

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.118 OF 2017

Shri Guruprasad B.P.
Mhapne,
Deputy Superintendent of
Police (Retd.), Currently
residing at Margao-Goa.

... PETITIONER

Versus

1. State of Goa,
Through the Chief Secretary,
Secretariat, Porvorim Goa.

2. The Additional Director
(Vigilance) Directorate of
Vigilance, Panaji-Goa.

3. The Director General of
Police, Police Headquarters,
Panaji-Goa.

... RESPONDENTS

Mr C. Padgaonkar, Advocate for the Petitioner.
Mr Manish Salkar, Government Advocate for Respondent -
State.

**CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ.**

DATED : 17th JULY 2023

JUDGMENT : (*Per M.S. Sonak, J.*)

1. Heard Mr Padgaonkar for the petitioner and Mr Manish Salkar, learned Government Advocate for the respondent – State.

2. The petitioner, who retired as a Deputy Superintendent of Police (Dy. S.P.), effective from 31.03.2016, challenges the impugned memoranda dated 07.02.2012 and 26.11.2015 seeking to initiate disciplinary proceedings against the petitioner for incidents that allegedly occurred between 28.01.2004 and 31.05.2005 when he was holding the additional charge of Dy. S.P. Airport Immigration at Dabolim Airport, Goa.

3. On 07.02.2012, the petitioner was served with a Charge Memorandum alleging that the petitioner had unauthorisedly managed to clear 85 housemaids for service to gulf countries through Dabolim Airport in violation of the applicable circulars/orders.

4. The petitioner filed a detailed reply on 30.04.2012 denying the charges and explaining how he was not concerned with the alleged charge. Upon receipt of the response, the respondents took no action against the petitioner for almost three years, leading the petitioner to legitimately believe that his reply was satisfactory, and all further proceedings were closed.

5. However, on 26.11.2015, the petitioner was served with a fresh Charge Memorandum, making the same allegation again. There was no explanation why this second Charge Memorandum was issued when the decision on the first Charge Memorandum was yet to be communicated to the petitioner.

6. Nevertheless, without prejudice, the petitioner filed yet another detailed response dated 22.01.2016, reiterating that he had no role to play in the clearance of said 85 housemaids to Gulf countries. The petitioner specifically pointed out that he had not issued any instructions or orders to any immigration officers at Dabolim Airport for the period from 28.01.2004 to 31.05.2005 to clear the immigration of the said housemaids illegally or otherwise. The petitioner pointed out that if any of the Officers at the immigration counters had committed any illegality, the petitioner could not be held responsible.

7. The petitioner attained the age of superannuation on 31.03.2016 and was allowed to accordingly retire. For about three months post-retirement, the petitioner heard nothing further in the matter until on 21.06.2016, the petitioner was informed that an inquiry officer had been appointed to inquire into the charges in Charge Memorandum dated 26.11.2015. As noted earlier, the charges in the Charge Memorandum dated 26.11.2015 pertain to the period from 28.01.2004 to 31.05.2005. Thus, the impugned Charge Memorandum dated 26.11.2015 purports to rake up incidents that allegedly took place ten to eleven years earlier.

8. By orders dated 15.03.2017 and 20.06.2017, the inquiry proceedings were effectively stayed. The position continues to date.

9. In the affidavit in reply dated 15.03.2017 filed on behalf of respondents nos.1 and 2, we find that there is no explanation for issuing the second Charge Memorandum dated 26.11.2015 after the issue of the first Charge Memorandum dated 07.02.2012, which was replied to in detail by the petitioner. Moreover, there is no explanation for the unreasonable delay in issuing the two Charge Memoranda dated 07.02.2012 and 26.11.2015. Such explanation was necessary because initiating disciplinary proceedings for incidents alleged in 2004-05, only in 2015, at least *prima facie* violates Article 14 of the Constitution of India.

10. Therefore, a valid explanation was a must from the respondents. In the absence of any valid explanation, a retired employee cannot be made to face disciplinary proceedings, given the inordinate delay. In the returns, the only so-called explanation is that the concerned Officers had a "workload" and could not attend to this matter. This is hardly an explanation, but the same constitutes a lame excuse which cannot be accepted.

11. The reply on behalf of respondent no.2 purports to justify the allegation in the Charge Memorandum, does not answer the crucial issue of why a second memorandum was issued when the first was pending but not inquired into and further the issue of inordinate and unexplained delay in issuing the impugned charge memoranda.

12. The law on the effect of inordinate and unexplained delay in issuing the charge sheet to an employee is discussed in great detail by the Division Bench of this Court in ***Bhupendra Pal Singh V/s. Union of India and Ors.***¹. The Division Bench, comprising *Dipankar Datta, C.J.* (as His Lordship then was) and *M.S. Karnik, J.*, upon a detailed consideration of several precedents on the subject, culled out the following principles:

“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.”

13. Applying the above principles, given the complete absence of a reasonable explanation for the inordinate delay in issuing the impugned Charge Memoranda and the fact that the petitioner has already retired from service effective from 31.03.2016, we think that a case is made out for quashing the impugned memoranda. In this case,

initiating an inquiry after such inordinate and unexplained delay at a stage when the petitioner had or was on the verge of retirement, amounts to violation of Article 14 of the Constitution of India.

14. That apart, prejudice is writ large in the action of the respondents. The factors favouring the petitioner are listed hereafter:

(a) A Charge Memorandum dated 07.02.2012 was issued after an inordinate delay of seven to eight years. The petitioner filed a detailed reply. No action was taken for almost three years leading the petitioner to believe that his reply was found to be satisfactory and was accepted;

(b) Without assigning any reasons, a second memorandum dated 26.11.2015 was issued, raking up the same instances of 2004-05. The delay now was of ten to eleven years without any reasonable explanation in the returns;

(c) The second Charge Memorandum dated 26.11.2015 was issued a few months before the petitioner was due to retire on attaining the age of superannuation effective from 31.03.2016;

(c) Again, the petitioner filed a detailed response showing how he was not involved with the instance while

he was holding only the additional charge. No decision was taken to actually support the inquiry, much less conclude the same before the petitioner retired on superannuation effective from 31.03.2016. The Inquiry Officer was appointed and directed to proceed only in June 2016 after the petitioner retired on attaining the age of superannuation;

(e) Since the incident relates to 2004-05 when the petitioner was only holding an additional charge as Dy. S.P. (Immigration), it would be impossible for the petitioner, at this point in time, to produce witnesses in his support. The staff at the Airport constantly changes, and as a retired police official, this will prejudice the petitioner's defence substantially;

(f) There is no charge of the petitioner's direct involvement. The charge is mainly that the petitioner failed to exercise sufficient supervision over the officers at the Airport when the petitioner was holding an additional charge as Dy. S.P. (Immigration);

(g) There is no explanation about the fate of the first Charge Memorandum dated 07.02.2012. There is no explanation for the inordinate delay in issuing the first and the second Charge Memorandum after so much delay;

15. The points that could be considered as favouring the Respondents are as follows:

(a) The petitioner's retiral dues, like pension, etc., were released notwithstanding the issue of impugned charge memoranda dated 26.11.2015. Thus, the petitioner suffered no prejudice on this count;

(b) The petitioner secured interim relief staying the inquiry proceedings and, in that sense, did not have to face the inquiry soon after his retirement.

16. Given the law laid down in the *State of Punjab V/s. Chaman Lal Goyal*², if the positive and negative factors referred to above are weighed, then a case is made out for quashing the impugned charge memoranda, particularly because the factors favouring the petitioner far outweigh the factors favouring the Respondents. Moreover, this is a case where not even an attempt is made to explain the delay or explain why the second Charge Memorandum was issued on the eve of the petitioner's retirement on superannuation.

17. In the returns, the only so-called explanation offered is that the concerned Officers had a "workload" and, therefore could not attend to this matter. This is hardly an explanation, but the same constitutes a lame excuse which cannot be accepted. The Division Bench in *Bhupendra Pal Singh* (supra) has explained the difference between an

² (1995) 2 SCC 570

explanation and an excuse in paragraph 38. The Court has held that an 'explanation' is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault if it is really not his fault. For the purposes of the present case, it was necessary for the respondents to explain on what account the delay occurred. Briefly put, the delay was caused because the draft charge sheet went through several stages before taking a final shape, thereby consuming a lot of time. None appears to have taken responsibility. In such circumstances, the question that obviously arises is, is the explanation for the delay really an explanation, or is it an 'excuse'? Although people tend to see 'explanation' and 'excuse' as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real. An 'excuse' is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as just an 'excuse' would imply that the explanation proffered is believed not to be true.

18. The Division Bench, in paragraphs 33 and 34, has also explained the fate of an employee who is required to face disciplinary proceedings on the eve of his retirement or post his retirement. The Court has held that where a public servant who has reached the December years of his service career and waiting in the departure

lounge to exit service is served with a chargesheet concerning incidents which are more than a decade old.

19. The Court held that although there could be just reasons for the delayed initiation of disciplinary proceedings, by reason of his advanced age, the charged officer may not be in a position to recollect or recall every single detail when called upon to raise his defence to the charge sheet. The more complex the charge, the more difficult it could become to recapitulate events that might have led to a particular action which, later on, forms the plinth of a charge of misconduct. That the charged officer did not suffer any discomfort or inconvenience before because of the delay in the initiation of proceedings is, perhaps, no answer to brush aside the challenge. If such an officer has to proceed for retirement on superannuation because of the age factor, it would be unreasonable and, in certain cases, could defy logic to expect him to meet and answer the charge(s) relating to incidents of yesteryears although he is not considered capable of serving beyond the age of superannuation and be retained in service. The odds would be against the charged officer, and prejudice to him inevitable in the scheme of things. Thus, the tests laid down in respect of sustainability of delayed disciplinary proceedings and/or stale charges forming part of the charge sheet ought to also, in our considered view, include the stage of the charged officer's service career when he is called upon to disclose his defence in respect of actions complained of as constituting misconduct.

20. Therefore, upon cumulative consideration of the above facts and circumstances and the law on the subject, we make the rule absolute in this petition by quashing the impugned memoranda dated 07.02.2012 and 26.11.2015. The impugned memoranda dated 07.02.2012 is quashed as a matter of abundant caution, even though we think that the said impugned memoranda was subsumed in the latter impugned memoranda dated 26.11.2015.

21. Accordingly, the rule is made absolute in terms of prayer clause (a) of the petition, which reads as follows:

“a. That this Hon'ble Court be pleased to issue a writ of certiorari or any other writ, order or direction, in the nature of certiorari, or any other writ calling for the records and quashing the impugned memorandum dated 07.02.2012 bearing no.ACB/VIG/COM/12/2008/246 and Memorandum bearing number ACB-VIG-COM-12/2008/3493 dated 26.11.2015 seeking to initiate disciplinary proceedings against the petitioner.”

22. There shall be no cost order.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.

NITI K
HALDANKAR

Digitally signed by
NITI K HALDANKAR
Date: 2023.07.28
10:49:42 +05'30'