

State of Madhya Pradesh and anr. Vs. Nirankar Singh and anr.

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Court : Madhya Pradesh

Decided On : Feb-06-2007

Reported in : (2008)ILLJ36MP

Judge : Dipak Misra and ;S.C. Sinho, JJ.

Appellant : State of Madhya Pradesh and anr.

Respondent : Nirankar Singh and anr.

Disposition : Petition allowed

Judgement :

Dipak Misra, J.

1. Invoking the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India the petitioner has prayed for issue of a writ of certiorari for quashment of the order dated June 24, 2004, Annexure P-1 passed by the Central Administrative Tribunal, Jabalpur Bench, Jabalpur in short 'the Tribunal' in Original Application No. 430/02.

Essential facts which are requisite to be stated for adjudication of this petition are that the respondent No. 1, Divisional Forest Officer was served with the charge-sheet dated October 1, 1990 and placed under suspension. The1 charges levelled against him pertained to financial irregularities committed by him during the period

when he was posted in Social Forestry Division, Sehore and Social Forestry, Division Rajgarh in the year 1989 and 1990. Being aggrieved by the initiation of the departmental proceeding and the order of suspension, the respondent No. 1 knocked at the doors of the Tribunal in Original Application. No. 163/91. The Tribunal by order dated March 27, 1991 directed the order of suspension be kept in abeyance and subsequently by final order dated September 17, 1992 directed the department to expedite the departmental inquiry. As the proceeding was not completed as per order passed in Original Application No. 163/1991 on February 17, 1992, Original Application No. 498/93 was filed for quashment of the charge sheet. The Tribunal disposed of the said Application on October 22, 1993 directing that the departmental enquiry to proceed according to the schedule already notified to the delinquent employee i.e. w.e.f. October 25, 1993 to November 26, 1993 and the delinquent employee shall remain present on each date of enquiry and his absence for each day or part thereof will provide fifteen days' extension to the inquiry officer. He shall not indulge in unnecessary lengthy cross-examination. Two witnesses, namely, J.N. Sharma and V. Sonis were directed to-be made available for further cross-examination and only relevant questions to be put. Further, the Tribunal directed no dates of enquiry should be fixed between November 19, 1993 to December 6, 1993. Before the Tribunal the delinquent employee informed that he has to examine only three to four witnesses and he would submit his defence statement within a period of seven days from the date inquiry officer orders requiring the same. The Tribunal directed the schedule w.e.f. December 7, 1993 shall be notified and the inquiry shall be conducted on each working day and, if necessary, on non-working day if convenient to the inquiry officer and the delinquent employee, and should be over by December 22 or so. It was also directed that the inquiry officer shall complete the enquiry report by January 7, 1994 and submit the same to the disciplinary authority and if the enquiry report is not submitted on or before January 7, 1994, the same shall stand quashed. Apart from the above, the Tribunal also stated that in case there are good reasons to depart from its directions by the State Government or the delinquent employee, both would have a right to approach the Tribunal for issuance of interim directions. The time-frame fixed by the Tribunal was extended up to January 24, 1994 as per order dated January 6, 1994 passed in M.A. No.

3/1994. Thereafter the inquiry officer completed the inquiry and submitted the report on January 5, 1994. The respondent No. 1 was asked to submit his show-cause and thereafter the matter was referred to the Union Public Service Commission on November 3, 1995 and to the Central Government on February 3, 1996.

2. When the matter stood thus, the respondent No. 1 preferred Original Application No. 430/02 before the Central Administrative Tribunal seeking quashment of the entire departmental proceeding or in the alternative to command the respondents to pass a final order to the effect that the departmental inquiry be completed. There was a prayer for grant of compensation.

3. According to the petitioner the order on Original Application was reserved on June 14, 2004 and the final order was passed on June 24, 2004 whereby the Tribunal allowed the Application and quashed the entire departmental proceeding. Before passing of the final order, the Central Government by order dated May 27, 2004 acting upon the findings and the opinion of UPSC inflicted upon the respondent No. 1 penalty of reduction of basic pay by five stages in scale of pay for a period of five years with a further direction that the respondent No. 1 will not earn increments during the currency of penalty and the penalty will have the effect of postponing his future increments. The said order was sent to the respondent No. 1 by registered post and received by him on June 3, 2004 and he preferred a revision on June 14, 2004 before the Secretary, Ministry of Forest, Union of India. It is contended that neither the respondent No. 1 nor the Union of India brought the aforesaid fact before the Tribunal and the competent authority of the State of MP coming to know about it, filed an application for review as per Annexure P-3 but the Tribunal without appreciating the materials brought on record, rejected the same.

4. It is averred that the Tribunal has committed illegality, in quashing the departmental proceeding without appreciating the factual matrix in proper perspective inasmuch as the petitioners have been sending constant reminders to the Central Government for taking appropriate steps. Additionally it is put forth that the respondent No. 1 was aware of the order passed against him but he did not

bring it to the notice of the Tribunal and got the benefit by suppressing the material facts.

5. A counter affidavit has been filed by the respondent No. 1 contending, inter alia, that the documents which have been filed as Annexures P-198, P-199 and P-9-A were not presented by the present petitioners before the Tribunal and hence, no relief can be granted on the same. It is urged that complete records were not submitted to the UPSC which resulted in inordinate delay. It is only in 2001 when the petitioner submitted complete documents and hence, they are defaulters. Commenting on Annexures P-198 dated November 3, 1995 it is put forth that the said letter was addressed by the Government of MP directly to the Secretary, Union Public Service Commission whereas the right procedure is to send the said communication to the Government of India first in case of imposition of penalty. A reference has been made to the communication sent by the Union Public Service Commission vide letter dated December 8, 2000 addressed to the Secretary, Govt. of India, Ministry of Environment and Forest, New Delhi seeking advice in case it is necessary on the part of the Ministries/Departments to furnish all the relevant documents/papers for the perusal of the Commissioner. Thereafter the observations of the Commissioner were quoted to highlight that in the absence of all documents being produced it was not possible to process the case for consideration of the Commission. It is urged that the State of MP failed to supply the documents to UPSC.

6. A stance has been taken in the return that once the order has been passed by the Tribunal to complete the inquiry within a period of four months failure therefrom would entail in dismissal, it was incumbent on the part of the State Government to be vigilant but as is manifest they did not complete the inquiry and pass appropriate orders thereon for a considerable length of time. It is put forth in the return that the petitioners were required to; submit complete record before the Commission but that having not been done total blame is on the petitioners for the enormous delay caused in departmental proceeding.

7. reference has been made to the order passed in Original Application No. 498/1993 how the Tribunal chalked out the Schedule for completion of the

disciplinary proceeding and how the petitioner prayed for extension of time. It is urged that though the representation was submitted on April 18, 1994, no effective and concrete steps were taken by the petitioners on the same. Since sufficient time had elapsed and no action, had been taken, substantial prejudice caused to the petitioner which constrained him to knock at the door of the Tribunal in Original Application No. 430/2002. It is asserted that the respondent No. 1 suffered in the promotional prospects because of delay in the departmental proceeding and had it been completed within reasonable time he would have been considered for promotion and promoted because of his seniority. A grievance has been made that his juniors have been promoted to the post of Conservator of Forests but the petitioner has been put to jeopardy because of lackadaisical attitude of the petitioners. It is put forth that the Tribunal has appreciated the fact situation in proper perspective and has passed the order quashing the departmental proceeding. It is contended that such quashment is a striking of balance and relevant factors have been taken into consideration which include prejudice to the incumbent and hence, the order passed by the Tribunal is totally defensible.

8. Questioning the correctness of the order passed by the Tribunal it is submitted by Mr. P.N. Dubey, learned Deputy Advocate General for the State that the Tribunal has misread its earlier judgment that as if there had been a direction to complete the disciplinary proceeding whereas the direction was to complete the inquiry. Learned Counsel further canvassed that when an order imposing punishment has been passed and the delinquent employee has challenged the same before the higher authority, the Tribunal should not have quashed the proceeding on the ground of delay as the same was not available to be quashed having attained the finality. It is his further submission that in the case of fiscal irregularities the Tribunal should not have lightly lanced the proceeding and exonerated the delinquent officer despite the factum that the departmental inquiry was completed and concurrence was sought by employer by the UPSC. It is urged by Mr. Dubey that such quashment of departmental inquiry would usher in total chaos and delinquent employee would go scot free despite serious and grave charges levelled against him.

9. Ms. Shobha Menon, learned senior Counsel appearing for the respondent No. 1 per contra, submitted that the Tribunal has rightly taken exception of recalcitrant and lackadaisical attitude expositied by the employer and, therefore, no fault can be found with the order of the Tribunal. Proponent of Ms. Menon is that due to colossal delay in finalization of the proceeding the respondent No. 1 had suffered immensely and when the Tribunal has lawfully quashed the same this Court should not interfere in exercise of supervisory jurisdiction. It is argued by her that the State Government has not conducted itself up to expectation of a model employer and hence, the Tribunal has soundly interfered with the proceeding and passed the order quashing the same. To buttress her submission she has placed reliance on the decision rendered in the case of P.V. Mahadevan v. M.D., T. N. Housing Board : (2005)IIILLJ527SC .

10. To appreciate the rivalised submissions raised at the Bar we have carefully perused the order passed by the Tribunal. The Tribunal has laid emphasis on its previous directions whereby it had directed the inquiry report to be submitted on or before January 7, 1994. The inquiry could not be over by that day and an extension was asked for. The Tribunal, as is evincible, extended the period for submission of inquiry report. There is no1 disputation that the inquiry report was submitted within the extended period and it was made available to the petitioner. The order of the Tribunal stipulated that if the inquiry report is not submitted on or before the time framed by, the Tribunal, the departmental proceeding shall stand quashed. Had the inquiry report been not submitted within the time frame, possibly the matter would have been different as the said order had gone unchallenged. But, an eloquent, one, the same is not fact situation. As is luminescent, the inquiry report was submitted within the time frame. It was urged before the Tribunal that after completion of the inquiry, the matter was sent to the Union Public Service Commission for appropriate orders and, therefore, the State Government cannot be held responsible. The Tribunal has taken exception to the fact that the State Government though had pleaded that it had entered into correspondence with the Union Public Service Commission but no documents had been filed that it had followed it up as it was obligatory on its part. The Tribunal finally observed thus:

The respondents have not produced any document or proof regarding their claim. It means that they are sleeping over the matter. This is a question of the career of a civil servant and when the Tribunal once directed the respondents to complete the enquiry and a specific date was given, then it was the duty of the respondents to comply with the orders of the Tribunal.

11. Submission of Ms. Shobha Menon is that in the obtaining factual matrix, the order passed by the Tribunal cannot be found fault with. In the case of P.V. Mahadevan (supra) the Apex Court was dealing with the case where certain disciplinary proceedings were initiated against the appellant therein who was working as Superintendent Engineer in the T.N. Housing Board A charge memo was issued in the year 2000. A writ petition was preferred for quashment of the charge-sheet. The charges that were levelled against the delinquent employee related with the fact that he had committed irregularities in issuing a sale deed in the year 1990 to one Mr. A.N. Beemaiah who was an employee of the Housing Board and was to superannuate shortly. It was urged before the Apex Court that there was delay often years in initiating the disciplinary proceeding by issuance of a charge memo which makes the departmental proceeding vitiated in the absence of any explanation for inordinate delay in initiating the proceeding. Their Lordships referred to the decisions rendered in the cases of State of M.P. v. Bani Singh : 1990 CriLJ1315 , State of A.P. v. N. Radhakishan : [1998]2SCR693 and Sections 118 and 119 of T.N. State Housing Board Act, 1961, stance taken in the counter affidavit and explanation offered for causation of delay and eventually came to hold as under:

11. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony distress to the officer concerned. The protracted disciplinary inquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage it is necessary to draw the curtain and to put an end to the enquiry. The appellant had

already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more 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.

12. In the case at hand the proceeding was initiated in quite promptitude as is evident from Annexure P-2 dated October 1, 1990. A free translation of the charges in English is reproduced below:

Charge No. 1: Shri Nirankar Singh was charged with issuing cheques for Rs. 5,13,000/- dated June 23, 1990 and for Rs. 4,00,000/- dated June 25, 1990 as forest advance to the range officer in violation of FFR-71.

Charge No. 2: He has been accused of negligence in inspection and supervision of scarcity relief works worth Rs. 11 Lakhs. It is alleged that a sum of Rs. 10.71 lakhs had been embezzled by preparation of false muster-rolls and vouchers. He was accused of deliberately overlooking the irregularities and thus helping in the fraud by issuing cheques to the Range Officers regularly.

Charge No. 3: He did not exercise proper control and supervision over departmental field works of Rs. 2. lakhs during May and June, 1990 in the ranges of Rajgarh and Sarangpur. By overlooking the false muster-roll vouchers, he facilitated the embezzlement.

Charge No. 4: Shri Nirankar Singh is accused of imposing fines on sawmill owners beyond his financial competence for routine omissions in accounts of timber received and thus, misusing his authority.

Charge No. 5: He purchased excessive quantities of seeds of khak, prospisjelliflora and bamboo for Rs. 2. Lakhs at higher rate without approval of the competent authority and without budget provisions in violation of commerce and Industries Department order dated July 30, 1988 and directives of the CCF (D) dated November 30, 1989. The seeds were obtained first and the purchase order was issued later on.

Charge No. 6: He ordered purchase of 10 Gypsy huts for Rs. 4 Lakhs without authority and without there being any need for Gypsy huts and budget provisions.

13. The respondent No. 1 was found guilty and final order was passed as Annexure P-11 dated May 27, 2004. He preferred a revision to the Secretary, Government of India, Ministry of Environment and Forest under Rule 24 of the All India Services (Discipline and Appeal) Rules 1969. The said revision was sent on June 14, 2004, the Tribunal has passed the impugned order on June 24, 2004. In the case of N. Radhakishan (supra), which has been referred to in the case of P.V. Mahadevan (supra), in paragraph 19 it has been held as under:

19. It is not possible to lay down any predetermined 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 the relevant factors and to balance and weigh 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 the delay is abnormal and there is no explanation of 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 the 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 his path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their 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 blame for the delay or when

there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the Court is to balance these two diverse considerations.

14. Their Lordships in the case of P.V. Mahadevan (supra) were not satisfied with regard to explanation offered for inordinate delay in initiation of the departmental proceedings. In the case of Radhakishan (supra), as is perceivable the Apex Court has expressed the opinion that the Court is required to balance two diverse considerations, namely, prejudice caused due to delay and whether there is delay in conducting disciplinary proceeding. In the case at hand the stand taken by the State is that it had conducted the inquiry within the time frame by the Tribunal and sought concurrence from the UPSC and as there is delay, nothing could be done. Quite apart from the above, during the pendency of the proceeding, the respondent No. 1 was visited with the punishment. It is also noteworthy to mention there that during the pendency of the proceeding before the Tribunal, the respondent No. 1 preferred the revision. These facts were in the special knowledge of the respondent No. 1. Despite that he did not bring it to the notice of the Tribunal and tried to gain advantage. It would not be inappropriate and inapposite to say that the respondent No. 1 did not bring the full facts before the Tribunal at all relevant time. True it is, the delay has caused hardship but the charges were serious in nature. The punishment had been imposed upon the delinquent officer. He has preferred the revision under the Rules. On one hand it is the delay on the part of the department and on the other, the material suppression of the facts by the delinquent officer. The other angle to it is the respondent No. 1 did not approach the Tribunal till 2002. If the cumulative effect and impact of all this factual scenario is appreciated in proper perspective there can be no scintilla of doubt that the balance tilts, in favour of department and we have no hesitation in coming to hold that the Tribunal has erred in quashing the departmental proceeding and accordingly the order passed by the Tribunal vide Annexure P-1 dated June 24, 2004 deserves to be quashed and accordingly/we so direct.

15. Before we part with the case we would like to mention a few aspects. Though we have quashed the order of the Tribunal that would not mean that we have interfered with as if we have endorsed the view expressed by the inquiry officer and punishment imposed. It is unnecessary to emphasise the same has to be

adjudicated by revisional authority from all spectrums.

16. The other aspect which we would like to highlight that the State Government as well as the Union Government is required to conduct itself as a model employer. A model employer may not reach the pinnacle of perfection but all efforts are to be made to act in quite promptitude in the matters of disciplinary proceeding for that causes immense agony, colossal humiliation and unacceptable discomfort. A model employer is under obligation to conduct itself with high probity and expected candour. An employer who is duty bound to act as a model employer has the social obligation to treat an employee in appropriate manner so that an employee is not condemned to feel totally subservient to the situation. A model employer is not supposed to annihilate and destroy the social reputation enjoyed by an employee. There cannot be compulsion to mortgage the self respect for security of job. An employer is entitled under the Law to initiate disciplinary proceeding when an employee to whichever cadre he belongs, if shows delinquency. Moral values are to be maintained when one is employed. Simultaneously, the employer has to have a positive proclivity towards the employee. It cannot afford to initiate departmental inquiry and proceed at its own pleasure and leisure. The disciplinary authority cannot get into slumber or sleep like 'Rip Van Winkle' or 'Kumbhakarna'. Inquiry cannot, be allowed to continue at snail's speed. The sword of Democles is not to be allowed to hung for no one would like to remain in a state of constant, uncertainty and if we allow ourselves to say, fear. Sooner this aspect gets concretized, fructified and ripened by the authorities better for the administration. Be it noted, delay in these matters is an anathema in doing justice with an employee. Delay extinguishes the marrow of a model employer and creates an incurable concavity in the cells. We hope and trust the respondents would be well advised to conduct themselves appositely in future keeping in view the doctrine of legitimate expectation of the employee who expects to get a fair deal from the employer.

Consequently, the writ petition is allowed. However, there shall be no order as to costs.