

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS

WPST 46 of 2017
With
CAN 1 of 2023

The State of West Bengal & Ors.
Vs.
Snehasis Saha

Appearance:

For the Petitioner	:	Mr. Susanta Pal, Adv.
		Ms. Ananya Neogi, Adv.
For the Respondent	:	Mr. Amitava Ghosh , Adv.
		Mr. Jaya Brata Ghose, Adv.
Judgment On	:	28.04.2023

Prasenjit Biswas, J. :

The instant writ petition has arisen out of an order passed by the West Bengal Administrative Tribunal on 16.09.2018 in connection with O.A. 266 of 2014 wherein the respondent had prayed for quashing the disciplinary proceeding as well as charge sheet issued against him.

By the impugned order the learned Tribunal allowed the original application filed by the respondent by quashing the memorandum of charges on

the ground that there has been inordinate delay in issuing the memorandum of charges for which no explanation was offered.

Shorn of details, the respondent herein was appointed to the post of Assistant Engineer with effect from 03.11.1995 at PWD Department and on the selfsame date he was sent to the Housing Department, Government of West Bengal on deputation and was posted as Assistant Director, Akra Subdivision under Akra Division of brick production holding additional charge of Akra Subdivision II. Thereafter, this respondent was transferred from his the then post to the post of Assistant Engineer, Plessey Subdivision by an order dated 24.11.1999. He got higher scale of pay under the West Bengal services ROPA Rules 1998 on 28.05.2007 and subsequently was promoted to the post of executive engineer on 02.05.2008.

A memorandum of charge sheet was issued against the present respondent on 15.03.2012 by the disciplinary authority and authority also pleased to hold an enquiry under Rule 10 of WBS (CC & A) Rules, 1971. The article of charge indicates to gross irregularities allegedly committed by the respondent in the supervision of tender related work for manufacture and supply of brick while he was posted on deputation at Akra Subdivision. It also indicates that the respondent allegedly committed gross irregularities in the supervision of tender related work including checking of measurements as recorded in measurement books and after signing RA bills and final bills to send to divisional office for payment, checking of outstanding dues to be recovered as recorded by SAE on the bills and in the MB for recovery purpose.

A preliminary investigation was conducted by the Anticorruption Bureau of the State Vigilance Commission and after perusal of the report of the

investigation and related documents including statement of the respondent it was opined that there were materials for proceeding against him and accordingly charge sheet was framed and it was forwarded to the disciplinary authority. Thereafter, the matter travelled to the State Administrative Tribunal challenging the disciplinary proceeding by the respondent initiated in the year 2012. The respondent has taken the plea that the disciplinary authority is estopped from issuing charge sheet in respect of alleged allegation pertaining to the period prior to his promotion as Executive Engineer on 02.05.2008.

The learned Tribunal passed the impugned order by finding that the disciplinary proceeding and charge sheet under challenge are not sustainable and quashed and set aside the same.

Mr. Susanta Pal, learned counsel appearing for the State submitted that since irregularity committed by the respondent was detected in the year 2010 after holding secret enquiry of the vigilance commission by taking opinion of the Housing Department, proceeding was initiated in the year 2012. It is further submitted by the learned counsel that the tribunal had to consider the gravity of the misconduct which is one of the relevant factors and which is to be taken into consideration while quashing the charge sheet.

Learned counsel drew attention of this court about the decisions rendered by the Hon'ble Apex Court in case of State of **Madhya Pradesh vs. Bani Singh & Anr.**, reported in **AIR 1990 SC 1308** and submitted that in that judgment the department was well aware of involvement of the officer in the earliest but the tribunal failed to distinguish the same from the instant case wherein it was the specific contention of the appellants herein that the alleged irregularities

allegedly committed by the respondent herein was detected in the year 2010 itself.

The learned counsel for the State was very much vocal on the point that these appellants authorities had no knowledge about the irregularities done by the respondent herein for the period from 1995-2000 and since the allegations against this respondent is of grave in nature the impugned order passed by the tribunal by quashing the disciplinary proceeding so also the charge sheet merely on the ground of delay in initiating proceeding without considering the factual aspect of the matter is liable to be set aside.

Mr. Amitava Ghosh, learned counsel appearing for the private respondent submitted before us *inter alia* that the appellants have not given any cogent or plausible ground for condonation of delay and therefore on this ground alone the application preferred by the appellants deserves to be rejected at the threshold. As per submission of the learned Advocate no satisfactory explanation was given by the appellants for inordinate delay of 12 years in initiating the charge against his client and disciplinary proceedings was initiated on stale charges. Virtually, the learned counsel countered the submissions advanced by the appellants on the basis of reasoning given by the Tribunal. He, therefore, submitted that there is no reason to take a contrary view in this case.

Learned counsel was very much vocal on the point that this respondent was given higher scale of pay in the year 2007 and was promoted to the higher post of executive engineer in the year 2008 and as such no disciplinary proceeding could be initiated or allowed to be continued on the basis of omission or commission or materials which relate to periods prior to the granting of such promotion.

Reliance is made by the learned counsel upon the decisions rendered by the Hon'ble Apex Court in case of **P.V. Mahadevan vs. M.D. Tamil Nadu Housing Board** reported in **AIR 2006 SC 207** and in case of **The State of Madhya Pradesh vs. Bani Singh & Anr.**, reported in **AIR 1990 SC 1308**.

It is profitable to quote the observation of the Hon'ble Apex Court in case of **State of A.P. Vs N. Radhakishan** reported in **(1998) 4 SCC 154** about the effect of delay in conclusion of departmental proceedings.

In the above referred case Hon'ble Court observed in paragraph No. 19 *inter alia* that –

“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 has 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 considerations”.

From the aforesaid observation of the Hon’ble Apex Court we can conveniently infer the necessary conclusions that the departmental proceedings should be initiated at the earliest. If there is inordinate delay in initiation of departmental proceedings then the same should be explained and if the delay is explained the proceedings need not be quashed but if it is not explained and it causes prejudice to the respondent, in that event, the departmental proceedings can well be quashed.

It appears that the learned Tribunal has relied upon the decision of Hon’ble Apex Court rendered in case of ***The State of Madhya Pradesh Vs Bani Singh & Anr.***, reported in ***AIR 1990 SC 1308***. In ***Bani Singh (Supra)*** Hon’ble Court observed that the irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975 – 1977 and it was not the case of the Department that they were not aware of the said irregularities in any, and came to know it only in 1987. 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 the Department would have taken more than 12 years to initiate the disciplinary proceedings and there is no satisfactory explanation for the inordinate delay in issuing the charge memo and accordingly it will be unfair to permit the departmental enquiry to be proceeded with at this stage.

In the present case no satisfactory explanation was given by the appellants for causing inordinate delay of 12 years in initiating the departmental proceedings against the respondent herein. Moreover, it is admitted position that the respondent was given higher scale of pay in the year 2007 and was promoted to the higher post of executive engineer in the year 2008. Since promotion was given on consideration of the entire records it indicates that the authorities gave a clean chit to the respondent and after promotion is granted to this respondent the disciplinary authority is estopped from issuing any charge sheet in respect of the allegations pertaining to the period prior to promotion. The disciplinary proceedings must be conducted soon after the irregularities are committed or soon after discovering irregularities. In the present case alleged irregularities were happened long before but the appellant authorities did not consider it necessary to initiate any disciplinary proceedings.

It is submitted on behalf of the appellant authorities that the irregularities committed by the respondent was only detected in the year 2010 after holding secret enquiry of the vigilance commission and after taking opinion of the Housing Department proceeding was initiated in the year 2012. It is nobody's case that the respondent herein at any stage tried to obstruct or delay the enquiry proceedings. The explanation of delay given by the appellant does not

inspire confidence of this court and we find that the tribunal rightly did not accept the explanations of the State as to why delay occurred and in fact there was hardly any explanation worth considerations.

The appellant authorities never alleged that the respondent herein was in any way responsible for the delayed initiation of the departmental proceedings. Therefore, after lapse of more than 12 years, this Court cannot permit the appellants to proceed with the disciplinary proceedings as the aforesaid unexplained inordinate delay in initiating the disciplinary proceedings would seriously prejudice the respondent. At this stage, it is necessary to draw the curtain and to put an end to the enquiry as the respondent herein had already suffered enough and more on account of the protracted disciplinary proceedings.

In case of **P.V. Mahadevan Vs. Md. T.N. Housing Board** the Hon'ble Apex Court observed about the effect of delay in initiation of departmental proceedings after inordinate delay of 10 years against the appellant and since no convincing explanation was given by the respondent employer in that respect Court held that allowing respondent authority to proceed further with departmental proceedings at this distance of time would be very prejudicial to the appellant as he had already suffered enough and more on account of the disciplinary proceedings and Hon'ble Court quashed the charge memo issued against the respondent..

While arriving such a conclusion, Their Lordships made a reference to **N. Radhakrishnana's** case (1998) 4 SCC 154 (cited supra). After considering the factual details and rival contentions, the Supreme Court has concluded that (para 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”.

After holding so, the Supreme Court quashed the charge memo issued against the appellant and also directed settlement of all retiral benefits in accordance with law within three months from the date of the order. The above decision has laid down the law in categorical terms that the undue and unexplained delay would be peril to the disciplinary proceedings initiated against the government employee. The court has thus interfered with such disciplinary action on the ground of delay alone. It is the basic principle of administrative justice that an officer entrusted with the 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.

This Court is unable to countenance the argument advanced by the learned Counsel appearing for the appellants as the extra ordinary delay in initiation of departmental proceedings against the respondent herein is uncondonable under any circumstances. This Court is aghast as to how the Department has kept the proceedings pending for long years without any progress, notwithstanding the fact there has been no legal embargo or impediment as to initiation of departmental proceeding against this respondent. The common thread running in all the judgments referred above is that if there is an inordinate delay in initiating the departmental enquiry and there is no sufficient and proper explanation for the delay, then the inordinate delay furnishes a ground for quashing the departmental enquiry. Thus, the settled position in law is that the departmental enquiry should be initiated without delay and inordinate delay without proper explanation for the same furnishes a ground for quashing the same. It is also settled that the departmental enquiry once initiated should be completed expeditiously and long delay in completing the enquiry without proper justification can also be ground to quash the enquiry. The employee is not made to undergo mental agony and also monetary loss when the enquiry 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 enquiry and constant strain and agony suffered by him cannot be compensated.

In case of ***M.V. Bijlani vs. Union of India & Ors.***, reported in **(2006) 5 SCC 88**, it has been held by the Hon'ble Apex Court that the tribunal as also the High Court held to take into consideration that the disciplinary proceedings were initiated after six years and it continued for seven years and, thus, initiation of the disciplinary proceedings as also continuance thereof after such a long time evidently prejudiced the delinquent officer. In the present case also the enquiry started after considerable period of time and it was only because of the delayed proceeding the respondent herein has been made to suffer which is not sustainable in the eyes of law.

It is submitted on behalf of the respondent that a new stand has been taken by the appellants before this court by filing Annexure P-1 (page 21 of the writ petition) for the first time and this annexure has been made with tailored precision by the appellants to explain the inordinate delay of 12 years for initiating charge against the private respondent by the appellant authorities. There is nothing on record which shows that preliminary enquiry was started after the year 2008 and there is no reason whatsoever has been stated in the charge sheet for such inordinate delay in trying charge against the respondent.

In case of ***Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner, New Delhi & Ors.***, reported in **AIR 1978 SC 851** Hon'ble Court observed at paragraph 8 *inter alia* that –

“The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning

may, by the time it comes to court of challenge, get validated by additional grounds later brought out”.

In view of observation of the Hon’ble Court referred above we are of the opinion that public orders made in exercise of a statutory authority cannot be construed in the light of explanations subsequently given or supplemented by fresh reasons in the shape of affidavit or otherwise.

In the present case, there is no such indication that how the delay occurred and what stage it occurred. Merely, stating that the Vigilance Commission on 11.11.2021 after preliminary enquiry held by the Anti-Corruption Bureau and perusal of the report of the investigation and related documents including statement of the respondent opined that there were materials for proceeding will not be a good explanation. We are of the considered opinion that in the peculiar facts, delay has not at all been explained. After 12 years of the alleged irregularities, it would be improper for us to allow the departmental proceedings to continue.

We are of the opinion that the appellants should not be allowed to proceed further with the disciplinary proceedings against the respondent herein on the basis of a stale charge and for that reason the appellant authorities should not be permitted to harass an employee on the basis of stale charge and issuing the charge sheet for initiating the departmental proceedings.

In the conspectus of the above discussion, this court holds that the impugned charge memo has to go lock, stock and barrel. Accordingly, the writ petition is dismissed.

Impugned order passed by the Tribunal dated 16.09.2015 passed in Case No. O.A. 266 of 2014 is held affirmed. The respondent herein will be entitled to all the retiral benefits in accordance with law and the said benefits shall be disbursed within three months from this date.

No order as to costs.

Urgent photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)