14, the Disciplinary Authority is required to draw up or cause to be drawn up the substance of imputation of misconduct or misbehaviour into definite and distinct articles of charge."

15. According to the CAT, in light of the law explained in ***B.V. Gopinath*** *(supra),* the approval of the charge-sheet itself by the DA was mandatory. In so far as that had not happened in the present case, the charge-sheet was held to be *non-est*. The entire disciplinary proceedings on that basis were also held to be bad in law. Reference was made to the decision in ***Chairman-cum-Managing Director., Coal India Ltd. v. Ananta Saha and Ors. (2011) 5 SCC 142.***

16. Notice in the present petition was issued on 13th February, 2018. On 15th October, 2018 counsel for Respondent No.1 made a statement that Respondent No.1 does not propose to take any coercive steps against the Petitioner for filing a contempt petition. This statement was placed on record and the application for stay was disposed of.

17. On 19th November, 2018 the Court formulated the issues that arise for

consideration in the following detailed order which reads as under:

> "1. In the present case, the incident in respect whereof the charge-sheet was issued to the respondent no.1 pertains to the period 1997-98. The charge-sheet was issued on 09.09.2014. On 28.07.2006, the punishment of Compulsory Retirement was inflicted upon the respondent no.1. He challenged the same vide OA no. 1600/2006, which was allowed on 18.11.2006 on account of non-consultation with Union Public Service Commission (UPSC). Fresh order imposing the same penalty was passed on 09.02.2010 after consultation with UPSC. This was again challenged by the respondent no.1 vide OA no. 1079/2010. This OA was disposed of vide order dated 13.05.2010 with directions to the respondent to challenge the penalty by way of revision. Accordingly, the respondent no.1 preferred the revision petition and an order was passed on 29.10.2010 reaffirming the penalty of compulsory retirement. The respondent no.1 finding no other way, filed OA no. 15/2011. This OA was allowed on 11.08.2011. The petitioner challenged the order dated 11.08.2011 vide WP(C) 429/2012. The Order of the Tribunal was upheld by the Calcutta High Court, dismissing the writ petition. The operative part of the order dated 11.08.2011 reads, as follows:
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> > "11. We accordingly quash the subsequent order dated 29.10.10 and direct the respondents to consult the UPSC. In accordance with the decision of the Apex Court in UOI vs. S.K. Kapoor [2011 (4) see 589], the applicant will also be entitled to represent against the UPSC advice. The entire exercise should be completed within 3 months of the receipt of the order. All other contentions raised by the applicant are left open."
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> 2. Before any further order could be passed in compliance of the order passed in OA no. 15/2011, the respondent no.1 superannuated upon attaining the age of retirement on 31.12.2011. Finally, the petitioner passed the order on 08.05.2017 and once again the penalty of compulsory retirement was imposed upon the respondent no. 1.

> 3. The first issue that arises for consideration is whether the punishment could be imposed upon the respondent no.1 while disposing of revision on 08.05.2017 when the respondent no.1 had already superannuated on 31.12.2011.
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> 4. The second aspect that needs our consideration is whether the punishment imposed upon the respondent no.1 related to a stale incident of the year 1997-98 and if so, the effect that the said aspect would have on the matter.
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> 5. There are certain other allegations, which the petitioner urges to contend.
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> 6. The petitioner seeks adjournment on the first aspect.
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> 7. List on January, 2019."

18. This Court has heard the submissions of Mr. Kirtiman Singh, learned Central Government Standing Counsel for the Petitioner and Ms. Richa Kapoor, learned counsel appearing for Respondent No.1

19. On the question of whether the requirement for a separate approval for the charge memo by the DA was mandatory, the Court is inclined to agree with the submissions of Mr. Kirtiman Singh that the decision in ***B.V. Gopinath*** *(supra)* does not spell this out as a specific requirement. On the facts of that case, the charge memo was in fact not put up for approval when permission was taken from the DA to initiate disciplinary proceedings. This is evident from a reading of paragraph 50 of the said judgment, which reads thus:

> "50. In our opinion, the Central Administrative Tribunal as well as the High Court has correctly interpreted the provisions of the Office Order No. 205 of 2005. Factually also, a perusal of the

> record would show that the file was put up to the Finance Minister by the Director General of Income Tax (Vigilance) seeking the approval of the Finance Minister for sanctioning prosecution against one officer and for initiation of major penalty proceeding under Rule 3(1)(i) and (3) (1) (iii) of the Central Civil Services (Conduct) Rules against the officers mentioned in the note which included the appellant herein. Ultimately, it appears that ***the charge memo was not put up for approval by the Finance Minister***. Therefore, it would not be possible to accept the submission of Ms. Indira Jaising that the approval granted by the Finance Minister for initiation of departmental proceedings would also amount to approval of the charge memo." (emphasis supplied)

20. In other words, had the file in the above case indicated that the charge memo was also part of the file when it was placed before the DA, there would be no necessity for obtaining a separate approval in regard thereto. The Division Benches of this Court have held likewise in ***Suresh Sharma v. NTRO*** (decision dated 18th August, 2017 in W.P. (C) 3937 of 2017) and ***Manjit Singh Bali v. Union of India*** (decision dated 16th October 2017 in W.P.(C) 9078 of 2017).

21. Therefore, this Court is unable to agree with the conclusion reached by the CAT in the instant case that the failure of the DA to specifically approve the charge-sheet, when in fact the draft memo of charges was part of the file when the note was approved by the DA, vitiated the enquiry proceedings.

22. On the aspect of the legality of an order of compulsory retirement being passed on 8th May 2017, even while Respondent No.1 superannuated on 31st December, 2011 itself the Court notices that there have been several rounds

of litigation involving Respondent No.1. Although he was asked to be reinstated, he in fact never was after the date of compulsory retirement. In any event, he superannuated on 31st December 2011 itself. The Court does not see any fetter on the Government imposing an appropriate punishment on Respondent No.1 even while the Respondent No.1 superannuated on 31st December, 2011. Indeed, such reinstatement of Respondent No.1 was going to be subject to the decision taken by the Respondents pursuant to the orders passed by the CAT and even the High Court as noticed earlier.

23. However, on the issue of delay and laches, the Court finds the explanation offered by the Petitioner to be weak. It is sought to be contended that there is no time limit as such for completion of a disciplinary enquiry and that since in the present case no prejudice said to have been caused, the delay itself did not vitiate the disciplinary proceedings. In a decision dated 29th October, 2003 in LPA 39 of 1999 (***DDA v. D. P. Bamba***) a Division Bench of this Court summarized the legal position as under:

> "15. In our opinion the legal position, when an action is brought seeking quashing of a charge-sheet on grounds of issuance of the charge-sheet or grounds of inordinate delay in completion of the disciplinary inquiry, may be crystalised as under:
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> (i) Unless the statutory rules prescribe a period of limitation for initiating disciplinary proceedings, there is not period of limitation for initiating the disciplinary proceedings;
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> (ii) Since delay in initiating disciplinary proceedings or concluding the same are likely to cause prejudice to the charged employee, courts would be entitled to intervene and grant appropriate relief where an action is brought;

(iii)If bone fide and reasonable explanation for delay is brought on record by the disciplinary authority, in the absence of any special equity, the court would not intervene in the matter;

(iv) While considering these factors the court has to consider that speedy trial is a part of the facet of a fair procedure to which every delinquent is entitled to vis-a-vis the handicaps which the department may be suffering in the initiation of the proceedings. Balancing all the factors, it has to be considered whether prejudice to the defence on account of delay is made out and the delay is fatal, in the sense, that the delinquent is unable to effectively defend himself on account of delay.

(v) In considering the factual matrix, the court would ordinarily lean against preventing trial of the delinquent who is facing grave charges on the mere ground of delay. Quashing would not be ordered solely because of lapse of time between the date of commission of the offence and the date of service of the charge-sheet unless, of course, the right of defence is found to be denied as a consequence of delay.

(vi) It is for the delinquent officer to show the prejudice caused or deprivation of fair trial because of the delay.

(vii) The sword of Damocles cannot be allowed to be kept hanging over the head of an employee and every employee is entitled to claim that the disciplinary inquiry should be completed against him within a reasonable time. Speedy trial is undoubtedly a part of reasonableness in every disciplinary inquiry."

24. Although Mr. Kiritiman Singh did seek to submit a list of dates seeking to explain the delay in commencing the disciplinary proceedings against the Petitioner, the Court is not satisfied with such explanation being offered belatedly. No such explanation was offered at any stage of the proceedings, either before the CAT or even before this Court. In fact, the stand taken in

the writ petition is that although there was delay, the Respondent has not shown any prejudice caused to him as a result thereof.

25. In the present case, Respondent No.1 has in fact sought to be compulsorily retired on the basis of such disciplinary proceedings. It can hardly, therefore, be said that Respondent No.1 has still to demonstrate prejudice. Indeed, the plain fact that no disciplinary proceedings commenced till September, 2004 in relation to events of 1997 itself makes the delay unreasonable.

26. Consequently, since the Court concurs with the CAT on the aspect of unexplained delay vitiating the disciplinary proceedings, it dismisses the present petition only on that ground. The pending application also stands disposed of. The date already fixed in the matter i.e. 9th January 2020 stands cancelled.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 20, 2019
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