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Rajesh Babu vs.ministry of Information & Broadcasting & Ors.

Rajesh Babu vs.ministry of Information & Broadcasting & Ors.

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Court : Delhi

Decided On : May-26-2017

Appellant : Rajesh Babu

Respondent : Ministry of Information & Broadcasting & Ors.

Advocate for Def. : Mr. Ripu Daman Bhardwaj, Mr. Ms. Radhalakshmi R, Mr. Pratishth Kaushal

Advocate for Pet/Ap. : Mr. Apurb Lal

Judgement :

$~ * + % IN THE HIGH COURT OF DELHI AT NEW DELHI W.P.(C) 2295/2014 RAJESH BABU Reserved on:

17. h January, 2017 Date of Decision:

26. h May, 2017 Through: Mr. Apurb Lal, Advocate .....Petitioner Versus MINISTRY OF INFROMATION & BROADCASTING & ORS. Through: Mr. Ripu Daman Bhardwaj, ...Respondents Rajeev Advocate for respondent No.1 Mr. Ms. Radhalakshmi R. & Mr. Pratishth Kaushal, Advocates for respondent Nos. 2 & 3 Sharma, CORAM: HON'BLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE CHANDER SHEKHAR CHANDER SHEKHAR, J.

Rajesh Babu, the petitioner, impugns the order dated 26th March, 2014 whereby the Principal Bench of the Central Administrative Tribunal (Tribunal, for short) has

dismissed OA No.1851/2013 and MA No.3405/2013 as premature. The impugned order also observed that the petitioner would have liberty to raise all contentions during the course of the ongoing departmental proceedings. W.P. (C) No.2295/2014 Page 1 of 16 2. The petitioner was recruited by the Union Public Service Commission and joined the Indian Broadcasting Engineering Service in 1988 and was posted as Station Engineer at All India Radio, Alwar, Rajasthan (AIR, Alwar for short) during the period 2002-2005.

3. On the basis of preliminary enquiry, memorandum dated 28th July, 2008 was issued pertaining to irregularities which took place at AIR, Alwar while the petitioner was posted there as Station Engineer, which read:-

"issued On an enquiry into the irregularities at AIR Alwar, it has been observed that civil minor works were carried out by two or three Gwalior firms. As per audit report it seems that bills were obtained first from the firms and their approval were taken later according to amount mentioned in the bills. As per loan register, 5 electronic equipments were to SE, AIR, Alwar. Substandard materials were purchased from one firm i.e. M/s. Dhruva Electricals, Hope Circus, Alwar for 49 items at lowest rates. Over-payments of Rs.l,88,202/- has been made by SE, AIR, Alwar to the Private Security Agency M/s. Millennium Security Service, Jaipur. Further, without settling the audit objections for this overpayment, SE, AIR, Alwar released the withheld amount of Rs.75,738/- the Security Agency. Digital Clocks worth Rs.87,144/- on three different occasions have been purchased which made it infructuous expenditure.

2. Ministry has desired to have the explanation of Sh. Rajesh Babu, DDE (formerly SE, AIR, Alwar)(now working as DDE, 0/o CE(NEZ), Guwahati). It is accordingly requested that Rajesh Babu, DDE, 0/o CE(NEZ), Guwahati may kindly submit his explanation within a fortnight. to W.P. (C) No.2295/2014 Page 2 of 16 Through his reply dated 11th August, 2008, the petitioner had denied the allegations.

4. At this stage, it may be relevant to state that FIR No.275/2004 dated 29th December, 2004 was registered against the petitioner on a complaint made by the wife of a Security Guard working at AIR, Alwar. Thereafter, vide letter dated 31st December, 2004, the petitioner made allegations of defamation against several of

his superiors at AIR, Alwar and stated that FIR No.275/2004 was false. On 18th March, 2005 final report was filed before the Court of District and Sessions Judge, Alwar which was accepted. The final report was subsequently received by the Director General of All-India Radio, Delhi. By the letter dated 5th October, 2006 the petitioner had alleged financial irregularities and malpractices occurring at AIR, Alwar, and correspondence was thereafter exchanged.

5. In the course of time, and after considerable interval, the petitioner was issued Memorandum of Charges dated 24th January, 2013. By letter dated 7th February, 2013 the petitioner sought documents which would be relied upon in the Departmental Proceedings in order to file his reply, stating that he would not be in a position to respond to the charges levelled against him relating to the period 2002-2005. It is the petitioners case that vide two reminders date 10th April, 2013 and 14th May, 2013 he reiterated the request W.P. (C) No.2295/2014 Page 3 of 16 made to the respondents for supply of relevant documents so that he could file his reply against the charge memo dated 24th January, 2013. However, there was no response from the respondents and the Inquiry Officer and Presenting Officer were appointed by order dated 8th May, 2013. The petitioners request for supply of relevant documents was not complied with and remained under consideration. The petitioner on 27th May, 2013 approached the Tribunal by way of OA No.1851/2013, which as noticed above, has been dismissed by the impugned order.

6. Counsel for the petitioner submitted that the Tribunal failed to take into consideration that there was substantial delay in initiating disciplinary proceedings, which has caused, and tantamounts to prejudice.

7. The respondents, per contra, contend that mere delay in initiation of disciplinary proceedings is not a ground for quashing disciplinary proceedings unless the delay is inexplicable and has caused irretrievable prejudice. In the present case, since the petitioner was a Group A officer, the matter required administrative consideration at various levels. The decision for taking disciplinary action required the advice of the Central Vigilance Commission. The Ministry, vide their ID Note dated 7th May, 2012, had advised Prasar Bharti to take appropriate action as per

extant Rules against the petitioner. Consequent to the amendment in the Prasar Bharti Act, 1960, there was a W.P. (C) No.2295/2014 Page 4 of 16 change in the Disciplinary Authority. Hence, it cannot be said, in the facts and circumstances of the present case, that the delay is wilful or unexplained.

8. The Tribunal in the impugned order records that the instances referred to, and pertaining to which charge memorandum dated 24th January, 2013 was issued, occurred in 2002-2004 (sic 2002-2005). Hence, no doubt, there was delay. However, what was imperative was to ascertain whether the delay had resulted in prejudice against the petitioner. Simultaneously, the gravity of the charge, would also have to be considered. The respondents have, as noticed above, given and elucidated on the reasons for the delay.

9. The memorandum of charge refers to three articles and is as under:-

"STATEMENT OF THE ARTICLES OF CHARGES FRAMED AGAINST SHRI RAJESH BABU THE THEN STATION ENGINEER, AIR, ALWAR & PRESENTLY DIRECTOR (ENGG), O/O CE (NZ), AIR & TV, NEW DELHI ARTICLE-I That Shri Rajesh Babu, Director (Engg), O/o CE (NZ), AIR & TV, New Delhi while functioning as Station Engineer at AIR, Alwar during the period 7.1.2002 to 19.9.2005, with ulterior motives, did not follow the procedure while opening of quotations for the works relating to painting/polishing in Station/Radio Colony, Alwar, so as to manipulate the rates of firms of his choice as lowest one for award of aforesaid work. W.P. (C) No.2295/2014 Page 5 of 16 By above act, Shri Rajesh Babu failed to maintain absolute integrity and acted in a manner unbecoming of a Govt. servant thereby contravening Rule 3(1)(i) and 3 (1)(iii) of CCS (Conduct) Rules, 1964. ARTICLE-II That Shri Rajesh Babu, Director (Engg), O/o CE (NZ), AIR & TV, New Delhi while functioning as Station Engineer at AIR, Alwar during the period 7.1.2002 to 19.9.2005 had made an excess payment of Rs. 1,88,202/- to the private security agency M/s. Millenium Security Services, Jaipur. Further, he in utter disregard of audit objection and without settling the excess payment made to the said private security agency released further payment of Rs. 75,738/- to the said agency with ulterior motive in violation of rules. By above act, Shri Rajesh Babu failed to maintain absolute integrity displayed lack of devotion to duty and

acted in a manner unbecoming of a Govt. servant thereby contravening Rule 3(1)(i), 3(1)(ii) and 3 (1)(iii) of CCS (Conduct) Rules, 1964. ARTICLE-III That Shri Rajesh Babu, Director (Engg), O/o CE (NZ), AIR & TV, New Delhi while functioning as Station Engineer at AIR, Alwar during the period 7.1.2002 to 19.9.2005 purchased 10 digital slave clocks and 01 digital master clock for non-technical area without proper justification and without the approval of competent authority. This resulted in an infructuous expenditure to the tune of Rs. 56,640/-. By above act, Shri Rajesh Babu showed lack of devotion to duty and acted in a manner unbecoming of a Govt. servant thereby contravening Rule 3(1)(ii) and 3 (1)(iii) of CCS (Conduct) Rules, 1964. W.P. (C) No.2295/2014 Page 6 of 16 10. Statement of imputation of misconduct or misbehaviour was enclosed with the memorandum of charge. The list of documents which were to be relied upon in support of the charges, along with the list of witnesses, are also available on record. The petitioner did not file his response to the said memorandum of charge. Instead he wrote letters dated 7th February, 2013 and 14th May, 2013 stating that he should be furnished all documents, file notings, quotations, sanction letters and comparative statements, etc. in respect of each charge. The petitioner also avers having sent the respondents a reminder dated 10th April, 2013. However receipt of the letters dated 7th February, 2013 and 10th April, 2013 has been disputed by the respondents.

11. The respondents, in paragraph 12 of the short affidavit on the point of interim relief filed before the Tribunal, stated that copies of the documents listed in the charge memorandum dated 24th January, 2013 were supplied to the petitioner vide letter dated 18th June, 2013. This is evident from Annexure P-16 filed by the petitioner which are the recordings of the Inquiry Officer of the proceedings dated 24th June, 2013 which record that the petitioner confirmed having received photocopies of the documents listed in the charge memorandum dated 24th January, 2013. The Inquiry Officer records that the petitioner had desired to inspect these documents in original, and hence the Presenting Officer was directed to grant the petitioner opportunity to inspect W.P. (C) No.2295/2014 Page 7 of 16 the said documents before the next date of hearing, viz. 12th July, 2013. However, on 12th July, 2013 the original documents had still not been produced and inspected. The petitioner had submitted a list of additional documents he

would require for his defence along with a list of defence witnesses. The Inquiry Officer vide his letter dated 12th July, 2013 wrote to the AIR, Alwar office requesting that the documents sought by the petitioner be produced on 30th July, 2013.

12. However, on 23rd July, 2013 the respondents filed short affidavit on point of interim relief, as referred to above, before the Tribunal. By order dated 25th July, 2013 the Tribunal directed the respondents to allow the petitioner to inspect the documents. The following day, i.e. on 26th July, 2013 the petitioner sought to inspect the relevant documents, but all the documents sought by him were not made available. The petitioner thereafter made another representation to the respondents dated 2nd September, 2013, stating that the Tribunals order dated 25th July, 2013 had not been complied with and that he had not been supplied the requisite documents. The petitioner thereafter submitted his rejoinder to the short affidavit filed by the respondents on 10th September, 2013 in which he stated:-

"9. That the statement made in para 23 of the short affidavit filed by respondent No.2 & 3 is matter of record. The answering W.P. (C) No.2295/2014 Page 8 of 16 respondent have only given the copy of the documents listed in the chargesheet in the month of June 2013 after the appointment of the departmental Inquiry Officer. The applicant was deprived from giving reply to the chargesheet in the absence of the relevant documents. 13. The respondents stated that the relevant documents including all the documents cited in the chargesheet were supplied to the petitioner. The petitioner had thereafter sought other documents that were not relied upon by the respondents, which were not available initially, however were subsequently traced out. Thereafter, most of the documents sought by the petitioner have been provided to him. In their reply, the respondents have annexed a tabular statement setting out the details of the documents supplied to the petitioner, which has been marked as Annexure R-1. It would be relevant to reproduce the contents of Annexure R-1 which are as follows: Documents related to the to Article of charges Listed documents Defence Documents sought by Sh. Rajesh Babu, Director(Engg) Article No.l: (i) File Notings. Documents forwarded to PO Already delivered to Sh. Rajesh Babu vide DG;AIR letter dated 18.06.2013(A-I) The original file/documents and the file notings pertaining to article W.P. (C)

No.2295/2014 Page 9 of 16 (ii) Sanction order. (iii) Relevant page of tender opening register. (iv) Instruction under which CPWD Works Manual is required to be followed by AIR, Stations to execute works of routine nature. Article No.2 (i) DGR guidelines for the period of. 2002 to 2005 for engaging private security Agencies. (ii) Guidelines of Security Wing of DG:AIR for engaging private agency. (iii) Copies of all bills paid to Security Agencies during the period of 2002 to 2005. (iv) Attendance register of Private Security Guards and Supervisor during the period of 2002 to 2005. (v) Memorandum No, 6 & 9 of Audit Team alongwith reply given by the 1 of charge was inspected by Sh. Rajesh Babu as confirmed by him vide his letter dated 26.7.2013 (Copy enclosed)(A-II). (iii) - Not available as intimated by custodian. (iv) It is a civil maintenance job which was required to be executed only by Departmental Civil wing as per AIR Manual para 7.7.42 (A-III) wherein such works are to be executed as per CPWD manual. Handed over to Sh. Rajesh Babu on 30.09.2014(A-IV). Handed over to Sh. Rajesh Babu on 30.09.2014(A-IV). These documents have already been forwarded to Presenting Officer on 08.08.2014 for producing before IO for inspection (A-V). Related copies of muster rolls handed over to Sh. Rajesh Babu on 30.09.2014(A-IV). Not yet traceable. W.P. (C) No.2295/2014 Page 10 of 16 Programme Head of AIR, Alwar. (vi) All the correspondence between 14.6.2004 to 20.07.2004 in the security matters (vii) Minutes of the meeting held for engaging Private Scurity at AIR, Alwar Article No.3 Related copies handed over to Sh. Rajesh Babu (A-IV) Original document cannot be photocopied being very light print. Sh. Rajesh Babu may inspect at his convenience. (i) Sanction order pertaining to 10 (i) The documents made available digital slave clocks and one mater (sic. master) clock and Head of account from which these were purchased (ii) File notings pertaining to proposal for purchase of these items (iii) Documents showing dates of purchase of old analogue clocks which were replaced by digital slave clocks. by custodian vide his letter dated 06.08.2013 (A-VI) were handed over to the PO vide letter dated 08.08.2013 for placing before the IO for inspection by CO. (ii) As above under para (i) No record of dates of purchase of old analog clocks is available. It seems that old analogue clocks were provided since installation.

14. Thus, apart from document No.(iii)- Relevant page of tender opening register (pertaining to article of charge No.1), and document no (v)- Memorandum No, 6 &

9 of Audit Team along with reply given by the Programme head of AIR, Alwar (pertaining to charge No.3), all other documents sought by the petitioner have been supplied to him.

15. It was further contended that the charges against the petitioner relate to financial irregularities and are of grave nature and, hence, it will not be W.P. (C) No.2295/2014 Page 11 of 16 appropriate to quash the proceedings on the ground of delay/non-availability of documents.

16. Counsel for the petitioner has relied upon State of A.P. v. N. Radha Krishan, 1998(4) SCC154 which held:-

"19. 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.... Reliance is also placed on P.V. Mahadevan v. MD, TN Housing Board, (2005) 6 SCC636 wherein it was held:-

"11. ...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 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. than 17. Learned counsel for the petitioner has also relied upon the judgments of the Supreme Court in State of M.P. v. Bani Singh & Anr., 1990 (Supp) SCC738 Mangat Ram v. DDA, 1998 RLR406 D.P. Bambah v. UOI &Ors., W.P. (C) No.2295/2014 Page 12 of 16 (1998) 74 DLT437 N.S. Bhatnagar v. UOI & Anr. (2001) 92 DLT301 M.L. Tahiliani v. DDA, 2002 (6) AD (Delhi) 9 and R.P. Nanda v. DDA & Anr. (2004) 109 DLT613 The judgments relied upon by learned counsel for the petitioner are of no help, in view of the distinct facts of the present petition.

18. The records demonstrate that the incident pertains to the period between 2002-2005. The first Memorandum with regard to the irregularities was issued to the petitioner on 28th July, 2008 and thereafter the charge memorandum was issued on 24th January, 2013. There is no doubt that there was a considerable delay in initiating departmental proceedings against the petitioner. However, no hard and fast rule can be stipulated for the quashing of departmental proceedings solely on the basis of delay. It is a fact on record that the petitioner was a Group A Officer and necessary approval for disciplinary action was required to be taken from the Ministry. The Ministry, through its ID Note dated 7.5.2012, advised Prasar Bharti to take appropriate action as per extant rules against the applicant. The departmental inquiry is on-going and no order interfering with the same should be passed, till the passing of the final order by the Disciplinary Authority.

19. In Secretary Ministry of Defence v. Prabhash Chandra Mirdha, (2012) 11 SCC565 it was held:-

"W.P. (C) No.2295/2014 Page 13 of 16 12. ...Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings. to 20. The facts and circumstances of each individual case must be considered in order to decide whether delay in initiating departmental inquiry caused prejudice to the charged officer or not. In this regard, the most important factor which has to be seen along with prejudice is the gravity of the charge. It is in this context that we have referred to, in the earlier part, the petitioners request for supply and furnishing of documents. In Union of India v. B.A. Dhayalan, 2012 SCC OnLine Del 3275, it was held:-

"35. ...The Tribunals also relied on Rule 14 of the CCS(CCA) Rules, 1965 and observed that the rules does not mandates that the disciplinary authority has to show original documents to the delinquent even if the delinquent does not demand the original documents. The only requirement is to provide a list of documents to be supplied to the delinquent. the copies of all the documents relied upon and the

statements of the witnesses cited on behalf of the disciplinary authority, ought to be supplied to the delinquent officer along with the charge sheet, wherever possible. 21. The

... RESPONDENTS
, in the reply affidavit have stated that all the documents sought in the chargesheet were provided to the petitioner. Subsequently, the petitioner had sought other documents that were not relied upon by the respondents. The said documents were not available initially. W.P. (C) No.2295/2014 Page 14 of 16 However, the same were traced and thereafter all the documents sought by the petitioner were provided to him, as set out in tabular statement reproduced in paragraph 12 (supra).

22. In Government of Andhra Pradesh & Ors. v. Appala Swamy, 2007(3) SCALE1 it was held that if the Inquiry Officer determines that prejudice has been caused to the Charged Officer, delay would certainly vitiate the proceedings, provided that the Charged Officer establishes before him that the delay caused prejudice to him. However, in the present case the petitioner has not established any prejudice having been caused to him and has instead approached the Tribunal and now this Court .

23. The question of delay and prejudice is sometimes not easy to answer. There are cases in which stale issues are belatedly raised to cause harm and detriment and also cases where enquiry proceedings are stalled and obstructed. All cases do not fall in a straitjacket. At times it is difficult to decipher and determine affirmatively whether a particular case is a deliberate attempt to revive dead and foreclosed issues, or is one of wrongdoing on which action was hampered and suppressed.

24. The charges leveled against the petitioner are regarding financial irregularities which are of grave nature and if allowed to be quashed at this W.P. (C) No.2295/2014 Page 15 of 16 stage, would set a wrong example and it would not be appropriate in the interest of justice.

25. The petitioner has failed to point out any infirmity in the impugned order dated 26th March, 2014 passed by the Tribunal. Hence, the relief sought by the petitioner in the instant writ petition is untenable in law. No interference at this stage is called for in the departmental proceedings being conducted by the respondents against the petitioner. However, it needs to be clarified that the petitioner is at liberty to raise the ground of prejudice in the disciplinary proceedings.

26. Nothing stated hereinabove shall tantamount to any expression on the merits of the defence of the petitioner. The petitioner shall be at liberty to raise his defence as he deems fit and proper in the disciplinary proceedings and the latter proceedings, if any.

27. The impugned order of the Tribunal dated 26.3.2014 cannot be faulted on any legally tenable ground. The writ petition has no merit and the same is dismissed. There shall be no order as to costs. (CHANDER SHEKHAR) JUDGE (SANJIV KHANNA) JUDGE May 26, 2017/tp W.P. (C) No.2295/2014 Page 16 of 16

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