

\$~62 to 69, 71, 72, 75 & 76

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

+ **W.P.(C) 4471/2014**

UNION OF INDIA & ORS. Petitioners
Through: Mr. Anil Soni, CGSC with Mr.
Vedesh Dubey, Advocate
versus

RITU CHAUDHARY Respondent
Through: Mr. M.K. Bhardwaj, Advocate

+ **W.P.(C) 6108/2014**

UNION OF INDIA & ANR. Petitioners
Through: Mr. Anil Soni, CGSC with Mr.
Vedesh Dubey, Advocate
versus

S.S. CHAUHAN Respondent
Through: Mr. M.K. Bhardwaj and Mr. Rajesh
Chauhan, Advocates for Mr. Sachin
Chauhan Advocate

+ **W.P.(C) 6279/2014**

UNION OF INDIA & ANR Petitioner
Through: Mr. Anil Soni, CGSC with Mr.
Vedesh Dubey, Advocate
versus

A.S. MAHAL Respondent
Through: Mr. M.K. Bhardwaj and Mr. Rajesh
Chauhan, Advocates for Mr. Sachin
Chauhan Advocate

+ **W.P.(C) 6296/2014**

UNION OF INDIA & ANR Petitioners
Through: Mr. Anil Soni, CGSC with Mr.

Vedesh Dubey, Advocate

versus

S. VILASINI

..... Respondent

Through: Mr. J. Thalapathy Sri Ram and Ms.
Shobha Ramamoorthy, Advocates

+

W.P.(C) 7635/2014

UNION OF INDIA & ORS.

..... Petitioners

Through: Mr. Anil Soni, CGSC with Mr.
Vedesh Dubey, Advocate

versus

SUBHASH CHANDER

..... Respondent

Through: Mr. M.K. Bhardwaj and Mr. Rajesh
Chauhan, Advocates for Mr. Sachin
Chauhan Advocate

+

W.P.(C) 7965/2014

UNION OF INDIA & ORS

..... Petitioners

Through: Mr. Anil Soni, CGSC with Mr.
Vedesh Dubey, Advocate

versus

JATINDER SINGH SAINI

..... Respondent

Through: Mr. M.K. Bhardwaj, Advocate

+

W.P.(C) 8130/2014

UNION OF INDIA & ROS.

..... Petitioners

Through: Mr. Anil Soni, CGSC with Mr.
Vedesh Dubey, Advocate

versus

SATENDRA PANWAR

..... Respondent

Through: Mr. M.K. Bhardwaj, Advocate

+

W.P.(C) 8134/2014

UNION OF INDIA & ORS Petitioners
Through: Mr. Anil Soni, CGSC with Mr.
Vedesh Dubey, Advocate
versus

HARGUN KUMAR KHANWANI Respondent
Through: Mr. M.K. Bhardwaj, Advocate

+ **W.P.(C) 3439/2015**

UNION OF INDIA & ANR. Petitioners
Through: Mr. Anil Soni, CGSC with Mr.
Vedesh Dubey, Advocate
versus

DEBASHISH DUTTA Respondent
Through: Mr. M.K. Bhardwaj and Mr. Rajesh
Chauhan, Advocates for Mr. Sachin
Chauhan Advocate

+ **W.P.(C) 3483/2015**

UNION OF INDIA & ORS Petitioners
Through: Mr. Anil Soni, CGSC with Mr.
Vedesh Dubey, Advocate
versus

SHIV RATTAN KAUSHIK Respondent
Through: Mr. M.K. Bhardwaj, Advocate

+ **W.P.(C) 8338/2015**

UNION OF INDIA & ORS Petitioners
Through: Ms. Eshita Baruah, Advocate for Mr.
Gaurang Kanth, Advocate
versus

PRAVEEN KUMAR SAXENA Respondent
Through: Mr. S.K. Gupta, Advocate

+

W.P.(C) 9654/2015

UNION OF INDIA AND ANR

..... Petitioners

Through: Mr. Anil Soni, CGSC with Mr.
Vedesh Dubey, Advocate

versus

D.R. CHANDRASEKHAR

..... Respondent

Through: Mr. M.K. Bhardwaj and Mr. Rajesh
Chauhan, Advocates for Mr. Sachin
Chauhan Advocate

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

%

11.12.2019

Dr. S. Muralidhar, J.:

1. These are a batch of petitions filed by the Union of India, where a similar set of issues are involved. The petitions are accordingly being disposed by a common order.

2. The lead case in this batch is the W.P.(C) 4471/2014 filed by Union of India against the judgment dated 6th January, 2014 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('CAT') in O.A. No.1011/2013 (*Ritu Chaudhary v. Union of India & Ors*).

3. The aforesaid O.A. was filed by the Ms. Ritu Chaudhary, Respondent in W.P.(C) 4471/2014, challenging the Memorandum of Charges ('MoC') dated 4th December, 2012 issued to her. Ms. Ritu Chaudhary at the relevant time was working as an Inspector in the Central Excise and Customs. The

charges pertained to the period between 1st May, 2004 and 31st December, 2004.

4. The MoC consisted of three Articles of Charge, all of which alluded to misconduct in contravention of Rule 3 of the Central Civil Services (Conduct) Rules, 1964. The charges may be summarized as under:

(i) Article-I: The charge was that the Respondent had failed to carry out a proper examination of imported goods comprising fine quality paper of more than 70 GSM which attracted the basic customs duty of 10%, but which were mis-declared as Newsprint/LWC paper carrying only 5% duty, causing revenue loss.

(ii) Article II: The charge was that Respondent's name appeared in a diary seized from the Custom House Agent by the DRI as the recipient of cash payment made for clearing the mis-declared consignments.

(iii) Article III: The charge was that the Respondent entered the user-ID of another Inspector in the computer terminal of a different officer while examining and clearing one consignment of newsprint/LWC paper.

5. Enclosed with the above MoC was a list of eight documents, which were proposed to be proved. There was, however, no list of witnesses.

6. Ms. Ritu Chaudhary challenged the MoC *inter alia* on the ground that the Department was seeking to proceed against her in 2012, with reference to

the events of 2004, with no valid explanation for the long delay. She referred to the instructions issued by the Central Vigilance Commission ('CVC') by its letter dated 6th September, 1999 and a further letter dated 23rd May, 2000, impressing upon Departments to take disciplinary action without any delay and to issue a charge-sheet within a period of six months from the date of the subject incident and base such charge-sheet on the findings in a preliminary enquiry. She further pointed out that the Department itself had admitted that the original documents of the case were not available and that in the absence of such original documents, the entire proceedings would stand vitiated.

7. Ms. Chaudhary also sought to obtain information under the Right to Information Act, 2005, which confirmed that a hard copy of the original documents of Bills of Entry presented by the Customs House Agent/Importer were not available.

8. A further contention of Ms. Chaudhary was there were no witnesses in order to prove the allegations set out in the MoC and that, therefore, the MoC could not be proved at all. Reliance was placed on the decisions of Supreme Court in *State of Madhya Pradesh v. Bani Singh, 1990 Supp (1) SCC 738*, *The Secretary to Government Prohibition and Excise Department v. L. Srinivasan (1996) 2 SCC 157*, *Food Corporation of India v. V.P. Bhatia (1998) 9 SCC 131*, *State of Andhra Pradesh v. S. Radha Krishan (1998) 4 SCC 154*, *State of Punjab v. Chaman Lal Goyal (1995) 2 SCC 570*, *P.V. Mahadven v. Tamil Nadu Housing Board (2005) 6 SCC 636*, to urge that inordinate delay in commencement of disciplinary

proceedings would vitiate such proceedings. In this regard, reference is also made to the decisions of this Court and that of the CAT. Reliance was placed on the judgment of this Court dated 23rd September, 2013 in W.P.(C) 4245/2014 (*Union of India v. Hari Singh*).

9. The CAT in the impugned order quashed the MoC dated 4th December, 2012 on the following grounds:

- i) There was no proper explanation for the inordinate delay in initiating disciplinary proceedings
- ii) The Disciplinary Authority is relying upon ten documents, including copies of a diary seized by the DRI and statements of Sanjay Sharma and Utpal Gupta recorded by the DRI, etc. However, “not a single witness has been listed to prove those charges”. When disciplinary proceedings are initiated after an inordinate delay witnesses at the relevant time may not be available.
- iii) In absence of witnesses, if an Enquiry Officer came to the conclusion that the charges have been proved, “such finding can only be termed as perverse and cannot be accepted”.
- iv) As held by the Supreme Court in para 14 of its decision in *Roop Singh Negi vs. Punjab National Bank & Ors 2009 (2) SCC 570*, documentary evidence is required to be proved not merely by producing documents but by examining the witnesses.

10. In the other connected matters, the CAT by separate orders quashed the disciplinary proceedings on one or the other of the above grounds, viz., delay in initiation of the disciplinary enquiry and no valid explanation for the same; absence of original documents; and, a list of witnesses not being appended to the charge memorandum. In some of its orders, the CAT placed reliance on its own judgment in *Ritu Chaudhary (supra)*.

11. It must be mentioned here that in some of the cases, the MoC relates to incidents as old as 1986. Many of the applicants before the CAT have since then superannuated. In none of present matters, was any interim order passed by this Court.

12. It is sought to be urged on behalf of the Petitioners that the impugned judgments run contrary to the well-settled legal position that a Court/Tribunal should necessarily not interfere with disciplinary proceedings at the stage of issuance of show cause notice. It is further submitted that the charges were grave in nature and that in these circumstances; the CAT ought not to have interfered “merely on the ground that a list of witnesses was not furnished to the delinquent along with the charge memo”. Thirdly, it is submitted that the delay in initiating the disciplinary proceedings is by itself not fatal, unless it is shown that such delay has caused prejudice to the Respondents.

13. The Court is not persuaded by any of the above contentions of the Petitioners. The Court notes that under Rule 14(3) & (4) of the CCS (CCA) Rules, it was incumbent, where the Government proposes to hold an inquiry,

to draw the substance of imputations which would contain “a list of documents by which and a list of witnesses by whom, the Articles of Charge are proposed to be sustained”. The said rule reads as under:

"14 (3) Where it is proposed to hold an inquiry against a Government servant under this rule and rule 15, the disciplinary authority shall draw up or cause to be drawn up –

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government servant;

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charges is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person".

14. Rule 14 (4) also envisages serving upon the Government servant the copy of the Articles of Charge which would include “the list of documents and witnesses by which each Articles of Charge is proposed to be sustained”.

15. The following observations in *LIC of India v. Ram Pal Singh Bisen*

(2010) 4 SCC 491 are relevant in this context:

"20. Thus, the question that arises, for consideration is whether in absence of any oral evidence having been tendered by the appellants, and especially in absence of putting their own defence to the respondent during his cross examination in the Court, what is the effect of documents filed by appellants and marked as Exhibits.

21. Despite our persistent requests made to the learned counsel appearing for the appellants they have not been able to show compliance of Order XII Rule 1 and 2 of the CPC, meaning thereby that there has not been any compliance thereof.

.....

26. We are of the firm opinion that mere admission of document in evidence does not amount to its proof. In other words, mere marking of exhibit on a document does not dispense with its proof, which is required to be done in accordance with law. As has been mentioned herein above, despite perusal of the record, we have not been able to come to know as to under what circumstances respondent plaintiff had admitted those documents. Even otherwise, his admission of those documents cannot carry the case of the appellants any further and much to the prejudice of the respondent.

27. It was the duty of the appellants to have proved documents Exh. A-1 to Exh. A-10 in accordance with law. Filing, of the Inquiry Report or the evidence adduced during the domestic enquiry would not partake the character of admissible evidence in a court of law. That documentary evidence was also required to be proved by the appellants in accordance with the provisions of the Evidence Act, which they have failed to do."

16. Although, as pointed out by learned counsel for the Petitioners, in disciplinary inquiry proceedings the rules of the CPC and the Evidence Act may not strictly apply, it is basic that the mere production of a document is not sufficient even in a disciplinary inquiry. There has to be some witness to prove such a document. Without a witness to prove the documents, the

Enquiry Officer cannot take it on record as a genuine document. In the present case in the absence of any list of witnesses, there was no means by which the documents could have been proved by the Department in the inquiry proceedings.

17. In the present cases, if indeed the MoC refer to documents, the originals of which were not available with the Department, and the list of the names of the witnesses who were sought to be examined to prove the above documents, was not appended, clearly, the holding of the enquiry would itself become a mere formality. As rightly pointed out by the CAT, if in the absence of original documents and witnesses, an Enquiry Officer was to find the charges to be proved, such a finding would obviously be perverse and unsustainable in law. In other words, by allowing the disciplinary proceeding to continue on the basis of the subject MoCs, the Court or the Tribunal, as the case may be, would be effectively directing a wasteful exercise to be undertaken, which would end up being invalidated on obvious grounds.

18. In that view of the matter, the Court is unable to agree that in the facts and circumstances at hand, it was impermissible for the CAT to intervene even at the stage of issuance of the MoC/show cause notice.

19. It is fairly well-settled that an inordinate unexplained delay itself causes prejudice to an accused employee. In each of the present cases there was no valid explanation for the inordinate delay in initiating the preliminary enquiry.

20. This Court has recently in its order dated 27th November, 2019 in W.P.(C) 4450/2017 (*Virender Singh Chankot v. Union of India*) quashed the disciplinary proceedings on similar grounds of unexplained delay in initiating the disciplinary proceedings. The Court referred to the decision of the Supreme Court in *State of Punjab v. Chamanlal Goyal (1995) 2 SCC 570* where it was observed as under:

“10. Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, malafides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances.”

21. The order of the Supreme Court dated 14th May, 2018 in Civil Appeal No. 5179/2018 (*Pavan Ved v. Union of India*) would also be relevant in this context. The Supreme Court was considering a challenge to a decision dated 25th August, 2017 of this Court in the W.P.(C) 215/2016 (*Pavan Ved v. Union of India*), by which the Court had dismissed the accused employee's petition, declining to interfere with disciplinary proceedings in which there

was an unexplained delay of 9 years between the submission of the report of the Inquiry and the issuance of show cause notice by the DA. The Supreme Court set aside this Court's judgment and allowed the appeal noting that "there was a massive unexplained delay of over 9 years between the date of enquiry report and date of a show-cause notice".

22. In that view of the matter, the Court is not inclined to interfere with the impugned order of CAT in the case of **Ritu Chaudhary** (*supra*) and the orders in each of the connected cases, where the CAT has placed reliance on the judgments noted hereinbefore and quashed the proceedings.

23. Nevertheless, the Court would like to clarify that in the event that the Petitioners have the necessary material in the form of original documents; a list of witnesses who can prove such documents; and, a valid explanation for the inordinate delay, it will be open to them to initiate the disciplinary proceedings by drawing up a fresh MoC. This should not be understood as the Court having given the Petitioners a *carte blanche* permission to initiate *de novo* disciplinary proceedings even in cases where the employees have already superannuated and where the holding of such enquiry will be rendered a mere formality. In other words, unless the Petitioners are able to meet the legal requirements explained in the judgments of this Court and the Supreme Court, which have been referred to in the impugned order of the CAT in **Ritu Chaudhary v. Union of India**, the Petitioners should not reopen dead issues.

24. With the above observations, the writ petitions are dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

DECEMBER 11, 2019

rr

