

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

HEARD ON: 24.03.2026

DELIVERED ON: 24.03.2026

CORAM:

THE HON'BLE CHIEF JUSTICE SUJOY PAUL

AND

THE HON'BLE JUSTICE PARTHA SARATHI SEN

WP.CT. 156 of 2015

Sri Asish Kumar Das Mahapatra

Versus

Union of India & Ors.

Appearance:-

Mr. Ayan Banerjee

Ms. Debjani Sengupta

Ms. Poulomi Ghosh

.....for the petitioner

Mr. S.N. Dutta

.....for the respondents

JUDGEMENT (ORAL):

PER, SUJOY PAUL, CJ.:-

1. In this petition filed under Article 226/227 of the Constitution, the challenge is mounted to the order of Central Administrative Tribunal, Calcutta Bench, Kolkata (**Tribunal**) dated 03.07.2015 passed in O.A. No. 350/00765/2015, whereby the challenge of petitioner to the charge sheet and disciplinary proceedings failed before the Tribunal.

ADMITTED FACTS

2. The petitioner was working as Depot Material Superintendent (DMS-II) with the department. The petitioner was awarded with certificate of merit for outstanding performance and devotion of duty in the year 2004. In 2007, the petitioner was again awarded certificate of merit for outstanding performance and devotion of duty. The petitioner was promoted in the year 2003 as Depot Material Superintendent (DMS-I) on restructuring basis.
3. The impugned charge sheet dated 28.01.2012 came as a bolt from blue to the petitioner just before two days of his retirement. After recording the evidence, the inquiry report was conveyed to the applicant on 3/12.09.2013. In turn, petitioner submitted his reply on 20.10.2013. Since disciplinary proceedings were not concluded and there was inordinate delay in issuing the charge sheet, the petitioner filed instant O.A. before the Tribunal for setting aside the charge sheet dated 28.01.2012 and the consequential disciplinary proceedings.
4. The Tribunal opined that it cannot interfere with the charge sheet and disciplinary proceedings at this stage because no finality has been achieved in the departmental proceedings.

While declining interference, Tribunal thought it proper to issue direction to the department to ensure that entire process of disciplinary proceedings is concluded within a period of two months from the date of receipt of copy of the order. Parties agreed that although the period of two months was extended twice, even that extended period came to an end long back.

5. During the course of hearing, on specific query from the Bench, learned counsel for railway administration fairly informed that because of non-cooperation of the petitioner in the disciplinary proceedings, the proceedings could not achieve finality till date.

CONTENTION OF PETITIONER

6. Learned counsel for petitioner by taking this Court to the charge sheet submits that the allegations of shortage of certain store materials were verified and came to the notice of department, way back on 21.01.1999. Despite having knowledge of alleged shortcoming, no action was taken by issuing the charge sheet and same is issued after more than 13 years from the date of alleged incident of finding shortage.
7. It is submitted that despite knowing the shortage of material, petitioner was awarded with the promotion on the post of Depot Material Superintendent. Thus, misconduct (if any), is deemed to

have been condoned. In other words, it is urged that if a misconduct or shortcoming is known to the department and yet with eyes open the department promoted the petitioner, in view of judgment of Supreme Court reported in **(2005) 6 SCC 641 (Vinayaka Dev Idagunji & Ors. vs. Shivaram & Ors.)**, the misconduct is condoned and charge sheet cannot become reason to punish the petitioner.

8. On the aspect of inordinate delay, the petitioner placed reliance on the judgment of Supreme Court reported in **(2005) 6 SCC 636 (P.V. Mahadevan vs. Md. T.N. Housing Board)**.
9. Lastly, it is urged that in view of Delhi High Court judgment in the case of **O.P. Gupta vs. Union of India & Anr. 1981 SCC OnLine Del. 373**, it is clear that charge sheet must be issued within reasonable time and with quite promptitude. The department could not assert a single justifiable reason for belatedly issuing the charge sheet and similarly concluding the disciplinary proceedings within reasonable time. In the result, the petitioner's certain retiral dues are still withheld. For these cumulative reasons, it is prayed that the impugned charge sheet and the disciplinary proceedings be set aside by directing the respondents to provide him all consequential benefits.

CONTENTION OF RESPONDENTS

10. Learned counsel for respondents submits that no doubt, despite getting two opportunities of extension of time in concluding the inquiry, the department could not conclude the same for the reason of non-cooperation of the petitioner. By placing reliance on the judgment of Supreme Court reported in **(1994) 3 SCC 357 (Union of India & Ors. vs. Upendra Singh)**, it is submitted that scope of judicial review by this Court on the disciplinary proceedings is limited. If, upon admission of charges, no misconduct is established, interference can be made. The correctness of allegations cannot be examined in the present proceedings.
11. He prayed for dismissal of the writ petition.

FINDINGS

12. We have heard the parties at length and perused the record.
13. Before dealing with rival contentions, it is apposite to examine Article-I of the charge dated 28.01.2012 (Annexure-‘P5’). A minute reading of this allegation makes it clear that the alleged shortage of items in the storage were detected, way back on 21.01.1999. Admittedly, thereafter the petitioner was given two awards for his meritorious working and also promoted as Depot

Material Superintendent-I in 2003. In 2012, the impugned charge sheet came to be issued against the petitioner. Admittedly, the petitioner was served with the said charge sheet two days before his retirement. In the charge sheet, there is no allegation against the petitioner that he has embezzled/misappropriated/pocketed or pilferaged or taken any pecuniary benefit arising out of alleged shortage. A simple shortage in store, which was detected in 1999 became subject-matter of charge sheet issued on 28.01.2012. The material placed before us nowhere explains the inordinate delay in issuing the charge sheet.

14. No doubt, in ***Upendra Singh (supra)***, the Apex Court opined that the charge sheet can be assailed on limited ground. However, limited to the grounds raised in the said case, the Court opined that the correctness of allegations cannot be gone into on writ proceedings. In the instant case, the petitioner is not challenging the charge sheet on the ground of its correctness. Instead, petitioner is assailing the charge sheet on the ground of unexplained and inordinate delay.

15. Law on this point is well-settled. The Apex Court way back in the case of **State of M.P. vs. Bani Singh reported in 1990 Supp. SCC 738** opined as under:

“The irregularities which were the subject-matter of the enquiry are 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 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 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.”

(Emphasis Supplied)

16. The same principle was followed by Supreme Court in the case of **State of A.P. vs. N. Radhakrishnan** reported in **(1998) 4 SCC 154**.
17. A conjoint reading of both the authoritative pronouncements makes it clear that an unexplained and inordinate delay in issuing the charge sheet can very well be a ground for interference. The prosecution cannot be permitted to become a persecution. In the instant case, sadly, the charge sheet was issued in a mechanical way before two days of petitioner’s

retirement and after 12-13 years of the detection of shortage. This inordinate and unexplained delay in issuing the charge sheet deserves interference.

18. The Tribunal has miserably failed to see that as per the authoritative pronouncements of Supreme Court in **Bani Singh (supra)** and **Radhakrishnan (supra)**, the charge sheet and disciplinary proceedings could have been challenged on the ground of inordinate and unexplained delay.
19. Thus, we are unable to countenance the order of Tribunal, where it opined that it cannot interfere on the charge sheet because it had not attained finality by imposing the punishment.
20. Apart from this, the Tribunal while not entertaining the O.A., directed to conclude the inquiry within two months. The said period was extended twice but within those extended periods also, the disciplinary proceedings could not be finalised. In the result, the petitioner, who retired on attaining the age of superannuation on 31.01.2012, had not received the entire retiral dues and certain dues are still withheld.
21. The sword of disciplinary proceedings is hanging on the head of the petitioner for more than a decade. Nothing prevented the administration to conclude the inquiry *ex parte* even assuming

that petitioner was not participating in the inquiry. There is no justifiable reason in not concluding the inquiry despite the order of the Tribunal fixing the time limits.

22. As a consequence, we are constrained to hold that belated initiation and non-completion of inquiry for decades cannot be countenanced. The citizen/civil post holder has a right of speedy trial as well as speedy initiation and conclusion of disciplinary proceedings. The said right of civil post holder is grossly and arbitrarily breached by the respondents for the reasons solely attributable to them. It certainly hits Articles 14 and 21 of the Constitution of India.
23. In view of the foregoing discussions, the impugned charge sheet dated 28.01.2012 and disciplinary proceedings founded upon it are set aside.
24. The petitioner shall get all consequential benefits as if the said disciplinary proceedings pursuant to charge sheet dated 28.01.2012 was never initiated against him. The petitioner, who was entitled to get his retiral dues on the date of retirement was deprived to get the same. The respondents shall pay the said benefits to the petitioner within 90 days from the date of

production of copy of this order with interest @ 6% p.a. on delayed payment.

25. Petition is **allowed** to the extent indicated above.
26. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(SUJOY PAUL, CJ.)

I agree.

(PARTHA SARATHI SEN, J.)