

**(2005) 09 DEL CK 0048**  
**In the Delhi High Court**  
**Case No : Writ Petition (C) 9089 of 2003**

Khem Chand Sharma

APPELLANT

Vs

MCD

RESPONDENT

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**Date of Decision :** 19-09-2005

**Acts Referred:**

**Citation :** (2005) 09 DEL CK 0048

**Hon'ble Judges :** S. Ravindra Bhat, J

**Bench :** Single Bench

**Advocate :** Munish Tyagi, for the Appellant; Anoop Bagai, for the Respondent

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## Judgement

S. Ravindra Bhat, J.—The petitioner, working as a Upper Division Clerk with the respondent (hereafter called "MCD") at the relevant time in the year 1981, sought permission for enrolling in a degree course leading to award of LL.B. This permission was granted. He eventually completed the course and acquired the qualification in the year 1985. After acquiring the qualification, the petitioner applied for a post of Legal Assistant which was advertised the MCD, apparently being satisfied about his eligibility based upon inter alias the LL.B. Qualification and the documents supplied by him, considered his candidature and appointed him to that post. He was kept on probation by letter dated 16.7.1992. The petitioner had also submitted his documents in relation to acquisition of the LL.B. Decree with the MCD.

2. The petitioner was subsequently promoted to the post of Assistant Law Officer on 18.9.2000.

3. In 1992, the MCD appears to have received certain complaints by a serving officer Ms. Rohilla, on 25.5.1992; she leveled several allegations including violation of CCS (Conduct Rules), unauthorised legal practice of the petitioner and other irregularities. Some other complaints were also apparently received in the year 1996.

4. In 1995, one Shri S.C. Jain filed a petition impleading the Bar Council of Delhi

and inter alias a large number of private respondents including the petitioner. The principal relief claimed in that proceeding was to cancel the membership of a private respondent to the Bar Council and that the enrolment was in violation of the Advocates' Act. That petition is pending consideration in this Court.

5. By the memo dated 27.3.2003, the petitioner was asked to explain how he managed to obtain the LL.B. degree from the Avdesh Pratap University, Reva, MP as a regular student without taking leave/permission or attending the classes. This was on the premises that the petitioner has applied for permission on 2.11.1991 without disclosing his prior admission nor about the college from where he desired to complete his LL.B. degree. The charge-sheet along with the statement of imputation was issued on 31.12.2003.

6. The petitioner has impugned the charge-sheet as highly belated and arbitrary. During the pendency of the proceedings, by order dated 13.2.2004, this court has stayed operation of the impugned charge-sheet.

7. The respondent MCD in its return has justified the issuance of the impugned charge-sheet stating that complaints had been received and were being investigated. It is also averred that certain complaints were looked into by the Anti-corruption Department and on its recommendation the impugned action has been initiated. The MCD has also stated that correspondence took place between it and the University in question which confirmed that the petitioner had appeared in the examination as a regular student and obtained the degree. It has been averred in paragraph 3 of the counter affidavit which is as follows:

"3. That contents of para three of writ petition are wrong and vehemently denied. It is submitted that the petitioner while posted as LDC in Dy. Assessor and Collector Office, MCD, New Delhi Zone, had taken his admission in LL.B. Course on 20.7.81 via admission No. 147, in Pt. Moti Lal Nehru Law College, Chhatterpur (M.P.), as a regular student without taking permission from the Department. The petitioner had applied for permission for higher study, LL.B. on 2.11.81 to the Dy. Assessor and Collector, MCD, New Delhi Zone, but he neither mentioned about his admission nor about the college from where he desired to get the degree of LL.B. He had passed the LL.B. exam in 1985 as a regular student from Avdesh Pratap Singh University, Rewa (M.P.) and informed his Department on 30.5.86. During the LL.B. course as regular student at Rewa (MP) he had not taken any kind of leave for studies and was continue on duty at Delhi. All leave had been taken by him on the pretext of marriage, illness, domestic affairs and LTC which merely account for 24 days in 1982, 113 days in 1983, 24 days in 1984 and 25 days in 1985. This much period hardly qualifies for being a regular student of any college that is especially situated at a distance of hundred miles away from Delhi. This clearly indicated that either Sh. Khem Chand Sharma had not attended the class/exam or he managed the same by illegal/fraudulent means.

That Sh. Khem Chand Sharma, ALO has managed to obtain the LL.B. degree

without seeking proper permission from the Competent Authority and without available sanction of leave for this purpose. It is humbly submitted that the act of petitioner amounts to lack of integrity, gross misconduct, negligence and dereliction in the discharge of his duties in a manner unbecoming of a municipal employee."

8. Mr. Tyagi, learned counsel for the petitioner submits that the impugned charge-sheet is highly belated. All the facts which have been put against the petitioner as acts of mis-conduct were within the knowledge of the MCD which did not deem it in irregularity. In fact, petitioner's documents were verified and he was granted appointment as Legal Assistant and subsequently promoted as Assistant Legal Officer.

9. Learned counsel also submitted that the factual position was also a matter of record in the pending writ proceedings where too certain allegations were leveled against a large body of respondents including the petitioner. That proceeding was also initiated in the year 1995. The MCD is also a party to those proceedings.

10. It was submitted that the courts have consistently ruled that delay in issuance of charge-sheet would cause irreparable prejudice and ought not to be permitted. The counsel has relied upon the judgment of this Court in R.P. Nanda v. DDA and Anr. 109 (2004) DLT 613. That judgment in outline has been relied on several previous ruling including those of the Supreme Court and concluded that in order to sustain a belated charge-sheet, and concluded that although there are no blank or invariable rule that charge-sheets in respect of past mis-conduct" are impermissible in law. Nevertheless, delay in initiating proceedings, which would cause prejudice to the charged employee would have to be examined and the Court would be entitled to intervene and grant appropriate relief. In such cases, the employer is under a duty to explain the reasons for delay and if such reasons are cogent, reasonable and convincing, the matter could be proceeded with further provided the nature of the enquiry or the charge is such that the defense would not be prejudiced on account of delay i.e. unavailability of witnesses etc.

11. The court quoted the Division Bench Ruling of this Court in LPA No. 39/1999, Delhi Development Authority v. D.P. Bambah and Anr. which is outlined the legal position as follows:

"In our opinion the legal position, when an action is brought seeking quashing of a charge-sheet on grounds of issuance of the charge-sheet or grounds of inordinate delay in completion of the disciplinary inquiry may be crystallised as under:

(i) Unless the statutory rules prescribe a period of limitation for initiating disciplinary proceedings, there is not period of limitation for initiating the disciplinary proceedings;

(ii) Since delay in initiating disciplinary proceedings or concluding the same are

likely to cause prejudice to the charged employee, Courts would be entitled to intervene and grant appropriate relief where an action is brought;

(iii) If bone fide and reasonable Explanation for delay is brought on record by the disciplinary authority, in the absence of any special equity, the Court would not intervene in the matter;

(iv) While considering these factors the Court has to consider that speedy trial is a part of the facet of a fair procedure to which every delinquent is entitled to vis-a-vis the handicaps which the department may be suffering in the initiating of the proceedings. Balancing all the factors, it has to be considered whether prejudice to the defense on account of delay is made out and the delay is fatal, in the sense, that the delinquent is unable to effectively defend himself on account of delay.

(v) In considering the factual matrix, the Court would ordinarily lean against preventing trial of the delinquent who is facing grave charges on the mere ground of delay. Quashing would not be ordered solely because of lapse of time between the date of commission of the offence and the date of service of the charge-sheet unless, of course, the right of defense is found to be denied as a consequences of delay;

(vi) It is for the delinquent officer to show the prejudice caused or deprivation of fair trial because of the delay;

(vii) The Sword of Damocles cannot be allowed to be kept hanging over the head of an employee and every employee is entitled to claim that the disciplinary inquiry should be completed against him within a reasonable time. Speedy trial is undoubtedly a part of reasonableness in every disciplinary inquiry."

12. In the present case, the charge-sheet has been issued admittedly after 22 years. The petitioner has applied for permission to enroll in the LL.B. course in the year 1981; it was granted. After obtaining the degree, he intimated the department and even supplied copies of the documents to the MCD. At that stage no objection appears to have been raised. Thereafter, the petitioner was found or deemed eligible and even considered favorably to the post of Legal Assistant on the strength of his LL.B. degree. He was appointed to that post in the year 1992. Some allegations were made in 1992 but the matter was not pursued. Apparently, as per the stand of the MCD, some fresh allegations were leveled in 1996 and the matter was investigated in 1998 when the University confirmed that the petitioner had completed his course as a regular candidate.

13. In the light of the above facts, the charge now leveled that the petitioner had enrolled in the course and then sought permission and that such a degree was obtained as a regular candidate is fair to law in the day. Had this charge been leveled contemporaneously i.e. sometime in the year 1985-86 without going into the issue how the respondent MCD was prejudiced on this account--there could have been some semblances of the Explanation. In my considered opinion, the

Explanation or the reason given i.e. some investigations were at foot is not only in-convincing does not Explanation at all. The period spends about 18 years. No attempt has been made to show to the Court as to why the MCD took no action if it deemed the act or omission of the petitions to was prejudicial to the discipline or to amount such a serious mis-conduct, as to why investigation was not carried out in a timely manner and action was not taken immediately.

14. In view of the above discussion, I have no hesitation in concluding the memorandum and charge-sheet issued against the petition are arbitrary and highly belated. The petitioner is Therefore entitled to succeed. However, it is clarified that nothing stated in the course of this order shall be deemed to be the reflection of the pending writ petition No. 3013/1995.

15. In view of the above, the petition is allowed. The memo dated 27.3.2003 and the charge-sheet issued pursuant thereto are hereby quashed.