

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) (OAC) No.3055 of 2016

In the matter of an application under Section 19 of the Administrative Tribunal Act, 1985.

.....

Partha Sarathi Das

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s.P.K.Sahoo & A.Sahoo.

For Opp. Parties : Standing Counsel
Mr. M.K.Balabantaray.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:24.08.2022 and Date of Order: 26.09.2022

Biraja Prasanna Satapathy, J.

- 1.** This matter is taken up through Hybrid Mode.
- 2.** Heard Mr. P.K.Sahoo, learned counsel for the Petitioner and Mr. M.K.Balabantaray, learned Standing Counsel for the State-Opposite Parties.
- 3.** The Petitioner has filed the Writ Petition with the following prayer:-

“a) Admit the Original Application, call for the records, quash the Disciplinary Proceeding No.E-III-1/2002 and Memorandum of Charges initiated by Respondent No.2

vide Office Order No.1930 dt.18.02.2002 which is still pending as against the applicant under Annexure-3,

b) And/ or pass such other order(s) or direction(s) as this Hon'ble Tribunal may deem just and proper".

4. It is submitted that even though the proceeding against the Petitioner was initiated vide Memorandum dated 18.02.2002 and the Enquiry Officer was appointed vide Office Order No.10381 dtd. 1.10.2003, but the said enquiry never proceeded with till he was issued with the notice on 04.05.2016 under Annexure-8 basing on the direction issued by the Commissioner of Endowments, Odisha on 23.04.2016 under Annexure-7.

5. It is also submitted that the Petitioner in the meantime attained the age of superannuation on 31.01.2017 and retired from his service.

6. It is submitted that in view of the admitted delay in concluding the proceeding and in view of the fact that no counter affidavit has been filed even though notice has been issued since 20.10.2016 on the ground of inordinate delay in concluding the proceeding the same is liable to be quashed, in view of the decision of the Hon'ble Apex Court reported in the case of **State of Andhra Pradesh vrs. N. Radhakishan, reported in AIR 1998 SC 1833**, Hon'ble Apex Court in Para-19 & 20 has held as follows:-

***"19.** It is not possible to lay down any pre-determined 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 relevant factors and to balance and weight 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 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 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 or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse consideration”.

20. *In the present case we find that without any reference to records merely on the report of the Director General, Anti-Corruption Bureau, charges were framed against the respondent and ten others, all in verbatim and without particularizing the role played by each of the officers charged. There were four charges against the respondent. With three of them he was not concerned. He offered explanation regarding the fourth charge but the disciplinary authority did not examine the same nor did it choose to appoint any inquiry officer even assuming that action was validly being initiated under 1991 Rules. There is no explanation whatsoever for delay in concluding the inquiry proceedings all these years. The case depended on records of the Department only and Director General, Anti Corruption bureau had pointed out that no witnesses had been examined before he gave his report. The Inquiry Officers, who had been appointed on after the other, had just to examine the records to see if the alleged deviations and constructions were illegal and unauthorised and then as to who was responsible for condoning or approving the same against the bye-laws. It is nobody's case that respondent at any stage tried to obstruct or delay the inquiry proceedings. The Tribunal rightly did not accept the explanations of the state as to why delay occurred. In fact there was hardly any explanation worth consideration. In the circumstances the Tribunal was justified in quashing the charge memo dated July 31, 1995 and directing the state to promote the respondent as per recommendation of the DPC ignoring memos dated October 27, 1995 and June 1, 1996. The Tribunal rightly did not quash these two later memos”.*

7. Even though notice of the writ petition was issued on 20.10.2016 with passing of an interim order, but no counter affidavit has been filed. However, it is submitted by the learned State Counsel that because of the interim order passed on 4.5.2016, the proceeding could not be disposed of.

8. This Court after going through the materials available on record finds that even though the proceeding was initiated in the year 2002 and the Enquiry Officer was appointed in the year 2003, but no further progress was made to the said proceeding till issuance of the notice on 04.05.2016 under Annexure-8. This Court further finds that Annexure-8 was issued only when Commissioner of Endowments, Odisha vide letter on 23.04.2016 under Annexure-7 calling for explanation from the enquiry officer in not completing the enquiry for such a long period.

9. In view of the discussions made hereinabove and the decision of the Hon'ble Apex Court as cited (supra), this Court is inclined to quash the proceeding initiated against the Petitioner vide Memorandum dated 18.02.2002. While quashing the same and in view of the fact that the Petitioner has retired in the meantime and his retiral dues have been held up due to pendency of the proceedings, the Opposite Parties are directed to sanction all the retirement benefits as due and admissible in favour of the Petitioner within a period of three (3) months from the date of receipt of this order.

10. With the aforesaid observations and directions, the WPC(OAC) stands disposed of. There shall be no order as to costs.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 26th of September, 2022/Subrat

