
(2013) 09 P&H CK 0524
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 10042 of 1994

Parma Nand

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 30-09-2013

Acts Referred:

Citation : (2014) 2 SCT 513

Hon'ble Judges : Gurmeet Singh Sandhawalia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gurmeet Singh Sandhawalia, J.—The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of writ in the nature of Certiorari quashing the charge sheet dated 21.1.994 (Annexure P-1) which had been issued for the incidents relating to year 1986 mainly on the ground of delay and the fact that the senior employee had already stood exonerated in the year 1991. The pleaded case of the petitioner is that he was working as Junior Engineer with the Punjab P.W.D. (B & R) Branch in the year 1986 and posted as such for construction of Dholwala Bari Khad Road in District Hoshiapur for a short period of about 3-1/2 months around March/June under Sh. K.L. Jetely, Sub Divisional Engineer (S.D.E.). He was issued Muster Rolls for earth work in April/May, 1986 and got the work executed and the superior Officer S.D.E. was responsible for the quality of the work and if satisfied with the same would make the payment to the labour employed. The payment was made in his presence but he did not make any payment which was done by the S.D.E. The work had been executed as required and he regularly submitted all papers and reports concerning the work. No objection was taken by any one in respect of anything done or not done at that time.

2. In the year 1987, there was some complaint regarding the quality of work being executed on the said road and charge sheet was issued to Mr. K.L. Jetely, S.D.E. in August, 1988 and out of 14 charges one of the charge pertained to the

alleged embezzlement made by him for the said work including the earth work under charge No. 10. In reply, the S.D.E. with respect to splitting of responsibilities had submitted that a J.E. was responsible for the progress; the S.D.E. was responsible for the quality and all financial control was with the Xen, who was to be guided by the SE and CE. The said officer was punished by way of simple warning vide memo dated 4.1.1991. Thereafter, second enquiry was sought to be started against him regarding the same matter and he approached the Civil Court and succeeded and that decree was upheld up to the High Court on 31.3.1993. Thereafter, respondents decide to make scapegoat out of the petitioner who had executed only a small amount of earth work for which payment had been made by the S.D.E. and accordingly a charge sheet was issued on 21.1.1994. The petitioner submitted his reply in May, 1994 but respondents did not drop the charges and accordingly challenge was made by filing the present writ petition on the ground that after 7 years, the charge sheet was liable to be quashed on the ground of delay alone. Secondly, disciplinary proceedings had been initiated against Sh. K.L. Jetely and no proceedings had been initiated against the petitioner and thus there could be no embezzlement or misappropriation since the money was paid by the S.D.E. directly to the labour and petitioner was not associated with the disbursement of the said amount.

3. In the written statement, the State has submitted that the temporary Muster Roll for executing the earth work in April/May, 1986 was issued and the progress of the work was to be done through the daily labour employed on the temporary Muster Roll and in part II of the Muster Roll as required under the Building and Roads Manual and Departmental Financial Rules, progress should have been recorded and duly checked by the petitioner. He failed to record the progress and payment for the work had been done on the basis of progress recorded for which the petitioner was solely responsible. It was admitted that complaint had been received during 1987 and that Sh. K.L. Jetely had been charge sheeted for various irregularities but had been let off by giving a written warning. However, since the duties and responsibilities of the S.D.E. and J.E. were entirely different and petitioner had committed serious irregularities by not entering the progress of the work done by temporary labour employed on Temporary Muster Roll as such he was personally responsible. Accordingly, he had committed irregularities involving Rs. 1,88,176/- and was charge sheeted. The petitioner had been given an opportunity to explain his position but instead of explaining his position he had come to this Court without exhausting the departmental remedy available to him. Reference was also made to filing of civil suit by the petitioner along with other plaintiffs and restraining the official respondents from proceeding with the enquiry and interim order passed by the said Court.

4. It is pertinent to mention here that while admitting the writ petition further enquiry proceedings were stayed on 29.7.1994. As submitted by the counsel for the petitioner, the petitioner thereafter has retired on 31.8.2001.

5. Counsel for the petitioner submits that the charge sheet is liable to be

quashed on the ground of delay and another fact that a senior officer had been let off with a minor punishment of warning and he had been made scapegoat in view of the fact that second enquiry had also been initiated against the said superior officer but further proceedings had been quashed by the Civil Court which was upheld in appeal. Counsel for the petitioner has placed reliance upon the judgment of the Apex Court in P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, to contend that once there was inordinate delay in initiating the departmental enquiry, the charge sheet is liable to be quashed since there was no convincing explanation given by the employer and prejudice would be caused to the petitioner.

6. Counsel for the State on the other hand submits that since the charges were of misappropriation, therefore, it would not be appropriate for this Court to quash the charge sheet and matter should be enquired into on the departmental side to fix responsibility of the guilty person.

7. After hearing the counsel for the parties, this Court is of the opinion that there is substantial merit in the submissions put forth by the counsel for the petitioner. There is no denial to the fact that the charge sheet was issued on 21.3.1994 under Rule 8 of the Punjab Civil Services (Punishment and Appeals) Rules, 1970 whereby it was proposed to initiate disciplinary proceedings against the petitioner on account of not entering the progress report of the work done on the Muster Roll for the month of April, 1986 and May, 1986 of the construction of Dholwala Bari Khad Road and the allegation was that there was misappropriation of Rs. 1,88,176/-. Further the allegation was that a sum of Rs. 1,88,176/- had been misappropriated by engaging ad hoc labour and the labour had not done any work as per Muster Roll and no progress of the work was shown. Relevant portion of the charge sheet reads as under:-

Shri Parma Nand has misappropriated a sum of Rs. 188176/- by engaging ad hoc labour on the Muster Rolls. As per Muster Roll this ad hoc labour had not done any work which is apparent from part No. 3 of the Muster Roll where no progress of work shown. The daily reports receipted with the Muster Rolls also show the same thing i.e. no work was done on this muster rolls because these reports ought to have reached the Sub Div. on every day entered in diaries. Besides this for operating the Muster Roll no sanction was obtained from the Divisional Officer for work authority. Permanent addresses of the labour engaged were not given from where any enquiry/explanation could be made. Therefore, this labour is bogus and the J.E. is responsible for misappropriated the Govt. funds.

2. Sh. Parma Nand J.E. is responsible for negligent in his duty.

As per para. 10 of instructions of Mannual of Orders P.W.D. For passing the Muster Roll progress report of work should be entered in part-III of the Muster Roll. Shri Parma Nand J.E. did not do this but got the payment made. In this way Sh. Parma Nand J.E. has been negligent in his duty and is responsible for financial irregularities and is not dependable employee.

It is proposed to take action against Sh. Parma Nand J.E. under Rule 8 of the Punishment and Appeals Rules, 1970.

8. There is no denial to the fact that in reply to said show cause notice, the petitioner had specifically mentioned that his superior Sh. K.L. Jetely, S.D.E. had also been charge sheeted and there were 14 charges and one of the charge was pertaining to the earth work of Dholwala Bari Khad Road and the alleged embezzlement made by said person. It is also admitted by the respondents that in 1991 the said person was let off by imposing punishment of warning. The State attempted to again proceed against the said S.D.E. who was successful in getting the 2nd enquiry quashed by the Civil Court. The petitioner along with two other employees then filed suit in 1993 apprehending an enquiry against them. It is also apparent from Annexure R/26 which is an appeal filed by the petitioner before the Additional District Judge, Hoshiarpur against the non grant of injunction along with two other employees in which it has been mentioned that Sh. K.L. Jetely filed a suit against the State which was decided on 6.4.1992 and the State was restrained from proceedings with another enquiry. The State was unsuccessful in getting the said judgment set aside. The relevant portion of the order reads as under:-

I am dealing with the appeal against the interim order. As per the arguments advanced by the counsel for the appellants there was a previous enquiry conducted by the Government, vide memo No. 553-ES(4)-9/250 dated 4.1.91, coupled with the fact that Sh. K.L. Jetely who was working as a S.D.E. at that time who filed the civil suit against the State which was decided by then SJIC Sh. G.C. Bedi on 6.4.92. The said suit was for declaration and the respondent State was restrained from proceeding with the enquiry. The said suit was contested by the State. Ultimately the same was decided against the State on 6.4.92 and State preferred an appeal which was decided by Shri S.K. Chopra the then Addl. District Judge, Patiala. The appeal of the State has been dismissed and the order of the trial Court was maintained. State filed appeal before the Hon"ble High Court, vide R.S.A. 498 of 1993 which was dismissed. The above said orders have not been disputed by the Government Pleader.

9. Thus, it would be apparent that after exonerating Shri K.L. Jetely on 4.1.1991 and once R.S.J. No. 498 of 1993 was dismissed by this Court the present charge sheet was issued against the petitioner almost on the same set of allegations regarding misappropriation of Muster Roll for the work done on the said Dholwala Bari Khad Road by engaging ad hoc labour. It has been specifically averred by the petitioner in paragraph 3 that the financial control was with the Xen and the S.D.E. was responsible for the quality whereas J.E. was only responsible for the progress which is also defence of Sh. K.L. Jetely. Once the department had not initiated any proceedings against the petitioner from May, 1986 and only after 7 years on having been unsuccessful against his superior, they sought to charge sheet the petitioner. There is no satisfactory explanation which has been given for the inordinate delay in issuing the charge sheet.

10. In the opinion of this Court, it would be unfair for the department to proceed with the enquiry. The petitioner would be gravely prejudiced at this point of time to raise any defence as a period of almost of three decades has gone by and now the petitioner has also retired since last 11 years and is in the evening of his life. If the proceedings had been initiated at that time when complaint was received in 1987, the situation would have been different and prejudice would not have been caused to the petitioner. The disciplinary proceedings were stayed by the Division Bench of this Court on 29.7.1994 and the order has remained in force for almost last two decades and the State had filed various applications for vacation of the stay but were not successful.

11. The Apex Court in *The State of Madhya Pradesh Vs. Bani Singh and another*, in such circumstances has held that it would be unfair for the department to proceed with the said enquiry. The said view was followed in *State of Andhra Pradesh Vs. N. Radhakishan*, and it was held as under:-

It is not possible to lay down any pre-determined 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 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 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 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 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 its 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 or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.

12. Counsel for the petitioner has also placed reliance upon the judgment in *P.V. Mahadevan's case* (supra) wherein similar observations have flowed from the Apex Court which reads as under:-

Under the circumstances, we are of the opinion that allowing the respondent to

proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer. We, therefore, have no hesitation to quash the charge memo issued against the appellant. The appeal is allowed. The appellant will be entitled to all the retrial benefits in accordance with law. The retrial benefit shall be disbursed within three months from this date. No costs.

Appeal allowed.

13. Counsel for the State has relied upon *The Secretary, Min. of Defence and Others Vs. Prabhash Chandra Mirdha*, to contend that in routine such charge sheet should not be quashed. There is no quarrel with the said proposition. A perusal of the said judgment would go on to show that rather it supports the petitioner since after examining the facts of the case also, the judgment in appeal was not interfered with while deciding the question of law. The position is similar in the present case also. The relevant observations read as under:-

8. The Law does not permit quashing of charge-sheet in a routine manner. In case the delinquent employee has any grievance in respect of the charge-sheet he must raise the issue by filing a representation and wait for the decision of the disciplinary authority thereon. In case the charge-sheet is challenged before a court/tribunal on the ground of delay in initiation of disciplinary proceedings or delay in concluding the proceedings, the court/tribunal may quash the charge-sheet after considering the gravity of the charge and all relevant factors involved in the case weighing all the facts both for and against the delinquent employee and must reach the conclusion which is just and proper in the circumstance. (Vide *State of Madhya Pradesh v. Bani Singh*, *State of Punjab v. Chaman Lal Goyal*, *Registrar, Cooperative Societies, Faizabad v. Sachindra Nath Pandey*, *Union of India v. Ashok Kacker*, *Prohibition and Excise Department v. L. Srinivasan*, *State of A.P. v. N. Radhakishan*, *Food Corporation of India v. V.P. Bhatia*, *Supdt. of Police v. T. Natarajan*, *M.V. Bijlani v. Union of India*, *P.D. Agrawal v. State Bank of India and Government of A.P. and Ors. v. V. Appala Swamy*.)

18. Be that as it may, in case the Tribunal as well as the High Court have permitted the Appellants to proceed de novo, we fail to understand why such a

course was not adopted though the Appellants wasted 20 years in litigation without any purpose. However, in the instant case, the Tribunal has quashed the charge-sheet vide order dated 20-3-1997 in respect of misconduct alleged to have taken place on 31.8.1991. Though the allegations against the delinquent had been very serious i.e. demand and acceptance of bribe, a period of two decades has passed since the alleged incident. Disciplinary proceedings could not be proceeded further as the charge-sheet itself had been quashed. There is nothing on record to show that the Respondent delinquent is still in service and that even if the Appellants are permitted to proceed with the inquiry, the evidence which was available 21 years ago would be available today.

14. Reference was also made to the judgment of the U.P. State Sugar Corporation Ltd. and Others Vs. Kamal Swaroop Tondon, . A perusal of the said judgment would go on to show that the matter was remitted to the High Court since in that case there was a recovery ordered on the basis of proceedings which were initiated prior to the employee's retirement and were challenged which was not adjudicated upon by the High Court while allowing the petition and proceedings had wrongly been set aside on the ground that the employee had retired. The position is not similar since the enquiry proceedings had been stayed at initial stage itself and the question of delay is involved herein. Accordingly, keeping in view the facts and circumstances of the present case, this Court is of the opinion that it would be appropriate to put an end to the controversy and draw a curtain on the proceedings. Accordingly, the present writ petition is allowed, charge sheet dated 21.1.1994 (Annexure P-1) is quashed. The petitioner shall be entitled for all consequential benefits due to quashing of the charge sheet.