

Item-4 10-09-2021

WP.CT 41 of 2021

Alak De Ray
Versus
Union of India & Anr.

sg

(Through Video Conference)

Ct. 16

Mr. Debabrata Saha Roy, Adv.
Mr. Neil Basu, Adv.
...for the petitioner

Mr. Anuran Samanta, Adv.
...for UOI

The writ petition is directed against an order dated 6th April, 2021 passed by the learned Central Administrative Tribunal, Kolkata Bench, in a proceeding arising out of a charge memo dated 11th March, 2010 issued by the Divisional Operations Manager/SDAH, Eastern Railway, Sealdah.

The disciplinary proceeding has been initiated against the applicant on 28th December, 2005 for alleged misconduct mentioned in the article of charges. The charge-sheet was issued in June 2005. The applicant replied to the said charge-sheet. However, the said charge-sheet dated 28th December, 2005 was withdrawn in the midst of the departmental proceeding and after withdrawal of the first charge-sheet, a second charge memo was issued on 5th/10th October, 2006 on the self same charges.

Challenging the legality and validity of the second charge-sheet, the writ petitioner preferred an original application being O.A. 756 of 2008. The learned Tribunal disposed of the said application with the observation that “at this stage, there is no

question of staying the enquiry proceeding nor it is permissible to quash the charge memo.” This order of the learned Tribunal was assailed in a writ petition being WP.CT No. 210 of 2008. The said writ petition was disposed of with the following observations:

“Learned advocate for the Railway Authority, however, submits that modification of the charge-sheet is permissible under the rule, we are not finding any such rule in the said rule itself. Since it is an admitted position that the Railway Authority has already amended the relevant rule and incorporated the same under Index no. 1033 of the Railway Manual, the same is binding to the Railway Officers, who initiated the departmental proceeding. It has not been done in the instant case, accordingly there is a mandatory breach and the impugned charge memo being the second charge memo on withdrawing the earlier charge memo is not legally sustainable due to the lack of sufficient reasons for issuing the fresh charge memo on withdrawing the earlier charge memo. It accordingly is set aside and quashed.”

In purported compliance of the order passed by the coordinate Bench, a third charge-sheet was issued on 11th March, 2010. This charge-sheet was challenged before the learned Tribunal on the ground that the charge memo does not specify the sufficient reasons for which the earlier charge memo was withdrawn and there is a requirement to issue a fresh charge memo. The learned Tribunal rejected the said application on the ground that there has been sufficient compliance with the direction passed by the earlier Division Bench and accordingly, dismissed the original application. In this proceeding, the said order has been challenged.

Mr. Debabrata Saha Ray, learned Counsel appearing on behalf of the petitioner submits that the proceeding before the

learned Tribunal was challenged on two-fold grounds, namely: (i) charges have been issued on stale charges and (ii) there has been non-compliance of the order passed by the coordinate Bench in disposing of the earlier writ petition.

In addressing the second issue first, it is found that the Divisional Operations Manager by a memo dated 11th March, 2010 withdrew the charge memoranda dated 26th December, 2005 and 30th August, 2006 and issued a fresh memo on identical charge, mentioning the cause of withdrawal of the earlier charge memo as under:

“The major penalty charge memorandum No. SDA/VIG/875 dated 26.12.05 and 30.08.06 are hereby withdrawn with a liberty to issue a fresh major penalty charge memorandum on identical charge.

The cause of withdrawal of the aforesaid charge memorandums are follows:

- 1. Signature of D.A. was not put in every annexure of memorandum.*
- 2. Violation of service conduct rule was put 1968 instead of 1966 due to typing mistake.*
- 3. So withdrawal charge sheet had been done without any prejudice for further DAR action against same charges.”*

Simultaneously, by the charge memo issued on the same date i.e. 11th March, 2010, the Divisional Operations Manager charged the applicant. The two documents are to be read as a whole to find out whether there has been substantial compliance of the order passed by the coordinate Bench. The earlier coordinate Bench while deciding the writ petition did not hold that the second charge-sheet issued was not permissible because it is based on

stale charges. However, it may be that the said issue was not decided being satisfied that there was no reason furnished by the authorities concerned in the second charge-sheet justifying the withdrawal of the first charge-sheet.

Mr. Saha Ray submits that it may be difficult at this stage for the writ petitioner to prove his innocence as the charge-sheet was issued initially after 10 years and thereafter, now almost after 15 years.

On the question whether a charge-sheet can be set aside on the ground of delay we have delivered a judgment on 8th September, 2021 in *State of West Bengal & Ors. vs. Dr. Tuhin Chakraborty (WP.ST 8 of 2021)* where we have made an attempt to summarize the law on this point in the following words:

“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 laches 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.*

It is needless to mention that the disciplinary authority shall take into consideration our aforesaid observations in finally deciding whether the said authority will continue with the disciplinary proceedings. Since full facts are not before us, it would be preposterous at this stage to come to a definite conclusion that it is likely to cause any prejudice to the writ petitioner in absence of any adequate information and pleadings. We feel that the disciplinary authority would be the proper authority to decide whether further action in this matter is to be taken after taking into consideration our observation in *Dr. Tuhin Chakraborty* (supra).

The writ petition is, accordingly, disposed of. However, there will be no order as to costs.

In the event, the disciplinary authority decide to continue further, the same shall be concluded without prejudice to the rights and contentions of the parties and within six months from the date of communication of this order.

All parties shall act on the basis of the server copy of this order duly downloaded from the official website of this Court.

(Hiranmay Bhattacharyya, J.)

(Soumen Sen, J.)