

IN THE HIGH COURT OF ORISSA AT CUTTACK
WPC(OAC) No.3033 of 2006

Ranjan Kumar Mohanty *Petitioner*
Mr. Sashibhusan Jena, Adv.

-versus-

State of Orissa and Ors. *Opposite Parties*
Mr. H.K. Panigrahi, ASC
(for SAT (Cuttack))

CORAM:
DR. JUSTICE S.K. PANIGRAHI

Order
No.
06.

ORDER
22.12.2022

1. This matter is taken up through hybrid mode.
2. The petitioner has filed this writ petition challenging the orders dated 18.04.2006, 19.04.2006, 20.04.2006 & 21.04.2006 passed by the Opposite Party No.2 i.e., Conservator of Forest, Bolangir Kenduleaf Circle in Annexure 4 to 7. The petition calls into question the action of Opposite Party No.2 in rejecting the four sets of appeal filed by the Petitioner in one day and the initiation of order of recovery of withheld vouchers as the same is in contravention to Rule 346(2) of the Orissa Forest Department Code.

I. FACTS OF THE CASE

3. Shorn of unnecessary details, the substratum of matter presented before this Court is that the Petitioner while working as Range Officer under the administrative control of the DFO Patnagarh Kenduleaf Division, had executed field operations in the range. While rendering monthly cash accounts, some objections were raised by the DFO following which the field payments that had been made were withheld by the DFO(KL) Patnagarh.
4. Aggrieved by the decision of the Opposite Party No.3, the Petitioner preferred four sets of appeal pertaining to his stint as Range Officer, Patnagarh (KL Range) from 1997-1999 before the Opposite Party No.2 in accordance with Rule 346 of the Orissa Forest Code, 1979 and prayed to change the entire amount by exonerating the Petitioner from any liability.
5. The four sets of appeal were filed in different spells (1st on 18.06.1997, 2nd on 07.11.1997, 3rd on 03.11.1998 and 4th on 21.01.2000) as against the total amount of Rs.11,751.10/-. While the matter stood, the Petitioner was transferred to Khariar Division where he was served with order dated 19.11.2005 for recovery of Rs.12,885/- (the disallowed amount). The said amount was ordered to be recovered from the salary of the Petitioner and was

pertaining to his incumbency as Range Officer, Patnagarh KL.

6. The Petitioner approached the Orissa Administrative Tribunal, Cuttack Bench in O.A No. 2427 (c) of 2005 with a prayer to quash the order of recovery as the same is not sustainable in the eyes of the law. The learned tribunal disposed of the case vide order dated 19.01.2006 with a direction to Opposite Party No.2 to dispose of the appeal within a period of 8 weeks and stayed the order of recovery.
7. Subsequently, the Opposite Party No.2 vide orders dated 18.04.2006, 19.04.2006, 20.04.2006 & 21.04.2006 decided the appeal and the order of recovery of amount for withheld vouchers was intimated to the Petitioner vide communication dated 22.11.2006. Hence, the Petitioner has sought for quashment of the order of recovery under Annexures-4-7.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER

8. It is submitted by Learned Counsel for the Petitioner that the decision on withheld vouchers should be taken within 3 months from the date of communication of the order failing which all withheld vouchers shall be incorporated in the accounts; however, the DFO and the

Conservator have not complied with this requirement under Rule 346 (2) of the Orissa Forest Code, 1979.

9. Furthermore, it is contended by Learned Counsel for the Petitioner that the DFO, Patnagarh KL Division deviated Rule 346 (2) of the Orissa Forest Code, 1979 and withheld the disallowed vouchers. The appeal relating to these vouchers were finally disposed of after a lapse of 8 years and therefore, the order of rejection and recovery under Annexure 4-7 is liable to be quashed in view of Rule 346 (2) of the Orissa Forest Code, 1979.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTY

10. Per Contra, it is submitted by Learned Counsel for the Opposite Parties that the Petitioner had not preferred appeal against the disallowed vouchers on time except for the month of Account 10/1996. Therefore, the submissions made by the Petitioner suffers from glaring infirmities and is liable to be rejected.

IV. COURT'S ANALYSIS AND REASONS

11. For better appreciation of issues at hand, Rule 346 of the Orissa Forest Department Code, 1979 is extracted hereinunder for convenience:

"(1) If a voucher is withheld, for incorporation in the Divisional Accounts on account of inaccuracies, or owing to suspicion of fraud, the explanation of the Range Officer and the officer who has disbursed the amount in the voucher should be obtained. The Divisional Forest Officer after due consideration of the explanation shall order about its incorporation in part or in full or he may order disallowing the vouchers. The disallowed amount shall then be recovered from the person disbursing the voucher. An appeal against the decision of the Divisional Forest Officer shall however be with the Conservator if this is preferred is within thirty days. The decision of the Conservator shall be final. In the event of a fraudulent voucher been disallowed in part or in full, further disciplinary action may also be taken.

(2) Decisions on withheld vouchers should be taken within 3 months, failing which all withheld vouchers shall be incorporated in the Accounts."

12. In the present case, insofar as the disallowed voucher for Month of A/c-01/1997 is concerned, the date of objection was 17.07.1997 and the compliance by R.O was on 16.08.1997. The voucher was disallowed by the DFO on 03.10.1997 and the appeal to the Conservator was made on 07.11.1997. According to Rule 346(1) of the Orissa Forest Code, 1979, an appeal to the Conservator should be made within 30 days if vouchers are disallowed by

the DFO. For Month of A/c-01/1997, the voucher was disallowed on 03.10.1997; however, the appeal to the conservator was made belatedly on 07.11.1997. According to Rule 346(1), the cause of action insofar as the appeal to the Conservator is concerned, arose on 03.10.1997 and should have been complied with before 03.11.1997.

13. For Month of A/C-02/1998, the date of objection was 03.11.1998; it was complied by the R.O on 18.11.1998; the vouchers were disallowed by the DFO on 03.11.1998 and the appeal to the Conservator was made on 31.01.1999. For Month of A/C-05/1998, the date of objection was 04.01.1999; it was complied by the RO on 13.01.1999; the vouchers were disallowed on 30.11.1999 and the appeal to the conservator was made on 24.01.2000. For month of A/C- 05/1998, the appeal to the Conservator should have been made on or before 30.12.1999 for the application of Rule 346(1). However, the appeal to the conservator had been made belatedly on 24.01.2000.

14. For Month of A/C- 12/1998, the date of objection was 01.05.1999; it was complied by the R.O on 30.07.1999; the vouchers were disallowed by the DFO on 30.11.1999 and the appeal to the Conservator was preferred on 24.01.2000. For Month of A/C- 12/1998 as well, the

requirements under Rule 346(1) were not fulfilled as the appeal to the Conservator was filed belatedly.

15. In the present case, there were laches and delay on the part of the Petitioner to file an appeal against the decision of DFO before the Conservator of Forest as the same was not done within 30 days as per Rule 346(1). However, the delay that has been caused by the Conservator to take decision on these withheld vouchers is far greater than the delay that the Petitioner has caused. It is because the Conservator vide order dated 26.08.2004 disposed of four sets of appeal pursuant to direction of the Tribunal. However, the final order was communicated to the Petitioner on 10.05.2006 & 16.05.2006 and the order of recovery was communicated on 22.11.2006. If Rule 346(2) is carefully perused, it provides that the decision on withheld vouchers should be taken within 3 months failing which the withheld vouchers shall be incorporated in the accounts. In the case at hand, the decision pertaining to withheld vouchers were taken after a period of 6-8 years. Therefore, it can be reasonably ascertained that the decision taken by the Conservator is contrary to Rule 346(2) of Orissa Forest Department Code, 1979. Even though the Petitioner has also contributed to the delay

as the appeal was not filed within 30 days, it cannot be used as a ground to perpetuate illegality by further delaying the matter for another 6-8 years.

16. The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the order of recovery 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 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 the 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 fact 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 his path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their 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 the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.

17. The sword of Damocles cannot be allowed to be kept hanging over the head of an employee and every employee is entitled to claim that the disciplinary inquiry should be completed against him within a reasonable time. Speedy trial is undoubtedly a part of reasonableness in every disciplinary inquiry. The decision of the Supreme Court in *Government of A.P. and Ors v. V. Appala Swamy*¹ dealt with the issue of delayed conclusion of disciplinary proceedings. What the Court laid down as law, on the issue under consideration before it, reads as follows:

“So far as the question of delay in concluding the departmental proceedings as against a

¹ Appeal (civil) 393 of 2007

delinquent officer is concerned, in our opinion, no hard-and-fast rule can be laid down therefor. Each case must be determined on its own facts. The principles upon which a proceeding can be directed to be quashed on the ground of delay are: (1) where by reason of the delay, the employer condoned the lapses on the part of the employee; (2) where the delay caused prejudice to the employee. Such a case of prejudice, however, is to be made out by the employee before the inquiry officer."

18. It is well-settled in law that the delay in concluding the domestic enquiry proceedings/disciplinary proceeding is not fatal to the proceedings. It depends on the facts and circumstances of each case. However, the unexplained protracted delay on the part of the employer can be one of the circumstances in not permitting the employer to continue with the disciplinary enquiry proceedings. Furthermore, in the case at hand, neither the DFO nor the Conservator has satisfactorily explained the delay in taking decision over the withheld vouchers. The decision in *V. Bijlani vs. Union of India*², also dealt with delay in initiation and conclusion of disciplinary proceedings. One of the grounds for the Supreme Court to interfere was that the Tribunal as also the High Court failed to take into consideration that

² (2006) 5 SCC 88

disciplinary proceedings were initiated after 6 (six) years and they continued for a period of 7 (seven) years and, thus, initiation of the disciplinary proceedings as also continuance thereof after such a long time evidently prejudiced the delinquent officer.

19. In *Anant R. Kulkarni vs. Y.P. Education Society*³, the Supreme Court observed:

“The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is dehors the limits of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show-cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by the court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question must be carefully examined taking into consideration the gravity/magnitude of the charges involved therein. The court has to consider the seriousness and magnitude of the charges and while doing so the court must weigh all the facts, both for and against the delinquent officers and come to the conclusion which is just and proper considering the circumstances involved. The essence of the

³ (2013) 6 SCC 515

matter is that the court must take into consideration all relevant facts, and balance and weigh the same, so as to determine, if it is in fact in the interest of clean and honest administration that the said proceedings are allowed to be terminated only on the ground of delay in their conclusion."

20. Beginning with the first aspect, there can be no quarrel with the proposition that whether or not disciplinary proceedings initiated or concluded after long delay should be interdicted, must depend on the facts of each case. Neither can there be predetermined principles applicable to all cases and in all situations where there is delay in initiating/concluding the disciplinary proceedings nor can there be any hard and fast rule in that regard. A recapitulation of the said events touching upon conclusion of proceedings against the Petitioner would reveal that the Petitioner was notified about the decision on the four sets of appeal on 26.08.2004 (pursuant to directions of the Tribunal); however, the final order pertaining to recovery of requisite amount was communicated on 22.11.2006. The Opposite Parties have neither placed any material on record to justify the delay in deciding the initial appeals nor have they explained the delay in communicating the final recovery

order after a lapse of 2 years. The entire sequence of events as noticed above leaves the Opposite Parties in very poor light as the delay in taking decisions over withheld vouchers is also contrary to Rule 346(2) of Orissa Forest Department Code, 1979. A similar stance was taken by the Orissa Administrative Tribunal in O.A No.1679 of 1997 wherein the Applicant was absolved from the liability of repaying the recovery amount as the decision on withheld vouchers was not taken within 3 months as per Rule 346(2).

21. Therefore, this Court is of the considered opinion that the reasons assigned while allowing O.A No. 1679 of 1997, as above, would squarely apply on facts and in the circumstances of the present case and that there being no valid and acceptable explanation for the delay of almost 6 (six) years in taking decision over withheld vouchers, it would be just and proper and in the interest of justice to set aside the final order dated 22.11.2006 issued by the Opposite Party No.4. The sum of Rs.1718/- that has already been recovered from the salary of the Petitioner be refunded back to him within a reasonable time preferably within a period of two months.

22. In the final evaluation, the Writ Petition is hereby allowed and accordingly disposed of. There shall be no order as to costs.

(*Dr. S.K. Panigrahi*)
Judge

B.Jhankar

