

(2009) 07 MP CK 0098

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1688 of 2006 (S)

Prafulla Kumar Chaturvedi

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 16-07-2009

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 15

Constitution of India, 1950 — Article 14, 16, 21

Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 — Rule 14, 15(1), 15(2)

Citation : (2010) 2 MPJR 92

Hon'ble Judges : Prakash Shrivastava, J

Bench : Single Bench

Judgement

Prakash Shivastava, J.

This writ petition has been filed by the petitioner challenging the charge-sheet and also the disciplinary proceedings pending against him.

Brief facts are that the petitioner during the relevant time, was working as Assistant Engineer in the Respondents Department. He was served with the charge-sheet dated 30.7.1998 containing the charges relating to the period 1987 to 1989. Petitioner submitted reply to the charge-sheet denying the charges. The enquiry proceedings took place before the Enquiry Officer and the Enquiry Officer submitted Enquiry Report dated 24.06.2002 holding that none of the charge against the petitioner was proved. The Disciplinary Authority by order dated 15.01.2004 rejected the Enquiry Report and directed the Enquiry Officer to conduct de novo enquiry. The petitioner appeared before the Enquiry Officer but the enquiry did not proceed further in the absence of production of record and the witnesses by the Presenting Officer. The petitioner then filed the present writ petition challenging the charge-sheet as well as the entire disciplinary proceedings. During the pendency of the writ petition, the petitioner reached the age of superannuation on 28.02.2007 and his pensionary dues were paid.

Learned counsel appearing for the petitioner submitted that the charge-sheet is liable to be quashed since it has been issued after an inordinate delay of about 10 years. In support of his submission, he placed reliance upon the judgment of the Supreme Court in the matter of *The State of Madhya Pradesh Vs. Bani Singh and another*, . He further submitted that in the Enquiry submitted by the Enquiry Officer on 24.06.2002, the petitioner was exonerated from all the charges and if the Disciplinary Authority was not agreeing with the Enquiry Report, he could have issued a show-cause notice to the petitioner giving the reason for disagreement and pass appropriate order after hearing the petitioner but he could not have ordered for de novo enquiry which is not permissible under the relevant Service Rules applicable to the petitioner. He placed reliance upon the judgment of the Supreme Court in the matter of *K.R. Deb Vs. The Collector of Central Excise, Shillong*, in respect of the plea that de novo enquiry under the Rules could not have been directed.

Learned counsel appearing for the Respondents submitted that no error has been committed in directing de novo enquiry by the Disciplinary Authority since the initial enquiry was ex-parte and the Enquiry Report does not discuss any evidence.

I have heard learned counsel for the parties and perused the record of the case.

On the examination of the charge-sheet, it is found that the charges relate to the period 1987 to 1989; whereas the charge-sheet was issued to the petitioner on 30.07.1998 almost after 9 years of the incident. A perusal of the charge-sheet indicates that these are not the charges which have come to the knowledge of the Respondents at any subsequent stage. The petitioner in the writ petition has taken a specific ground that there was inordinate delay in issuing, the charge-sheet for which no reason has been disclosed or explanation has been given by the concerned Respondents. On the perusal of the reply filed by the Respondent before this Court, it is found that even in the reply before this Court the Respondents have not disclosed any reason for delay in issuing the charge-sheet and initiating the enquiry almost after 9 years of the incident. Thus, there is no explanation whatsoever for delay in serving the charge-sheet and initiating the Departmental Enquiry after a lapse of almost 9 years.

It is the settled position in law that if there is inordinate delay in initiating the Departmental Enquiry and there is no satisfactory explanation for the delay in issuing the charge-sheet, then it would not be fair to permit the department to continue with the Departmental Enquiry. In the matter of *The State of Madhya Pradesh v/s Bani Singh (Supra)*, the Departmental Enquiry initiated by serving charge-sheet in 1987 in respect of incident of 1975-76 was challenged on the ground of inordinate delay of over 12 years, and Supreme Court held that :-

4. The appeal against the order dt. 16.12.1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the

matter on merits. We are unable to agree with this contention of the learned Counsel. The irregularities which were the subject-matter of the enquiry is said to have taken place between the years 1975-1977. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April, 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss the appeal.

In the matter of State of Andhra Pradesh Vs. N. Radhakishan, , the Supreme Court took the view that while examining the question of quashing the disciplinary proceedings on the ground of delay all the relevant factors should be taken into account and disciplinary proceedings should be allowed to terminate after the delay, particularly when the delay is abnormal and there is no explanation for the delay and the Court has to consider the two diverse considerations i.e. the prejudice caused to the charged officer due to the delay and the fact that normally disciplinary proceedings should be allowed to take their own course as per relevant rules. The Supreme Court in this context in the matter of N. Radhakishan (Supra) held that :-

19. 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 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 the 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 the 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 the 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 fact of it. It could also be seen as to how much the 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

their course as per relevant rules but then delay 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 for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.

Protracting disciplinary enquiry and keeping a government official under charges of corruption and disputed integrity cause unbearable mental agony and distress to the officer concerned and for the mistake committed by the department in initiating the disciplinary proceedings, the employee concerned cannot be made to suffer. The Supreme Court in the matter of P.V Mahadevan v/s Md. T.N. Housing Board, reported in (2005) 6 SCC 636 held that :-

11. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with 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 suffering 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.

The Division Bench of this Court in the matter of Sadashiv Shivram Garud and Others Vs. Food Corporation of India and Others, , considered the same question in the background of the fact that the charge-sheet in that case was issued in 1999 for the grave misconduct committed in 1987-1988. The Departmental Enquiry was initiated after more than 10 years. The Division Bench of the Court held that :-

9. Having found nothing against the appellants during investigation and having used them as prosecution witnesses, it is not understandable why the Corporation has been instructed to initiate departmental enquiry after more than 10 years, more so, in absence of any finding as to their statements by the Special Judge. The Corporation could, if it wanted, initiate the enquiry, when the lapse was detected, it did not do so.

Another face of the question is whether this Court can interfere at this stage. The common thread running through catena of cases is, where charge is serious and proveable by large number of documents and witnesses reasonable delay in completion of enquiry is excusable and time can be fixed to complete the same.

While in cases of unexplained delay and charge is not serious, proceedings can be quashed. The Court can entertain the petition and quash the proceedings where there is no satisfactory explanation for the inordinate delay in initiating and completing the departmental enquiry. However, as said by the Apex Court in N. Radhakishan's case (supra), 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. Each case has to be examined on the facts and circumstances of that case. The Corporation could initiate the enquiry during 1987-1988 or within a reasonable time thereafter. It did not initiate it, which means it is doing it at the directions of the Central Bureau of Investigation. Under what rules/regulations this direction is issued, is neither here nor there. The Corporation failed to apply its mind independently, therefore, initiation of departmental enquiry against the appellants is grossly delayed. It is neither legitimate nor inconsonance with principles of justice and fair play, when seen in the context of the facts and circumstances of the case.

The appellants could challenge the initiation and continuance of the departmental enquiry/charge sheet against them at any stage, longer the delay in completing the departmental enquiry more the justification to challenge it. Conclusion that the petitions have been filed after three years, is unsustainable on facts and law.

10-A. The departmental enquiry puts an employee under great strain and stigma. It has serious repercussions on his family as well. Therefore, delinquent employee has a right that the disciplinary proceedings against him are concluded expeditiously. He is not made to undergo mental agony and also monetary loss when the enquiry is unnecessarily initiated and prolonged without satisfactory explanation and without any fault on his part in delaying the proceedings. He is bound to be prejudiced in such an enquiry and constant strain and agony suffered by him cannot be compensated. Therefore, such an enquiry would in violation of Articles 14, 16 and 21 of the Constitution of India.

Thus, the settled position in law is that the Departmental Enquiry should be initiated without delay and inordinate delay without proper explanation for the same furnishes ground for quashing the same. It is also settled that the Departmental Enquiry once initiated should be completed expeditiously and long delay in completing the enquiry without proper justification can also be ground to quash the enquiry.

The Supreme Court in the matter of N. Radhakishan has held that there are no predetermined principles applicable to all cases in all situations and each case has to be considered taking into account all relevant facts and circumstances taking into account all relevant facts and circumstances and balance has to be maintained between purity of administration and the adverse effect which the prolonged proceedings have on an employee. Thus, this Court is required to take into account the entire circumstances of the case before reaching to the conclusion that the case for quashing the charge-sheet or Departmental Enquiry on the ground of delay is made out.

In the present case there is inordinate delay of more than 9 years in initiating the Departmental Enquiry. The enquiry relates to the alleged misconduct committed during the period 1987 to 89. The enquiry is pending against the petitioner for last more than 10 years.

It is worth noting that on the basis of the charge-sheet dated 30.07.1998 the disciplinary proceedings took place in which the petitioner appeared on various dates but the Presenting Officer neither produce the relevant documents nor did he produce the witnesses to prove the charges against the petitioner. By the letter dated 14.06.2002 (Annexure P/3), Presenting Officer had expressed his inability to produce the record and the witnesses and had requested the Enquiry Officer to take appropriate decision in the enquiry and convey it to the government. The Enquiry Officer in the report dated 24.06.2002 has recorded that the Presenting Officer was not appearing inspite of the notice nor did he produce the version of the Government or witnesses or the official record. The record indicates that the enquiry remain pending from 1988 to 2002. The petitioner had the right of speedy conclusion of the departmental enquiry and prejudice has been caused to the petitioner for this long delay.

It is also noticed that out of the five charges mentioned in the charge-sheet, first 3 charges relate to deviation from technical sanction is constructing culvert, fourth charge is in respect of poor quality of constructing one culvert and fifth charge is keeping the cement stock of two contracts together. The Enquiry Officer had submitted the report dated 24.06.2002 in which he found that none of the charges leveled against the petitioner were proved. He did not find the petitioner guilty of any of the charge and the alleged misconduct remain disprove. The Disciplinary Authority kept the matter pending before it for more than 11/2 years and thereafter passed the order dated 15.01.2004 directing for de novo enquiry by the Enquiry Officer.

Even after 15.01.2004, the matter remained pending and the Enquiry Officer issued the notice to appear in the enquiry to the petitioner on 25.01.2006 which was more than 2 years after the order of the Disciplinary Authority. This shows that there was delay not only at the stage of initiation of the enquiry but at every subsequent stage.

It is also found that the order dated 15.01.2004 is not in accordance with the requirement of the relevant rules applicable to the petitioner. The enquiry was held against the petitioner under the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966. Rule 15(1) and (2) of these Rules provide :-

Rule 15(1) Action on the Enquiry Report - Further Enquiry. (1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceeded to hold the further inquiry according to the provisions of Rule 14, as far as may be.

(2) Further action if Disciplinary Authority if disagrees with the findings of

Enquiry Authority. (2) The Disciplinary authority shall, if it disagrees with the findings of the Inquiring Authority on any article of charge, record its reasons for the such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

The Supreme Court in the matter of K.R. Deb (Supra) considering the similar Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 has held that Rule 15 does not contemplate successive enquiries and if there is some defect in the enquiry conducted by the Enquiry Officer, the Disciplinary Authority can direct the Enquiry Officer to conduct further enquiry in respect of that matter but it cannot direct a fresh enquiry to be conducted.

It is worth noting that under Rule 15(1) or (2) no power has been given to the Disciplinary Authority to reject the report of the Enquiry Officer and order de novo enquiry. Under Rule 15(1) it can only direct for further enquiry, that too by recording reasons in writing. A perusal of the order dated 15.01.2004 indicates that the Disciplinary Authority directed de novo enquiry which was not permissible in terms of Rule 15(1) of the Rules.

Even otherwise the Disciplinary Authority assigned two reasons for directing de novo enquiry. Firstly, that the enquiry proceedings were ex-parte; and secondly, that the finding of the Enquiry Officer are not based on evidence. In the opinion of this Court both the reasons are not proper. If the Presenting Officer did not cooperate in the enquiry and failed to produce any evidence and document without there being any fault on the part of the delinquent employee, then that can be said to be a ground for directing de novo enquiry. So far as the second reason is concerned, if there was any flaw in the enquiry report, the Disciplinary Authority could have disagree with the report under Rule 15(2) and after giving reasons for disagreement it could have recorded its own findings and in any case by the said order he could not have directed for de novo enquiry traveling beyond the applicable rules. Thus, the action of the Disciplinary Authority to order de novo enquiry itself was not proper.

It is also worth noting that the petitioner suffered the mental agony of the Departmental Enquiry for several years and ultimately he reached the age of superannuation on 28.02.2007. After the retirement his PPO and GPO have been issued and his retiral dues have been paid. Therefore, at this stage continuation of the departmental enquiry will cause serious prejudice to him that too in respect of an incident which allegedly took place more than 20 years back.

In view of the aforesaid analysis, I find that it would not be lawful to permit the Respondents to continue with the Departmental Enquiry against the petitioner on the basis of the charge-sheet dated 30.07.1998. Therefore, the charge-sheet dated 30.07.1998 and the Departmental Enquiry pending in pursuant to the said charge-sheet are hereby quashed.

The writ petition is allowed to the extent mentioned above. No order as to costs.