

\$~29

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

%

Date of Decision:22.01.2019

+ W.P.(C) 1185/2018 & CM 4944/2018

GOVT. OF NCT OF DELHI AND ANR

..... Petitioners

Through: Ms. Avnish Ahlawat, Standing
Counsel with Mr. N.K. Singh, Ms.
Palak Rohmetra & Ms. Aarushi,
Advocates

versus

SH O.P. SAGAR

..... Respondent

Through: Mr. Shanker Raju, Mr. Nilansh Gaur
& Mr. Karan Chawla, Advocates

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

VIPIN SANGHI, J. (ORAL)

1. The Government of NCT of Delhi has preferred the present writ petition to assail the order dated 04.10.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA 1145/2015. The petitioner also assails the order dated 31.07.2017 passed in M.A. 945/2017 in the same proceedings. The respondent had preferred the aforesaid Original Application wherein he had assailed the disciplinary proceedings initiated against him.

2. On 20.04.2015, the Tribunal stayed the said disciplinary proceedings against the respondent. However, on 04.10.2016, the Tribunal vacated the stay order and directed that the enquiry be completed within a period of three months and the report of the Enquiry Officer be submitted to the Disciplinary Authority, who was required to pass the consequential order within a period of two months thereafter. The respondent was directed to cooperate in the enquiry. The Tribunal also observed as follows:

“The matter being very old, in the event the time schedule is not adhered to, the proceeding shall terminate without any further direction.”

3. It appears that repeated notices were sent to the respondent by the enquiry officer, including on 16.03.2017, to which he did not respond. The petitioner then moved the aforesaid M.A. 945/2017 for grant of extension of time to implement the order dated 04.10.2016. The Tribunal rejected the same by a summary order which reads as follows:

“MA No. 945/2017

Through the medium of this Application, a prayer is made for grant of extension of time in implementation of the Order dated 04.10.2016 passed in OA No. 1145/2015. This MA was filed on 06.03.2017. Three months period, as prayed for in the MA, is already over.

The MA is rendered infructuous. Dismissed as such.”

4. The submission of learned counsel for the petitioner is that the Tribunal was not justified in dismissing MA 945/2017. It is also submitted

that there was no authority in the Tribunal to, firstly, fix the mandatory time limit, observing that in case the enquiry is not concluded during the said period, the same shall stand terminated without further directions. Learned counsel submits that the Tribunal should have considered the application moved by the petitioner on its merits, rather than rejecting it in the manner it did, vide order dated 31.07.2017.

5. The petitioner was required to file an additional affidavit, which has been filed on record. The petitioner has pointed out that on several dates, right from 13.03.2015 onwards, notices were issued to the respondent but he did not participate in the enquiry proceedings. The said tabulation reads as follows:

<i>Sl. No.</i>	<i>ORDER/ NOTICES</i>	<i>DATE</i>	<i>REMARKS</i>
1.	<i>Notice sent to CO by EO for preliminary hearing</i>	<i>13.03.2015</i>	<i>Respondent refused to accept the same.</i>
2.	<i>Notice sent to CO by EO for preliminary hearing</i>	<i>07.04.2015</i>	<i>Respondent refused to accept the same.</i>
3.	<i>Notice sent to CO by EO for preliminary hearing</i>	<i>20.04.2015</i>	<i>Respondent refused to accept the same.</i>
4.	<i>Notice sent to CO by EO</i>	<i>23.05.2015, 11.07.2016, 17.08.2016, 16.03.2017</i>	<i>CO refused to accept the same.</i>
5.	<i>Appointment order of PO</i>	<i>30.03.2017</i>	<i>CO refused to accept the order.</i>
6.	<i>Notice sent by EO to Respondent</i>	<i>12.04.2017; 28.04.2017; 23.05.2015; 07.06.2017</i>	<i>CO refused to accept the notices.</i>
7.	<i>Notice sent to CO by EO alongwith copy of proceeding and listed</i>	<i>26.06.2017</i>	<i>Postal Department returned the same with remarks that</i>

	<i>documents</i>		<i>“after repeated visits receiver is not available”.</i>
8.	<i>Notice issued to CO by EO</i>	<i>18.07.2017</i>	<i>Postal department returned the same with remark “refused”</i>
9.	<i>Enquiry report dated 25.07.2017 along with memo dated 26.07.2017 for submitting any representation.</i>	<i>26.07.2017</i>	<i>Postal Department returned the same with remark “Refused”</i>

6. On the other hand, Mr. Raju submits that the chargesheet was issued to the respondent at the fag end of his career, and just before he was to retire. The enquiry officer was not even appointed for a period of about two years after issuance of chargesheet on 05.08.2013. He submits that the petitioner has been dragging its feet in the enquiry, and the sword of damocles has been hanging on the head of the respondent all along. On the aspect of delay in conclusion of departmental enquiries, Mr. Raju has also placed reliance on the judgment of the Supreme Court in ***Prem Nath Bali vs. Registrar, High Court of Delhi & Anr.***, (2015) 16 SCC 415. In paragraphs 27 and 28, the Supreme Court observed, as follows:

“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.”

7. Having heard learned counsel and perused the record, we are inclined to allow the present petition. Though, there has been some delay on the part of the petitioner in the matter of holding and concluding the enquiry proceedings, it is also apparent that the respondent has also not been cooperating in the proceedings, and he too is responsible for the delay. In such matters, the courts are guided by the principle of prejudice which may be caused to the delinquent employee/retired employee on account of the delay. The respondent, admittedly, is receiving provisional pension under Rule 69 of the CCS Pension Rules, which is equivalent to his full monthly pension. In our view, therefore, the prejudice, if any, caused to the respondent, is mitigated. There is no doubt that the employee/retired employee is entitled to see closure of such proceedings, and continuation thereof, indefinitely, would lead to undue harassment. However, pitted against such personal inconvenience, is the public interest in ensuring that misconduct, if any, is appropriately dealt with, so as to uphold the rule of law and discipline in the organisation. This aspect cannot be lost sight of.

Thus, even if there is some delay on the part of the authorities in concluding the proceedings, that should not be a reason to sacrifice the larger interest of the society. The observation made by the Supreme Court in ***Prem Nath Bali***'s case (supra) lays down the guideline with regard to the time frame during which, normally, the disciplinary proceedings should be completed. However, we do not find in the said guideline any imperative direction to say that if the proceedings are not concluded within the period of one year, they shall stand abated.

8. In ***Rajendra Singh vs. U.O.I. & Anr.***, WP(C) No.5657/2017 decided on 10.07.2017 a similar issue arose for consideration of this Court. In that case, the petitioner had preferred O.A. No. 675/2013, which was disposed of by the Tribunal on 01.05.2014 with a direction to the respondent to conclude the disciplinary proceedings and to issue the order within 6 weeks of the receipt of the copy of the order. It was directed that there should be no further delay, failing which, the proceedings would await after the expiry of the said stipulated period. The stipulated period of 6 weeks was not adhered to by the respondent. Consequently, the petitioner preferred O.A. No. 2423/2014. The petitioner submitted before the Tribunal that on account of non-compliance of the time limit prescribed by the Tribunal in its order dated 01.05.2014, the disciplinary proceedings stood awaited. The Tribunal rejected that submission of the petitioner which led to filing of the aforesaid writ petition before this Court. This Court in the said order observed as follows:

“The submission of the petitioner is that the earlier order of the tribunal in O.A. No. 675/2013 had been served on the DoPT on 15.05.2014. The period of six weeks expired on 26.06.2014, whereas the penalty order of penalty was issued only on 07.07.2014. Therefore, there was a delay of 11 days in passing the penalty order.

*Counsel for the petitioner has sought to place reliance on the judgment of the Supreme Court in **State of Punjab & Ors. v. Chaman Lal Goyal**, JT 1995 (2) SC 18, wherein the Supreme Court issued a similar direction in relation to departmental proceedings.*

Having heard counsel for the petitioner and perused the record, we do not find any merit in this petition. First and foremost, the directions issued by the tribunal cannot be read as, and did not attain the status of a statute. The kind of direction issued by the tribunal – that is to say that the departmental proceedings shall abate if the proceedings are not finalised within a particular period, in our view, should not be issued. Even if the tribunal, in a given case, feels that the departmental proceedings are unduly delayed and the tribunal makes a direction that the same should be completed in a time bound manner, the directions should be couched in such language as to not vest the delinquent with a right, which even a statute does not vest in him. There are other ways and means for the tribunal to ensure strict compliance of its directions. Such unintended benefit cannot be accorded to a delinquent employee, whose conduct is under examination. The tribunal has itself not viewed its earlier direction issued on 01.05.2014 as peremptory and, in our view, rightly so.

..... When it comes to directions issued by the Supreme Court, entirely different considerations come into play. Article 142 of the Constitution of India expressly provides that the orders passed by the Supreme Court shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by

Parliament. Reliance placed by Chaman Lal Goyal (supra) is, therefore, misplaced.”

9. In view of the aforesaid, we allow the petition and permit the petitioner to complete the proceedings. Since the respondent has chosen not to participate in the proceedings, and we are granting time to the petitioner to conclude the proceedings, to balance the equities, we grant the respondent one opportunity to now participate in the proceedings from the stage he stopped appearing. However, we make it clear that neither the petitioner, nor the respondent shall delay the proceedings or seek undue adjournments. It is expected of the petitioner to now complete the proceedings within four months from the date the proceedings are resumed, and further action based on the report be taken within four months, thereafter.

10. The petition stands disposed of in the above terms.

VIPIN SANGHI, J

A. K. CHAWLA, J

JANUARY 22, 2019

rd