HIGH COURT OF DELHI
Bench: V. Kameswar Rao, J and Anoop Kumar Mendiratta, J
Date of Decision: November 01, 2023

W.P.(C) 5287/2006

U.O.I & ANR. ..... Petitioners

versus

RATTAN LAL ..... Respondent

Sections, Acts, Rules, and Articles:
Rule 14 of CCS/CCA Rules, 1965
Code of Criminal Procedure, 1973
Article 14 and Article 21 of the Constitution of India

Subject: Delay in Initiating Disciplinary Proceedings - Prejudice caused by Delay – Chargesheet quashed -Dismissal of Petition.

Headnotes:

Delay in Issuing Charge Sheet - Challenge to the order of the Central Administrative Tribunal quashing a charge sheet issued after a significant delay - Petitioners argue that the delay is not a valid ground for quashing the charge sheet - Emphasis on the need to allow disciplinary proceedings to proceed - Reliance on documentary evidence and statutory rules - CVC advised initiation of departmental action - Respondent's retirement and age considered - Plea of undue delay and its impact on the respondent's retiral benefits - Tribunal's reliance on precedents concerning delay in disciplinary matters - Request for dismissal of the writ petition. [Para 1-13]

Disciplinary Proceedings - Delay in Initiating Proceedings - Prejudice caused by delay - Explanation for delay - Bifurcation of Department and transfer of records - Complaint received in 1998, charge sheet issued in 2005 - Delay of 7 to 9 years in initiating proceedings - Lack of earnestness in taking the complaint to its logical end - Prejudice caused to government servant - Supreme Court's judgment in M.V. Bijlani v. Union of India referred to - Proceedings stayed but not initiated by the petitioners - Respondent retired during the delay - Delayed initiation of proceedings after 25-29 years from the alleged incidents - Prejudice to the respondent - Court declines to revive the charge sheet and directs proceedings - Petition dismissed. [Para 14-31]

Referred Cases:

- State of Madhya Pradesh v. Bani Singh and Anr., 1990 (2) SLR 798
- B.C. Chaturvedi v. Union of India and Ors., (1995) 6 SCC 749
- Secretary to Government Prohibition & Excise Department v. L.S. Srinivasan, (1996) (1) ATJ 617
- State of Andhra Pradesh v. N. Radhakishan JT 1998 (3) SC
- Union of India and Ors. v. Mohd. Ibrahim, (2004) 10 SCC 87
- Secretary, Ministry of Defence & Ors. v. Prabhash Chandra Mirdha, 2012 (11) SCC 565

- Government of Andhra Pradesh and Ors. v. V. Appala Swamy, 2007 (14) SCC 49
- Chairman, Life Insurance Corporation of India & Ors. v. A. Masilamani, 2013 (6) SCC 530
- Anant R. Kulkami v. Y.P. Education Society, 2013 (6) SCC 515
- State of Madhya Pradesh & Ors. v. Akhilesh Jha and Ors., Civil Appeal No. 5513/2021 (SC)
- M.V Bijlani v. Union of India, (2006) 5 SCC 88

Representing Advocates:

For Petitioner: Mr. Ruchir Mishra, Mr. Mukesh Kr. Tiwari, Ms. Reba Jena Mishra, Mr. Sanjiv Kr. Saxena, Ms. Poonam Mishra, Ms. S. Pradhan and Ms. Eesha Sharma, Advs.
For Respondents: Ms. Richa Kapoor, Mr. Amresh Bind and Mr. Sandesh Kumar, Advs.

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J U D G M E N T

V. KAMESWAR RAO, J

1. The challenge in this writ petition is to an order dated June 28, 2005, passed by the Central Administrative Tribunal, Principal Bench,

New Delhi, ('Tribunal', for short) in Original Application No.851/2005 ('OA', for short) whereby the Tribunal has allowed the OA filed by the respondent herein by stating in paragraphs 12 to 15 as under:

"12. Taking stock of these facts, it is clear that inquiry should be initiated at the earliest. However, it depends upon the facts of each case. If delay is explained and prejudice is not caused, in that event, the inquiry need not be quashed but if there is no satisfactory explanation for delay and otherwise also, it is found that prejudice is caused in that event, the application should succeed.

13. In the present case before us, it has been explained that documents were involved for investigation had to be collected and there was bifurcation of PWD Electrical Division IV. The records went to many other divisions and some records were required to be called from various divisions. It has been further stated that the records were also required to be called from various other offices for investigation. Therefore, it took considerable time. In our considered opinion, though the respondents have explained for the delay in initiation of the departmental proceedings but they have not fully explained. The delay herein runs into 7 to 10 years from the alleged incident. The delay is not fully explained because even if some files were to be collected, it must be done at the earliest. It is not a case of fabrication of false records that the ratio deci dendi of the decision of Shri L. Srinivasan (supra) can be attracted. Herein, delay necessarily caused prejudice. They cannot blame the applicant for the delay. Prejudice would be inherent because

merely after a period of one decade of the alleged misconduct, it would be difficult for anybody to contest on the facts.

14. For these reasons, we hold that the delay in the peculiar facts is not explained and keeping in view the findings, the proceedings are liable to be quashed.

15. For the abovesaid reasons, we allow the present application and quash the Articles of Charge served on the applicant."

2. The facts relatable for a decision in the writ petition are that the respondent was, at the relevant time, working as Executive Engineer (Electrical) in Central Public Works Department ('CPWD', for short) under the Director General (Works), Government of India, New Delhi. On March 21, 2005, Statement of Articles of Charge framed against the respondent along with an advise of the Central Vigilance Commission dated January 06, 2005 was issued, wherein the following Articles of charge were framed against him which are reproduced as under:

"ARTICLE-I

Shri Ratan Lal, EE(E) carried out works which were of the nature of original works for which administrative approval and expenditure sanction as required from the competent authority was not available. I also allowed his AE(E)s to award similar nature work at Sub-Division level without administrative approval and expenditure sanction by way of approving "Schedule of works". Many of such works were executed without any technical sanction accorded by the competent authority. In some cases there was no provision on the items executed in the A/A & E/S referred to in the technically sanctioned estimate. The details; of such works are given in Appendix-I. He thereby violated Paras 2.1, 2.2 .and 2.34 of the CPWD Manual Vol. II (1988 edition).

ARTICLE-II

Shri Ratan Lal, EE(E) invited tenders by splitting up the works by keeping, the estimated cost of the NIT within Rs.2 lakhs for call of tenders with the objective to avoid vide publicity through press and healthy competition. He also allowed his AE(E)s to invite tenders at Sub-Division level by splitting up the works by keeping the estimated cost of the NIT within Rs.60,000/- with a purpose to avoid wide publicity and healthy competition; He , thus violated para 2.47, 17.4.1 and 18.1.2 of the CPWD Manual Vol. II (1988 Edition). The details of such spitted works given in Appendix-II.

ARTICLE-III

Shri Ratan Lal, EE(E) invited tenders for specialized works as per details given in Appendix-III, without inviting pre-qualification applications and obtaining approval of the competent authority. He thereby violated para 19.2 and 19.6 of CPWD Manual Vol.II (1988 Edition).

ARTICLE-IV

Shri Ratan Lal, EE(E) allowed his AE(E)s to invite tenders at Sub-Division level by approving the schedule of works for supply and fixing of Crompton/equivalent make fan regulators, as per details given in Appendix-IV, instead of procuring the item through DGS&D Rate contract and issuing them to contractor for fixing. No approval of SE(E) was obtained for including supply of fan regulators in the schedule of works. Sh. Ratan Lal, EE(E) thereby violated Circular No.CE/Accts/602 dt. 3.11.87 partially modified by Circular No.DGW/Accts/17 dt. 30.05.91.

The rates approved by Sh. Ratan Lal was very high causing substantial loss to the, Government.

ARTICLE-V

Shri Ratan Lal, EE(E) invited tenders at Division level and allowed his AE(E) to invite tenders at Sub-Division level on CPWD-6 for fabrication 8& supply of Aluminum Ladders. The awarded amount in each contract was more than the delegated local purchase power for Executive Engineer/Asst. Engineer (E) and in this manner he violated the provision of delegation of financial powers to Executive Engineer (E) as prescribed under Appendix I of CPWD Manual Vol.11. Details of such tenders are given in Appendix V Thus the said Shri Ratan Lal, EE(E) by his above acts failed to maintain absolute integrity and exhibited lack of devotion to duty thereby contravening Rules 3(l)(i) 85 3(l)(ii) of CCS(Conduct) Rules, 1964." xxxx xxxx xxxx

"CENTRAL VIGILANCE COMMISSION

The Commission would, in agreement with Ministry of Urban Development & Poverty Alleviation, advise initiation of major penalty proceedings against S/Shri Ratan Lal, EE(E) & Ved Pcakash, EE(E) and closure of case against S/Shri AK Shareef, EE(E), TR Garg, AE(E) & RK Garg, JE(E).

2 *Further, it is seen that the investigation in the case was initiated in 1998 and it has taken more than 6 years to approach the Commission for 1st stage advice in the matter. Due to the inordinate delay, no action is possible against S/Shri PN Chadha, EE(E), Shaktimay Rudra, AE(E) & YK Gupta, AE(E) as they have retired and the case against them has become time barred. The Commission expresses its displeasure at the undue delay in processing the case.*

3 *The Commission has also decided to include the case in its annual report for the year 2004.*

4 *Ministry of Urban Development & Poverty Alleviation's records are returned herewith the receipt of which may be acknowledged and action in pursuance to Commission's advice may be initiated in due course."*

3. The aforesaid OA was the second round of litigation which was filed primarily challenging the aforesaid charge sheet issued to him.

4. The plea of the respondent before the Tribunal was that the charge sheet issued in the year 2005, was with respect to works executed between the years 1994-1998 and as such, the same need to be quashed on the ground of delay.

5. The case of the petitioners before the Tribunal was that the respondent had carried out large number of works at his own level or allowed his Assistant Engineers (E) to award 16 such works which were in the nature of the original work without obtaining the administrative approval and expenditure sanction of the Competent Authority. It was also stated that, many of such works were executed without any technical sanction accorded by the Competent Authority. In some of the cases, there was no provision of the items executed with the administrative approval, which is in violation of the Central Public Works Department Manual (Vol. II).

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6. The petitioners have stated that the respondent to avoid publicity through press and healthy competition has allowed Assistant Engineer to split the work to keep the estimated cost of NIT within ₹60,000/-. The respondent has also violated the departmental guidelines by inviting tenders for the specialized works without inviting prequalifications applications; he also did not obtain the approval of the Superintending Engineer (E) for including supply of fan regulator in the contract and thus violated the circular dated November 03, 1987.

7. On the plea of delay taken by the respondent, the case of the petitioners was that, large number of records / documents was involved for investigation of the case and due to bifurcation of PWD Electrical Division IV and transfer of some of the Sub-Divisions of PWD Electrical Division IV to other Divisions; the record went to many other divisions. Therefore, in order to investigate, the records were required to be called from various other offices and the compilation of documents/records from various divisions consumed time. It was also the petitioners case that, even the Central Vigilance Commission (CVC) had advised for initiation of the departmental action.

8. The Tribunal while allowing the OA has considered the following judgments on the question of inordinate delay:

(i) ***State of Madhya Pradesh v. Bani Singh and Anr., 1990 (2) SLR 798;***

(ii) ***B.C. Chaturvedi v. Union of India and Ors., (1995) 6 SCC 749;***

(iii) ***Secretary to Government Prohibition & Excise Department v. L.S. Srinivasan, (1996) (1) ATJ 617;***

(iv) ***State of Andhra Pradesh v. N. Radhakishan JT 1998 (3) SC;***

(v) ***Union of India and Ors. v. Mohd. Ibrahim, (2004) 10 SCC 87.***

9. The submission of Mr. Ruchir Mishra, learned counsel appearing for the petitioner is primarily that the disciplinary proceedings in the present case are based on documentary evidence, rules, regulations and instructions and the respondent had in response to the petitioner's order dated December 15, 2004 has submitted a detailed representation. He also stated that, in the representation dated December 15, 2004, the respondent has nowhere taken the plea of delay or that, he is having difficulty in contesting the proceeding. In such circumstances, the Tribunal has erred in quashing the charge sheet on the ground of delay.

10. He further submitted that, it is settled position in law that the law does not permit quashing of charge sheet in a routine manner, and in the absence of any violation of statutory provision, the disciplinary proceedings should be

allowed to be completed and the Courts or Tribunal should not interfere with the charge sheet on the ground of delay. In support of his submissions, he has relied upon the following judgments:

(i) ***Secretary, Ministry of Defence & Ors. v. Prabhash Chandra Mirdha, 2012 (11) SCC 565,***

(ii) ***Government of Andhra Pradesh and Ors. v. V. Appala Swamy, 2007 (14) SCC 49,***

(iii) ***Chairman, Life Insurance Corporation of India & Ors. v. A. Masilamani, 2013 (6) SCC 530.***

11. According to him, mere issuance of charge sheet does not imply that the delinquent has been punished. He stated that the respondent would get adequate opportunity to defend himself in the disciplinary proceedings which are guided by statutory rules. He also stated that the reliance placed by the Tribunal on the judgments, as referred to in paragraph 7 above, have no applicability in the facts of this case, and the charges which have been framed against the respondent being of serious nature, the same should be permitted to be enquired into. The Tribunal should not have interfered with the same. In support of his submission, he has also relied upon the judgment of the Supreme Court in the case of ***Anant R. Kulkami v. Y.P. Education Society, 2013 (6) SCC 515***. He seeks the prayer(s) as made in the writ petition.

12. On the other hand, Ms. Richa Kapoor, learned counsel appearing for the respondent would justify the order of the Tribunal and stated that the Tribunal has rightly held, in the absence of proper explanation for issuance of charge sheet after a period of 7 to 9 years the charge sheet is bad in law.

13. She stated that the Central Vigilance Commission, while tendering its advice, showed its displeasure with regard to undue delay in processing the case. She has also stated that the respondent has retired on December 31, 2011 and has attained the age of 71 years. The subject matter of the charges relates back to 24-28 years. It is too late in the day for the petitioners to proceed with the charge sheet against the respondent. Due to the pendency of the charge sheet, the respondent has not been paid the retiral benefits, which is causing hardship to him. This delay itself is a prejudice, caused to the respondent. In support of her submissions, she has relied upon the judgments, as referred to by the Tribunal in the impugned order. She seeks the dismissal of the writ petition.

14. Having heard the learned counsel for the parties and perused the record, the short issue which arises for consideration is, whether the Tribunal was justified in setting aside the charge sheet on the ground of delay.

15. We may state here that there is no dispute that the subject matter of the charge sheet pertains to the works executed in the years 1994-1998. The charge sheet was issued in March 21, 2005. In that sense, there was a delay of 7 to 9 years for issuing the charge sheet.

16. The petitioners in the list of dates have explained the delay by highlighting the following facts:

"(i) That an anonymous complaint dated Nil (received vide Dy.No.740 dated 15.6.1998) was received by the petitioners alleging scandal of tenders in the office of Executive Engineer(E), PWD ED-IV and the same was investigated by the Vigilance Unit CPWD under the petitioners.

(ii) That it is submitted that the PWD ED-IV was bifurcated and some of its sub-divisions were transferred to other Division and its records were also transferred to many other Divisions. Hence, the detailed investigation in the aforesaid complaint took some time in getting the report and records of the case from the field units arid involvement of a large number of records/documents in the investigation. Hence, the relevant records were collected from various divisions and sub-divisions.

(iii) That during the preliminary investigation of the aforesaid complaint, the Vigilance Unit, CPWD, vide OM N0.15/5/6/98/VSI dated 15.9.2004, called for explanation of the respondent herein, who was working as Executive Engineer(E), PWD, ED-IV during the relevant period.

(iv) That the respondent herein did not submit his reply to the

aforesaid OM dated 15.9.2004 and hence the Vigilance Unit issued him a reminder vide (DM dated 19.10.2004. The respondent herein acknowledged receipt of the OM dated
15.9.2004 and gave his detailed representation dated 15.12.2004 wherein he also took the ground of delay in initiation of the disciplinary proceedings.
(v) That, however, the respondent herein approached the Id. Tribunal below vide OA No.225/2005 which was dismissed as withdrawn by the Id. Tribunal below vide its order/judgement dated 1.2.2005.
(vi) That the Vigilance Unit, CWPD finalized the investigation report on the basis of records available and the same was submitted to the office of petitioner No.l herein, who obtained 1st stage advice of the Central Vigilance Commission (hereinafter called and referred to as 'CVC) in the matter. It is submitted that the CVC advised initiation of major penalty proceedings against the respondent herein as well as others. Accordingly, the advice of the CVC was accepted by the petitioners and a charge sheet for major penalty under Rule 14 of CCS/CCA) Rules, 1965 was issued to the respondent herein vide Memo dated 21.3.2005."

17. We have already reproduced the conclusion drawn by the Tribunal in paragraph Nos.12 to 15 of the impugned order. The law with regard to delay in issuance of charge sheet is quite well settled. 18. The judgments relied by the Tribunal with regard to delay are the following:

i. The judgment of the Supreme Court in ***Bani Singh (supra)*** wherein, in paragraph 4, the Supreme Court has held as under:

"4. The appeal against the order dated 16.12.1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned counsel. The irregularities which were the subject matter of the enquiry is said to have taken place I between the years 1975-1977. 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 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 the appeal."

ii. In ***B.C. Chaturvedi (supra)***, the Supreme Court has held:

"The next question is whether the delay in initiating disciplinary proceeding is an unfair procedure depriving the livelihood of a public servant offending Article 14 or 21 of the Constitution. Each case depends upon its own facts. In a case of the type on hand, it is difficult to have evidence of disproportionate pecuniary resources or assets or property. The public servant, during his tenure, may not be known to be in possession of disproportionate assets or pecuniary resources. He may hold either himself or through somebody on his behalf, property or pecuniary resources. To connect the officer with the resources or assets is a tardious journey, as the

Government has to do a lot to collect necessary material in this regard. In normal circumstances, an investigation would be undertaken by the police under the Code of Criminal Procedure, 1973 to collect and collate the entire evidence establishing the essential links between the public servant and the property or pecuniary resources. Snap of any link may prove fatal to the whole exercise. Care and dexterity are necessary. Delay thereby necessarily entails. Therefore, delay by itself is not fatal in this type of cases. It is seen that the C.B.I. had investigated and recommended that the evidence was not strong enough for successful prosecution of the appellant under Section 5 (1)(e) of the Act. It had, however, recommended to take disciplinary action. No doubt, much time elapsed in taking necessary decisions at different levels. So, the delay by itself cannot be regarded to have violated Article 14 or 21 of the Constitution."

iii. Similarly, in ***L.S. Srinivasan (supra)***, the Supreme Court has held as under:

"The Tribunal had set aside the departmental enquiry and quashed the charge on the ground of delay in initiation of disciplinary proceedings. In the nature of the charges, it would take long time to detect embezzlement and fabrication of false records which should be done in secrecy. It is not necessary to go into the merits and record any finding on the charge leveled against the charged officer since any finding recorded by this Court would gravely prejudice the case of the parties at the enquiry and also at the trial. Therefore, we desist from expressing any conclusion on merit or recording any of the contentions raised by the counsel on either side. Suffice it to state that the Administrative Tribunal has committed grossest error in its exercise of the-judicial review. The member of the Administrative Tribunal appear (sic) to have no knowledge of the jurisprudence of the service law and exercised power as if he is an appellate forum de hors the limitation of judicial review. This is one such instance where a member had exceeded his power of judicial review in quashing the suspension order and charges even at the threshold. We are coming across frequently such orders putting heavy pressure on this court to examine each case in detail. It is high time that it is remedied."

iv. In ***State of Andhra Pradesh v. N. Radhakishan (supra)***, the Supreme Court in paragraph 19 has held 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 he is 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."

v. Similarly, in ***Mohd. Ibrahim (supra)***, the Supreme Court in paragraph 2 held as under:

"2. Union of India is in appeal against the order of the Tribunal setting aside an order of the dismissal of the respondent as well as the order of the High Court refusing to interfere in its jurisdiction under Article 226 of the Constitution. In a disciplinary proceeding against the respondent, a set of charges leveled against which charges appear to be grave and serious, the ultimate conclusion of the enquiring officer having been based upon statement of persons made in the course of preliminary enquiry, the Tribunal came to hold that the conclusion is vitiated since the same was based upon the statement of persons examined in the preliminary enquiry and accordingly the Tribunal set aside the order of dismissal. The High Court on being approached has refused to interfere with the order in an application under Article 226 of the Constitution. When the matter was listed for admission, learned ASG requested that the power of the employer to start a fresh proceeding should not be whittled down in any manner, particularly in view of the nature of charges against the delinquent. He however fairly stated that in the procedure adopted in the case in hand, the order cannot be found fault with. Pursuance to the notice, respondent has entered appearance and the learned counsel for the respondent vehemently contested on the ground that 17 long years have elapsed and it will cause great hardship to start a proceeding afresh. We are unable to persuade to agree with the submission of the learned counsel for the respondent, particularly looking at the charges leveled against. In that view of the matter, though we are of the considered opinion that the order of dismissal was vitiated as the findings have been based on consideration of statement of the persons examined during the preliminary enquiry but the power of employer to start a fresh proceeding cannot be taken away. Therefore, we dispose of the matter with the observation that it will be open to the competent authority to start a fresh disciplinary proceeding and conclude the same in accordance with law.

19. In so far as the judgments relied upon by Mr. Mishra are concerned, in the case of ***Prabhash Chandra Mirdha (supra)***, the Supreme Court has in paragraphs 9 and 10, held as under:

"9. In Forest Deptt. v. Abdur Rasul Chowdhury [(2009) 7 SCC 305 : (2009) 2 SCC (L&S) 327] (SCC p. 310, para 16) this Court dealt with the issue and observed that delay in concluding the domestic enquiry is not always fatal. It depends upon the facts and circumstances of each case. The unexplained protracted delay on the part of the employer may be one of the circumstances in not permitting the employer to continue with the disciplinary proceedings. At the same time, if the delay is explained satisfactorily then the proceedings should not (sic) be permitted to continue.

10. Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the court. (Vide State of U.P. v. Brahm Datt Sharma, Bihar State Housing Board v. Ramesh Kumar Singh, Ulagappa v. Commr., Special Director v. Mohd. Ghulam Ghouse and Union of India v. Kunisetty Satyanarayana."

20. Similarly in the case of ***V. Appala Swamy (supra)***, the Supreme Court has in paragraphs 12 and 13 held as under:

"12. So far as the question of delay in concluding the departmental proceedings as against a delinquent officer is concerned, in our opinion, no hard-and-fast rule can be laid down therefor. Each case must be determined on its own facts. The principles upon which a proceeding can be directed to be quashed on the ground of delay are:

(1) where by reason of the delay, the employer condoned the lapses on the part of the employee;

(2) where the delay caused prejudice to the employee.

Such a case of prejudice, however, is to be made out by the employee before the inquiry officer.
13. This aspect of the matter is now squarely covered by the decisions of this Court in Secy. to Govt., Prohibition & Excise Deptt. v. L. Srinivasan; P.D. Agrawal v. State Bank of India; Registrar, Coop. Societies v. Sachindra Nath Pandey.

21. Similarly in ***A. Masilamani (supra)***, the Supreme Court in paragraphs 17 and 18 held as under:

"17. The second question involved herein is also no longer res integra. Whether or not the disciplinary authority should be given an opportunity to complete the enquiry afresh from the point that it stood vitiated depends upon the gravity of delinquency involved. Thus, the court must examine the magnitude of misconduct alleged against the delinquent employee. It is in view of this, that courts/tribunals are not competent to quash the charge-sheet and related disciplinary proceedings, before the same are concluded on the aforementioned grounds.
18. 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 dehors the limits 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 the 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 have to be examined

taking into consideration the gravity/magnitude of charges involved therein. The essence of the matter is that the court must take into consideration all relevant facts and to balance and weigh the same, so as to determine if it is in fact in the interest of clean and honest administration, that the judicial proceedings are allowed to be terminated only on the ground of delay in their conclusion. (Vide State of U.P. v. Brahm Datt Sharma, State of M.P. v. Bani Singh, Union of India v. Ashok Kacker, Prohibition & Excise Deptt. v. L. Srinivasan, State of A.P. v. N. Radhakishan, M.V. Bijlani v. Union of India, Union of India v. Kunisetty Satyanarayana and Ministry of Defence v. Prabhash Chandra Mirdha."

22. Even in a recent judgment, the Supreme Court in the case of ***State of Madhya Pradesh & Ors. v. Akhilesh Jha and Ors.***, ***Civil Appeal No. 5513/2021***, has in paragraphs 14 and 15, held as under:

"14. On the basis of the above material which has been placed on the record, it was impossible to come to the conclusion that the charge against the first respondent is vague or ambiguous. The charge-sheet, together with the statement of imputations, contains a detailed elaboration of the allegations against the first respondent and does not leave the recipient in a measure of doubt or ambiguity over the nature of the case he is required to answer in the disciplinary enquiry. The finding that the charge is vague is palpably in error. The Tribunal declined to quash the charge-sheet by its initial order dated 28-7-2016 [Akhilesh Jha v. State of M.P., 2016 SCC OnLine CAT 4628] . However, by a subsequent order dated 5-1-2018 [Akhilesh Jha v. Union of India, 2018 SCC OnLine CAT 28635] , it proceeded to do exactly what it had declined to do by its previous order. The Tribunal purportedly did so on the basis that prejudice had been caused to the first respondent by the denial of an opportunity for deputation or for promotion as a result of the pendency of the proceedings.

15. The line of reasoning which weighed with the Tribunal is plainly erroneous. The Tribunal would have been justified in directing the expeditious conclusion of the enquiry, but instead, it proceeded to quash the enquiry in its entirety. This, in our view, was clearly impermissible. Every delay in conducting a disciplinary enquiry does not, ipso facto, lead to the enquiry being vitiated. Whether prejudice is caused to the officer who is being enquired into is a matter which has to be decided on the basis of the circumstances of each case. Prejudice must be demonstrated to have been caused and cannot be a matter of surmise. Apart from submitting that the first respondent was unable to proceed on deputation or to seek promotion, there is no basis on which it could be concluded that his right to defend himself stands prejudicially affected by a delay of two years in concluding the enquiry. The High Court, therefore, in our view, has clearly failed to properly exercise the jurisdiction vested in it by simply affirming the judgment of the Tribunal. The judgment of the Tribunal suffered from basic errors which go to the root of the matter and which have been ignored both by the Tribunal as well as by the High Court."

23. From the reading of the judgments above, it is clear that, every delay in the initiation of disciplinary proceedings is not fatal. The Court is bound to look into the totality of the facts of each case, so as to come to a conclusion whether any prejudice has been caused to the government servant in initiation of disciplinary proceedings after much delay.

24. Having said that, from the facts of this case, it is clear that the charges framed against the respondent pertains to the period 1994-1998 as is clear from the impugned order of the Tribunal. The charge sheet was issued in the year 2005. The justification given by the petitioners as noted above is that because of bifurcation of the Department and transfer of some of the Sub-divisions to other Divisions, the records went to many other Divisions in the said process. For investigation of the complaint made against the petitioner, these records were required to be called from various offices, which consumed time.

25. Surely, the complaint received on June 15, 1998 would not take six years to collate the records and complete the investigation. The delay clearly suggests lack of earnestness, to take the complaint to its logical end. We agree with the findings of the Tribunal that the petitioners have explained the delay in initiating the departmental proceedings, but they have not fully explained the delay. Surely the delay of 7-10 years in the facts has caused prejudice.

26. We may note that, in one of the judgments decided by the Supreme Court in the case of ***M.V Bijlani v. Union of India, (2006) 5 SCC 88***, the charge sheet was issued in the year 1975 for certain happenings in the year 1969. The proceeding remained pending for seven years, before the disciplinary authority, till December 21, 1983 and before the appellate authority till February 21, 1991. In view of the delay, the Supreme Court set aside the proceedings.

27. It is noted from the record that though the Tribunal vide the impugned order has set aside the charge sheet, this Court immediately after the filing of the writ petition, vide its order dated April 3, 2006, has stayed the operation of the impugned order of the Tribunal to enable the petitioners initiate proceedings against the respondent but the petitioners did not initiate the proceedings against the respondent. Nothing this fact, this Court on October 8, 2007 had passed the order vacating the stay, by stating as under:

"Since the charge sheet is quashed by the learned Tribunal vide impugned order on the ground of delay, <u>the granting of a stay order would amount to allowing the petition itself at the interim stage. Even otherwise, we find that though the stay was granted, no steps have been taken by the petitioner</u>. Therefore, we vacate the stay and dismissed the application."
(emphasis supplied)

28. The above reveals, despite stay of the order of the Tribunal, the petitioners did not hold the departmental proceedings. In the interregnum, the respondent retired from service on December 30, 2011.

29. The above would show, there was a delay of 7 to 9 years in issuing the charge sheet; despite a stay of the impugned order of the Tribunal in the year 2006, the petitioners did not conduct the inquiry against the respondent; 12 years elapsed after the retirement of the respondent and 17 years have gone by from the date of filing of this writ petition. It means the subject matter of the charges are in respect of certain happenings which have taken place 25-29 years back and during this period the respondent has been denied the retiral benefits which itself is a prejudice caused to the respondent.

30. In the facts of this case, we are of the view that it is too late in the day for us to revive the charge sheet and direct the petitioners to hold proceedings against the respondent, pursuant to the charge sheet dated March 20, 2005.

31. In view of the aforesaid facts of the case, we are not inclined to interfere with the impugned order. We dismiss the petition. No costs.

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