

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)(OA) No.2874 of 2018

Rama Chandra Naik

....

Petitioner

-versus-

State of Odisha & Anr.

....

Opposite Parties

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

08.12.2022

Order No

09.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.

2. The present writ petition has been filed with a prayer to quash the proceeding dtd.26.11.2001 initiated against the Petitioner vide Annexure-3 and with a further prayer to declare the period of suspension as duty.

3. It is the case of the Petitioner that because of his implication in five (5) nos. of Vigilance cases in Keonjhar Vigilance P.S. Case No. 36 of 2001 to 40 of 2001, a proceeding was initiated against him on 28.11.2001 under Annexure-3 with the following article of charges:-

“i) Abuse of official position in accepting illegal gratification on demand.

ii) Violation of Rule-3 of Orissa Govt. Servant Consuder Rule, 1959.

iii) Breach of trust in discharging Govt. duty.

iv) Misconduct.”

3.1. Though the proceeding was initiated because of the implication of the Petitioner in the Vigilance cases, but the Petitioner was honorably acquitted in all the Vigilance Cases vide Judgment dtd.06.03.2017. It is also contended that seeking leave to appeal against the said order of acquittal though the State approached this Court in CRLLP No. 17/2015 and CRLLP No. 51 of 2015, but this Court vide order dtd.06.03.2017 dismissed the application in CRLLP No. 17 of 2015 and CRLLP No. 51 of 2015 is yet to be listed. Accordingly, the order of acquittal passed against the Petitioner has attained finality in the eye of law. Even after his acquittal in the criminal proceedings and the order of this Court denying leave to prefer any appeal in CRLLP No 17 of 2015, the proceeding in question was never finalized. Only vide order dtd.28.12.2020 the Disciplinary Authority has appointed the Enquiry Officer and the Marshalling Officer to conduct the inquiry.

3.2. It is contended that in the proceeding initiated in the year 2001 the order of appointment of the Enquiry Officer and Marshalling Officer is made in the year 2020. It is also contended that because of his acquittal in the Criminal Proceeding the Authority concerned should have dropped the proceeding and in support of the aforesaid submission Mr. Rath, learned counsel for the Petitioner relied on a decision of the Hon'ble Apex Court reported in **AIR 2001 SC 343 (State of Punjab Vs. V.K. Khanna & Ors.)** Hon'ble Apex Court in Para 37 of the said Judgment has held as follows:-

“37. While it is true that justifiability of the charges at this stage of initiating at disciplinary proceeding cannot possibly be delved into by any court pending inquiry but it is equally well settled that in the event there is an element of male or malafide, motive involved in the matter of issue of a charge-sheet or the

concerned authority is so biased that the inquiry would be a mere farcical show and the conclusions are well known then and in that event law courts are otherwise justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a public official. It is not a question of shielding any misdeed that the Court would be anxious, it is the due process of law which should permeate in the society and in the event of there being any affectation of such process of law that law courts ought to rise up to the occasion and the High Court in the contextual facts has delved into the issue on that score. On the basis of the findings no exception can be taken and that has been the precise reason as why this Court dealt with the issue in so great a detail so as to examine the judicial propriety at this stage of the proceedings.”

3.3. Mr. Rath also submitted that since in the meantime more than 21 years have passed and the inquiry is yet to be started, in view of the decision of the Hon’ble Apex Court reported in **(2005) 6 SCC 636** the proceeding is liable to be dropped. Hon’ble Apex Court in the aforesaid decision in Para 4, 5 & 11 has held as follows:-

“4. In the first case of Bani Singh, an OA was filed by the officer concerned against initiation of departmental enquiry proceedings and issue of charge-sheet on 22-4-1987 in respect of certain incidents that happened in 1975-76 when the said officer was posted as Commandant, 14th Battalion, SAF, Gwalior. The Tribunal quashed the charge memo and the departmental enquiry on the ground of inordinate delay of over 12 years in the initiation of the departmental proceedings with reference to an incident that took place in 1975-76. The appeal against the said order was filed in this Court on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. This Court rejected

the contention of the learned counsel. While dismissing the appeal this Court observed as follows: (SCC p. 740, para 4)

“The irregularities which were, the subject-matter of the enquiry are said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. 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 orders and accordingly we dismiss this appeal.”

5. In the second case of N. Radhakishan the respondent was appointed as Assistant Director of Town Planning in the year 1976. A report dated 7-11-1987 was sent by the Director General, Anti-Corruption Bureau, Andhra Pradesh, Hyderabad to the Secretary to the Government, Housing, Municipal Administration and Urban Development Department, Andhra Pradesh, Hyderabad about the irregularities in deviations and unauthorised constructions in multi-storeyed complexes in the twin cities of Hyderabad and Secunderabad in collusion with Municipal Authorities. On the basis of the report, the State issued two memos both dated 12-12-1987 in respect of three officials including the respondent Radhakishan, the then Assistant City Planner. In this case, till 31-7-1995 the articles of charges had not been served on the respondent. The Tribunal, however, held that the memo dated 31-7-1995 related to incidents that happened ten years or more prior to the date of the memo and that there was absolutely no explanation by the Government for this inordinate delay in framing the charges and conducting the enquiry against the respondent and that there was no justification on the part of the State

now conducting the enquiry against the respondent in respect of the incidents at this late stage. This Court, in para 19, has observed as follows: (SCC p. 165)

"19. 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 to 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 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 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 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."

This Court held that there was hardly any explanation worth consideration as to why the delay occurred. In the circumstances, this Court held that the Tribunal was justified in quashing the charge memo dated 31-7-1995 and directing the State to promote the respondent as per recommendation of the DPC ignoring memos dated 27-10-1995 and 1-6-1996. Accordingly, the appeal filed by the State of Andhra Pradesh was dismissed.

* * * * *

11. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the office concerned. The protracted disciplinary enquiry against government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.”

3.4. Making all such submissions learned counsel for the Petitioner contended that the proceeding initiated against the Petitioner under Annexure-3 be quashed by this Court on the ground of inordinate delay in concluding the same for the last 21 years.

4. Mr. D.K. Mohanty, learned ASC on the other hand made his submission basing on the stand taken in the counter affidavit. It is

contended that because of the pendency of the Vigilance Proceedings the Disciplinary Proceeding could not be finalized and accordingly no latches can be found with the Authority concerned. It is also contended that against the order of acquittal in all the five Vigilance Cases though State filed CRLLP No. 17 of 2015 and CRLLP No. 51 of 2015 seeking leave to appeal, but CRLLP No. 17 of 2015 is yet to be taken up by this Court. Learned State Counsel however did not dispute the order of this Court, wherein prays for leave made in CRLLP No. 17 of 2015 was denied.

5. I have heard Mr. N. Rath and Mr. D.K. Mohanty, learned counsel appearing for the Parties and on their consent the matter was heard finally and disposed of at the stage of admission.

6. This Court after going through the materials available on record finds that the proceeding against the Petitioner was initiated on 28.11.2001 under Annexure-3 because of his implication in the Vigilance Cases. This Court further finds that though the Petitioner was acquitted in all the Vigilance Proceedings but leave application was moved by the State seeking leave to prefer an appeal in CRLLP No. 17 of 2015 and 51 of 2015 only. Such prayer seeking leave in CRLLP No. 17 of 2015 was rejected by this Court on 06.03.2017, but no action was taken by the Disciplinary Authority to conclude the proceeding. Only vide order dtd.28.12.2020 the Disciplinary Authority has appointed the Enquiry Officer & the Marshalling Officer to proceed with the inquiry.

7. In view of such action of the Disciplinary Authority, this Court is of the view that the petitioner has been unnecessarily harassed for the last 21 years and no progress has been made to the Disciplinary Proceeding initiated in the year 2001. Therefore, taking into

account the submissions made and the decisions of the Hon'ble Apex Court as cited (supra), this Court is inclined to quash the proceeding so initiated against the Petitioner under Annexure-3 and quash the same.

8. Accordingly, the writ petition is disposed of.

(Biraja Prasanna Satapathy)
Judge

Sneha

