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Court : Delhi

Decided On : Dec-19-2003

Reported in : 2004(73)DRJ23; 2004(3)SLJ15(Delhi)

Judge : Pradeep Nandrajog, J.

Acts : Discipline and Appeal Rules; [Code of Criminal Procedure \(CrPC\) , 1973](#);
[Constitution of India](#) - Articles 14, 21 and 226

Appeal No. : CW No. 2719/1998

Appellant : R.P. Nanda

Respondent : Dda and anr.

Advocate for Def. : Geeta Mittal, Adv.

Advocate for Pet/Ap. : S.C. Varshney, Adv

Disposition : Petition allowed

Judgement :

Pradeep Nandrajog, J.

1. Should this court, exercising jurisdiction under Article 226 of the [Constitution of India](#), bring to an end the disciplinary proceedings at the threshold by quashing the charge-sheet? This is the issue which squarely arises for my consideration in the

present writ petition and the connected batch.

2. Before I set out the sequence of the essential facts with consequences, culminating in the filing of the writ petition, it would be appropriate we have a birds eye view of the legal position.

3. In the judgment reported : 1990 CriLJ1315 State of Madhya Pradesh v. Bani Singh in Para 4 the Hon'ble Supreme Court held as under:-

'The appeal against the order dt. 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 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 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 dismissed the appeal.'

4. In : (1994)ILLJ819SC , Registrar of Co-operative Societies Madras v. F.X. Fernando, it was noted that the respondent had functioned as Joint Registrar since 1984. Complaints were received. The Vigilance and Anti-Corruption Department was requested to complete the enquiry on or before December 31, 1987. No progress was made. Report was filed towards end of 1988. On 20.12.1988 decision was taken to take disciplinary action against the respondent. Charge memo was issued on 20.3.1989. Enquiry officer was appointed. Respondent appeared and participated in the inquiry. On 20.3.1990, respondent made complaint that enquiry officer was biased. Complaint was rejected. Another complaint was made to same effect. It too was rejected on 8.5.1990. Respondent

was directed to appear before the enquiry officer. The order dated 8.5.1990 was challenged before Tamil Nadu Administrative Tribunal on the ground that the Registrar Co-operative Societies was not competent to even issue the charge sheet. Respondent succeeded. Matter reached by way of appeal before the Hon'ble Supreme Court. Order of the Administrative Tribunal was set aside. Argument was raised that due to delay in initiation of proceedings, they be not revived. It was rejected on the ground that the department cannot be faulted. The department was always prompt. Inaction which caused delay was that of the Vigilance and Anti Corruption.

This judgment would, therefore, be an authority on the point that if the delay is not attributable to the department and has been occasioned due to external factors, the enquiry must go on. On facts, I may note that between the date of the alleged offence and issuance of charge memo, time lag was 5 years.

5. In the judgment : (1995)II LLJ679SC , State of Punjab v. Chaman Lal Goyal, Hon'ble Supreme Court, considering the issue as to what was the effect of delay vis-a-vis the disciplinary proceedings held:-

'Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and thus not also in the interest of administration of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, male fides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weight the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the court has to indulge in

a process of balancing.'

Thereafter, in paragraph 12 of the judgment, it was concluded that:-

'Applying the balancing process, we are of the opinion that the quashing of charges and of the order appointing enquiry officer was not warranted in the facts and circumstances of the case. It is more appropriate and in the interest of justice as well as in the interest of administration that the enquiry ordered be allowed to be completed.'

One important facet of the above judgment of the Hon'ble Supreme Court may be noticed by me, namely, that by the time the High Court had quashed the charge-sheet, a major part of the inquiry was over.

6. In the decision : (1995)ILLJ 1069 SC Deputy Registrar, Co-operative Societies, Faizabad v. Sachindra Nath Pandey & Ors., the Hon'ble Supreme Court held:-

'On a perusal of charges, we find that the charges are very serious. We are, therefore, not inclined to close the matter only on the ground that about 16 years have elapsed since the date of commencement of disciplinary proceedings, more particularly when the appellant alone cannot be held responsible for this delay.'

On facts, the Hon'ble Supreme Court concurred with the stand taken by the appellant therein in the counter-affidavit that the employee had adopted a course of total non-cooperation and procrastination and in-spite of repeated opportunities which were given did not respond or participate in the inquiry.

7. In the decision reported as Union of India v. Kacker, while reversing the order of the Central Administrative Tribunal quashing the inquiry proceedings, the Hon'ble Supreme Court observed that since the delinquent had not submitted his reply to the charge-sheet, it was not the stage at which the Tribunal ought to have entertained the petition for quashing the charge-sheet. The appropriate course for the delinquent to adopt was to file his reply to the charge-sheet and invite the decision of the disciplinary authority thereon.

8. In the decision : (1996)ILLJ 1231 SC , B.C. Chaturvedi v. UOI and Others, in Para 11, the Hon'ble Supreme Court held as under:-

'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 of 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 resource. 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 tardy 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. thereforee, delay by itself is not fatal in these type of cases. It is seen that the CBI 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 decision at different levels. So, the delay by itself cannot be regarded to have violated Article 14 or 21 of the Constitution.'

9. In : (1996)ILLJ245SC , Secretary To Government Prohibition & Excise Department v. L.Srinivasan, it was held:

'In the nature of the charge, it would take a long time to detect embezzlement and fabrication of false record which should be done in secrecy. In quashing the suspension and the charges on the ground of delay in initiation of the disciplinary proceedings, the Administrative Tribunal has committed grossest error in its exercise of the judicial review.'

I may note that the charge related to offence of embezzlement and fabrication of false records. As noted in the judgment, this is done in secrecy and by its very

nature, takes time to be detected. It was a case where detection took time. It was not a case of delay post detection.

10. In the judgment : (1996)11LLJ296SC , State Bank of Patiala v. S.K. Sharma, the Hon'ble Supreme Court held:-

'Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice.'

11. In the decision : [1997]3SCR327 Secretary to Government v. K. Munniappan dealing with a case where as a result of concerted and confabulated action on the part of the employees, an embezzlement of funds of the Government, to the tune of Rs.7.82 cores took place and the delinquent at the relevant time was functioning as the Divisional Accountant, the Hon'ble Supreme Court observed:-

'It is true that there is a time gap, but in a case involving embezzlement of public funds by several persons in a concerted way, a thread bare investigation is required to be undertaken by the investigating officer and, therefore, in the nature of the situation, it would be difficult to find fault with the authorities for not completing investigation expeditiously.'

12. In : [1998]2SCR693 State of Andhra Pradesh v. N. Radhakishan in Para 19, the Hon'ble Supreme Court held as under:-

'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 determined 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 Explanationn 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 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 fact of it. It could also be seen as to how much the 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 Explanationn for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.'

On facts, the Hon'ble Court was of the view that on the facts of the case, delay in concluding the inquiry was not justified. The view that the charge-sheet ought to be quashed, was upheld.

13. In the decision : (2001)IIILLJ 1058 SC , F.C.I. v. V.P. Bhatia, it was held:-

'It is no doubt true that undue delay in initiation of disciplinary proceedings may cause prejudice to the employee concerned in defending himself and, therefore, the courts insist that disciplinary proceedings should be initiated with promptitude and should be completed expeditiously. The question as to whether there is undue delay in initiation of disciplinary proceedings or whether they are being unnecessarily prolonged has to be considered in the light of the facts of the particular case. On an examination of the facts of this case we find that the alleged misconduct came to light in April 1986 after the CBI carried surprise checks in April 1986 and the samples that were taken were found to be substandard by the Forest Research Institute, Dehradun. Thereafter, the CBI took up the investigation in the matter suo motu and submitted its report on 30-12-1988 wherein it

recommended the holding of disciplinary proceedings against the employees concerned including the respondents. Shri Vivek Gambhir, the learned counsel for the appellants, has invited our attention to paragraph 1.7 of Chapter III of Volume I of the Vigilance Manual of the Central Vigilance Commission which has been adopted by the appellant-Corporation wherein it is stated:

'Once a case has been entrusted to the CBI for investigation further inquiries should be left to them and departmental inquiry, whether fact-finding or formal under the Discipline and Appeal Rules, if any, commenced already, should be held in abeyance till such time as the investigation by the CBI has been completed. Parallel investigation of any kind should be avoided. Further action by the administrative authority should be taken on the completion of the investigation by the CBI on the basis of their report.' In view of the said direction contained in the Vigilance Manual no fault can be found with the appellant-Corporation in waiting for the investigation report of the CBI and the High Court was in error in holding that the appellant-Corporation need not have waited for the report of the CBI and should have started the disciplinary proceedings straightaway.

After the receipt of the report of the CBI dated 30-12-1988 the matter was considered by the Central Vigilance Commission because reference had been made to the Central Vigilance Commission by the CBI as well as by the appellant-Corporation. The Central Vigilance Commission, on 22-5-1989, recommended initiation of proceedings for major penalty. Thereafter, the appellant-Corporation took up the preparation of the charge-sheet against the employees concerned and the charge-sheets were served on the respondents in September 1990. The charge-memos that have been served on the respondents show that in the said charge-memos reliance has been placed on 69 documents and 44 witnesses. Having regard to the alleged misconduct and the fact that large number of documents and statements of witnesses had to be looked into it cannot be said that the period of slightly more than one year taken in serving the charge-memos after the recommendations of the Central Vigilance Commission is unduly long.'

I may note that the delay was of 4 years. Misconduct came to light in April 1986 and charge memo was served in September 1990.

14. A division bench of this court, considered the judgments on the issue. In its judgment delivered on 29th October, 2003 in LPA No.39/1999, Delhi Development Authority v. D.P. Bambah and another , it was held:-

'In our opinion the legal position, when an action is brought seeking quashing of a charge-sheet on grounds of issuance of the charge-sheet or grounds of inordinate delay in completion of the disciplinary inquiry may be crystallized as under:-

(i) Unless the statutory rules prescribe a period of limitation for initiating disciplinary proceedings, there is not period of limitation for initiating the disciplinary proceedings;

(ii) Since delay in initiating disciplinary proceedings or concluding the same are likely to cause prejudice to the charged employee, courts would be entitled to intervene and grant appropriate relief where an action is brought;

(iii) If bone fide and reasonable Explanationn for delay is brought on record by the disciplinary authority, in the absence of any special equity, the court would not intervene in the matter;

(iv) While considering these factors the court has to consider that speedy trial is a part of the facet of a fair procedure to which every delinquent is entitled to vis-a-vis the handicaps which the department may be suffering in the initiation of the proceedings. Balancing all the factors, it has to be considered whether prejudice to the defense on account of delay is made out and the delay is fatal, in the sense, that the delinquent is unable to effectively defend himself on account of delay.

(v) In considering the factual matrix, the court would ordinarily lean against preventing trial of the delinquent who is facing grave charges on the mere ground of delay. Quashing would not be ordered solely because of lapse of time between the date of commission of the offence and the date of service of the charge-sheet unless, of course, the right of defense is found to be denied as a consequences of delay.

(vi) It is for the delinquent officer to show the prejudice caused or deprivation of fair trial because of the delay.

(vii) The sword of Damocles cannot be allowed to be kept hanging over the head of an employee and every employee is entitled to claim that the disciplinary inquiry should be completed against him within a reasonable time. Speedy trial is undoubtedly a part of reasonableness in every disciplinary inquiry.

In determination of this, the first question which would have to be answered is whether on facts, is there a delay? If yes, how long? Was the delay inevitable having regards to the nature of the charge? Was the delay beyond the control of the employer? Whether the employee willfully contributed to the delay or was responsible for the delay? Has prejudice caused to the defense?

All questions would have to be answered. In a nutshell, the court would have to weigh all the factors, both for and against the employee and come to the conclusion whether in the facts and circumstances prejudice has been shown as having been occasioned to the employee, justifying quashing of the charge-sheet either on account of delay in issuance of the charge-sheet or on account of delay in completion of the disciplinary proceedings.'

15. On joining service, be it under the Government, a Statutory Authority, Autonomous Corporation or any Instrumentality of the State, a person does not mortgage or barter away his basic human rights as a human being in favor of the government or his employer organization. The employer does not become the Master of his body and soul. On taking employment, the employee only agrees to subject himself to the regulatory measures concerning his service. His association with the Government or any other employer is regulated by the terms of contract of service or service rules including certified standing orders. It has been held that the fundamental right of the Right of Life and Liberty under Article 21 of the [Constitution of India](#) includes the right to a speedy trial. More often than not, pending enquiry, the employee is put under suspension which in law is not a punishment, but he gets only a subsistence allowance. In : (1988)ILLJ453SC , O.P. Gupta v. UOI, the Hon'ble Supreme Court held that: 'There is no doubt that an order of suspension, unless the departmental inquiry is conducted within a reasonable time, affects a Government servant injuriously.' The judgment highlighted the point of quick departmental proceedings.

16. Having noted the fabric and the hue of the law on the subject at hand, I proceed to enter into the factual arena of the case at hand.

17. The charge-sheet was issued on 10.10.1997 pertaining to certain alleged irregularities pertaining to the year 1981-82 for the works of construction of 228 LIG flats in Bo Della. Petitioner sought production of records as according to him after 16 years he could hardly reply to the charge-sheet. Letter to this effect was written on 20.10.1997. On 18.11.1997, request was renewed. On 13.1.1998, reminder was sent. Again on 2.4.1998, petitioner highlighted that in the absence of inspection of the record, he could not give any effective reply. Since the respondent/DDA threatened to continue with the enquiry without affording opportunity of inspection, petitioner challenged the very issuance of the charge-sheet on the ground of delay. In the counter affidavit, which has been filed, no Explanation whatsoever has been given as to why the respondent took so long to issue the charge-sheet. It is only stated that the department proceeded to take action against the petitioner after obtaining the advice of the Central Vigilance Commission.

18. I find that there is no Explanation whatsoever given by the DDA as to why the charge-sheet was delayed. The charge against the petitioner was that he was responsible for certain over-payments to the contractor in the year 1981. It has not been brought out in the counter affidavit as to when the over payment was detected. In fact from the charge-sheet itself, it stands brought out on record that in the year 1986 when the Supt. Engineer decided to levy penalty, over payment came to be noticed. If that be so, delay of 11 years after 1986 goes unexplained. It is not the case of the DDA that it has the relevant record which it can offer to the petitioner for inspection. I may note that the petitioner was working as an accounts officer in the year in question and had nothing to do with measurement of the works at site. Sh.Ashok Kumar, who was working as the Junior Engineer of the works at site was also issued a charge-sheet. Ashok Kumar filed a writ petition being CW No.1653/1999. The same was quashed by the judgment and order dated 31st May, 2002 on grounds of delay.

19. Tested in the light of the law noted by me above and the facts as they emerge on record, the delay in issuance of the charge-sheet is totally unexplained. Record is not available. Petitioner is being prejudiced by the delayed enquiry. The writ petition is allowed. Charge-sheet dated 10.10.1997 is quashed.

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