

**(2018) 03 CAT CK 0052**

**In the Central Administrative Tribunal**

**Case No :** Review Application No. 11 Of 2018, Original Application No. 1837 Of 2017

Indira Rani

APPELLANT

Vs

Lt. Governor And Ors

RESPONDENT

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**Date of Decision :** 08-03-2018

**Acts Referred:**

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 14

**Citation :** (2018) 03 CAT CK 0052

**Hon'ble Judges :** V. Ajay Kumar, J;Nita Chowdhury, Member (A)

**Bench :** Division Bench

**Final Decision :** Dismissed

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**Judgement**

V. Ajay Kumar, J

1. The applicant filed the OA No.1837/2017 questioning the Annexure A-1 Charge Memorandum dated 30.08.2010. The charges levelled in the charge sheet are pertaining to the year 2008 and whereas the Charge Memorandum was issued after a lapse of 2 years and she retired from service on attaining the age of superannuation on 31.05.2017. She has also submitted that even after lapse of 7 years from the date of issuance of the charge sheet, the respondents have not completed the disciplinary proceedings and thereby depriving her all the retirement benefits. The respondents submitted that the delay in completion is due to non-cooperation of applicant. After hearing the parties, the OA was disposed of on 28.11.2017 and the operative part of the said order reads as under:-

"4. In the circumstances, we are of the considered view that the OA deserves to be disposed of by directing the respondents to complete the disciplinary proceedings pending against the applicant within a fixed time frame and to pass final orders. Accordingly, the OA is disposed of by directing the respondents to complete the disciplinary proceedings initiated against the applicant vide the impugned Annexure-A/1 charge memorandum dated 30.08.2010, within 90 days

from the date of receipt of a certified copy of this order. It is needless to mention that the Inquiry Officer may conduct the inquiry on day to day basis, if necessary, and that the applicant shall cooperate for the early completion of the inquiry proceedings within the said time. If the disciplinary authority failed to pass the final orders within the said time inspite of the co-operation of the applicant, the disciplinary proceedings initiated against the applicant are deemed to have been abated and the respondents shall release all the retirement benefits to the applicant.

5. Pending MA stands disposed of".

2. Now the Review Applicant has filed the present RA bearing No.11/2018 for reviewing the indicated order, mainly on the ground that at the time of disposal of the OA, she has placed reliance on a judgment of the Hon'ble Apex Court in Prem Nath Bali Vs. Registrar, High Court of Delhi and Another (2015) 16 SCC 415 and that the said judgment was also brought to the notice of the Tribunal by filing MA No.4171/2017 in OA No.1837/2017 wherein it was held that "every employer (whether State or private) must make sincere endeavour to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit and where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within the reasonably extended period depending upon the cause and the nature of inquiry but not more than a year" but the Tribunal while disposing of the OA neither considered the said decision nor followed the principle enunciated therein and on the other hand granted 3 months more time to the respondents for completion of the disciplinary proceedings. According to the review applicant, non-consideration of the judgment of the Hon'ble Apex Court and not following the ratio decided therein, is an error on the face of the record and accordingly prays for review of the order in the OA.

3. In Pram Nath Bali (supra), the appellant, while working as Upper Division Clerk in the office of the District and Sessions Judge, Delhi, was served with a Charge Memorandum dated 18.07.1990 under Rule 14 of the CCS (CCA) Rules, 1965 and the said disciplinary proceedings continued for more than 9 years which finally ended when the District and Sessions Judge, Delhi, vide orders dated 27.10.1999 and 28.10.1999 imposed a major penalty of compulsory retirement on the appellant. The statutory appeal preferred by the appellant was dismissed on 21.08.2000. The writ petition filed against the said orders was also dismissed and hence the Civil Appeal. The Hon'ble Apex Court while allowing the appeal partly observed as under:-

"30. We are constrained to observe as to why the departmental proceeding, which involved only one charge and that too uncomplicated, have taken more than 9 years to conclude the departmental inquiry. No justification was forthcoming from the respondents' side to explain the undue delay in completion

of the departmental inquiry except to throw blame on the appellant's conduct which we feel, was not fully justified.

31. Time and again, this Court has emphasized that it is the duty of the employer to ensure that the departmental inquiry initiated against the delinquent employee is concluded within the shortest possible time by taking priority measures. In cases where the delinquent is placed under suspension during the pendency of such inquiry then it becomes all the more imperative for the employer to ensure that the inquiry is concluded in the shortest possible time to avoid any inconvenience, loss and prejudice to the rights of the delinquent employee.

32. As a matter of experience, we often notice that after completion of the inquiry, the issue involved therein does not come to an end because if the findings of the inquiry proceedings have gone against the delinquent employee, he invariably pursues the issue in Court to ventilate his grievance, which again consumes time for its final conclusion.

33. Keeping these factors in mind, we are of the considered opinion that every employer (whether State or private) must make sincere endeavor to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of inquiry but not more than a year.

34. Now coming to the facts of the case in hand, we find that the respondent has fixed the appellant's pension after excluding the period of suspension (9 years and 26 days). In other words, the respondents while calculating the qualifying service of the appellant for determining his pension did not take into account the period of suspension from 06.02.1990 to 01.03.1999.

35. Having regard to the totality of the facts and the circumstances, which are taken note of supra, we are of the view that the period of suspension should have been taken into account by the respondents for determining the appellant's pension and we accordingly do so.

36. In view of foregoing discussion, the appeal succeeds and is allowed in part only to the extent indicated above in relation to fixation of appellant's pension. The respondents are accordingly directed to re-determine the appellant's pension by taking into account the period of suspension (06.02.1990 to 01.03.1999) and then pay to the appellant arrears of the difference amount from the date he became eligible to claim pension and then to continue to pay the appellant re-determined pension regularly in future as per Rules. It is to be done within three months from the date of receipt of this order. No costs".

4. In the OA against which the RA is filed, the disciplinary proceedings initiated

vide Charge Memorandum dated 30.08.2010 were not yet concluded and the cause for the delay, according to the respondents, was the conduct and non-cooperation of the applicant.

5. The need and necessity to complete the disciplinary proceedings within a reasonable period was reiterated by the Hon'ble Apex Court time and again in various decisions. The decision of Prem Nath Bali (supra) was also one such decision. Following the said line of decisions including Prem Nath Bali (supra) only, this Tribunal directed the respondents to complete the disciplinary proceedings within 90 days and also observed that, if the disciplinary authority failed to pass the final orders within the said period of 90 days, in spite of the cooperation of the applicant, the same be deemed to have abated and the respondents shall release all the retirement benefits to the applicant.

6. In Prem Nath Bali (supra), it was not stated that any abnormal delay in completion of disciplinary proceedings automatically results in vitiating the departmental proceedings and the courts should quash such proceedings. On the other hand, it is the settled principle of law that mere delay in completion of the disciplinary proceedings does not vitiate the disciplinary proceedings, automatically.

7. In Anant R. Kulkarni Vs. Y.P. Education Society and Others (2013) 6 SCC 515 it was held as under:-

"14. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is de hors the limitation of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question, must be carefully examined, taking into consideration the gravity/magnitude of charges involved therein. The Court has to consider the seriousness and magnitude of the charges and while doing so the Court must weigh all the facts, both for and against the delinquent officers and come to the conclusion, which is just and proper considering the circumstances involved. The essence of the matter is that the court must take into consideration all relevant facts, and balance and weigh the same, so as to determine, if it is infact in the interest of clean and honest administration, that the said proceedings are allowed to be terminated, only on the ground of a delay in their conclusion. (Vide: State of U.P. v. Brahm Datt Sharma & Anr., AIR 1987 SC 943; State of Madhya Pradesh v. Bani Singh & Anr., AIR 1990 SC 1308; State of Punjab & Ors. v. Chaman Lal Goyal, (1995) 2 SCC 570; State of Andhra Pradesh v. N. Radhakishan, AIR 1998 SC 1833; M.V. Bijlani v. Union of India & Ors., AIR 2006 SC 3475; Union of India & Anr. v. Kunisetty Satyanarayana, AIR 2007 SC 906; The Secretary, Ministry of Defence & Ors. v. Prabash Chandra Mirdha, AIR 2012

SC 2250; and Chairman, LIC of India & Ors. v. A. Masilamani, JT (2012) 11 SC 533)."

8. In the OA, it was the specific contention of the respondents that the disciplinary proceedings against the applicant were delayed, due to the conduct and non-cooperation of the applicant only. That is why, this Tribunal keeping in view the facts of the case and by following the ratio of the various decisions of the Hon'ble Supreme Court including Prem Nath Bali (supra), specifically directed the respondents to complete the disciplinary proceedings against the applicant within 90 days and also to safeguard the interest of the applicant in the event of non-compliance of the said direction by the respondents, observed that the applicant is entitled for release of all retirement benefits, if the respondents fail to complete the disciplinary proceedings within the said time frame. Once this Tribunal followed the settled principle of law, non-mentioning of a decision, which supports the said settled principle, cannot be a ground for review of the order. Obviously, the applicant somehow or the other does not want the enquiry proceedings to go on thereby resulting in conclusion.

9. In the circumstances and for the aforesaid reasons, the review being devoid of any merit is dismissed in circulation. No costs.