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**(2021) 12 CAL CK 0007**  
**In the Calcutta High Court**  
**Case No : W.P.C.T. No. 69 Of 2018**

Dibyendu Chakraborty

APPELLANT

Vs

Union Of India And Others

RESPONDENT

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**Date of Decision :** 01-12-2021

**Acts Referred:**

**Citation :** (2021) 12 CAL CK 0007

**Hon'ble Judges :** Sabyasachi Bhattacharyya, J; Jay Sengupta, J

**Bench :** Division Bench

**Advocate :** Debabrata Saha Roy, Indranath Mitra, Subhankar Das, Neil Basu, Rajdeep Biswas

**Final Decision :** Allowed

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## Judgement

Jay Sengupta, J

1. This application is directed against a judgment and order dated 19.02.2018 passed by the Learned Central Administrative Tribunal, Kolkata Branch in OA No. 1851/2015, thereby affirming an order dated 04.07.2011 issued by the disciplinary authority as affirmed by the appellate authority on 02.09.2015.

2. On 15.10.1985 the applicant was appointed as an unapproved substitute at the Taherpur Station under the Eastern Railway. On 26.02.1992 he was promoted to the post of commercial clerk in September 2003. The applicant was appointed as Goods Guard and was posted at Naihati. On 22.06.2005 the petitioner was placed under suspension and a charge-sheet was issued to him on 28.12.2005. The alleged charged related back to the year 1994. It was alleged that the petitioner had adopted unfair means while entering into railway service. The petitioner got the employment in the railway as a gang man by virtue of AEN/BT/S letter number EG/2/BT dated 15.09.1994 (RUD-I), but the authority as mentioned in the said letter which was also mentioned in the service record of the concerned staff was fake. Senior DPO/SDAH confirmed that no such letter as indicated in the office order had been issued from his office. The front page of

the service record of the petitioner revealed that he was appointed by an office order dated 21.10.1993. The front page of the same bore the signature of the petitioner, that he had been appointed on the basis of such order of senior DPO/SDAH. On 11.06.2006 the petitioner prayed for revocation of suspension order. On 01.09.2006 during the course of enquiry the charge memorandum dated 28.12.2005 was withdrawn. But, on 10.10.2006 a second memorandum of charge was issued. The petitioner again prayed for revocation of suspension order on 26.10.2006. On 19.04.2007 he prayed for a change of the enquiry officer. He again made a representation for stay of the departmental proceeding on 17.05.2007. On 04.02.2008 the suspension order was revoked. During the course of enquiry the petitioner prayed for an adjournment on 10.03.2008 but the same was turned down. On 24.03.2008 the enquiry proceeding was held and the enquiry was declared closed. The petitioner challenged the decision before the learned Central Administrative Tribunal by filing OA No. 263/2008. On 02.04.2008 the said application was disposed. On 22.05.2008 the disciplinary authority requested the enquiry officer to supply documents to the petitioner and thereafter to start enquiry. On 18.06.2008 the enquiry officer intimated the disciplinary authority that the question of further enquiry did not arise since he had already submitted charge-sheet on 29.04.2008. The applicant submitted his reply before the enquiry officer in 2008 and then again representation before the disciplinary authority in 2009 he finally submitted his reply on findings of the enquiry officer on 16.06.2011. On 04.07.2011 the disciplinary authority passed an order of the petitioner's dismissal with immediate effect. The applicant preferred before the learned appellate authority in terms of leave granted by the learned tribunal in OA No. 729/2011. On 14.08.2012 the appellate authority confirmed the order passed by the disciplinary authority. The revisional authority rejected the prayer of the applicant. On 09.07.2015 the learned tribunal passed the impugned order disposing of petitioner's application. Pursuant to this, the petitioner submitted notes of arguments before the appellate authority. On 02.09.2015 the appellate authority passed an order of affirmation of the dismissal. On 19.02.2018 OA No. 1851/2015 filed by the petitioner challenging the order of the appellate authority was dismissed. Being aggrieved by such order the petitioner preferred a writ application being WPCT 49/2018. On 24.07.2018 the application preferred by the petitioner was dismissed as withdrawn with liberty to file afresh with proper annexure. Thereafter, the petitioner filed the present application challenging the order passed by the learned tribunal.

3. Mr. Saha Roy, learned senior counsel appearing on behalf of the petitioner submitted as follows. The main allegation was that a wrong information was supplied before the employer on behalf of the petitioner during his appointment. But, there was a delay of about 11 years in bringing up the issue. The petitioner's prime contentions were that there was an inordinate delay in levelling charges; nearly 11 years have passed from the alleged date of occurrence. Secondly, no reason was given for withdrawing the first charge sheet

and issuing the second. The second charge sheet was filed against the present petitioner on the self-same charge, as the first charge sheet. This point was taken up by the petitioner as far back as in 2006. The petitioner gave the second representation. However, the departmental authority arrived at his findings without providing sufficient reason. In fact, the enquiry was conducted by a retired employee. Even the appeal preferred by the petitioner was disposed of by an unreasoned order. The review too contained no reasons. Then the Learned Central Administrative Tribunal set aside the order and remanded it back. However, the same order was passed, but with certain guidelines. The appellate authority, by its order dated 02.09.2015, refused to modify or change the order passed by the disciplinary authority without giving much reason. Only two judgments were mentioned. So far as the impugned order passed by the Learned Central Administrative Tribunal was concerned, there was nothing to explain why relevant documents were not supplied. Although not relied upon by the department, those documents were very vital. In fact, no finding was arrived at as to why those documents were not relevant. Relevant documents which would have been favourable to the petitioner were not supplied to him. There was a perverse finding that the charges were proved by a reasoned order. On the question of delay, reliance was placed on P.V. Mahadeven vs. Md. T.N. Housing Board, (2005) 6 SCC 636, M.V. Bijlani vs. Union of India & Ors., (2006) 5 SCC 88 and B.K. Malla vs. Union of India & Ors., (2010) 3 CHN (Cal) 878.

4. Mr. Biswas, learned counsel for the Union of India submitted as follows. Adequate reasons were given for the second charge sheet as would be evident from the order of the learned Tribunal. Moreover, delay has been properly dealt with. Charge sheet was issued immediately after the irregularity was detected. On the issue that the delay was not fatal if sufficient ground was there to proceed, reliance was placed on (2009) 7 SCC 305. On the question of non-supply of documents, reliance was placed on (1993) 4 SCC 77.

5. We heard the submissions of learned counsels representing the petitioner and the respondent and perused the application.

6. It is alleged that the petitioner had obtained the job at the first instance by relying on some fake documents. However, this was not pointed out for a very long time and the petitioner was allowed to work in the department and get promotions by sitting in appropriate test/s. The authorities did not exercise due care and caution for an inordinately long time. So, the alleged illegality could be detected after nearly 11 years of service of the petitioner. All this long the petitioner worked in the capacity in which he was to serve the employer. The very fact that the petitioner was promoted on certain occasions makes it abundantly clear that he was doing his job quite well. Although ordinarily an act of fraud would vitiate a process and would date back to the earliest point in time when the engagement in question was initiated, yet a patent lack of care, caution and sincerity on the part of an employer in detecting the same could act as an acquiescence and as a consequent waiver of irregularity in certain cases. This is

especially so when all relevant documents are available for such detection. In the present case, a hiatus of 11 long years in the employer's urge to exercise reasonable care and caution does vitiate the belated departmental proceeding. The decisions relied upon on the issue of effect of delay, too indicate that an inordinate and unexplained delay may act as a bar to such a belated proceeding.

7. As regards non supply of copies, the view of the learned Tribunal that the petitioner failed to explain why he needed the copies of documents is not quite relevant. There were certain documents available with the employer. It was open to them to rely on some such documents in the departmental proceedings. All the documents that would be relied upon against the petitioner have to be supplied to him. Even as far as the other documents available with the employer, it was the petitioner's right to pray for supply of some such documents, which would enure to his benefit. It is a categorical case of the petitioner that the documents that he had sought, but were refused to be supplied to him by the authorities would have clearly strengthened his defence. Therefore, the failure of the authorities to supply copies of documents as sought by the petitioner strikes the proceeding at its root.

8. Now, so far as the withdrawal of the first charge sheet and the introduction of second is concerned, the same too could not be casually brushed aside. There is an established procedure by which a charge sheet in a departmental proceeding can be withdrawn and a second one instituted. Reference may be made to Index No. 1033 and the Railway Board's letter dated 01.12.1993. In the present case, no worthwhile reason was cited for withdrawing the first charge sheet and instituting the second charge sheet. Such cavalier acts seriously prejudicing an employee cannot be sustained in the eye of law.

9. If any of the former three issues were not enough alone to vitiate the proceeding against the petitioner, then the lack of reasoning in the orders passed against him, of dismissal and thereafter by the appellate authority, would be sufficient to warrant an interference with the proceeding or its outcome. The order of the learned Tribunal fails to take these into consideration.

10. In view of the above referred infractions and infirmities in the proceedings, the impugned order dated 19.02.2018 passed by the Learned Central Administrative Tribunal cannot be sustained.

11. Accordingly, we quash and set aside the impugned order passed by the Learned Central Administrative Tribunal.

12. The writ application is allowed.

13. However, there shall be no order as to costs.

14. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.