

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No.3417 of 2015

Adwait Kumar Pattnayak *Petitioner*
Mr. S.B. Jena, Adv.

-versus-

State of Odisha and Ors. *Opposite Parties*
Mr. H.K. Panigrahi, Adv.
(SAT (Cuttack))

CORAM:
DR. JUSTICE S.K. PANIGRAHI

Order

No.

5.

ORDER

26.09.2022

1. This matter is taken up through hybrid mode.
2. The present petition has been filed assailing the long pendency of a disciplinary proceedings initiated against the Petitioner vide Office Order No.2180/2F (SG) 163/2001 dated 15.12.2001 passed by the Principal Chief Conservator of Forests, Odisha. The petition calls into question the gross inaction and laxity on the part of the Opposite Parties for not concluding such disciplinary proceedings thereby, impacting the Petitioner's prospects with regards to promotion while in service and post retirement pensionary benefits.

3. Shorn of unnecessary details, the substratum of matter presented before this Court remain that the Petitioner was recruited to the post of Forest Ranger on 05.08.1986 and worked in the said post in different wings of Forest Department to the satisfaction of the authorities till his retirement.
4. A disciplinary proceedings was initiated against the Petitioner vide Office Order No. 2180/2F (SG) 163/2001 dated 15.12.2001 by the Principal Chief Conservator of Forests, Odisha, Bhubaneswar in relation to his incumbency as Sub-Divisional Manager, Purunakatak Sub-Division under Boudh Commercial Division of the Odisha Forest Development Corporation Limited while he was under deputation from 18.10.1993 to 19.01.1996. The article of charges against the petitioner is extracted hereasunder:
 - A. *Gross negligence in duty due to non-transportation of leftover stock of bamboo and U.D. case timber and loss of the Corporation.*
 - B. *Submission of false vouchers and temporary misappropriation of W.F.P welfare fund.*
5. In accordance with Office Order No.469/2F(SG)163/2001 dated 14.09.2004, Smt. P. Mekro, IFS, Working Plan Officer, Bhanjanagar Division was appointed as the Inquiry Officer to inquire into the ingredient of charges

levelled against the Petitioner and the D.D.M, Boudh(C) Division, OFDC Ltd. was appointed as the Presenting Officer so as to direct the Inquiry Officer to furnish her enquiry report within a stipulated time of two months along with the relevant records.

6. In response, the Petitioner submitted his written defence vide representation dated 20.02.2005 denying his alleged complicity in the commission of the departmental irregularities with a prayer to absolve him from the charges and set him at liberty.
7. It is submitted by Learned Counsel for the Petitioner that the charges were framed after a long lapse of around 5 years beyond all canons of law and justice. Moreover, the disciplinary proceedings has ultimately lost its essence owing to gross inaction and laxity on the part of the authorities, without bearing any legal significance and the same is liable to be dropped so as to meet the ends of justice.
8. Furthermore, it is contended by Learned Counsel for the Petitioner that though the Departmental Proceedings was initiated against the Petitioner during his service tenure, it is still continuing after his retirement which is deplorable as it impacts his post-retirement pensionary benefits in a negative manner.

9. Per Contra, it is submitted by Learned Counsel for the Opposite Party that vide Letter No. 10477/F&E dated 10.06.2015, the Government of Odisha in Forest & Environment Department had requested the Inquiry Officer to submit enquiry report for taking further action in their end. Hence, no cause of action survives on the part of PCCF, Odisha in relation to the present case.

10. It is the settled position of law that Departmental/Disciplinary Inquiry should be initiated without delay and, inordinate delay without proper explanation for the same furnishes ground for quashing the same. It is also settled that the Departmental Inquiry once initiated should be completed expeditiously and long delay in completing the enquiry without proper justification can also act as ground for quashing the inquiry.

11. This is primarily because the departmental inquiry puts an employee under great strain and stigma. It has serious repercussions on his family as well. Therefore, a delinquent employee has a right that the disciplinary proceedings against him are concluded expeditiously. He should not undergo mental agony and also monetary loss when the inquiry is unnecessarily

initiated and prolonged without satisfactory explanation and without any fault on his part in delaying the proceedings. He is bound to be prejudiced in such an inquiry and constant strain and agony suffered by him cannot be compensated. Therefore, such an enquiry would be in violation of Article 14, 16 and 21 of the Constitution of India

12. In the matter of *State of A.P. Vs. N. Radhakishan*¹, the Supreme Court took the view that while examining the question of quashing the disciplinary proceedings on the ground of delay, all the relevant factors should be taken into account and disciplinary proceedings should be allowed to terminate after the delay, particularly when the delay is abnormal and there is no explanation for the delay. The Court has to consider the two diverse considerations i.e. the prejudice caused to the charged officer due to the delay and the fact that normally disciplinary proceedings should be allowed to take their own course as per relevant rules. The Supreme Court in this context has held that: -

“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.

¹(1998) 4 SCC 154

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 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 the delay is abnormal and there is no explanation for the delay. The W.P. No.15534/2015 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 delayed 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."

13. On perusal of the above-mentioned pleadings, this Court is of the view that protracting disciplinary enquiry and keeping a government official under charges of negligence and misappropriation causes unbearable mental agony and distress to the officer concerned and for the mistake committed by the department in initiating the disciplinary proceedings, the employee concerned cannot be made to suffer. The Supreme Court in the matter of *P.V. Mahadevan Vs. MD.T.N. Housing Board*² has held that:-

"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 officer concerned. The protracted disciplinary enquiry against a 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

²(2005) 6 SCC 636

already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and suffering 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."

14. The Supreme Court in *Dev Prakash Tewari vs. U.P.*

*Cooperative Institutional Service Board*³ was considering the case as to whether disciplinary proceedings after retirement of an employee could be continued in absence of any rule to that effect. The Court observed:

".....once the appellant had retired from service on 31.3.2009, there was no authority vested with the respondents for continuing the disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority it must be held that the enquiry had lapsed and the appellant was entitled to get full retiral benefits."

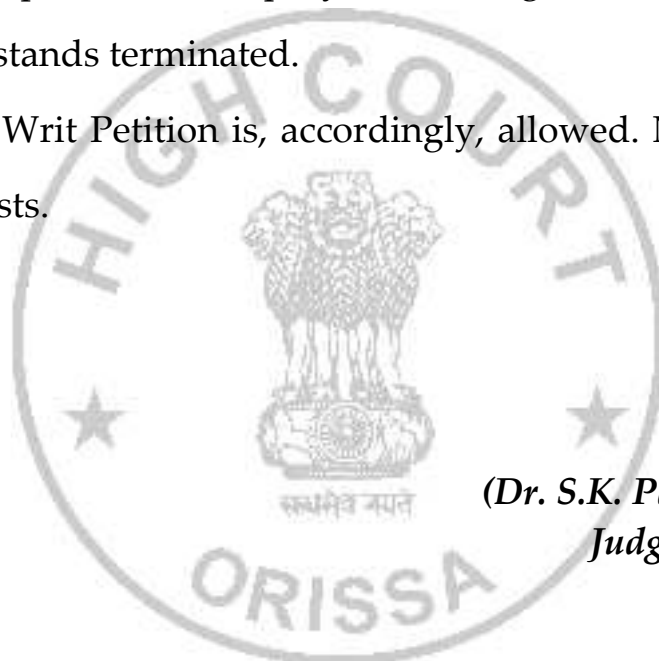
15. In the present case though the departmental enquiry was initiated in the year 2001, but the same has not been completed till date, which can be attributed as an inordinate delay on the part of the Opposite Parties. The pendency of the departmental enquiry for more than 20

³CIVIL APPEAL NO(s).5848-49 OF 2014

years has caused great prejudice to the Petitioner and he had to suffer humongous mental agony as well as monetary loss.

16. In view of the aforesaid facts and circumstances, this Court is of the considered opinion that the Office Order No.2180/2F (SG) 163/2001 dated 15.12.2001 deserves to be set aside and is hereby set aside. As a consequence, the departmental enquiry initiated against the Petitioner also stands terminated.

17. The Writ Petition is, accordingly, allowed. No order as to costs.



(Dr. S.K. Panigrahi)
Judge

B.Jhankar