

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: 14th September 2022**
Pronounced on: 11th November, 2022

+ **W.P.(C) 4796/2011**

GS SHERGILL

..... Petitioner

Through: Mr. Tarkeshwar Nath, Mr. Lalit
Mohan, Mr. Shivam Roy, Mr. Virat
Saharan and Mr. G.S. Shergill,
Advocates

versus

DELHI STATE CIVIL SUPPLIES CORPORATION LTD

..... Respondent

Through: Mrs. Anju Bhattacharya, Ms. Suriti
and Mrs. N. Chandra, Advocates

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

FACTUAL MATRIX

1. The brief facts of the instant case are that, the Petitioner joined the Delhi State Civil Supplies Corporation Ltd. (hereinafter referred to as the 'Respondent Corporation') in the year 1981 as a Deputy Manager. In the year 1986, he was promoted to the rank of Manager. The Respondent Corporation received two telegrams dated 31st March 1995 and 3rd April 1995 in their Chairman's office from the Army Purchase Organisation (hereinafter referred to as 'APO'), Ministry of Defence, wherein the

negotiation was proposed to be held with Public Sector Undertaking/State Level Co-operative Federations for the purpose of procurement of 19000 MT of various varieties of pulses, 9000 MT of Gram whole and 11000 MT of Barley. It categorically mentioned the eligibility criteria for the PSUs/Federation for negotiation, as to who could undertake to procure the contracted goods directly from the Mandis without involving middlemen.

2. The Chairman of the Respondent Corporation then put his remarks on the copy of telegram dated 3rd April 1995. The remarks were as follows:

"imp/immediate Good. We must participate in the negotiations. DM PDS HQ, Manager/Marketing, AM [Market/Intelligence] will attend the negotiations."

3. On 4th April 1995, a committee of three members, including the Petitioner, was constituted by the Chairman for negotiation with APO. On the same day, a meeting was held in the presence of the Chairman in order to give effect to the said proposal as contained in the said telegrams as the negotiation with APO was scheduled on 6th April 1995. It was decided in the said meeting to respond and negotiate for supply of various pulses and Barley to APO against their proposal. It was further decided that the Committee constituted with Manager (Marketing), DM (PDS and Estt.) and AM (Monitoring and Marketing Intelligence), would identify the supplier/party for transaction with APO.

4. On the basis of the approval of the Chairman, the Committee surveyed Naya Bazar, Khari Baoli and after obtaining information from APO, NCCF and DCCWS, identified M/s KNR Trading Co. (hereinafter referred to as the 'Party') for transaction with APO. The same was duly approved by the Chairman of the Respondent Corporation. The rates quoted

by the Party were tendered to the APO which was accepted by it and the Party paid a sum of Rs. 2 lakhs as earnest money at the time of submission of the rates to APO. The Party also agreed to pledge an FDR of Rs. 5,00,000/- to the Respondent Corporation.

5. However, the ultimate transaction could not be materialised between the Respondent Corporation and APO. Consequently, M/s KNR Trading Company also stood on the same footing and could not supply the material as agreed between them and the respondent herein. The Party requested the Respondent Corporation to refund the earnest money of Rs. 2,00,000/- vide its letter dated 19th May 1995 and on the other hand, APO sought a claim of Rs. 52,50,000/- for dal masur, Rs. 33,11,306.79 for 500 MT Masoor whole and Rs. 32,15,600/- for 900MT dal Arhar, totalling to Rs.1,17,76,906.79, against the Respondent Corporation as they failed to make the supplies within the period prescribed by the APO vide its letter dated 26th February 1998.

6. APO raised an arbitral dispute against the Respondent and an award was passed in favour of the APO. The Respondent Corporation challenged the same before the Delhi High Court. On 21st July 2005, a charge sheet was issued to the Petitioner for the above-mentioned transactions that took place in the year 1995 and the Petitioner was asked to file his reply to the said memorandum. The Petitioner filed his reply vide letter dated 29th July 2005.

7. The Disciplinary Authority, after being not satisfied with the reply, appointed an Inquiry Officer to inquire into the charges as mentioned in the charge Sheet vide order dated 8th March 2006. After appreciating the evidences, the Inquiry Officer filed his report dated 1st January 2008 to the effect that all the charges against the petitioner stand "NOT PROVED". But

on 13th April 2010, the Disciplinary Authority issued a disagreement note to the Petitioner, calling him to make representation on the reasons for disagreement within a period of 15 days from the date of memorandum. The Petitioner in response to the said memorandum submitted its representation dated 14th May 2010 to the Disciplinary Authority. The Disciplinary Authority vide its order No. Vig. 10(20)/2000/DSCSC/965 dated 27th July 2010, held all the charges as proved against him. The Disciplinary Authority imposed a penalty of recovery from the pay of the petitioner or such other amount as may be due to him to the extent of 5% for the pecuniary loss allegedly caused to the Corporation. The Disciplinary Authority, however, made the said penalty conditional to the extent that the same would be reviewed on the outcome of the decision of the Division Bench of this Court in the appeal filed by the Respondent Corporation against the arbitral award passed against them.

8. Aggrieved with the said order of the Disciplinary Authority, the Petitioner filed his appeal dated 17th August 2010 before the Appellate Authority under the relevant service rules. The Appellate Authority vide its order dated 30th March 2011 stated that the matter would be reviewed on the outcome of the decision of the appeal against arbitral award pending before a Division Bench of this Court. Vide order dated 5th July 2012, the Appellate Authority dismissed the appeal filed by the Petitioner. The relevant portion of the order dated 5th July 2012 is reproduced below:

“With reference to his appeal dated 17/08/2010 addressed to the Board of Directors against the order of Disciplinary Authority dated 27/07/2010, Sh. G. Shergill, Chief Manager, is hereby informed that the Board has considered the case in detail and came to

the conclusion that the penalty imposed by the Disciplinary Authority vide order No.Vig.l0(20)/2000/DSCSC/02/965 dated 27/07/2010 is just and fare and needs no interference with the decision of Disciplinary Authority."

9. Aggrieved with the order passed by the Disciplinary Authority as well as the Appellate Authority, the Petitioner has approached this Court by way of the instant writ petition.

SUBMISSIONS

Submission of the Petitioner

10. The learned counsel appearing on behalf of the Petitioner has heavily relied on the submission that the issuance of charge sheet in the present facts and circumstances is belated and consists of stale charges due to which prejudice has been caused to the Petitioner in meeting his defence. It is also submitted that the entire disciplinary proceedings are vitiated on this ground alone as the transaction had taken place in the year 1995, whereas the charge sheet was issued against the Petitioner after an unexplained period of 10 years.

11. It is further submitted that as per the note dated 4th April 1995, it is mentioned that: *"it was collectively decided to respond and negotiate for supply of various pulses and barley to APO against their proposal for the same"*.

12. It is submitted that such statement completely exonerates the Petitioner of the charges as the decision admittedly was collective in nature and the Petitioner was not solely involved in the process. For substantiating the claim, the Petitioner has relied on the judgment of the Hon'ble Supreme Court in ***Bongaingaon Refinery & Chemical Limited vs. Girish Chander***

Sharma (2007) 7 SCC 206, wherein the apex Court had set aside the inquiry proceedings against an official because no action was taken against the other members who collectively took the decision.

13. It is further submitted that the disagreement note of the Disciplinary Authority suffers from non-application of mind as the same is solely based on reports of Vigilance Officer, Senior General Manager and comments of Chief Vigilance Officer, which were never made available to the Petitioner for his comments. Therefore, it is submitted that non-supply of these documents to the Petitioner has led to a denial of opportunity to the Petitioner, and has led to the violation of principles of natural justices.

14. It is also argued that the charge contained in the disagreement note as point no.4 is a fresh charge and finds no basis in the report of the Inquiry Officer. It is submitted that such an approach is non-permissible being contrary to the settled law as laid down by the Hon'ble Supreme Court. It is further submitted that even the Chairman of the Respondent Corporation never doubted the requisite experience and sound financial background of M/s KNR Trading Company as the rates quoted by them were found to be competitive.

15. It is further submitted that though the Inquiry Officer exonerated the Petitioner on 1st January 2008, but the disagreement note was received by the Petitioner only on 13th April 2010. Therefore, it is submitted that there is an unexplained delay of more than two years in issuing the disagreement note by the Disciplinary Authority which vitiates the entire disciplinary proceedings.

16. It is further submitted that the decision to participate in the tender was taken by the then Chairman Sh. Sewa Ram along with other officers of the

Respondent Corporation. It is also submitted that despite being cited as a witness, Sh. Sewa Ram, the then Chairman did not choose to appear as a witness, as he had already retired, and hence he being a material witness was not available owing to belated initiation of inquiry causes prejudice to the Petitioner in meeting his defence.

Submissions of the Respondent

17. *Per Contra*, learned counsel appearing on behalf of the Respondent Corporation has taken a preliminary objection that under Article 226 of the Constitution of India, this Court has a very limited jurisdiction to interfere in the conclusions reached by the Disciplinary Authority and cannot act as an Appellate Authority. It is further submitted that the Petitioner has failed to bring out any violation of principles of natural justice, denial of reasonable opportunity or that the findings recorded by the Disciplinary Authority are based on no evidence.

18. It is further argued that the penalty imposed upon the Petitioner was as per Rule 26 and Rule 27 of Delhi State Civil Supplies Corporations (Conduct, Discipline and Appeal) Rules, 1985 (hereinafter referred to as the 'CDA' Rules). It is also submitted that the Petitioner has failed to make a case that the impugned findings are based on no evidence. The disagreement note clearly mentions the Inquiry Officer findings, defence statement of charged officer and the evidence available on record in response to the articles of charges against the charged officials, and gives detailed reasons for disagreement with the findings of the Inquiry Officer.

19. It is also argued that the Petitioner has not only failed to properly examine the various instructions, terms and conditions of the tender, but he

also failed to execute a comprehensive no risk legal agreement with M/s. K.N.R Trading Company even after many days of completion of the tender formalities. As a result, after M/s. KFR Trading Company reneged from its commitment to make supplies to the APO, the Respondent Corporation suffered huge financial loss. It is submitted that the said acts exhibits gross negligence and dereliction of duty which is unbecoming of an officer of the Corporation.

20. It is submitted that it is wrong to say that the decision was taken collectively by the members of the Committee. Even if the decision was taken collectively, it would not exonerate the Petitioner as he was the senior most member of the Committee and was also the senior most Manager in the Marketing Division.

FINDINGS AND ANALYSIS

21. Heard learned counsel for the parties and perused the record.

22. Admittedly, the transaction pertains to the year 1995 and the memorandum of charge sheet was issued in the year 2005. Two issues which require adjudication in the facts and circumstances of the present case are as follows:

ISSUE 1- Whether non-submission of certain documents can be said to have caused prejudice to the Petitioner in meeting his defence before the Disciplinary Authority?

ISSUE 2- Whether is there any delay in the initiation of disciplinary proceedings by the Respondent Corporation? If yes, can the disciplinary proceedings be quashed on that ground?

ANSWER TO ISSUE 1:

23. The Petitioner has contended that he was not provided with certain documents on which the Disciplinary Authority has relied while striking the disagreement note. The relevant portion of his submission in the writ petition is reproduced below:

“Because the disagreement note of the Disciplinary Authority wherein it has disagreed from the findings of the enquiry report exonerating the petitioner, suffers from non-application of mind as the same is solely based on the reports i.e report of Vigilance Officer, Senior General Manager and Comments of Chief Vigilance Officer which were never made available to the petitioner for his comments. Non supply of those documents to the petitioner has denied the opportunity of his making representation and therefore, principle of natural justice has been violated. Needless to say, the said reports are material, which admittedly, has influenced the Disciplinary Authority for her decision of disagreement with the findings of the Inquiry Officer.

24. I do not find force in the submission of the Petitioner in as much as the Petitioner has failed to raise such a ground in his representation to the disagreement note issued by the Disciplinary Authority. If prejudice could be said to have been caused to the Petitioner, then naturally, such a stand would have been taken by the Petitioner in his representation to the disagreement note issued by the Disciplinary Authority. The relevant portion of the representation of the Petitioner to the disagreement note issued by the Disciplinary Authority is reproduced below:

“Madam,

This is in respect of the Memo no. Vig.10(20)/2000/DSCSC/893 dated 13/04/2010 which was received on 15/04/2010 along with a copy of the Inquiry Report which was submitted by the Inquiry officer on 01/01/08.

The harassment and biasness towards the charged officer is apparent from the fact that there has been unnecessary prolonged, inordinate and unexplained delay on the part of the disciplinary Authority in initiating and conducting of the disciplinary proceedings. The aforesaid memo whereby the Inquiry report has been disagreed is highly vitiated as no cogent reason has been given nor there is application of independent mind by the Disciplinary Authority and rather it is based on analysis made by the vigilance officer, Sr. General Manager and comments of the CVO as stated in the said Memo, under reply. No where it has been shown in the Memo as to what were the duties of the charged officer (C.O.) in terms of the prescribed Rules and how the same were violated by the charged officer. It is but obvious that the aforesaid Memo has been issued consequent on the Award of the Learned Arbitrator in favour of APO which was challenged before the Hon'ble High Court and has been decided in favour of the APO and only when the Hon'ble High Court has directed the corporation to deposit the Award amount, the thrust of the blame is being tried to be shifted on the C.O. The listed documents which have been relied upon by the D.A. in the Memo under reply clearly brings out that the C.O. was appointed as a member of the Tender Committee along with two alleged co accused whose role was limited to give recommendations and bring out factual feasibility or otherwise for responding to the invitation of Tender Notice of the APO. The decision there on obviously rested as per Rules and practice

on the accepting officer i.e. the then M.D. and Chairman which is crystal clear from his note at page 5/N of the listed document No.3. Therefore, the Memo of the D.A. is contrary to the findings of the I.O. and is totally erroneous, subjective besides that it is vitiated by unexplained and inordinate delay gravely prejudicial to the interest of the C.O.

My detail submission in rebuttal of the unreasonable and un-justifiable findings of the D.A.in disagreement with the findings of the I.O. are submitted as under:

A) The grounds advanced by the DA for disagreement with the findings of the IO on the basis of analysis made by the vigilance officer, SR GM and the comments of the Chief Vigilance Officer to arrive at its observation that the IO in his findings has not taken into account material evidence on record, is incorrect and untenable since the DA has arrived at the erroneous conclusion without applying independent mind and instead depended on recommendation reported to have been made by the above mentioned authorities which is prohibited in law.”

25. It is also relevant to discuss certain judicial pronouncements in this regard. In ***Janakinath Sarangi v. State of Orissa, (1969) 3 SCC***, the Hon’ble Supreme Court made the following pertinent observations:

“5. From this material it is argued that the principles of natural justice were violated because the right of the appellant to have his own evidence recorded was denied to him and further that the material which was gathered behind his back was used in determining his guilt. In support of these contentions a number of rulings are cited chief

among which are State of Bombay v. Narul Latif Khan; State of Uttar Pradesh and Anr. v. Sri C.S. Shanna and Union of India v. T.R. Varma. There is no doubt that if the principles of natural justice are violated and there is a gross case this Court would interfere by striking down the order of dismissal; but there are cases and cases. We have to look to what actual prejudice has been caused to a person by the supposed denial to him of a particular right.... Anyway the questions which were put to the witnesses were recorded and sent to the Chief Engineer and his replies were received. No doubt the replies were not put in the hands of the appellant but he saw them at the time when he was making the representation and curiously enough, he used those replies in his defence. In other words, they were not collected behind his back and could be used to his advantage and he had an opportunity of so using them in his defence. We do not think that any prejudice was caused to the appellant in his case by not examining the two retired Superintending Engineers whom he had cited or any one of them."

26. In ***K.L. Tripathi v. State Bank of India and Ors., (1984) 1 SCC 43***, the Hon'ble Supreme Court considered the question whether violation of each and every facet of principles of natural justice has the effect of vitiating the inquiry:-

"32. The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept of fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitable form part of fair play in action but where there is no

lis regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version of the credibility of the statement.

The party who does not want to controvert the veracity of the evidence from or testimony gathered behind his back cannot expect to succeed in any subsequent demand that there was no opportunity of cross-examination specially when it was not asked for and there was no dispute about the veracity of the statements. Where there is no dispute as to the facts, or the weight to be attached on disputed facts but only an explanation to the acts, absence of opportunity to cross examination does not create any prejudice in such cases

The principles of natural justice will, therefore, depend upon the facts and circumstances of each particular case. We have set out hereinbefore the actual facts and circumstances of the case. The appellant was associated with the preliminary investigation that was conducted against him. He does not deny or dispute that. Information and materials undoubtedly were gathered not in his presence but whatever information was there and gathered namely, the versions of the persons, the particular entries which required examination were shown to him. He was conveyed the information given and his explanation was asked for. He

participated in that investigation. He gave his explanation but he did not dispute any of the facts nor did he ask for any opportunity to call any evidence to rebut these facts.”

27. There is no whisper of objection to the non-production of essential documents by the Petitioner. Merely raising objection to the non-production of certain documents cannot help the Petitioner mechanically as prejudice must be shown to have been caused to the Petitioner by such violation of principles of natural justices. Therefore, this issue is answered against the Petitioner and in favour of the Respondent Corporation.

ANSWER TO ISSUE 2:-

28. The genesis of disciplinary inquiry that was initiated in the year 2005 dates back to the year 1995, when the transaction between the Respondent Corporation and the APO could not be materialised. The Committee which gave a go ahead to the prices quoted by M/s KNR Trading Co. consisted of the Petitioner and two other officers of the Respondent Corporation. The misconduct alleged upon the Petitioner was not clandestine in the year 1995 as the charges leveled against him are of a description which can be said to be within the knowledge of the Respondent Company in the year 1995 itself. It is pertinent to quote the relevant portion of the Counter Affidavit in this regard:

“That the Petitioner not only failed to properly examine the various instructions, terms and conditions of the tender, he also failed to execute a comprehensive no risk legal agreement with M/s.

K.N.R Trading Company even after many days of completion of the tender formalities. As a result, after M/s. KNR Trading Company reneged from its commitment to make supplies to the APO, the Respondent Corporation suffered huge financial loss. The said acts on the part of the Petitioner exhibited gross negligence and dereliction of duty unbecoming of an officer of the corporation. For the above said acts of the Petitioner, an enquiry was conducted. Findings of the enquiry report were disagreed by the Disciplinary Authority who after giving an opportunity to the Petitioner to make representation against the disagreement note passed the impugned order.”

29. Therefore, it is not the case of the Respondent Corporation that the role of the Petitioner in the irregularities was not within their knowledge or that it transpired at a belated stage. At this stage, it becomes pertinent to discuss the judicial dicta in regard to the delayed initiation of disciplinary inquiry.

30. In *State of Punjab vs Chaman Lal Goyal*, (1995) 2 SCC 570, the Hon’ble Supreme Court noted that:

“9. Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of

bias, mala fides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances."

31. In ***State of Madhya Pradesh vs Bani Singh & Anr.***, (1990) Supp. SCC 738, the Hon'ble Supreme Court held that:

"4.....The irregularities which were the subject matter of the enquiry is 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 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."

32. In ***State of A.P. vs N. Radhakrishnan***, (1998) 4SCC 154, the Hon'ble Supreme Court held that:

"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.”

33. In **P.V. Mahadevan vs Managing Director, T.N. Housing Board, (2005) 6 SCC 636**, the Hon'ble Supreme Court held as follows:

“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 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 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.”

34. In **UCO Bank & Ors. vs. Rajender Shankar Shukla, (2018) 14 SCC 92**, the Hon'ble Supreme Court held that:

“12....The first issue of concern is the enormous delay of about 7 years in issuing a charge-sheet against Shukla. There is no explanation for this unexplained delay. It appears that some internal discussions were going on within the Bank but that it took the Bank 7 years to make up its mind is totally

unreasonable and unacceptable. On this ground itself, the charge-sheet against Shukla is liable to be set aside due to the inordinate and unexplained delay in its issuance.”

35. In ***Bhupendra Pal Singh vs. Union of India, 2021 SCC OnLine Bom 6073***, a Division Bench of the Bombay High Court summarised the principles in this regard:

“31. The principles that can be culled out from the aforesaid decisions may be summarized as below:

a. It would always be desirable to initiate disciplinary proceedings immediately after the alleged misconduct is detected but if charge-sheet is issued after a considerable length of time has passed since such detection, it would be unfair to the charged officer to proceed against him on the basis of stale charges.

b. Disciplinary proceedings may not be interdicted at the stage of charge-sheet and should be allowed to proceed according to the relevant rules since a charge-sheet does not affect any legal right of the delinquent unless, of course, it suffers from an invalidity that strikes at the root of the proceedings.

c. If there is delay in initiation of disciplinary proceedings by drawing up charges against the delinquent and such proceedings are challenged, the disciplinary authority is under an obligation to explain the reasons for the delay; and, depending upon the worth of such reasons, the Court may proceed to decide one way or the other.

d. There cannot be any exact measurement of the length of delay by reference to years to fall into the category of 'too long a delay', and what would amount to the same has to be decided depending upon the facts of a given case.

e. Should the delay be found to be too long and unexplained, that would definitely have a bearing on the seriousness of the disciplinary authority to pursue the charges against the charged officer and the Court may, in a fit and proper case, quash the proceedings because prejudice to the officer in such case would be writ large on the face of it.

f. Even if, in a given case, the delay is satisfactorily explained, the charge-sheet could still be quashed if the charged officer proves to the satisfaction of the Court that he would be severely prejudiced if the proceedings were allowed to continue, a fortiori, lending credence to the claim of unfair treatment.

g. For the mistakes committed by the department in the procedure for initiating disciplinary proceedings, the charged officer should not be made to suffer.

h. Delay in initiation of disciplinary proceedings per se may not be a vitiating factor, if the charges are grave and in such case the gravity of the charges together with the factors, for and against the continuation of the proceedings, need to be balanced before arriving at a just conclusion."

36. With respect to the delay in the initiation of the disciplinary proceedings, the Respondent Corporation in their counter affidavit have submitted that:

“....It is wrong and denied that the enquiry is grossly belated. The delay in the said matter happened because the arbitration proceedings came to an end in the year 2005 by in an award which resettled huge financial liabilities upon the Respondent Corporation. It has been held by the Hon'ble Court that when there are great charges of financial irregularities neither the charge sheet nor the enquiry should be quashed on the grounds of delay. It is wrong and denied that the decision was taken collectively by the members of the Committee. Even if the decision making was collective, it would not exonerate the petitioner as he was the senior most member of the committee and also senior most Manager in the Marketing Division. It is for this reason that the Disciplinary Authority in her disagreement note found the petitioner responsible for the lapses on his part.”

37. The Respondent Corporation cannot rely on the observation of the Division Bench of this Court vide judgment dated 19th January 2012 to justify the delay in the initiation of the disciplinary proceedings. In the counter affidavit, the Respondent Corporation has taken the following stand:

“The Hon'ble High Court of Delhi decided the appeal filed the respondent Corporation against the arbitrator award; wherein this Hon'ble court expressed displeasure that no officer of the respondent Corporation suffered administrative and financial consequence of such loss which was caused to a public sector enterprises (i.e. DSCSC Ltd.).”

38. The relevant portion of the judgment dated 19th January 2012, whereby the appeal against the arbitral award filed by the Respondent Corporation was dismissed, is reproduced below:

“We may also note the strange and unacceptable plea of the appellant that it submitted a tender without proper application of mind and thus should have been permitted to back out of the tender which had been accepted. Such a plea is contrary to all settled law and we fail to appreciate how the appellant went into this misadventure and why no officer of the appellant suffered administrative and financial consequences of such loss being caused to a public sector enterprise.”

39. As it has been discussed above, the Hon’ble Supreme Court has categorically held that the disciplinary proceedings must be conducted soon after the irregularities are committed or soon after discovering the irregularities. Undoubtedly, as held by the Hon’ble Supreme Court that this proposition cannot be a rigid and inflexible guideline restricting the judicial discretion, but then there has to be an explanation which must be forthcoming to justify the delay and laches. They cannot be initiated after a lapse of considerable time, as then the entire purpose of conducting the disciplinary proceedings would become a mode of harassment and this Court cannot allow such lackadaisical approach to be perpetuated. It is unreasonable to hold that the Respondent Corporation would have taken 10 years to initiate disciplinary proceedings against the Petitioner.

40. It cannot be denied that prejudice has been caused to the Petitioner as *inter alia*, the then Chairman who was examined as a witness for the Respondent Corporation was not available at the time of cross-examination by the Petitioner. The cross-examination of such witness was pivotal as there is no dispute to the fact that every step in the process of finalizing the Party was processed by taking the Chairman into confidence. His testimony

was pivotal but due to such belated nature of the inquiry, the Petitioner could not have the privilege of the cross-examination of the Chairman.

41. Furthermore, as has been held above, in the opinion of this Court there is unexplained delay on the part of the Respondent Corporation in initiating disciplinary proceedings against the Petitioner which in the facts and circumstances of the present case cannot be sustained. Therefore, this issue is decided in favor of the Petitioner and against the Respondent Corporation.

CONCLUSION

42. In view of the above discussion on facts as well as law, the Disciplinary Proceedings and all consequential proceedings emanating therefrom are quashed and set aside. The Petitioner is exonerated of all the charges. The Respondent Corporation is directed to pay all the dues to the Petitioner which was withheld from him in pursuance of order dated 27th July 2010 passed by the Disciplinary Authority, along with simple interest at the rate of 4% p.a. from the date when the amount withheld was due to the Petitioner, as expeditiously as possible, positively within a period of 3 months from today.

43. Accordingly, the instant writ petition stands allowed. Pending application, if any, stands disposed of.

44. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

NOVEMBER 11, 2022

Aj/mg

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