

(2000) 08 MAD CK 0039

In the Madras High Court

Case No : W.P.No.3110 of 1998 and W.M.P.No.4641 of 1998

B. Loganathan

APPELLANT

Vs

The Union of India and another

RESPONDENT

Date of Decision : 04-08-2000

Acts Referred:

Citation : (2000) 3 CTC 351 : (2001) WritLR 315

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : Mr. D. Bharatha Chakravarthy, for the Appellant; Mr. K.K. Saseedharan for Mr. T. Murugesan, Government Pleader Pondicherry, for the Respondent

Judgement

1. The writ petition is directed against the charge memorandum of the second respondent dated nil calling for the petitioner to submit written

statement of defence within 10 days to quash the same and for consequential direction to the second respondent to consider and promote him as

Senior Assistant with effect from 13.1.1998 with all service and monetary benefits.

2. According to the petitioner, he was initially appointed as clerk in the municipality and was subsequently absorbed in the Villianur Commune

Panchayat service as Junior Assistant with effect from 11.11.1974. The 2nd respondent-Villianur commune Panchayat published a seniority list of

Junior Assistants on 12.11.87, in which his name figures at Sl.No.5. He is fully qualified for promotion to the next higher post of Senior Assistant

and has been making representations to consider his case and to promote him to the next higher post. While so, the second respondent has served

on him the impugned charge memo alleging that he had committed irregularities

in the year 1982. He submitted his explanation dated 14.11.97, denying the charges. It is stated that in the statement of imputation of misconduct the charges are explained and the whole statement is vague and totally unclear and totally meaningless and he is not in a position to understand the same. By order dated 13.1.98 his juniors were promoted as Senior Assistants, while he has been denied the same on account of the pendency of the impugned charge memo. He is otherwise entitled to be promoted as Senior Assistant. The impugned charge memo was served on the petitioner after a delay of 15 years from the date of occurrence which clearly deprives the petitioner the opportunity to defend himself. Inasmuch as the charge memo was served on the petitioner after a delay of 15 years from the date of occurrence and the two charges contained in the impugned charge memo are vague and not specific, the same was served only to deprive him of his due promotion, he has approached this Court by way of present writ petition to quash the charge memo.

3. The second respondent has filed a counter affidavit disputing various averments made by the petitioner. It is stated that the vigilance and anti-corruption have probed into the serious misconduct of the petitioner in the office of the Villianur Commune Panchayat during the year 1982 in the process of execution of NREP. It is not within the hands of the second respondent to assume certain strings and proceed against the petitioner without the relevant document, since the police" after investigation had submitted a report in the year 1993 to the Government which after consideration of the report had sent the same to the office of the Villianur Commune Panchayat for taking further action into the matter and in that view of the matter, the impugned proceedings in Memo dated 5.11.97 has been issued to the petitioner by which the petitioner was called upon to answer the serious misconduct and grave charges. He was given 10 days time to give his written representation in answer to the charges dated 5.11.97. Instead of submitting his written representation and without answering the charges the petitioner has approached this Court and put-forth unsustainable claims to justify his misconduct under the pretext of delay in launching disciplinary proceedings. Inasmuch as the misconduct, which took place from 1982 was enquired by the Vigilance and Anti-Corruption of Pondicherry Government and submitted its report only in the year

1993, the 2nd respondent initiated the impugned proceedings on 5.11.97. It is always open to the petitioner to put-forth all his defence in the proposed enquiry. Hence the writ petition is liable to be dismissed.

4. In the light of the above pleadings, I have heard the learned counsel for the petitioner as well as respondents.

5. Mr. D. Bharatha Chakravarthy, learned counsel for the petitioner by pointing out that even according to the second respondent, the alleged

incident took place in the year 1982, the impugned charge memo was served on the petitioner after a delay of 15 years from the date of

occurrence, which deprives the petitioner the opportunity to defend himself effectively, hence the extreme delay vitiates the charge memo and the

same is liable to be quashed. He further contended that two charges contained in the impugned charge memo are vague and not specific; hence the

charge memo is liable to be quashed. According to him the impugned charge memo was served only to deprive the petitioner of his due promotion.

On the other hand, the learned counsel appearing for the second respondent would contend that though the incident took place in the year 1982,

the Vigilance and Anti-corruption of the Pondicherry Government submitted its report only in the year 1993; hence the second respondent issued

charge memo in the month of November, 1997, hence on the ground of delay the charge memo cannot be interfered with by this Court. He further

contended that it is open to the petitioner to raise all contentions/objections in the proposed enquiry; hence the writ petition is liable to be

dismissed.

6. I have carefully considered the rival submissions.

7. There is no dispute that the petitioner was working as Junior Assistant in the second respondent Panchayat with effect from 11.11.74. It is the

grievance of the petitioner that though he figures at Sl.No. 5 in the seniority list of Junior Assistants published on 12.11.87, he was not considered

for promotion to the next higher post of Senior Assistant because of the impugned charge memo. The impugned charge memo, served in the month

of November, 1997, contains two irregularities said to have been committed by the petitioner in the year 1982, namely, (1) non-disbursement of

cash to muster roll workers; and (2) non-maintenance of proper cash registers. As regards the first charge it is the case of the petitioner that on

some occasions other persons disbursed cash instead of the petitioner who was acting as cashier and regarding the 2nd charge, cash amounting to

Rs.5 lakhs were not properly shown in the Cash Register and several instances are given to show that the amounts are shown at different dates,

The perusal of the charge memo and the imputations served along with the charge memo clearly would show that there is no allegation to the effect

that the petitioner had misappropriated public money. On the other hand, it shows that the amount relating to wages have been disbursed to the

workers by different persons than the petitioner who was the cashier and entries were made then and there in the cash register. However, the

amounts are shown at different dates. Though it is stated on the side of the 2nd respondent that petitioner and other persons committed serious

irregularities as observed earlier, the fact remains that in so far as the petitioner is concerned there is no imputation on him having mis-handled or

misappropriated the public money.

8. Even according to the second respondent, the charges levelled against the petitioner relates to the year 1982. The only reason given for the

delay of 15 years is that only in the year 1993 the Vigilance and Anti-corruption. Government of Pondicherry submitted a report and based on that

report, the impugned charge memo was served on the petitioner in the month of November, 1995. Except the above particulars in para 11 of the

counter affidavit, no other details have been furnished by the second respondent. In other words, though it is stated that the alleged mis-conduct

occurred in the year 1982, the 2nd respondent has not furnished any information except the statement that the Vigilance and Anti-corruption has

submitted their; report only in the year 1993. Even on receipt of the said report in the year 1993. it is not explained why they have not taken any

action till November, 1997. As a matter of fact even regarding the submission of report by the Vigilance and Anti-corruption cell in the year 1993,

there is a correction in the affidavit particularly in the year ""1993"". The said correction has not been explained in any portion of the counter

affidavit, in the absence of any explanation for the delay between the period 1982 and 1993 and on receipt of the report in 1993 till the date of

charge memo i.e.. 5.11.97, I am of the view that the inordinate and un-explained delay vitiates the impugned charge memo and hence the same is

liable to be quashed. In the case of The State of Madhya Pradesh Vs. Bani Singh and another, . Their Lordships of the Supreme Court quashed

the similar charge memo therein served on the delinquent after 12 years. In the case before the Supreme Court, the irregularities which were the

subject matter of the enquiry are said to have taken place between the years 1975-77 and action was taken only in the year 1987. After

considering the inordinate delay, Their Lordships have held that,

...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...

9. In the case of V. S. Ramanarayanan v. The Food Corporation of India, represented by its Zonal Manager, Madras-6, 1984 T.L.N.J. 123 a

Division Bench of this Court while considering delay of 2 years. Their Lordships have held that the delay will constitute denial of reasonable

opportunity to the petitioner to defend himself and that it would amount to violation of principles of natural justice and ultimately struck down the

impugned charge memo therein.

10. In State of Punjab and Others Vs. Chaman Lal Goyal, , Their Lordships have considered similar question, namely delay in initiating

departmental proceedings and held as follows:- (para 9)

9. 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 lime. It would not be fair

to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration.

Delayed initiation of proceedings is bound to give room for allegations of bias, mala 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 weigh 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...

11. The, principles to be borne in mind in this behalf have been set out by a Constitution Bench of this Court in Abdul Rehman Antulay Vs. R.S.

Nayak and another etc. etc., . Though the said case pertained to criminal prosecution, the principles enunciated therein are broadly applicable to a

plea of delay in taking the disciplinary proceedings as well. In paragraph 86 of the judgment, this Court mentioned the propositions emerging from

the several decisions considered therein and observed that "ultimately the court has to balance and weigh the several relevant factors - balancing

test or balancing process - and determine in each case whether the right to speedy trial has been denied in a given case". It has also been held that,

ordinarily speaking, where the Court comes to the conclusion that right to speedy trial of the accused has been infringed, the charges, or the

conviction, as the case may be, will be quashed. At the same time, it has been observed that that is not the only course open to the court and that

in a given case, the nature of the offence and other circumstances may be such that quashing of the proceedings may not be in the interest of

justice. In such a case, it has been observed, it is open to the court to make such other appropriate order as it finds just and equitable in the

circumstance of the case.

11. In the case of State of Andhra Pradesh Vs. N. Radhakishan, . regarding delay in taking departmental action. Their Lordships have observed in

para 19 as follows:-

19. 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 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 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 fact 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 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. After holding so, Their Lordships have upheld the order of the Tribunal quashing the charge memo on the ground of delay.

12. Learned counsel appearing for the second respondent by relying on a decision of the Supreme Court in Secretary to Government, Prohibition and Excise Department Vs. L. Srinivasan, would contend that the scope of judicial review is very limited and sought to distinguish the above referred decisions. No doubt; in the said decision. Their Lordships have observed that it would not be open to the Tribunal or the court to quash the suspension order and charges even at the threshold. The perusal of the judgment does not show the details such as when the incident had taken place and when the Government have initiated action etc. In Union of India v. Ashok Kacker, 1995 Supp (1) SCC 180 , no doubt, Their Lordships have observed that it is open to the delinquent to file his reply to charge-sheet and raise all objections and also invite the decision of the disciplinary authority thereon. In this case also, no other details have been furnished such the date of occurrence, steps taken by the Government etc. In such circumstances, I am of the view that both the decisions relied on by

the Government Pleader are not helpful to their case. I have already stated that even according to the 2nd respondent, the alleged irregularities had taken place in the year 1982 and even after receipt of the report from the Vigilance and Anti-Corruption, Pondicherry Government in the year 1993 the impugned charge memo was issued only on 5.11.97.

The inordinate and unexplained delay vitiates the impugned charge memo and the same is liable to be quashed. As observed by Their Lordships of the Supreme Court in *State of Punjab and Others Vs. Chaman Lal Goyal*, , the disciplinary proceedings cannot be initiated after a 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 is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the Court may well interfere and quash the charges. Here, in our case, the petitioner has raised a plea that the delay is likely to cause prejudice to him in defending himself. If such plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. I have already stated that the first charge states that the petitioner did not disburse cash from January, 1982 and, as rightly contended by, the learned counsel for the petitioner, not even the period is mentioned clearly and like-wise, the statement that cash book was not maintained properly is a bald statement. Further, the nature of the charges relate to day-to-day activities of disbursement of cash and maintenance of registers, which are routine affairs, hence the unexplained delay of 15 years cannot be accepted. It would be impossible for the petitioner to remember the identity of witnesses whom he could summon to appear before the enquiring authority to support his case. Even If he could summon their presence, it would be a doubtful proposition whether they would be in a position to remember that happened more than 15 years back and help him in his defence. Further more, the petitioner may not be in a position to effectively cross-examine the witnesses to be examined on the side of the second respondent in support of the charges. Practically, it would be a doubtful proposition that either the prosecution witnesses or the defence witnesses would be in a position to remember the facts of the case and advance

the case of either the department or the petitioner. Under these circumstances and on the facts and circumstances disclosed, I hold that the un-

explained inordinate delay will constitute denial of reasonable opportunity to the petitioner to defend himself that it would amount to violation of

principles of natural justice and as such, the impugned charge memo must be struck down on this ground alone. By weighing all the factors both for

and against the petitioner/delinquent officer quashing the charge memo is just and proper in the circumstances.

13. Under these circumstances, the impugned charge memorandum dated 5.11.1997 is quashed and the second respondent is directed to consider

the claim of the petitioner for promotion to the post of Senior Assistant de hors to the impugned charge memo and pass appropriate orders within

a period of four weeks from the date of receipt of a copy of this order. Writ Petition is allowed to the extent mentioned above. No costs.

W.M.P.No.4641 of 1998 is closed.