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

\+ **W.P.(C) 13015/2018 & CM APPL. 50510/2018 (additional documents), 50511/2018 (interim order)**

M.N. SHARMA ..... Petitioner
Through: Mr. Padma Kumar. S, Advocate

versus

GOVT OF NCT OF DELHI & ORS ..... Respondents
Through: Mrs. Avnish Ahlawat, SC, GNCTD (Services) with Mr. N.K.Singh, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **13.02.2020**

1. The present petition challenges the orders dated 14th August, 2018 and 10th October, 2018 of the Central Administrative Tribunal, Principal Bench ('CAT') in OA No. 1444/2018 and RA No. 100/195/2018, respectively.

2. This Court by its order dated 3rd December, 2018 limited the scope of the present petition to examining if the delay in issuance of the Memorandum of Charges ('MoC') dated 1st May, 2017 to the Petitioner resulted in the vitiation of the disciplinary proceedings:

> "The petitioner has preferred the present writ petition to assail the order dated 24.08.2018 passed by the Central Administrative Tribunal (CAT) in OA no.1444/2018 and order

dated 10.10.2018 in RA no. 195/2018.

2. The Tribunal had dismissed the OA preferred by the petitioner assailing the charge-sheet issued to him on 01.05.2017. The ground on which the same was assailed was that in respect of same incident, the petitioner was though initially convicted by the trial court in the case filed by CBI under the Prevention of Corruption Act, the appeal thereagainst was allowed by this Court on 08.10.2010 vide Criminal Appeal No. 813/2009. The petitioner states that despite the said acquittal in 2010, the charge-sheet was issued highly belatedly on 01.05.2017 without explaining the delay. The petitioner also contends that no charge-sheet could be issued on the same allegations for holding of departmental inquiry since the petitioner had already been acquitted by the Appellate Court.

3. As for the submission of the petitioner that no charge-sheet could be issued in respect of the same incident consequent upon the petitioner's acquittal in the criminal appeal, we do not find any merit in the same. A bare perusal of the judgment dated 08.10.2010 passed in criminal appeal no.813/2005 alongwith another connected appeal shows that the appellate court observed that though the circumstance gave rise to a suspicion that appellant Roshan Lal accepted the tainted money from the complainant, the suspicion by no means is substitute for proof. The appellate court observed that in absence of any definite evidence of acceptance of tainted money by the appellant Roshan Lal, the prosecution had failed to prove the recovery and acceptance of tainted money by the appellant Roshan Lal. Thus, the acquittal of the petitioner was premised on the benefit of doubt given to him by the Appellate Court.

4. On the aspect of the delay in issuance of the charge-sheet on 01.05.2017, the submission of the learned counsel for the petitioner is that the petitioner had brought the judgment of the Appellate Court to the notice of the respondents on 01.02.2011, while making a representation for revocation of his suspension. Reference is also made to the order dated 28.04.2011, whereby,

> the suspension of the petitioner was revoked with immediate effect without prejudice to the outcome of SLP, if any, filed by CBI. Thus, the submission is that the respondent was aware of the fact that the petitioner stood acquitted by this Court on 08.10.2010 and yet, the respondent did not issue the charge-sheet expeditiously. Limited to this aspect, issue notice. Learned counsel for the respondent accepts notice. Let the original record be produced before the Court and the reply be filed explaining the delay in issuance of the charge-sheet, within four weeks. In the meantime, departmental proceedings can go on, but, final order shall not be passed.
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> 5. Learned counsel for the petitioner shall provide the complete and proper paginated copy of the writ petition to the counsel for the respondent during the course of the day.
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> 6. List on 3rd May, 2019."

3. Pursuant to the above order, a counter affidavit was filed on 26th July, 2018 by the Respondents seeking to explain the delay in issuance issuing the charge sheet.

4. The facts relevant to this aspect, as set out in the counter affidavit of the Respondents, are that the DIG, Central Bureau of Investigation ('CBI') by the letters dated 18th and 21st December, 1998 requested for grant of prosecution sanction in respect of the Petitioner, who was then serving as Sub-Registrar, Adhoc, DANICS and Roshan Lal, a Peon in the office of the Sub-Registrar at Rampura in connection with CBI case RC No. 47(A/98)/DLI. The said RC related to an alleged demand of a bribe of Rs. 6500/- by the Petitioner, which was later reduced to Rs. 6000/- and was accepted through Roshan Lal from one Vijay Kumar as illegal gratification

for registering certain documents. The Chief Secretary, Delhi granted sanction for prosecution on 24th December, 1998.

5. The Petitioner was placed under deemed suspension with effect from 28th August, 1998 by an order dated 14th September, 1998. Subsequently, by an order dated 14th May, 2002 the Chief Secretary revoked the suspension of the Petitioner.

6. By a judgment dated 28th September, 2005, the Special Judge, CBI convicted the Petitioner for the offences under Section 120 B IPC read with Sections 7, 13 (2) and 13(1)(d) of the Prevention of Corruption Act, 1988 ('PCA'). On 30th September, 2005, the Petitioner was sentenced to undergo Rigorous Imprisonment ('RI') for one year and a fine of Rs.1000/- for the offence under Section 120 B read with Sections 7, 13 (2) and 13(1) (d) of the PCA and in default of payment of fine to undergo Simple Imprisonment ('SI') for three months. The sentence to RI for one year and fine of Rs.2000/- for the offence under Section 7 of the PC Act and in default of payment of fine to undergo SI for two months. He was sentenced to undergo RI for two years and pay a fine of Rs.2000 for the offence under Section Sections 7, (13)(2) and 13(1) (d) of the PCA and in default of payment of fine to undergo SI for two months.

7. On receipt of the above judgment of the Trial Court, the Chief Secretary, Delhi issued a Show Cause Notice ('SCN') dated 16th November, 2005 to the Petitioner, seeking his explanation on why he should not be dismissed from service in view of his conviction of the criminal case. He was also

placed under deemed suspension with effect from the date of his conviction i.e. 28th September, 2005. Subsequently, the suspension came to be revoked by an order dated 28th April, 2011.

8. By a letter dated 10th February, 2006 the Petitioner furnished the Respondents with a copy of the order dated 3rd February, 2006 in Crl.M (B) No.107/2006 in Crl.A.No.813/2005, suspending the conviction of the Petitioner till the disposal of his appeal against the judgment of the CBI Court and also directing the Respondents to not give effect to the MoC dated 16th November, 2005, subject to the condition that the Petitioner would continue to be under suspension till the disposal of his appeal by the Court and no request for his reinstatement shall be entertained by the Respondent.

9. Subsequently, by his representation dated 26th October, 2010 the Petitioner informed the Respondents of his acquittal by the High Court by its judgment dated 8th October, 2010 in the aforesaid appeal Crl. A. No. 813/2005. A copy of the said letter, enclosed with the counter affidavit, shows that the Office of the Chief Secretary had received the letter on following date i.e. 27th October, 2010. It is seen that the said letter enclosed a copy of the judgment dated 8th October, 2010. Incidentally, the appeals of both the Petitioner and Roshan Lal were allowed by this Court.

10. What is, therefore, clear is that from 27th October, 2010 onwards the Respondent was aware of the judgment of this Court acquitting the Petitioner. By a separate letter dated 17th January, 2011 of the CBI, which was also sent to the Petitioner, the Respondents were informed of the

Petitioner's acquittal by the High Court by its judgment dated 8th October, 2010. The CBI further informed the Respondents that it intended to file a Special Leave Petition ('SLP') against the High Court's judgment. By this time, over three months had lapsed since the Respondents became aware of the judgment of this Court acquitting the Petitioner.

11. Four months later, on 11th May, 2011 the CBI informed the Respondents that it was still "in the process of filing SLP". By this time, eight months had lapsed.

12. It is clear from a perusal of the counter affidavit that it is completely silent on what steps were taken by the Respondents to obtain information on whether the CBI had actually filed an SLP in the Supreme Court. It appears that it was only on 17th June, 2014 i.e. more than 3 years thereafter, that a letter was written by the Directorate of Vigilance ('DoV') of the Government of NCT of Delhi ('GNCTD') inquiring about the fate of the SLP, in response to which the CBI by its letter dated 11th July, 2014 stated that the said SLP was still pending.

13. On 17th November 2014, the Petitioner wrote to the Director, DoV enclosing a copy of the order dated 5th November, 2014 passed by the Supreme Court dismissing SLP (Crl) Nos. 733-734/2012.

14. The DoV sat on this letter for nearly three months. It was only on 3rd February, 2015 that the DoV again wrote to the CBI seeking confirmation of the status of the SLP. By a letter dated 23rd March, 2015 the CBI informed

the DoV that it intended to file a review petition before the Supreme Court.

15. Again the DoV did not follow up on the matter. Seven months later the Petitioner by a letter dated 4th September, 2015 informed the Respondents that Review Petition No. 478/2015 had also been dismissed by the Supreme Court by its order dated 25th August, 2015. It is only on 24th May, 2016, nine months after the dismissal of the Review Petition by the Supreme Court that the CBI informed the DoV of the dismissal of the Review Petition and the decision of the competent authority in the CBI to allow the matter to rest. It was only now that the CBI informed the DOV that it could "take action as deemed fit" at its end against the Petitioner.

16. Following this, the opinion of the Law Department, GNCTD was sought, which tendered its opinion dated 3rd August, 2016. The Assistant Legal Advisor, opined that the Petitioner's acquittal was on merits and that on the strength of the legal position, there could be no doubt that the "initiation of disciplinary proceedings after acquittal in the criminal case, on the same set of evidence, held to be bad by the courts".

17. It appears from the copy of the notes on the file enclosed with the counter affidavit that the Chief Secretary on 28th March, 2017 gave approval for initiating the Regular Departmental Action ('RDA') against the Petitioner in the form of major penalty proceedings. There were further delays. Ultimately, on 1st May, 2017 the charge sheet came to be issued against the Petitioner.

18. Enclosed with the MoC dated 1st May, 2017 is the statement of Article of Charge which is about his having demanded and accepted illegal gratification through his subordinate, from a private person for registration of some documents. The statement of imputation of charges entirely pertains to the case before the CBI. There is no mention of the fact that the CBI Court convicted the Petitioner, which conviction was set aside by the High Court and which decision of the High Court was affirmed by the Supreme Court. There is also of course no mention of the Supreme Court rejection of the CBI's SLP against this Court's judgment, as also the dismissal by the Supreme Court of CBI's Review Petition against said order of rejection of the SLP. The list of documents relied upon, which has been set out in "Annexure-III" to the MoC comprises entirely of all the documents that formed part of the record in the criminal case before the CBI. Even the witnesses cited appear to be the same as those cited by the CBI.

19. Since notice in the present petition has been issued, limited to the question of delay, the Court has carefully examined the counter affidavit, wherein the only explanation given for the delay is in para 5, which reads as under:

> "5...there was no intentional delay in issuance of the charge-sheet to the petitioner, the department was awaiting the outcome of the appeal and Review filed by the CBI before the Hon'ble Supreme Court of India, against the order of this Hon'ble Court in Criminal Appeal and immediately after dismissal of SLP and Review Petition the competent authority issued charge-sheet to the Petitioner."

20. From the detailed chronological narration of events, as is clear from the

counter affidavit of the Respondents, the claim by the Respondents that the Competent Authority issued the MoC "immediately after dismissal of SLP in review petition" is not true. As noticed hereinbefore, the SLP was dismissed on 5th November, 2014, which information was made available to the Respondents on 17th November, 2014 along with a copy of the order. The review petition was dismissed on 25th August, 2015, a copy of which was provided by the Petitioner to the Respondents by his letter dated 4th September, 2015. By no means can it be said that the MoC issued on 1st May, 2017 was "immediately" after the above orders came to be passed.

21. There is no explanation given by the Respondents on why they were awaiting the outcome of the CBI's SLP and the Review filed thereafter by the CBI if, in any event, the RDA could have been initiated in law, notwithstanding the acquittal by the High Court. In other words, if according to the Respondents, the acquittal by the High Court was only on technical grounds and if the law permitted an RDA to be initiated, notwithstanding such acquittal, there was no need to await the outcome of the CBI's SLP. It is now settled law that an RDA does not have to hinge upon the outcome of the criminal proceedings.

22. It may be noticed here that while the earlier proposed action of dismissing the Petitioner was effectively stayed by the High Court by its order dated 3rd February 2006, that order was not questioned by the Respondents. At the same time, in view of the said order the Respondents could not have initiated any RDA till the conclusion of the appeal in the High Court. That bar on initiating the RDA got lifted, however, when the

High Court allowed the Petitioner's appeal on 8th October, 2010. If one were to compute the period thereafter, certainly the delay in initiating the RDA was extraordinary and unjustified.

23. The Court is conscious of the fact that the Petitioner has in the meanwhile superannuated. Mrs. Avnish Ahlawat, learned counsel for the Respondents relied on the decision of the Supreme Court in ***Government of Andhra Pradesh v. Appala Swamy 2007 (3) SCALE 1*** where it was observed that no hard and fast rule could be laid down in respect of the inquiries where delay has occurred. Each case had to be determined on its own facts. The principles upon which the proceedings could be directed to be quashed on the ground of delay were: (1) where due to the delay, the employer condoned the lapses on the part of the employee and (2) where the delay caused prejudice to the employee.

24. There can be no manner of doubt that the delay has caused immense prejudice to the Petitioner. Even 20 years after the alleged incident he has been unable to get back in service, despite his acquittal by the High Court in 2010 itself.

25. Reference has also been made by the Respondents to the decision in ***State of A.P v. N.Radhakishan (1998) 4 SCC 154*** which more or less reiterates the same principles. The following passage of the said decision succinctly explains the legal position:

> "It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay

in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated, each case has to be examined on the facts and circumstances in that case. **The essence of the matter is that the court has to take into consideration all the relevant factors and balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay, particularly when the delay is abnormal and there is no explanation for the delay**. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings, the court has to consider the nature of charge, its complexity and on what account the delay has occurred. **If the delay is unexplained, prejudice to the delinquent employee is writ large on the face of it**. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path, he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations." (emphasis supplied)

26. On the facts of the present case, it is plain that there would be grave prejudice to the Petitioner if more than 20 years after the alleged incident and more than 10 years after his acquittal, the Respondents were to be permitted to initiate the RDA against him, with there being no satisfactory

explanation for the delay in initiating such RDA.

27. The impugned order of the CAT proceeds on the basis that the judgment of acquittal passed by the High Court on 8th October, 2010 "was not within the knowledge of the Respondents, but it was only within the knowledge of the Applicant". This on the face of the record is erroneous. The Respondent themselves have in the counter affidavit to the present petition acknowledged the fact that the Petitioner made available a copy of the judgment dated 8th October, 2010 of the High Court, acquitting him along with his letter dated 26th October, 2010. Therefore, the impugned order of the CAT in this regard is unsustainable in law.

28. For all the aforesaid reasons, the MoC dated 1st May, 2017 is quashed on the ground of unexplained and inordinate delay in issuing it. Consequently, all further proceedings pursuant to the said MoC also stand quashed. The impugned orders of the CAT dated 14th August, 2018 and 10th October, 2018 are set aside. The consequential orders giving effect to this judgment shall be issued by the Respondents within a period of 12 weeks from today.

29. The petition is allowed in the above terms. The pending applications are also disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

FEBRUARY 13, 2020/mw