
(2012) 02 CHH CK 0068
In the Chhattisgarh High Court
Case No : Writ Petition No. 6534 of 2005

Kaleshwar Singh Rajput

APPELLANT

Vs

The State of Chhattisgarh and others

RESPONDENT

Date of Decision : 09-02-2012

Acts Referred:

Citation : (2013) 1 CG.L.R.W. 184

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Division Bench

Advocate : N. Naha Roy, for the Appellant; Ajit Singh PL for the State, for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Shri Prashant Kumar Mishra, J

1. Petitioner has prayed for issuance of a writ of certiorari against the respondents for quashing the enquiry on the ground of delay in its conclusion. While the petitioner was working as Sub Engineer in Block Development Office, Pharsabhar, District Raigarh he was suspended by order Annexure P-1 dated 27th June, 1995 mentioning therein that he has misbehaved with the people's representatives, failed to value the work within time and has been negligent and delinquent in work. A show cause notice was issued to him on 7th July 1995 vide Annexure P-2 seeking his explanation as to why a departmental enquiry should not be constituted against him. In this show cause notice only two imputations were leveled, that he addressed the Sarpanchas as csodwwwQ and ew[kZ (idiots and fools) and has directed the Sarpanchas to move application on a stamp paper of Rs.5/- for carrying out valuation of the work. Particulars of charges and the details of charges as also the list of witness and documents were served alongwith the show cause notice. The petitioner submitted his reply on 24/08/1995 vide Annexure P-3. However, by order Annexure P- 4, dated 8/09/1995 he was reinstated and by another order Annexure P-5 of the same date enquiry officer was appointed for proceeding ahead with the enquiry against

the petitioner. It is this enquiry which is pending since September, 1995 i.e. for more than 16 years and the petitioner moved repeated applications on 10/08/2000 (Annexure P-7), 26/09/2000 (Annexure P-8) and 13/06/2001 (Annexure P-9) for early conclusion of the departmental enquiry and release of annual increment which is not paid to him since when the enquiry was constituted against him.

2. In the above back ground and factual matrix, learned counsel for the petitioner would submit that continuation of enquiry for a period of 16 years is violative of principles of natural justice as also for the reason that it affects his valuable right of obtaining annual increment and his consideration for promotion to the next higher post. He would submit that even the charges are trivial as none of the charges allege anything about his sincerity, honesty and integrity. He would submit that in the facts of the case enquiry proceeding deserves to be quashed.

3. Learned State counsel has opposed the prayer on submission that the petitioner misbehaved with the elected representatives and was negligent in performing his duties, therefore the charges cannot be said to be trivial and the writ petition deserves to be dismissed.

4. This writ petition is pending since 2005 and yet return has not been filed by the respondent/State. It has not been made clear by the respondents as to at what stage the departmental enquiry is presently placed, therefore there is no other option with the court but to rely upon the submission made by the petitioner that after appointment of the enquiry officer on 8/09/1995 there is absolutely no progress in the enquiry and the petitioner has never been informed about the dates of hearing or the dates for examination of the witnesses.

5. In the matter of State of Andhra Pradesh Vs. N. Radhakishan, it has been held that 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 proceeding and 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 and the essence of the matter is that the court has to take into consideration all the relevant facts 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 inordinate delay particularly when delay is abnormal and there is no explanation for the delay.

6. In considering whether delay has vitiated the disciplinary proceedings the court has to consider the nature of charges, its complexity and on what ground the delay has occurred and if the delay is unexplained, prejudice to the delinquent employee is writ large on the face of it.

7. According to the Hon''ble Supreme Court every officer is entrusted with a particular job to perform his duties honestly, efficiently and in accordance with rules and if he deviates from this path he is to suffer penalty prescribed but then

delay defeats justice and it 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 concluding the disciplinary proceedings.

8. This court, after relying the judgment of Supreme Court in the matter of N. Radhakishan (supra) has quashed the disciplinary proceedings in the matter of S.K. Tigga vs. State of C.G. & others, 2008 (3) C.G.L.J. 267 when the charge sheet issued to him in September 2003 for an incident which had taken place in October, 2000 was not completed within a reasonable time and was continued even after the retirement of the officer.

9. Applying the ratio laid down by the Supreme Court in the matter of N. Radhakishan (supra) and when facts of the present case are dissected on the anvil of the said pronouncement it is to be seen that the petitioner has been alleged of addressing the Sarpanchas as idiots and fools and for demanding a written application on a non judicial stamp of Rs.5/- for carrying out the valuation of the work conducted by the Gram Panchayat. It has also been alleged that he did not conduct valuation of the work done within time.

10. The first two charges are concerning complaints made by Sarpanchas of the various villages who have been cited as witnesses in the enquiry. The only charge which may have an element of not performing his duties efficiently is the charge number 3, however from the particulars of charge served upon the petitioner along with the charge sheet, it would appear that the said charge is vague and nothing can be elicited from the said charge as it does not contain which particular work of which particular Gram Panchayat was not valued within time and who are the beneficiaries who have not been paid their benefits because of the petitioner's negligence.

11. None of the charges leveled against the petitioner speak anything about his integrity, honesty or sincerity. When the nature of charges are considered along with the fact that the petitioner is a Sub Engineer and has been denied annual increment for last 16 years and has not been considered for further promotion during this period. It appears to this court that the present is a fit case for applying ratio laid down by the Supreme in the matter of N. Radhakishan (supra) for quashing the charges/enquiry proceedings.

12. The pending enquiry is in violation of petitioner's right to claim annual increment and to be considered for promotion to the next higher post. It is also to be kept in mind that had the charges been so serious, the petitioner would not have been reinstated in services within a period of less than three months. In the absence of any reply having been submitted by the State, there is no material available before this court from which it can be deduced that the enquiry proceedings have been delayed because of petitioner's non-cooperation or delaying tactics adopted by him.

13. In view of the above, this court is of the considered opinion that disciplinary proceedings and the charges constituted against the petitioner by issuance of

charge sheet dated 7th July, 1995 (Annexure P-2) deserves to be and is hereby quashed. Needless to say once the charges/disciplinary proceedings are quashed the petitioner would be entitled to all such benefits which might have been accrued to him if the charges would not have been leveled against him. The writ petition is allowed to the extent indicated above.