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

+ **W.P.(C) 4450/2017 & CM 19426/2017 (Interim Directions)**

VIRENDER SINGH CHANKOT

..... Petitioner

Through: Mr. A.K. Bhardwaj, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Manish Mohan, CGSC for UOI
with Ms. Manisha Saroha, Advocate.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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27.11.2019

Dr. S. Muralidhar, J.:

1. Aggrieved by the dismissal of his O.A. by the Central Administrative Tribunal, Principal Bench, New Delhi ('CAT'), declining to quash the charge-sheet dated 2nd September, 2015 issued to him, the Petitioner has filed the present petition.

2. It requires to be noticed at the outset that at the time of issuing notice in the present petition on 22nd May, 2017, this Court stayed the departmental proceedings pursuant to the aforementioned charge-sheet.

3. The Petitioner was initially appointed as a Lower Division Clerk ('LDC') in the office of the Director of Accounts, Cabinet Secretariat, New Delhi on 22nd March, 1984. He was promoted as Auditor in 1989 and as Senior Auditor in 2003. He was next promoted as Junior Accounts Officer with

effect from 10th February, 2004.

4. Between 10th February, 2004 and 9th May, 2004, the Petitioner was posted as Assistant Accounts Officer ('AAO') in the office of the Executive Engineer ('EE')/Divisional Officer, Karnal, Central Division, CPWD.

5. During November-December, 2004, the EE, Karnal, Central Division invited tenders for construction work connected to water supply, sanitary installation, drainage, electrical installation and fire alarm for IHM, Kurukshetra. The sealed tenders received were opened by the EE on 24th January, 2005 and handed over to Mr. R. P. Dua, the Upper Division Clerk ('UDC') for checking them and preparing a comparative statement. Mr. Dua then undertook the task with the assistance of his colleagues Mr. Jai Singh, UDC, Mr. Harsh Jain, LDC, and a Computer Operator.

6. On 28th January, 2005, Mr. Dua noticed four pages of the second lowest tender by M/s. Rajaram Contractor to be missing. He reported this to the EE on 17th February, 2005. The EE then sought an explanation from the Petitioner by his letter dated 15th March, 2005 and 24th March, 2005. By his replies dated 17th March, 2005 and 30th March, 2005, the Petitioner gave an explanation of the factual position. The EE thereafter decided not to proceed against the Petitioner.

7. As noted in para 4.11 of the reply filed by the Respondents before the CAT, their explanation as to what transpired thereafter reads as under:

“Para 4.11: That the contents of para 4.11 of the O.A. are denied being wrong and misleading. It is submitted that the

Article of Charge dated 02.09.2015 has been served on the applicant vide Controller of Accounts, Ministry of Water Resources, RD & GR's letter No. WR/CA/Admn./V.S.C./2015-16/703-04 dated 03.09.2015. The article of charge has been framed against the applicant after conducting a preliminary Inquiry and after obtaining the first stage advice of the Central Vigilance Commission vide OM No. 015/W&H/010/278728 dated 20.03.2015. Copy of OM dt. 20.3.2015 is annexed as Annexure R-5.

A complaint received from M/s Satish Kumar Gupta was forwarded to the Vigilance Unit of CPWD by CVC vide OM No. 288/2007-52914 dated 03.04.2007 for furnishing the Action Taken Report to the Commission. ATR was submitted to the commission vide letter of even No. dated 11.11.2009 wherein it was intimated that detailed investigation shall be conducted for allegation of tempering of tender. CVC vide OM No. 288/2007/8-68348 dated 22.12.2009, directed to furnish the Investigation Report to the commission. Thereafter the preliminary inquiry was conducted and the Investigation Report was submitted by the Vigilance Unit of the CPWD vide F. No.12/ 1/ 1/(C-52/07)/2010-VS.I on 15.01.2015. As such matter remained under active consideration.”

8. The aforementioned complaint of M/s. Satish Kumar Gupta was in fact received in 2007 itself. It is seen from the above stand of the Respondents that it took almost ten years for the investigation report to be submitted to the Vigilance Unit of the CPWD. There is no indication that the Petitioner, in any manner, contributed to that delay.

9. As a result of the above report being submitted to the Vigilance Unit of the CPWD, the charge-memo dated 2nd September, 2015 was issued to the Petitioner. The sole charge against the Petitioner reads as under:

“Tender of M/s Raja Ram, Contractor for the work “C/o Main

Institute Building Residential Quarters, Electrical Sub-Station & Enquiry Office for IHM Kurukshetra i/c Water Supply, Sanitary Installation, Drainage, Electrical Installations & Fire Alarm” was tempered by way of removing four pages while the tenders were under scrutiny in the accounts branch of Karnal central Division, CPWD, Karnal and thus by not ensuring the safe custody of the tender documents, during the computation and preparation of comparative statement in accounts branch the said Sh. Virender Singh Chankot, AAO has violated the CPWD works manual 2003 para 18.3.161.1.

Thus, by his above acts, the said Sh. Virender Singh Chankot, AAO committed grave misconduct, exhibited lack of devotion to duty, and acted in a manner unbecoming of a Government servant, thereby contravening Rule 3(1)(i), (ii) & (iii) of the central Civil Services (Conduct) Rules, 1964.”

10. The report of the investigation submitted to the Vigilance Unit referred to the role played by Mr. Dua, UDC and the role of Mr. S. S. Vashisht, EE. It talked of “lapses” on the part of the Petitioner and Mr. Dua. Further, after discussing the reply of the EE, it concluded, “the lapse on the part of Sh. S.S. Vashisht, EE, is clearly made out.”

11. On 20th March, 2015, an Office Memorandum (‘OM’) was issued by the Central Vigilance Commission (‘CVC’) where it advised issuance of a “recordable warning” to Mr. Vashisht, the then EE, while at the same time advising initiation of major penalty proceedings against the Petitioner and Mr. Dua.

12. The charge-sheet was served upon the Petitioner on 14th September, 2015, in response to which he made a detailed representation on 30th November, 2015. Thereafter, the Petitioner approached the CAT with O.A.

No. 4415/2015, praying for quashing of the charge-sheet.

13. The principal ground on which the charge-sheet was impugned was that it was extraordinarily belated and the delay itself had caused the Petitioner prejudice. *Inter alia*, the Petitioner pointed out that he was nowhere responsible for the four pages from the tender of M/s. Rajaram Contractor going missing. According to the Petitioner, there was a nexus/connivance between the EE and Mr. Dua, UDC, as was indicated in a complaint dated 28th February, 2007, of Mr. Satish Kumar Gupta, whose tender was also rejected by the EE.

14. The stand taken by the Respondents in their reply before the CAT has already been adverted to. It was contended that no prejudice was caused to the Petitioner on account of such delay. On merits, it was contended that the Petitioner was responsible for the safe custody of the tender document during the scrutiny stage, but failed to ensure the same. It was not disputed that only a “recordable warning” had been issued to Mr. Vashist, the then EE.

15. The CAT noted the contentions of the parties and the judgments relied upon by them. According to the CAT, the handing over of the tender documents by the EE to Mr. Dua, who was working under the Petitioner, did not absolve the Petitioner of his responsibility of ensuring their safe custody. It was further observed that the Petitioner had not shown before the CAT that any prejudice had been caused to him because of the delay in the issuance of the charge-sheet.

16. The submissions of learned counsel for the parties have been considered. The Court has also examined the impugned order of the CAT in light of the documents on record.

17. The statement of Mr. Dua, as recorded in the investigation which led to the issuance of the charge-sheet, reveals that after the papers were entrusted to him by the EE for checking the tender documents for preparing the comparative statement, the tender documents never went back at any stage to the Petitioner. After Mr. Dua found those pages missing, he lodged a report in that regard to the EE. It is not, therefore, understood how the Petitioner could be held responsible for four pages of the tender documents of M/s. Rajaram Contractor going missing.

18. The Court has been shown Section 18 of the CPWD Works Manual, 2003, and in particular, Section 18.3.16.1, which reads as under:

“18.3.16.1. The Divisional Accountant is responsible for the safe custody of tender documents during the period when they remain in the Accounts Branch until submission to the Executive Engineer.”

19. Consequently, as far as the Petitioner is concerned, his responsibility for safe custody of the tender documents continued till their entrustment to the EE, and not thereafter. In the present case, after the Petitioner had entrusted the documents to the EE, the latter, in turn, entrusted them to Mr. Dua. Those documents did not come back to the Petitioner at any stage.

20. The Court also finds that the CAT has not appreciated the correct legal position as regards delay. It appears to have conflated the prejudice arising

from the delay itself with the prejudice caused to the defence of the charged official as a result of the delay. That the delay itself could cause prejudice and this is distinct from the delay prejudicing the defence of the charged official is brought out clearly in the decision of the Supreme Court in *State of Punjab v. Chamanlal Goel (1995) 2 SCC 570* 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. In the present case, the Court finds that the complaint of Mr. Satish Kumar Gupta, one of the contractors whose bid was rejected, was received in 2007 itself, but the investigation pursuant to that complaint stretched on till 2015. During this entire period, there was no question of the Petitioner contributing to the delay. In other words, the Respondents have no plausible explanation for an eight years delay in completing even the preliminary enquiry. In the meanwhile, the Petitioner's case for further promotion as Pay

and Accounts Officer ('PAO') was deferred in view of the pendency of the above disciplinary proceedings. The recommendations in regard to the Petitioner's promotion as PAO were kept in a sealed cover.

22. The CAT also appears to have overlooked the legal position as regards the discriminatory treatment meted out to a charged official vis-à-vis another charged officer, when the charges for which the charge-sheet are similar and have arisen out of the same event. In the present case, as already noticed, although the preliminary enquiry fastened responsibility on the EE, he was let off with a "recordable warning", whereas major penalty proceedings were initiated against the Petitioner. In the facts narrated hereinbefore, it is plain that the four pages of the tender document of M/s. Rajaram Contractor went missing during the time that the EE handed over the papers to Mr. Dua, UDC. The essential responsibility at this stage for the safe custody of the paper was obviously on the EE, and not on the Petitioner, as is also evident from the CPWD Manual under Section 18.3.16.1.

23. In a decision dated 1st May, 2008 in Civil Appeal 3186/2008 (*Man Singh v. State of Haryana*), the Supreme Court commented on the discriminatory treatment afforded to delinquent officials, and explained the legal position in Paragraphs 19 and 20 as under:

"19. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair-minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an

individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of 'fair play' and reasonableness. We have, therefore, examined the case of the appellant in the light of the established doctrine of equality and fair play. The principle is the same, namely, that there should be no discrimination between the appellant and HC Vijay Pal as regards the criteria of punishment of similar nature in departmental proceedings. The appellant and HC Vijay Pal were both similarly situated, in fact, HC Vijay Pal was the real culprit who, besides departmental proceedings, was an accused in the excise case filed against him by the Excise Staff of Andhra Pradesh for violating the Excise Prohibition Orders operating in the State. The appellate authority exonerated HC Vijay Pal mainly on the ground of his acquittal by the criminal court in the Excise case and after exoneration, he has been promoted to the higher post, whereas the appeal and the revision filed by the appellant against the order of punishment have been rejected on technical ground that he has not exercised proper and effective control over HC Vijay Pal at the time of commission of the Excise offence by him in the State of Andhra Pradesh. The order of the disciplinary authority would reveal that for the last about three decades the appellant has served the Police Department of Haryana in different capacity with unblemished record of service.

20. In the backdrop of the above-mentioned facts and circumstances of the case, we are of the view that the order of the disciplinary authority imposing punishment upon the appellant for exhibiting slackness in the discharge of duties during his visit to Hyderabad when HC Vijay Pal was found involved in Excise offence, as also the orders of the appellate and revisional authorities confirming the said order are unfair,

arbitrary, unreasonable, unjustified and also against the doctrine of equality. The High Court has failed to appreciate and consider the precise legal questions raised by the appellant before it and dismissed the Second Appeal by unreasoned judgment. The judgment of the High Court, therefore, confirming the judgments and decrees of the first appellate court and that of the trial court is not sustainable. The appellant deserves to be treated equally in the matter of departmental punishment initiated against him for the acts of omissions and commissions vis-a-vis HC Vijay Pal, the driver of the vehicle.”

24. This was reiterated in ***Rajendra Yadav v. State of M. P. (2013) 3 SCC 73*** as under:

“13. The principle stated above is seen applied in few judgments of this Court. The earliest one is *Director General of Police and Others v. G. Dasayan (1998) 2 SCC 407*, wherein one Dasayan, a Police Constable, along with two other constables and one Head Constable were charged for the same acts of misconduct. The Disciplinary Authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan and that of compulsory retirement on Head Constable. This Court, in order to meet the ends of justice, substituted the order of compulsory retirement in place of the order of dismissal from service on Dasayan, applying the principle of parity in punishment among co-delinquents. This Court held that it may, otherwise, violate Article 14 of the Constitution of India. In *Shaileshkumar Harshadbhai Shah* case (*supra*), the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary retirement scheme. In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of voluntary retirement from service from the month on which the others were given the benefit.

14. We are of the view the principle laid down in the above-

mentioned judgments also would apply to the facts of the present case. We have already indicated that the action of the Disciplinary Authority imposing a comparatively lighter punishment to the co-delinquent Arjun Pathak and at the same time, harsher punishment to the appellant cannot be permitted in law, since they were all involved in the same incident.”

25. In the circumstances, this Court is of the view that the CAT was in error in concluding that no prejudice was caused to the Petitioner on account of the delay in issuing him the charge sheet and that on merits the charge-sheet issued to the Petitioner was justified in law.

26. For all of the aforementioned reasons, the Court sets aside the impugned order dated 25th April, 2017 passed by the CAT, and quashes the charge-sheet dated 2nd September, 2015 issued to the Petitioner. The recommendations regarding the promotion of the Petitioner as PAO be now carried to their logical end, since they are no longer required to be kept in a sealed cover. The consequential orders be passed no later than eight weeks from today.

27. The petition is allowed in the above terms. The pending application is also disposed of. No costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 27, 2019

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