

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Madhuresh Prasad

AND

The Hon'ble Justice Supratim Bhattacharya

W.P.C.T 258 of 2024

Union of India & Ors.

Vs.

Tarun Kumar Pramanik

For the petitioners : Mr. P. R. Chakraborty,
Mrs. Sarda Sha

For the Respondent : Mr. Achintya Kr. Banerjee
Mr. Sudip Kr. Dutta
Ms. Indumouli Banerjee

Heard on : 31.01.2025

Judgment on : 31.01.2025

MADHURESH PRASAD, J.:

1. We have heard learned counsel for the Union of India/petitioner as well as the learned counsel for the applicant/respondent.
2. The Tribunal by the impugned order dated 15th March, 2024 passed in O.A. No. 983 of 2019 has directed release of the petitioner's retiral benefits after holding that the disciplinary proceedings instituted against the petitioner on 5th October, 1990

could not be permitted to continue any further in view of delay and laches by the respondent authorities. It is this order which is being challenged by the Union of India in the present writ petition.

3. The brief factual matrix which does not lie in the realm of dispute is that the petitioner was appointed on 11th April, 1984 on the post of Postal Assistant in the Department of Posts. At the time of appointment he had submitted a mark sheet showing the marks obtained by him to be 717 (seven hundred and seventeen) in the secondary examination conducted in the year 1978. About seven years thereafter a complaint is alleged to have been received by the department that the petitioner misrepresented his marks and had submitted a false/fake mark sheet (attested copy). Based thereupon the authorities claim to have made enquiry from the school as well as the board.
4. According to the respondent the report received from these two authorities were showing the petitioner to have obtained 424 (four hundred and twenty four) marks in total in the secondary examination. It is under such circumstances that the charge memo dated 5th October, 1990 was drawn up against the petitioner under Rule 14 of the CCS (CCA) Rules, 1965. The petitioner thereafter was proceeded against and the enquiry

officer did not find the charges to be proved as per the enquiry report submitted by him on 18th November, 1991.

5. The Disciplinary Authority, proceeded to pass an order of removal against the petitioner on 20th April, 1993. The order of removal was assailed by the petitioner in O.A. No. 442 of 1993 (hereinafter referred to as the First O.A) before the Kolkata Bench of Central Administrative Tribunal vide order dated 22nd April, 1993, the Tribunal found that the Disciplinary Authority had passed the order of removal disagreeing with the findings of the enquiry officer without complying with the mandatory procedure of serving a note of disagreement specifying therein the tentative reasons for disagreeing with the findings of the enquiry officer, and without giving opportunity to the petitioner to meet the points of disagreement. The punishment order was thus set aside and the Disciplinary Authority was directed to give a note of disagreement and proceeded from this stage.
6. The Disciplinary Authority thereafter reiterated the same illegality. The respondent thus had to file a second application before the Tribunal and O.A. 335 of 1994 (hereinafter referred to as the Second O.A.) was filed by the petitioner resulting in passing of the same order against the Disciplinary Authority to proceed de novo after communicating points of disagreement. The Disciplinary Authority again passed a similar order which was

met with the same fate in the Central Administrative Tribunal Kolkata Bench, in the third Original Application filed by the petitioner bearing O.A. No. 102 of 1995 (hereinafter referred to as the Third O.A.).

7. Again the same mistake was committed by the Disciplinary Authority on the fourth occasion when the petitioner was again compelled to approach the Central Administrative Tribunal by filing O.A. No. 1082 of 2000 (hereinafter referred to as the Fourth O.A.).
8. This being the fourth petition in respect of the same illegality being repeatedly being committed by the Disciplinary Authority the Tribunal in its order dated 15th September, 2005 has observed that since the matter has been going on since long "*we hope and trust that the disciplinary proceedings would be finalized within a period of four months from the date of communication of the order*". By recording such hope the Tribunal again directed the Disciplinary Authority to proceed from the stage of issuing of a disagreement note in terms of the order passed in the earlier Original Application bearing number O.A. 102 of 1995.
9. Pursuant to such order of the Tribunal the Disciplinary Authority served a note of disagreement and passed an order of removal from service with immediate effect, vide its order dated 18th April, 2006. The petitioner preferred an appeal before the Appellate

Authority. The Appellate Authority passed an order dated 19th September, 2006 thereupon setting aside the order passed by the Disciplinary Authority.

10. It is shocking to note that the Appellate Authority found that even the fifth order (18th April, 2006) passed by the Disciplinary Authority was unsustainable and, therefore, remitted the matter to the Disciplinary Authority to proceed de novo but from the stage of communication of a disagreement note.
11. Thus, the proceeding arising out of the charge memo dated 5th October, 1990 was protracted for these sixteen years on account of the Disciplinary Authority persisting to commit the same illegality repeatedly, five times. It is only thereafter that the disagreement note has been issued on 25th June, 2019 i.e. after a further unexplained delay of 13 years after a direction to this effect was issued by the Appellate Authority vide its order dated 19th September, 2006. The same was assailed by the petitioner by filing the Original Application which was numbered as O.A. 983 of 2019. Upon filing of the Original Application the Tribunal stayed any further proceedings on the basis of the belated, alleged disagreement note.
12. The proceedings before the Tribunal was finally decided on 5th March, 2024. There is an important development in the

meantime, being the applicant attaining the age of superannuation on 30th November, 2023.

13. The Tribunal after considering the case of the parties and the various citations cited by the appellant/respondent therein has allowed the Original Application in the following terms:

“8. Further, from perusal of the Inquiry Report, it appears that the Inquiry Officer has clearly held that charges framed against the applicant is not proved, relevant portion of which is quoted below:-

“It is therefore held that the alleged failure on the part of the charged official for production of his original mark sheet of Madhyamik Pariksha, 1978 due to its nontraceability as intimated instantly does not constitute misconduct and hence are not violative of the provisions of Rules 3(I)(i) and 3(I)(iii) of C.C.S. (Conduct) Rules, 1964 and the charges brought against Sri Tarum Kr. Pramanik, Postal Asstt., Bansdroni P.O. and now Postal Asstt. Baruipur H.P.O. vide Article I of Annexure I of the charge sheet no B/T-38 dated 8/10/90 are held to be ‘Not proved’.

9. Looking into the peculiar circumstances of the case we are of the opinion that the respondents failed to discharge their duties regarding verification of documents at the time of appointment of the applicant. The respondents are also responsible for the delay and non-completion of disciplinary proceedings. They delayed such proceedings till 2019 and could not complete the same till retirement of the applicant, therefore, such proceeding would not serve any fruitful purpose at this stage when the applicant is no more in service.

10. In view of the aforesaid observations, we are of the opinion that at such a belated stage, the disciplinary proceeding should be dropped against the applicant on account of delay and laches and non-compliance of the order of the Appellate Authority

dated 19.09.2006 to complete the disciplinary proceeding expeditiously. Accordingly the disagreement note dated 25.06.2019 is hereby quashed. The respondents are directed to release the entire retirement benefits to the applicant within three months. No order as to costs."

14. The learned counsel for the Union of India in support of the writ petition has submitted that the Tribunal should not have quashed the note of disagreement and restrained the authorities from proceeding against the petitioner. According to him the Tribunal has proceeded on the erroneous assumption that in the present case there was an issue of belated initiation of proceedings, whereas the proceedings had already been initiated by issuance of charge memo in the year 1990. Therefore the decisions relied upon by the petitioner regarding belated charge memo is unsustainable, and was not applicable to the facts of the present case.
15. According to him it is axiomatic that proceedings sometimes get protracted for a period of years. In every case where there is a delay in conclusion of the proceedings, The proceedings are not required to be set aside. Interest of justice demands that the matter regarding delinquency of a government servant be considered with due seriousness upon merits in the departmental proceedings. According to him an overemphasis on delay ignoring the nature of misconduct, as obtaining in the present case, where

the employee has obtained employment on the basis of a fake mark sheet, is misplaced.

16. The learned counsel for the applicant/respondent on the other hand submits that when the petitioner had joined his service in 1983 the marks claimed by him in the secondary examination were duly supported by a mark sheet (attested copy). After due verification of the credentials and testimonials he was allowed to join. An alleged vague and baseless complaint made seven years after his joining led to initiation of the proceedings. The allegations were thus unreliable and could not constitute a valid basis for initiation of proceedings against the respondent.
17. Upon going through the material on record the enquiry officer has recorded a definite finding regarding the charges not being proved. It is, therefore, submitted that the emphasis by the learned counsel for the Union of India regarding there being some grave charges in the present proceedings is misplaced. As per the learned counsel for the applicant/respondent the Disciplinary Authority has caused delay of decades in the proceedings by committing the same error five times in spite of four orders dated 28th April, 1993; 16th June, 1994; 20th August, 1999 and 15th September, 2000 passed by the Central Administrative Tribunal in O.A. No. 442 of 1993, O.A. No. 335 of 1994, O.A. No. 102 of 1995 and O.A. No. 1082 of 2000 respectively. It is only thereafter

that the Disciplinary Authority has finally issued a note of disagreement but then also the note of disagreement is a composite order of being a note of disagreement as well as an order removing the petitioner from service. The note of disagreement dated 18th April, 2006 was thus found unsustainable and was set aside by the Appellate Authority.

18. We find force in the submissions advanced by the learned counsel for the applicant/respondent. It is not in dispute that the petitioner was duly exonerated from the charges by submission of the enquiry report. A plain reading of the enquiry report reveals that based on the records of the enquiry and evidence adduced by both the parties that the applicant/respondent was asked to produce original of the mark sheet vide communication dated 23rd July, 1983. The enquiry officer has also recorded a finding that the respondent had produced the same which is evident from exhibit no. SD-4, which was being relied upon by the Disciplinary Authority. He has also taken note of the fact that the proceeding was based on a complaint received from the Service Union through the Kolkata Region on 29th May, 1990. He has found that the alleged fake mark sheet was enclosed along with the complaint. He has also found that the alleged letter from the West Bengal Board of Secondary Education (SD-7) wherein the marks obtained by the petitioner at the secondary examination

has been alleged to be 424 (four hundred twenty four) was received by the Disciplinary Authority on 5th May, 1990, even before the complaint was received from the Service Union on 29th May, 1990. He has taken note of the fact that the records regarding verification of the allegation were received by the Disciplinary Authority, even prior to the complaint having been made by the Service Union. He has further expressed surprise over the fact that some of these documents which were records of the Disciplinary Authority, such as SD-2 and SD-9 were enclosed with the complaint letter sent by the Service Union. The enquiry officer has noted that it is not clear how these official documents reached the hands of the union authority (complainant). Further he has taken note of the fact that there is no evidence showing any reason whatsoever for issuance of SD-7 and SD-9 in advance, before any complaint in this regard was lodged. Taking note of these murky circumstances, as also the deposition of DW-2, he was recorded a finding that the original was produced by the respondent, and the documents were verified with the original ones satisfactorily. Therefore, the enquiry officer after due consideration has held the charges against the petitioner to be not proved. Thereafter the Disciplinary Authority in spite of repeated directions and framing of a time frame for concluding the proceedings has caused procrastination of the proceedings by

repeatedly issuing orders contrary to the directions passed by the Tribunal in four Original Applications; and even flouting the order of his Superior, namely the Appellate Authority.

19. We, therefore, find that the enquiry report was submitted exonerating the petitioner after due consideration of the material in the enquiry. The enquiry officer by the Enquiry Report dated 18th November, 1991 had returned a clear and definite finding of charges “Not Proved”. Such finding was submitted by the enquiry officer by the enquiry report dated 18th November, 1991 the Disciplinary Authority thereafter has in haste proceeded to award the punishment of removal from service on 20th April, 1993. The same was set aside by the Central Administrative Tribunal in the First O.A. filed by the respondent. For more than two and half decades thereafter the Disciplinary Authority has repeated the same illegality in complying with the successive directions issued by the Central Administrative Tribunal in the various proceedings (at least four) and the appellate authorities order dated 19th September, 2006 recorded above to issue a note of disagreement to the respondent. The disagreement note has finely been issued on 25th June, 2019.
20. The facts, as noted above shows that the delay of decades in conclusion of the proceedings are attributable to the Disciplinary Authority. This delay is also to the prejudice of the respondent, in

whose favour the enquiry officer had already submitted a enquiry report holding the charges not proved as early as on 18th November, 1991. It may be significant to note here that even for arrears of salary, in terms of the orders passed by the Central Administrative Tribunal, Kolkata Bench the petitioner was compelled to approach the Central Administrative Tribunal by filing Original Application 625 of 2000 (6th Original Application) for being paid the arrears of salary. In the circumstances we find that the delay is not only attributable to the Disciplinary Authority, but also has resulted in harassment to the respondent over decades.

21. The plea of the present petitioner that in view of the gravity of charges it will be in the interest of clean administration and justice that the enquiry was conducted and taken to its logical conclusion by the Disciplinary Authority, we find no force in such submission.
22. We find that the plea raised by the petitioners regarding the matter being required to be considered on merits was not given due importance by the authority himself who has frustrated consideration of the matter over decades. We are of the opinion that it does not lie in the mouth of the petitioners now to content that the charges were of such nature that even after finding of the enquiry officer regarding the charges being not proved and

procrastination for decades by the Disciplinary Authority, in violation of the various orders passed by the Tribunal and the Appellate Authority any further opportunity should have been given to such an Authority to proceed with the enquiry.

23. In the facts and circumstances of the present case we also find that the distinctions sought to be drawn by the learned counsel for the petitioner regarding the present case being in continuation and not a case of belated initiation of proceedings, also to be devoid of any substance. The present respondent had already faced the enquiry proceedings and the enquiry report was submitted in his favour. In so far as the applicant was concerned a very vital stage of the enquiry based on depositions and evidence had concluded in his favour as far back as in 18th November, 1991, therefore, the prejudice caused to the petitioner by delay of decades in communicating the notes of disagreement, in the facts and circumstances of the present case cannot in any way be considered as less than the prejudice that may be caused to a government servant by submission of a belated charge memo.

24. We further find that the Tribunal has taken note of certain judgments of the Apex Court. The learned counsel for the applicant has also referred decisions of the Apex Court in the case of ***Prem Nath Bali –Vs.- Registrar, High Court of Delhi***

and Another reported in **(2015) 16 SCC 415**. We have considered the same and observe that in this decision there was an issue of the petitioner's suspension being continued for nine years and twenty six days, coupled with delay in completion of the departmental proceedings the respondents before the Apex Court were alleging that the delay was attributable to the petitioner. Taking into consideration the stand of the parties the Apex Court in paragraph 28 has observed as follows:

“28. Keeping these factors in mind, we are of the considered opinion that every employer (whether State or private) must make sincere endeavour to conclude the departmental enquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time-frame then efforts should be made to conclude within the reasonably extended period depending upon the cause and the nature of inquiry but not more than a year.”

25. Reliance has also been place on the case of **M. V. Bijlani –Vs.- Union of India and Others** reported in **(2006) 5 SCC 88**. The learned counsel has referred to paragraph 19 of this report wherein the Apex Court has expressed “great surprise” that a disciplinary proceeding was initiated five years after the appellant therein handed over charge of his post, and that the enquiry officer thereafter took a period of seven years to complete the

enquiry. In the said case the Appellate Authority has also taken seven years to dispose of the appeal.

26. Another decision relied upon by the respondent's counsel is decision in the case of ***State of A.P. -Vs.- N. Radhakishan*** reported in ***(1998) 4 SCC 154*** wherein the Apex Court has recognized a right that the disciplinary proceedings against an employee are required to be concluded expeditiously and that an employee should not be made to undergo mental agony and monetary loss by unnecessary delaying of proceedings without any fault on the part of the employee. The Apex Court has laid down the law that in such cases of delay the Court has also to consider the nature of charge, its complexity; and the fact that unexplained delay would cause prejudice to the delinquent employee.
27. The basic principle of administration has been stated in this report that an officer entrusted with a particular job is required to perform his duties honestly officially and in accordance with the rules and if he deviates this path he is to suffer penalty. Thus in the interest of a clean and efficient administration it has been held that normally disciplinary proceedings should be allowed to take their course as per the rules. Having observed so the Apex Court has further observed that delay, if not attributable to the charged officer, after taking into consideration the complexity and

nature of the charge, may in an appropriate case cause prejudice and such delay may defeat justice. The Apex Court has held that the Court is required to balance the two considerations.

28. We thus find that the judgments frown upon unnecessary delay in conclusion of proceedings, when the same is not attributable to the delinquent. The decision in the case of ***N. Radhakishan (supra)*** is also on the same lines, but requires a consideration of the complexity and nature of charge and factors, such as the requirement of a clean administration.
29. In this light we consider the findings in the enquiry report exonerating the petitioner from the charges, the opinion of the enquiry officer regarding the murky state of affairs surrounding issuance of the charge memo, allegations contained therein being Not Proved, and the two and half decades delay clearly attributable to the Disciplinary Authority in concluding the proceedings. We thus find that the decision of the Tribunal not to permit continuance of such belated proceedings is fortified by the legal position derived from the three reports of the Apex Court considered above.
30. We find no reason to interfere with the order of the Central Administrative Tribunal order dated 15th March, 2024 in O.A. No. 983 of 2019.

31. The writ petition and pending applications, if any, stands dismissed
32. The writ petition is dismissed.
33. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all necessary formalities.

(MADHURESH PRASAD, J.)

(SUPRATIM BHATTACHARYA, J.)

B.K.N.
A.R. (Court)