

IN THE HIGH COURT AT CALCUTTA

APPELLATE SIDE

BEFORE:

The Hon'ble Mr. Justice Soumen Sen

The Hon'ble Mr. Justice Hiranmay Bhattacharyya

WPST 8 of 2021

State of West Bengal & Ors.

Vs.

Dr. Tuhin Chakraborty

For the State	: Mr. Kishore Datta, Advocate General Mr. T.M. Siddiqui, Advocate Mr. Nilotpal Chatterjee, Advocate
For the Respondent	: Mr. Sandip Ghose, Advocate Mr. Debayan Ghosh, Advocate
Hearing concluded on	: 24 th August, 2021
Judgment on	: 8 th September, 2021

Soumen Sen, J.: The writ petition is arising out of an order passed by the West Bengal Administrative Tribunal on 28th November, 2019 in connection with the application filed by Dr. Tuhin Chakraborty in which he had prayed for quashing of the memo of charges followed by the Article of charges issued under the memo no. 757-VIG/CON-14/14 dated 19th May, 2014 and had sought necessary directions upon the said petitioners not to proceed with the purported disciplinary action contemplated against him in pursuance of the aforesaid memorandum of charges.

The learned tribunal allowed the original application by quashing the memorandum of charges on the ground that there has been inordinate delay in issuing the memorandum of charges for which no satisfactory explanation

was offered. The respondents were aware of irregularities if any regarding non-refunding of the advance received by him almost fourteen years ago while he was working at Padmaja Naidu Himalayan Zoological Park at Darjeeling (in short 'PNHZ Park') but did not feel that it was necessary to initiate any proceeding against him. This order is under challenge.

Shorn of details, the respondent while was working at PNHZ Park at Darjeeling wanted to participate in a training programme in endoscopy of exotic birds commencing from 27th September to 2nd October, 1998 scheduled to be held in Stadt Bern, Switzerland.

The authority concerned at Berne accepted the request for the training course in endoscopy of exotic birds and requested him to attend the course between the aforesaid period. Since he was working for a zoo the course fee was waived off and it was notified that he would be provided with a guest room. However, other expenses were notified to be borne by the respondent. In order to participate in the said training programme the respondent obtained an approved advance of Rs.55,000/- only as travelling allowance from the office of the then Director of PNHZ Park, Darjeeling and, after returning from training he further claimed Rs.8240/- as tour expenses and such amount was disbursed in favour of the respondent.

The Director of the said PNHZ Park at Darjeeling vide his letter dated June 22, 1999 had asked the respondent to pay back the entire sum of Rs. 63,240/- failing which such amount received as advance would be recovered from the pay bill of the respondent from July, 1999 onwards.

The authorities on 3rd November, 1999 confirmed the recovery of Rs. 50,449/- out of Rs. 55,000/- taken as advance from the salary of the respondent from June, 1999 onwards as would appear from the letter dated 3rd November, 1999, relevant portions whereof is stated below:

“.....However the T.A. Advance of Rs. 55,000/- (Rupees fifty-five thousand) which you had already been taken during tour to Switzerland on 03.08.1999 has been recovered from your salary from June, 99 onwards in the following manner.

- 1. Salary for June, 99 – Rs.15,021.00*
- 2. Salary for July/August, 99- Rs.19,180.00*
- 3. Salary for September/October, 99- Rs. 16, 248*

Total Rs. 50,449

Out of Rs. 55,000/- Rs. 50,449/- has been recovered from the salary bill and the balance amount will be recovered from the salary bill of November, 1999 onwards along with the T.A. advance Rs. 12,000/- which you have taken for your tour.....”

The respondent was released from the post of Deputy Director of the said Zoo on 1st March, 2000 and joined his parent department i.e. Animals Resources Development Department as Assistant Superintendent of Livestock.

On or about January 31, 2014 the District Vigilance Officer, Darjeeling vide Memo. No. 76/VIG dt. January 31, 2014, inter alia, requested the Joint Director, ARD Department, Institute of Animal Health of Veterinary Biologicals to hold an enquiry against the respondent in pursuance of allegations made by the Anti-Corruption Unit, Darjeeling under the Anti-Corruption Bureau of State Vigilance Commission, West Bengal.

The Secretary of the Government of West Bengal ARD Department as a Disciplinary Authority under Rule 9 of the WBS (CCA) Rules, 1971 issued a Memorandum of Charges vide Memo dated May 19, 2014 stating that the Governor has proposed to hold an enquiry under Rule 10 of the West Bengal Services (Classification Control and Appeal) Rules, 1971 against the respondent for failure to refund the aforesaid sum.

Two Articles of charges have been framed against the respondent.

The principle charge against the respondent was that he obtained travelling allowance to the tune of Rs.63, 240/- to which he was not entitled and in spite of repeated requests Dr. Chakraborty have never refunded the said allowances. He was not entitled to the aforesaid allowances as it transpired from the letter of the Director of Tierpark, Dählholzli, Bern, Switzerland dated 21st June, 1998 that the course and the accommodation was free of charge, but the trainees were required to bear their own expenses of air fare and insurances charges.

Dr. Tuhin Chakraborty had claimed that the entire amount had been recovered from his salary and enclosed a copy of Memo no. 1174/EASTAB/FILE/PNHZP dated 3rd November, 1999 of Director, PNHZ Park, Darjeeling in support of his claim. However, deduction of TA from his salary could not be corroborated from the records of department. It was thus held that the aforesaid conduct showed lack of integrity and was thereby improper and unbecoming of Government servant and as such is

violative of the provisions of Rule 3(2) of West Bengal Services (Duties, Rights and Obligation of the Govt. Employees) Rules, 1980.

Dr. Chakraborty replied to the said show cause in which he had specifically stated that there has been inordinate delay in issuing the charge sheet and the charges levelled against him were stale and liable to be dropped. In the said letter he had also complained about photocopies of some illegible documents shown earlier to him along with purported charge sheet. It had been categorically stated that as per direction of the then director of PNHZ Park, Darjeeling in the letter dated 22nd June, 1999, the advance taken by him was fully recovered from his salary. He relied upon and referred to his last pay certificate and the letter dated 3rd November, 1999, to prove his innocence and accordingly submitted that no disciplinary proceeding could have been initiated against him. The initiation of the proceedings was only to harass him and to victimize him.

He also referred to an incident which happened in 2000 when the then Director of PNHZ Park, Darjeeling tried to victimize him and suspended him from service, which however, was set aside by the West Bengal Administrative Tribunal on 6th June, 2000 pursuant to which he was released from PNHZ Park and thereupon joined the parent organisation. On the basis of the order dated 6th June, 2000 by the learned Tribunal his arrear salary was also released. The respondent had received certificate from the Director of Tierpark in which it was stated that Dr. Chakraborty impressed the director with his intensive interest and surgical experience and the director had observed that he had not come across someone

learning the skill so quickly in such a short time. It was further stated that, Dr. Chakraborty now could perform any kind of endoscopic examination in rare and exotic birds.

The writ petitioners have challenged the order of the tribunal on the ground that the learned Tribunal has applied the wrong test and overlooked decisions of the Apex Court which clearly stated that mere delay in initiating disciplinary proceeding does not necessarily result in quashing of the memo of charges.

Mr. Advocate General submits that although the authorities concerned had failed to detect non-refund of the amount advanced to Dr. Chakraborty contemporaneously or earlier to 31st June, 2014, the fact remains that he had taken the said advance to which he was not entitled to and failed to refund the said amount which prima facie showed his lack of integrity and, if the disciplinary proceedings were not allowed, it would send a wrong signal. Moreover no prejudice would be caused in the event the proceeding is allowed to continue, as in the said proceeding it would be open for the respondents to prove his innocence. Mr. Advocate General submits that the reliance of the learned tribunal on ***State of Madhya Pradesh vs. Bani Singh***, reported at **AIR 1990 SC 1308** and ***I.P.V. Mahadevan vs. M.D. Tamil Nadu Housing Board***, reported at **AIR 2006 SC 2007** to grant relief to Dr. Chakraborty was on wrong appreciation of law.

Mr. Advocate General has referred to few decisions in which ***Bani Singh*** (supra) was noticed and distinguished to submit that the ratio

decidendi of the said decisions were to be understood and applied depending on the facts and circumstances of the case and does not have universal application. The decisions are:

- (i) ***Food Corporation of India and Ors. vs. V.P. Bhatia*** reported at (1998) 9 SCC 131,
- (ii) ***Md. Harul Al Rashid vs. Union of India*** reported at AIR 2015 Cal 49 (FB),
- (iii) ***Anant R. Kulkarni vs. Y.P. Education Society & Ors.***, reported at (2013) 6 SCC 515,
- (iv) ***Chairman, Life Insurance Corporation of India vs. A. Masilmani*** reported at (2013) 6 SCC 530,
- (v) ***Secretary to Govt. Prohibition vs. L. Srinivasan*** reported at (1996) 3 SCC 57.

It is submitted that the aforesaid decisions have clearly laid down that delay in all the cases does not automatically result in quashing of the charge sheet and the disciplinary proceeding must be allowed to be taken to its logical end. It is further submitted that the charge sheet does not give rise to any cause of action as issuance of the charge sheet does not infringe the right of the writ petitioner. It is submitted that it is only when final order imposing the punishment or otherwise adversely affecting the party, is passed it may have a grievance and cause of action.

Mr. Advocate General, however, has fairly submitted that the entire amount has been recovered from the salary of the respondent before the initiation of the disciplinary proceeding.

The learned Counsel for the respondents submits that there was no explanation offered for initiating the proceeding for alleged non-refund of the

amount taken as advance before the respondent left for Switzerland. In fact, the amount was advanced by the director of PNHZ Park, Darjeeling after he had received the letter from Switzerland dated 21st June, 1998. The Director at the relevant time felt that the respondent would be entitled to such advance. The learned Counsel has drawn our attention to last pay slip as well as the service record that were produced before the tribunal to show that the entire amount has been realised from the salary of the respondent in terms of the letter of the director dated 3rd November, 1999. It is submitted that the respondent did not suppress any fact and since the issue of refund arose after he had agreed to the said amount being realised from his monthly salary as directed by the authorities concerned and had refunded the amount, it cannot be said that he had committed any misconduct. The authorities did not find the advance amount to have been dishonestly obtained and thereby a misconduct. No ill motive could be imputed to the respondent.

In view of the fact that the writ petitioners have fully recovered the said amount no further demand was raised against the respondent contemporaneously and he was released from PNHZ Park in March, 2000. The pay slip, service book and the last pay certificate established realisation of the entire amount. In fact, the Director of Animal Husbandry, by a letter dated 4th May, 2000, requested the Director PNHZ Park to release arrear salary and forward last pay certificate and other documents so as to enable the office to fix the pay and allowances of the respondent. It was on the basis of documents forwarded subsequently by the PNHZ Park the pay and

allowances were fixed by the parent organisation. The respondent had filed the service book, last pay certificate, vigilance file and acquaintance roll in the Tribunal on 26th June, 2019, in the terms of the order of the Tribunal dated 23rd April, 2019, and on consideration of all these record the learned Tribunal quashed in the charge-sheet.

After fourteen years of his release from PNHZ Park, now the issue of non-refund of advance has been raised and it would be impossible for the respondent now to prove his innocence. Moreover, the respondent submits that the record speaks for itself. When the facts are admitted that entire amount has been realised, the initiation of disciplinary proceeding after fourteen years is clearly mala fide, harsh and unfair. It is submitted that in the facts and circumstances of the case the decisions relied upon by the respondent in the tribunal, namely, **Bani Singh** (supra) and **P. V. Mahadevan** (supra) are relevant and have been correctly relied upon by the learned Tribunal.

The learned Counsel has also relied upon the following decisions for the proposition that if the initiation of disciplinary proceeding is unduly delayed and the charges are not grave and serious, the memo of charges can be quashed:

State of Madhya Pradesh vs. Bani Singh, reported at **AIR 1990 SC 1308** and **I.P.V. Mahadevan vs. M.D. Tamil Nadu Housing Board** reported at **AIR 2006 SC 2007**

In the instant case, the writ petitioners were aware of the irregularity of non-refunding the aforesaid amount, if any, almost fourteen years ago, however, there is no explanation offered, far less any satisfactory explanation for the inordinate delay for issuing the charge memo. Moreover, the documents produced before the tribunal and forming part of the record would unmistakably show that the writ petitioner was released by PNHZ Park after making all adjustments and, in any event the pay slips and last pay certificate produced before the learned Tribunal during hearing of the original application does not show that any amount was recoverable from the respondent by the PNHZ Park before or during the period he was relieved by the said organization. As rightly pointed out by the learned Counsel for the respondent, that pursuant to the letter of the Director of Animal Husbandry dated 4th May, 2000, requesting the Director of PNHZ Park to release arrear salary and forward last pay certificate and other documents so as to enable the parent organization to fix the pay and allowance of the respondent, the parent organization fixed the pay and allowance upon receipt of such document. The service book, last pay certificate, vigilance file and acquittance roll filed in the tribunal on 26th June, 2019, does not show that any amount was recoverable from the respondent. If now after fourteen years of his release from PNHZ Park issue of refund is raised it would cause serious prejudice to the respondent, as the initial onus of discharge of debt is proved as the amount of advance has been fully recovered from the respondents. The record of the organization clearly speaks that the debt is discharged.

The learned Tribunal has relied upon **Bani Singh** (supra) for quashing the charge sheet. In **Bani Singh** (supra) the irregularities which were the subject matter of the enquiry was said to have taken place between the years 1975-77. Bani Singh was an IPS officer of Madhya Pradesh Cadre and direct recruit of the 1976 batch. The department did not contend that they were not aware of the irregularities if any, and came to know it only in 1987. According to them even in 1987 there was a doubt of the involvement of the officer for the said irregularities and the investigation was going on. It was on such facts the Hon'ble Supreme Court observed:

“4. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's order and accordingly we dismiss this appeal.”

In the instant case, the facts are almost similar to **Bani Singh** (supra) and from the narration of facts it would appear that the Director of PNHZ Park, Darjeeling had noticed the irregularities if any, and did not think it was necessary to initiate disciplinary proceedings for such alleged irregularities. The irregularities, if any, with regard to the advance taken by the respondent towards the training programme, came to the knowledge of the Director of PNHZ Park in June, 1999, and, thereafter on consideration of all materials on record the Director decided to deduct the said sum of Rs.55,000/- advance taken as travelling allowance from the salary of the respondent and the fact that the said amount was deducted would be borne

out from the letter dated 3rd November, 1999, read with other documents discussed above and produced before the learned Tribunal as well as before us. The entire matter was closed before he was transferred to his parent organization fourteen years ago, without any charge of misappropriation or dishonesty or lack of integrity. The proceeding was initiated after unreasonable and inexplicable delay to enquire into charges which have become stale by the passage of time. It would cause unbearable mental agony and distress to the respondent.

Mr. Advocate General was correct in submitting that disciplinary proceedings cannot be quashed merely on the ground of delay.

However, in deciding whether the Court should exercise its power to quash the disciplinary proceedings, the nature of charges, the circumstances surrounding the delay and, the conduct of the parties are relevant considerations. The court in such a situation is required to arrive at a conclusion that the circumstances are such that it would not be in interest of justice to quash the proceeding.

The law on this point may be summarized in the manner following:

- (i) The charge sheet or show-cause notice cannot ordinarily be quashed by the court merely on the ground of delay.
- (ii) The court is required to examine the facts and circumstances of each case by taking into consideration the seriousness, gravity and magnitude of the charges involved therein.
- (iii) In cases relating to embezzlement and fabrication of false record which are usually done secretly, the court has to take into

consideration in a judicial review that in such cases, even if, the time is too long to detect such offences, it is not desirable to quash the charge sheet, the reason being that, it is not easy to detect those offences and the offender would always try to keep the information secret and, in the process it is likely to take time to detect embezzlement and fabrication of record.

- (iv) Even a single act of misconduct, if found to be of grievous nature, having regard to its quality, insidious effect and gravity of situation in the attendant circumstances, may be a factor where some delay in initiation of disciplinary proceeding may not be considered as fatal.
- (v) The nature of charges, circumstances surrounding the delay and conduct of the parties may be such that it would not be in the interest of justice to quash the proceedings.
- (vi) Delayed initiation, irrespective of the length of delay, if likely to cause prejudice to the delinquent in the form of non-availability of witness and documents.

The aforesaid considerations are only illustrative and not exhaustive.

The court needs to weigh the nature and gravity of the charges, circumstances surrounding the delay, conduct of the parties and all relevant factors involved in the case, both for and against the delinquent employees and, must reach the conclusion which is just and proper in the circumstances. Gravity of alleged misconduct is one of the relevant factors which is to be taken into consideration while quashing the proceeding.

The court is to take into consideration all the relevant factors and to balance and weigh them to determine, if it is in the interest of a 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 such delay.

It is in the interest of justice that disciplinary proceedings must be conducted soon after the irregularities are committed or soon after discovering irregularities. In the instant case, the irregularities, if any, happened during 1998-99 and, the writ petitioners were aware of such alleged irregularities. However, they did not consider it necessary to initiate any disciplinary proceeding. They did not consider it to be a misconduct. On the contrary they felt that recovery of the advance amount under the circumstances would suffice and could be recovered from the monthly salary of the respondent and the said amounts were, in fact, realized.

Disciplinary proceeding cannot be initiated after lapse of considerable time as it would not be fair to the officer. As such delay also makes the task of proving the charges difficult, and is thus, also not in interest of administration. Delayed initiation of proceeding is bound to give room for allegations of bias, mala fide and misuse of power. If the delay is too long and is unexplained the court may well interfere and quash the charges. However, how long the delay may be considered to be too long always depends upon the facts of the case and if it appears that such delay is likely to cause prejudice to the delinquent officer in defending himself, the

enquiry has to be interdicted. (See. **State of Punjab vs. Chaman Goyal** reported at **1995 (2) SCC 570** paragraph 9 and **Food Corporation of India vs. V.P. Bhatia**, reported at **1998 (9) SCC 131** paragraph 4)

The learned Tribunal in the present instance quashed the charge sheet upon noticing **Bani Singh** (*supra*) with the following observation:

“The aforesaid principal (sic) was followed by the Hon’ble Apex Court in all other cases including us on different occasions. In the instant case, the respondents are also aware of any irregularities of non-refunding the aforesaid amount if any, long 14 years ago, however they have no explanation for such delay in issuance of charge sheet. Therefore in our considered view, the applicant is entitled to get the benefit of the aforesaid judgments, as in our considered opinion, the charge sheet is hopelessly barred by delay and latches on the part of respondents.

Hence the charge sheet dated 19-05-2014 is set aside and quashed. Accordingly the OA is disposed of with the above observations with no order as to cost.”

The principles laid down in **Bani Singh** (*supra*) were followed in many decisions including **M. V. Bijlani v. Union of India & Ors.**, reported at **2006 (5) SCC 88**, where disciplinary proceeding was initiated five years after the appellant handed over charge. At that time he admittedly was not in possession of any document which could be utilized to prove his innocence.

Applying the aforesaid principles and taking into consideration that the initiation of departmental proceeding or a protracted disciplinary enquiry against an government employee should be avoided not only in the interest of the Government employee, but in the public interest and also in the interests of inspiring confidence in the minds of the Government employee,

we are of the view that initiation of the disciplinary proceedings after fourteen years was improper and in absence of any explanation far less satisfactory for such inordinate delay, the tribunal was justified in allowing the original application. There was no acceptable explanation on the side of the writ petitioners explaining the inordinate delay in initiating disciplinary proceeding. If the present petition is allowed, it would be prejudicial and detrimental to the interest of the respondent against whom no ill motive is imputed. The respondent is going to retire soon.

On such consideration we do not find any reason to interfere with the order of the learned tribunal.

The writ petition fails.

However, there shall be no order as to costs.

(Soumen Sen, J.)

I agree

(Hiranmay Bhattacharyya, J.)