
(2010) 07 CAL CK 0022

In the Calcutta High Court

Case No : F.M.A. No. 241 of 2010 and M.A.T. No. 1334 of 2009

Barun Kumar Malla

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-07-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 342, 354, 376, 504, 511

Citation : (2010) 4 CALLT 71 : (2010) 127 FLR 634

Hon'ble Judges : J.N. Patel, C.J.; Bhaskar Bhattacharya, J

Bench : Division Bench

**Advocate : Saptangsu Basil and Mr. K.P.S. Mahapatra, for the Appellant;
Sudhakar Biswas and Mr. Prithu Dudhonia, for the Respondent**

Final Decision : Allowed

Judgement

J.N. Patel, C.J.—This appeal is directed against the judgment and order dated 11th November, 2009 passed by the learned single Judge dismissing the writ petition filed by the Appellant/writ Petitioner for seeking a mandamus to quash and set aside the departmental inquiry initiated against the Appellant writ Petitioner (memorandum of charges dated 15th October, 2007).

2. The Appellant/writ Petitioner is working as an inspector in Central Industrial Security Force (CISF for short). While the Petitioner was working in the MAMC unit at Durgapur as a sub-Inspector in-charge of crime and intelligence wings, a complaint came to be filed against the Petitioner in respect of an incident which occurred on May 5, 2000 at about 8:30 P.M. by one Smt. Manju Das, wife of Sri Fatik Das, Ganatantra Colony, P.S. NTSPS, Durgapur before the learned SDJM, Durgapur which came to be registered as M.P. Case No. 99 of 2000 for having committed offence punishable under Sections 342/504/354/376/511 Indian Penal Code on the allegations that on 5.5.2000 at about 6:30 P.M. when the complainant was returning back by performing her daily work from the quarter of B.S. Das, the Appellant/ writ Petitioner along with three others confined her in front of the quarter of B.S. Das and started abusing filthy languages towards her

by saying" SALIKO AKDIN UTHAKA LAY JYANGA" and hearing the same the complainant became agitated and restrained herself but protested, the Appellant/writ Petitioner caught hold of her hairs while the other accused pulled over the sari of the complainant and pressed her breasts. It appears that the learned Magistrate referred the case for investigation to NTPS Police Station. The police officer registered the said complaint as First Information Report and registered FIR No. 48 of 2000 dated 31.05.2000 against the Appellant/writ Petitioner and others named in the complaint by treating the original Court complaint as FIR.

3. It appears that the police officer in-charge of NTPS Police Station informed by a letter to the CISF in respect of the complaint filed by Smt. Manju Das against the Appellant/writ Petitioner and others with a request to produce the officers named in the complaint as accused at the police station at NTPS for the purpose of investigation.

4. On the basis of the aforesaid complaint case filed by Smt. Manju Das, a preliminary inquiry was conducted after issuing memorandum of charges dated 15th October, 2007 against the Appellant/Petitioner. The Appellant/ writ Petitioner in his reply to the memorandum contended that the said memo of charge is issued after a lapse of 8 years from the date of alleged incident and, therefore, it is not maintainable and liable to be quashed and set aside due to inordinate delay. It has also contended that the allegation contained in the FIR was known to the authorities immediately. In spite of knowledge of the allegations the authorities did not take any action for the last 8 years and, therefore, the alleged misconduct is deemed to have been condoned. The Appellant/writ Petitioner also took a stand that on the selfsame cause of action a criminal proceeding is pending and that he will be greatly prejudiced, and if he is called upon to disclose his defence in the departmental proceedings his defence in the criminal proceedings will be disclosed to his prejudice and requested for departmental proceeding to be kept in abeyance till finalisation of the criminal proceedings and sought for relevant documents. It appears that the disciplinary authority was not satisfied with the reply given by the Appellant/Petitioner to the show cause notice and appointed an officer in the rank of Deputy Commandant as Inquiry Officer for initiating departmental inquiry into the charges framed against the Appellant/writ Petitioner. Aggrieved by this said decision, the Appellant/writ Petitioner moved the Hon'ble High Court by filing Writ Petition No. 26249(W) of 2007 for quashing and setting aside the departmental proceedings/inquiry pursuant to the memorandum of charges dated 15th October, 2007 on the ground that the alleged incident is related to year 2000 and, therefore, the issue of memorandum of charges in the year 2007 is extremely belated and liable to be set aside on the ground of delay and that at the relevant point of time the authorities were satisfied that the Appellant was innocent and that the departmental case is grounded on the selfsame facts and selfsame witnesses and, therefore, the disclosure of defence by the Petitioner at the departmental(sic) proceedings would cause irreparable loss and injury in the criminal(sic) proceedings. The Appellant/writ Petitioner also took stand that the

Deputy Commandant after thorough investigation into the allegations arrived at a(sic) finding that the writ Petitioner is innocent and, accordingly, has written a(sic) letter to the police officer and in such view of the matter the issue of the impugned memorandum of charges is malafide. He also raised the contention that the Petitioner was promoted as Inspector subsequent to the alleged incident which was reported by filing a criminal complaint case which amounts to condonation of the act of alleged misconduct by the disciplinary authority and raised other ancillary grounds.

5. In reply an affidavit was filed by the Respondents in which it was contended that considering the complaint dated May 23, 2000 filed by Smt. Manju Das, the maid servant of Inspector/Exe B.K. Malla CISF Unit Durgapur it was found that the said alleged misconduct tarnishes the image of the Force which tantamounts to act of gross misconduct, indiscipline and unbecoming of a member of an armed force of the Union like CISF and, therefore, the writ Petitioner was issued a charge sheet under Rule 36 of CISF Rule, 2001. It was also contended that the memorandum of charge was received by the Petitioner on October 25, 2007 and since the writ Petitioner denied the charges, it was considered necessary to conduct a departmental inquiry. The Respondents have further stated that the then Deputy Commandant under whom the Petitioner was serving had sent a letter to the police station to protect the Petitioner and other accused persons for the reason best known to him and that at the material point of time the Petitioner was functioning as the in-charge of Crime and Intelligence Wing of CISF Unit, MAMC, Durgapur was in close touch with the then Deputy Commandant, CISF Unit, MAMC, Durgapur who seems to have given such protective coverage to the writ Petitioner while writing to the police station which also contributed to the delay in initiation of departmental proceedings against the writ Petitioner. According to the Respondents there is no legal bar in initiating the departmental enquiry during the pendency of a criminal proceeding in a Court of law. In spite of the allegations by the Petitioner that the departmental proceedings have been initiated for a mala fide reason, it is contended that due to protective coverage enjoyed by the Petitioner from the then Deputy Commandant, no departmental proceedings could be initiated against him and, therefore, it was stated that the petition is misconceived and liable to be dismissed with exemplary costs. There is one more fact which deserves to be referred. The Petitioner has put up a case that there was an illicit relationship between Inspector B.M. Das and Smt. Manju Das (his maid servant) which fact was reported by the Petitioner to the superior officer. In support of his contention writ Petitioner has relied upon memos issued to Inspector B. M. Das to demonstrate that the Petitioner along with others is falsely implicated by Smt. Manju Das at the instance of Inspector B. M. Das for the aforesaid reason by filing criminal complaint case before the learned Magistrate. This was strongly refuted by the Respondents in their affidavit-in-opposition. It was also stated that the whole truth will come out in the light of the departmental inquiry.

6. The learned Judge was pleased to dismiss the writ petition by holding that the

rules do not prohibit departmental proceeding in such a case and, therefore, the discretion of the authority to proceed cannot be taken away by the Court. Consequently, on the ground of delay the learned Judge held that the Respondents have given plausible explanation why the departmental inquiry was delayed for a period of 8 years and found support from a letter dated 6th June, 2000 addressed by the Deputy Commandant to the Officer-in-charge of the concerned police station intimating him that the accused persons were innocent and the proceeding should be dropped.

7. The learned Counsel appearing for the Appellant/writ Petitioner contended that the very fact that the disciplinary authority at a relevant point of time was satisfied that the Appellant/writ Petitioner was innocent of the charges made against him and as such no action was taken by the then disciplinary authority and, therefore, subsequently after a lapse of 7 to 8 years the departmental proceedings are initiated on the same charges by the Respondent authority, it can only said to be bias, mala fide and it was contended that the stand taken by the Respondents that the Deputy Commandant provided a protective umbrella to the Appellant/writ Petitioner cannot be accepted as he was not the disciplinary authority of the Petitioner and nothing prevented disciplinary authority from initiating such action who was higher in rank. It is further contended by the Appellant/writ Petitioner that the Petitioner have been promoted to the post of Inspector and, therefore, misconduct, if any, is deemed to have been condoned. It is contended that considering the allegations contained in the charge sheet it cannot be said that it was a misconduct during the course of discharge of duty and, therefore, the case of the Appellant was squarely covered by the decision of the Court in *Badal Pal v. Union of India and Ors.* 2003 (3) CHN 82 as confirmed by the Division Bench judgment in the case of *G.D. Paul v. Union of India and Ors.* 2009 (2) CHN 769. Learned Counsel appearing for the Petitioner also pointed out the fallacy in the charge sheet by raising various issues in defence of the Appellant/writ Petitioner.

8. Per contra it is contended by the learned Counsel appearing for the Union of India that the decision of the learned single Judge does not call for any interference for the reason that the Respondent is well within his right to initiate a departmental proceeding on the basis of allegations made by Smt. Manju Das in her criminal complaint case. It is contended that the allegations pertains to criminal offence attracting moral turpitude and, therefore, taking into consideration the allegation against the Petitioner it is unbecoming of an officer of the Force and amounts to grave misconduct. It is contended that there is no prescribed period of limitation to initiate departmental proceeding in the rules governing the subject and further the Respondents authority sufficiently explained the delay which was at the instance of the Appellant/ writ Petitioner, as Deputy Commandant tried to protect him, therefore, no interference is called for.

9. With the assistance of the learned Counsel for the parties we have gone through the judgment and order of the learned single Judge and the relevant

case papers. In our opinion so far as the findings of the learned Judge relating to the jurisdiction of the authority to initiate a disciplinary proceeding during the pendency of the criminal proceeding in the appropriate Court of law is concerned, it does not call for any interference. We find that the reliance placed by the learned Counsel for the Appellant on the decision of this Court in G.D. Paul's case (supra) is of no assistance to the Appellant/Petitioner. This Court,(sic) held in paras 25 and 26 of the above judgment as under:

25. The question squarely raised is whether Badal Pal is good law in that it did not take into account the Harish Chandra dictum. For, if Badal Pal(sic) is considered to lay down the correct position at law, the facts in the present case bearing verisimilitude with the facts obtaining in that case would prompt a similar result, at least as far as the first charge is concerned. The ratio in the Badal Pal judgment is that the CISF would not have the authority to initiate disciplinary proceedings in respect of a criminal charge committed outside the scope of duty till such time that a conviction resulted in the criminal proceedings. It must be appreciated here that the first charge, even if taken at face value and against the Appellant, reveals the following features: that he absented himself from duty or a function akin to duty; that he travelled to the rented accommodation of a fellow employee; and, that he attempted to outrage the modesty of such fellow employee's wife.

26. The rented accommodation was not within the CISF precincts. The primary charge, therefore, was his absence without excuse which is also the substance of the fourth charge. As to whether a member of a force committing a crime beyond the geographical limits of the area under the jurisdiction of the force in course of his absence from duty without excuse can be proceeded against departmentally, is the moot point. What is important to the force is the unexplained absence of the employee from duty. It seems that, it would be irrelevant to the force as to whether during such unexplained absence the member of the force committed a petty theft or any grave offence or even murder, unless there is a conviction upon a criminal trial that would make the conduct relevant for the purpose of the discipline of the force. To hold otherwise would be absurd and empower the employer in such a case with draconian powers to control the movement and conduct of an employee as an extra-judicial authority not recognised by law. It would be different if the offence were committed in course of the duty or, possibly, even when a criminal offence is committed within the territorial jurisdiction of the force or the immediate vicinity of the field of duty. But to suggest that the force would have all pervasive control over the body and soul of its members when they are off duty and not within the territorial authority of the force, would be the recognition of an utterly undesirable bondage.

10. We have no reason to take a different view as far as the ratio laid down in Pal's case is concerned but the case at hand can be distinguished from the facts of Badal Pal's case and as we have concurred with the finding of the learned

single Judge on the first issue, we do not want to express any further opinion in the matter. Suffice it to say that this can be raised as a ground in defence by the delinquent and to be considered by the Inquiry Officer while recording his finding to the effect whether the offence/ misconduct has been committed during the course of duty or not.

11. We are really concerned with the issue of inordinate delay in initiating departmental proceedings in the given facts and circumstances. The learned single Judge has examined the said issue and has come to the conclusion that the Respondents have offered a plausible explanation for the delay of 7 years while rejecting the said contention. The learned single Judge has referred to the letter dated 6th June, 2000 addressed by the Deputy Commandant to the Officer-in-charge of the concerned police station intimating him that the accused persons were innocent and the proceeding should be dropped. The learned single Judge has been cautious while observing that he should not have expressed any definite opinion as regards any protective umbrella allegedly provided by the Deputy Commandant to the Petitioner, and as regards truth of the contents of the letter so as to prejudice the Petitioner/Appellant or the complainant in the trial pending before the learned Magistrate as well as the departmental proceedings inquiry.

12. In *P. V. Mahadevan v. Md. T N. Housing Board* (2005) 6 SCC 636, the Supreme Court had considered the issue of delay in initiation of departmental inquiry and its effect. In that case Supreme Court observed:

Certain disciplinary actions were initiated against the Appellant who was working as Superintending Engineer in the Tamil Nadu Housing Board. A charge memo was issued against him in the year 2000 for irregularity in issuing a sale deed in 1990 to one B. The Appellant preferred a writ petition for quashing the said charge memo and restraining the Respondent employer from proceeding with it. Certain other consequential prayers relating to disbursement of monetary benefits, etc. were also made. The Appellant submitted (i) that though the records were very much available with the Respondent, no action had been taken against him for about 10 years, and (ii) that no explanation whatsoever was offered by the Respondent for the inordinate delay in initiating the disciplinary action. Aggrieved by the order of the High Court, the Appellant preferred the instant appeal.

Allowing the appeal, the Supreme Court Held:

The Respondent submitted that the irregularity during the year 1990, for which disciplinary action had been initiated against the Appellant in the year 2000, came to light in the audit report for the second half of 1994-95. But, Section 118 of the Tamil Nadu State Housing Board Act, 1961 specifically provides for submission of the abstracts of the accounts at the end of every year and Section 119 of the said Act relates to annual audit of accounts. Therefore, the explanation offered for the delay in finalizing the audit account cannot stand

scrutiny in view of the above two provisions. There is no acceptable explanation on the side of the Respondent explaining the inordinate delay in initiating departmental disciplinary proceedings. The stand taken by the Respondent in the counter-affidavit is not convincing and is only an afterthought to give some explanation for the delay.

13. The Supreme Court referred to the two decisions rendered in the cases of (i) State of M.P. v. Bani Singh (1990 supp. Supreme Court 738), (ii) State of Andhra Pradesh Vs. N. Radhakishan, in paras 4 and 5 while considering the factum of inordinate delay in P.V. Mahadevan's case:

4. In the first case of The State of Madhya Pradesh Vs. Bani Singh and another, an OA was filed by the officer concerned against initiation of departmental enquiry proceedings and issue of charge-sheet on 22-4-1987 in respect of certain incidents that happened in 1975-76 when the said officer was posted as Commandant, 14th Battalion, SAF, Gwalior. The Tribunal quashed the charge memo and the departmental enquiry on the ground of inordinate delay of over 12 years in the initiation of the departmental proceedings with reference to an incident that took place in 1975-76. The appeal against the said order was filed in this Court 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. This Court rejected the contention of the learned Counsel. While dismissing the appeal this Court observed as follows: (SCC p. 740, para 4)

The irregularities which were the subject-matter of the enquiry are said to have taken place between the years 1975-77. 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 dismiss this appeal.

5. In the second case of State of Andhra Pradesh Vs. N. Radhakishan, the Respondent was appointed as Assistant Director of Town Planning in the year 1976. A report dated 7-11-1987 was sent by the Director General, Anti-Corruption Bureau, Andhra Pradesh, Hyderabad to the Secretary to the Government, Housing, Municipal Administration and Urban Development Department, Andhra Pradesh, Hyderabad about the irregularities in deviations and unauthorised constructions in multi-storeyed complexes in the twin cities of Hyderabad and Secunderabad in collusion with

Municipal Authorities. On the basis of the report, the State issued two memos both dated 12-12-1987 in respect of three officials including the Respondent Radhakishan, the then Assistant City Planner. In this case, till 31-7-1995 the articles of charges had not been served on the Respondent. The Tribunal, however, held that the memo dated 31-7-1995 related to incidents that happened ten years or more prior to the date of the memo and that there was absolutely no explanation by the Government for this inordinate delay in framing the charges and conducting the enquiry against the Respondent and that there was no justification on the part of the State now conducting the enquiry against the Respondent in respect of the incidents at this late stage. This Court, in para 19, has observed as follows: (SCC p. 165)

"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 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 face 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 this 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. This Court held that there was hardly any explanation worth consideration as to why the delay occurred. In the circumstances, this Court held that the Tribunal was justified in quashing the charge memo dated 31 -7-1995 and directing the State to promote the Respondent as per recommendation of the DPC ignoring memos dated 27-10-1995 and 1-6-1996. Accordingly, the appeal filed by the State of Andhra Pradesh was dismissed."

15. Let us consider the stand taken by Respondent Union of India (CISF) that there is no limitation for initiating departmental proceeding, but that does not mean that the disciplinary authority is not bound by the principles of natural justice, i.e., fair play and good conscience. Therefore, departmental proceedings/enquiry against the Appellant/or writ Petitioner ought to have been initiated within reasonable time considering the seriousness of the charges leveled against him.

16. The Court has to consider the nature of the charge, its complexity and on what account the delay has occurred. If the delay is unexplained it does cause prejudice to the Appellant who is an officer in CISF and we find there is hardly any explanation worth considering as to why the delay occurred. The only explanation offered by the Respondents in order to justify the delay initiating disciplinary proceeding is that the Petitioner was functioning at the relevant point of time as the in-charge of Crime and Intelligence Wing of CISF Unit, MAMC, Durgapur was in close touch with the then Deputy Commandant, CISF Unit, MAMC, Durgapur who seems to have given such protective coverage to the writ Petitioner while writing to the police station which also contributed to the delay in initiation of departmental proceedings against the writ Petitioner and they have placed reliance on the letter dated 6th June, 2000 written by the Deputy Commandant CISF Unit, MAMC, Durgapur. It appears that the said letter was in response to the letter dated 31st May, 2000 addressed by the officer in-charge, NTS Police Station, Durgapur for handing over custody of the Petitioner and others who are accused by the complainant Smt. Manju Das in her criminal complaint. The tenor of the letter does not indicate that it was to protect the Appellant/writ Petitioner or other persons but to place before the police the correct facts which the police officer was expected to take into consideration while submitting the report before the Court. The letter does not, in any manner, indicate that the Deputy Commandant wanted to protect the Appellant/writ Petitioner or others in any manner whatsoever and, therefore, the said letter cannot be a basis to form an opinion or come to the conclusion that the said Deputy Commandant had provided a protective umbrella to the Appellant/writ Petitioner. As rightly contended by the learned Counsel for the Appellant/writ Petitioner that nothing prevented the disciplinary authority from initiating disciplinary proceeding/inquiry against the Appellant/writ Petitioner and others against whom the criminal complaint came to be filed by the maid servant of Inspector B. M. Das. Nothing is placed on record to show that the disciplinary authority of the Appellant/writ Petitioner was not conscious of the fact of such a complaint being alleged against the Appellant/writ Petitioner in the Court pursuant to which the police has registered an FIR against the Appellant/writ Petitioner. The Appellant/ writ Petitioner placed on record its letters dated 03.08.1999 and 03.06.2000 addressed to B.M Das by the Deputy Commandant for removal of Smt. Manju Das, the maid servant who was working in his quarter while Inspector B.M Das was residing alone in his quarter and it was contended by learned Counsel for the Appellant/Petitioner that as he was instrumental in

reporting to the authorities the illicit relationship with Inspector B. M. Das had with his maid servant was the reason for falsely implicating him and others in the criminal case by lodging a criminal complaint before the Magistrate. Therefore in all probabilities higher authorities were aware of the state of affairs and did not take any decision to initiate any proceedings against the Appellant/writ Petitioner. On the contrary, the Appellant/writ Petitioner was promoted as Inspector/Executive much after the alleged incident which clearly shows condonation on the part of the authorities of the alleged misconduct.

17. In order to appreciate as to whether the Respondents have been able to offer a probable explanation for the inordinate delay of more than 7 years in initiating a departmental inquiry against the Appellant-accused, the least Expected of them was to place before the Court the justification in the form of good and sufficient reason as to why they were required to wait for 7 and more years for taking a decision to hold a departmental proceeding/inquiry against the Appellant/writ Petitioner. That is whether it was due to the protective umbrella offered by the Deputy Commandant and if so, whether the disciplinary authority of the Appellant/writ Petitioner was influenced by such protective umbrella extended to the Appellant/writ Petitioner or due to ignorance of the alleged criminal complaint lodged by Smt. Manju Das and the FIR registered at the concerned police station. One cannot lose sight of the fact that to take a decision to hold departmental inquiry on such serious charges involving moral turpitude would entail criminal consequences like dismissal from service and it definitely affects a person's life and liberty if disciplinary proceedings/inquiries are kept pending for years and years together without any justification. It operates as engine of oppression and does cause prejudice. It is obligatory on the part of the Respondents to offer an explanation for the inordinate delay in initiating departmental proceedings. The explanation which has been offered in the affidavit-in-opposition by the Respondents is no explanation in the eye of law much less probable explanation and, therefore, in the facts and circumstances of the case, we have no hesitation to come to the conclusion that virtually no explanation has been given by the Respondents and, therefore, to allow the Respondent to proceed further with a departmental proceeding, is bound to cause serious prejudice to the Appellant. Therefore, the departmental inquiry deserves to be quashed and set aside on this ground alone.

18. It should not be construed that this Court is, in any manner, exonerating the Appellant/writ Petitioner from the criminal charges for which he is facing trial before the learned Magistrate. In case the Appellant/writ Petitioner is convicted by the criminal Court, the disciplinary authority will be competent enough to initiate appropriate action against the Appellant/ writ Petitioner and, therefore, we quash the memo of charge issued against the Appellant.

19. The appeal is allowed in aforesaid term. No order as to costs.

Bhaskar Bhattacharya, J.

I agree.