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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 13.02.2024***

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W.P.(C) 5083/2018 & CM APPL. 19666/2018 -Stay.**GOVERNMENT OF NCT OF DELHI & ORS Petitioners**

Through: Ms.Avnish Ahlawat, SC, GNCTD
with Ms.Tania Ahlawat, Mr.N.K.Singh,
Ms.Laavanya Kaushik, Ms.Aliza Alam &
Mr.Mohnish Sehrawat, Advs.

versus

RAJ KUMAR SAINI**..... Respondent**

Through: Mr.Manish Vashisht, Sr. Adv.
Mr.Vanshay Kaul, Ms.Harshita Nathrani &
Mr.Ajesh Luthra, Advs.

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE RAJNISH BHATNAGAR****REKHA PALLI, J (ORAL)**

1. The present writ petition under Articles 226 & 227 of the Constitution of India seeks to assail the order dated 30.01.2017 passed by the learned Central Administrative Tribunal (Tribunal) in O.A. No.941/2015. Vide the impugned order, the learned Tribunal has allowed the Original Application (O.A) filed by the respondent/applicant by setting aside the Charge Memorandum dated 18.06.2014 issued to him.
2. The brief factual matrix as may be necessary for adjudication of the present petition may be noted at the outset.
3. In May, 1995, the respondent was appointed as a Grade II officer of the Delhi Administrative Subordinate Services (DASS). In March, 1999, he



was posted as Grade II Inspector in the Office of Registrar Co-operative Societies, where he remained till November, 1999 and was thereafter posted to the Sales Tax Department. It appears that in 2007, much after the petitioner had been posted out from the Office of Registrar Co-operative Societies, allegations of having submitted an incorrect verification report in respect of some sample resignations were levelled against him and the matter was referred to the Central Bureau of Investigation (CBI). However, after examining the material available on record, the CBI on 02.07.2007, recommended that disciplinary proceedings be initiated against the respondent.

4. It is the petitioner's case that upon receiving the aforesaid recommendation from the CBI, correspondence was made with it from 2007 till 2013 with a request to finalise the draft charge sheet and also to forward the authenticated copies of all the relevant documents. However, certified copies of the requisite documents were not received and therefore, the petitioners could not issue any charge memo to the respondent till 18.06.2014. It is this Charge Memorandum which has been quashed by the learned Tribunal on the ground of inordinate delay by observing that even though the relevant documents as forwarded by the Central Bureau of Investigation (CBI) were available with the petitioner since 2007, the petitioner did not take steps for another seven years to issue a Charge Memorandum to the respondent. Being aggrieved, the present petition has been filed.

5. Learned counsel for the petitioner submits that this presumption drawn by the learned Tribunal that the necessary documents were available with the petitioner since 2007 was factually incorrect as repeated



correspondences were made with the CBI during the period between 2007 to 2014 and it is only in 2014 that the petitioner was provided with authenticated copies of the relevant documents, whereafter the Charge Memorandum was issued without any delay.

6. On the other hand, learned senior counsel for the respondent supports the impugned order and submits that the learned Tribunal has, after perusing the entire record, found as a matter of fact that copies of all the relevant documents were available with the petitioner way back in 2007 but the petitioner did not deem it appropriate to initiate any action against the respondent at that stage. He further submits that the very fact that the CBI did not find any criminality in the charges levelled against the respondent, was also taken into account by the learned Tribunal. He, therefore, prays that the writ petition be dismissed.

7. Having considered the rival submissions of the parties and perused the record, we may begin by noting the relevant extracts of the impugned order, as contained in para nos. 11 to 15, 19 to 21 and 23. The same read as under:-

“11. Even as per the respondents counter itself, the CBI had recommended to the respondents for initiation of disciplinary proceedings against the applicant on 02.07.2007 itself. Though it is stated that they received the relevant documents from CBI during 2013 and 2014 it is not coming forth from the pleadings of the respondents when they have requested the CBI for supply of the relevant documents, and if they requested the CBI for the same immediately after its recommendation for initiation of disciplinary proceedings against the applicant, when the CBI has supplied the same.

12. On the directions of this Tribunal, the respondents filed a statement of chronology of events in the



disciplinary proceedings case of the applicant by enclosing the relevant documents. The letter No.6160 RC 8(E)/2005/CBI/ND dated 08.08.2007 of the CBI addressed to the respondents indicated that the CBI has furnished all the relevant documents along with their letter dated 02.07.2007, under which they have recommended for initiation of disciplinary proceedings against the applicant. The said letters dated 02.07.2007 and 08.08.2007 read, as under:

Letter of 02.07.2007:

"No.4227 RC.8(E)/2005/CBI/N.D.

O/o the Superintendent of Police

Central Bureau of Investigation

Economic Offences Unit.VII

Block No.3, 5th Floor, CGO Complex,

Lodhi Road, New Delhi - 110 003. Dated 2/7/07

The Chief Secretary,

Delhi Secretariat,

Govt. of Delhi,

I. P. Estate

New Delhi.

Sub: Investigation of CBI Case RC.8(E)/2005, ECU.VIII involving Netaji Subhash Chaner Bose CGHS (Registration no.1382).

Sir,

Please find enclosed herewith a self contained note containing the brief facts revealed during the investigation of the above mentioned case. During investigation it is revealed that Shri R.K.Saini the then Dr.II Inspector of RCS (Now Tehsildar Sabzi Mandi) had committed misconduct by giving false inspection report. RDA for major penalty is recommended against him for the said misconduct.



The copies of relevant documents and statement of witnesses are also enclosed for initiating RDA proceedings against him.

*Sd/-
(P.V.Ramashastry)
DIG/CBI/EO.III
New Delhi"*

Letter of 08.08.2007:

"Sir,

May please refer to your letter no.F-7/A/39/2007/DOV/6091 dt. 24.07.07 on the above mentioned subject.

In this regard it is to inform that as per policy decision of the CBI, the practice of sending draft charge sheet and draft statement of imputations for departmental action have been discontinued. The department concerned has to prepare the same on the basis of the SCN sent. The copies of documents have already been forwarded along with the SCN vide this office letter dt. 2.7.2007. The I.O. of the case will authenticate the copies of the documents, which are finally selected by the department after preparation of the draft charge sheet. The services of the I.O. for this purpose are always available and the officer concerned may be directed to contact the I.O. Shri R.L.Yadav, Inspector, CBI, EOU.VII in this regard.

This issues with the approval of DIG EO.III."

13. The letter dated 18.01.2011 of the respondents addressed to the CBI shows that though the CBI in 2007 itself furnished the relevant documents to them, after a delay of four years, the respondents again asked the CBI to supply another set of authenticated/original copies of the relevant documents.



14. Even thereafter, the respondents further delayed in issuing the impugned Charge Memorandum by some more years.

15. As rightly contended by the learned counsel for the respondents, It is true that mere delay, may be abnormal, itself cannot be the sole ground for quashing of the disciplinary proceedings.

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19. It is trite law that disciplinary proceedings should be conducted soon after the alleged mis-conduct or negligence on the part of the employee is discovered. Inordinate delay cannot be said to be fair to the Delinquent Officer and since it would also make the task of proving the charges difficult, it would also not be in interest of administration. If the delay is too long and remains unexplained, the court may interfere and quash the charges. However, how much delay is too long would depend upon the facts of each and every case and if such delay has prejudiced or is likely to prejudice the delinquent in defending the enquiry ought to be interdicted.

20. In *P.V. Mahadevan Vs. M.D. Tamil Nadu Housing Board*, JT 2005 (7) SC 417, a charge memo was issued to the appellant on 8th January, 2000 for the irregularity in issuing a sale deed in the year 1990. There was no explanation for the unordinary delay of 10 years in initiating the proceedings. The respondent explained that the irregularities for which disciplinary action had been initiated had come to light only in the second half of 1994-95, when the audit report was released. The Hon'ble Supreme court did not accept the contentions of the respondent that the period from date of commission of the irregularities by the appellant to the date on which it came to the knowledge of the Housing Board cannot be



reckoned for the purpose of ascertaining whether there was any delay on the part of the Board in initiating disciplinary proceedings. The Hon'ble Supreme Court felt that allowing the respondent to proceed further with the enquiry would be very prejudicial to the petitioner and would cause unbearable mental agony and distress to the officer concerned. During the course of judgment the Hon'ble Supreme court observed as under:-

"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."

*21. Summarizing the entire case law on the subject, the Hon'ble Apex Court in in **Anant R. Kulkarni v. Y.P.Education Society and Others**, (2013) 6 SCC 515 held as follows:*

"Enquiry at belated stage:

14. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is de hors the limitation of judicial review. In the event that the



court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question, must be carefully examined, taking into consideration the gravity/magnitude of charges involved therein. The Court has to consider the seriousness and magnitude of the charges and while doing so the Court must weigh all the facts, both for and against the delinquent officers and come to the conclusion, which is just and proper considering the circumstances involved. The essence of the matter is that the court must take into consideration all relevant facts, and balance and weigh the same, so as to determine, if it is in fact in the interest of clean and honest administration, that the said proceedings are allowed to be terminated, only on the ground of a delay in their conclusion. (Vide: State of U.P. v. Brahm Datt Sharma & Ann, AIR 1987 SC 943; State of Madhya Pradesh v. Bani Singh & Anr., AIR 1990 SC 1308; State of Punjab & Ors. v. Chaman Lai Goyal, (1995) 2 SCC 570; State of Andhra Pradesh v. N. Radhakishan, AIR 1998 SC 1833; M.V. Bijiani v. Union of India & Ors., AIR 2006 SC 3475; Union of India & Anr. y. Kunisetty Satyanarayana, AIR 2007 SC 906; The Secretary, Ministry of Defence & Ors. v. Prabash Chandra Mirdha, AIR 2012 SC 2250; and Chairman, LIC of India & Ors. v. A.Masilamani, JT (2012) 11 SC 533)."

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23. Admittedly, with respect of the charge, which pertains to the year 1999, the respondents issued the Charge



Memorandum, after an abnormal delay of 15 years, i.e., on 18.06.2014. The charge is that the applicant, without physically verifying the genuineness of resignations of certain members, submitted the inspection/verification report dated 20.05.1999. The reasons given by the respondents for such an abnormal delay are unacceptable in view of the specific stand of the CBI in furnishing the relevant documents to the respondents, way back in 2007, itself. As held by the Hon'ble Apex Court, in the circumstances of the case, allowing the respondents to proceed further with the inquiry would be very prejudicial to the applicant and would cause unbearable mental agony and distress to the officer concerned."

8. From a perusal of the aforesaid, it clearly emerges that the learned Tribunal was conscious of the fact that the Charge Memorandum should generally not be interfered with. However, after perusal of the record including the CBI's letter dated 02.07.2007 addressed to the petitioner, the learned Tribunal found that the petitioner was provided with all necessary documents in the year 2007 itself but chose not to issue any Charge Memorandum for another seven years, for which there was no satisfactory explanation. In these circumstances, it was found that though the incident pertained to year 1999, a charge memo was sought to be issued almost 15 years thereafter and therefore, the learned Tribunal was of the considered view that it was a fit case where the Charge Memorandum issued against the respondent was liable to be quashed.

9. Even before us, the petitioner has not been able to give any worthwhile justification for this inordinate delay of more than eight years in issuing the Charge Memorandum from the date of receiving the



recommendations from the CBI. We can also not lose sight of the fact that the respondent was posted in the office of Registrar Co-operative Societies for a very short period between March 1999 to November 1999 and therefore, grave prejudice would be caused to him at this belated stage if he were to be tried for his purported negligence/misconduct, which even the CBI did not find worth proceeding with.

10. We, therefore, find no infirmity with the impugned order passed by the learned Tribunal. The writ petition being meritless is, accordingly, dismissed.

(REKHA PALLI)
JUDGE

(RAJNISH BHATNAGAR)
JUDGE

FEBRUARY 13, 2024
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