
(2007) 11 CAL CK 0018
In the Calcutta High Court
Case No : M.A.T. No. 3754 of 2004

Ranabir Saha

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-11-2007

Acts Referred:

Citation : (2008) 1 CHN 746 : (2008) 116 FLR 529

Hon'ble Judges : Pranab Kumar Chattopadhyay, J; Kalidas Mukherjee, J

Bench : Division Bench

Advocate : Kalyan Bandyopadhyay and Anindya Lahiri, for the Appellant; Malay Kumar Basu and Asok Kumar Jana, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—The appellant herein filed a writ petition being aggrieved by the initiation of the disciplinary proceeding on the basis of the chargesheet issued by the concerned authority after lapse of 22 years from the date of commission of the alleged misconduct.

2. The learned Single Judge dismissed the aforesaid writ petition by the judgement and order dated 20th September, 2004 upon rejecting all the arguments made on behalf of the appellant herein.

3. It has been urged on behalf of the appellant that the disciplinary proceeding initiated against the said appellant cannot be sustained in the eye of law on the ground of delay alone. Various points were raised before the learned Single Judge while challenging the validity and/or legality of the disciplinary proceeding initiated against the appellant herein, but the learned Senior Counsel representing the said appellant while assailing the judgement and order under appeal confined his arguments only on the ground that the said disciplinary proceeding cannot be sustained on the ground of inordinate delay alone.

4. Mr. K Bandyopadhyay, learned Senior Counsel representing the appellant submits that the chargesheet was issued to the appellant herein on February 3,

2004 alleging the misconduct in connection with an incident which took place in the month of December, 1981. Mr. Bandyopadhyay further submits that the aforesaid disciplinary proceeding initiated against the appellant herein should have been quashed by the learned Single Judge on the ground of inordinate delay alone. Mr. Bandyopadhyay referred to and relied on a decision of the Supreme Court in the case of P.V. Mahadevan v. MD, T.N. Housing Board reported in 2005(6) SCC 636, in support of his aforesaid arguments.

5. Mr. Malay Basu, learned Counsel representing the respondent authorities, however, submits that the delay in initiating the disciplinary proceeding was not unexplained. Mr. Basu further submits that the misconduct allegedly committed by the appellant herein was discovered on the basis of source information/ complaint received by the Ministry of Shipping and the Board sometimes in the month of October, 2003 from the Investigation report forwarded by the Vigilance Officer of the Kolkata Port Trust authorities. Mr. Basu also submits that the Investigation report of the concerned Vigilance Officer was communicated to the respondent-Calcutta Dock Labour Board authorities on 23rd October, 2003 and thereafter, steps were taken by the competent authority of the Board without any unnecessary delay. Mr. Basu submits that the Court may interfere and quash the charges if the delay is too long and unexplained, but in the present case, according to Mr. Basu, the concerned authority took expeditious steps for initiation of the disciplinary proceeding soon after discovering the irregularities. Mr. Basu referred to and relied on the decision of the Supreme Court in the case of State of Punjab and Others Vs. Chaman Lal Goyal, , in support of his arguments.

6. There is no doubt that the chargesheet was issued to the appellant herein on February 3, 2004 alleging misconduct in connection with the incident regarding submission of L.T.C. Declaration Form dated 16th December, 1981 and thus, there was almost 22 years delay in initiating disciplinary proceeding by issuing formal chargesheet to the appellant herein. The learned Single Judge while dealing with the aforesaid issue observed that because of the aforesaid delay, appellant herein did not suffer any prejudice.

7. The learned Senior Counsel of the appellant, however, submits that on account of the aforesaid delay in initiating the disciplinary proceeding, appellant herein is bound to suffer serious prejudice since the vital witness namely, the mother of the said appellant expired before completion of the disciplinary proceeding. The said learned Senior Counsel also submits that the mother of the said appellant was the best person to disclose the materials relating to the submission of her resignation before the concerned authority during the period in question and due to the delay in initiation of the disciplinary proceeding, the said mother of the appellant expired before completion of the disciplinary proceeding.

8. Admittedly, delay causes prejudice to a charged employee unless the concerned employee is responsible for the said delay. Mr. Basu sought to give an explanation for the delay in initiating the disciplinary proceeding against the

appellant herein but, in our opinion, the said explanation cannot be regarded as proper and reasonable explanation. According to the respondent authorities, entire charge against the appellant herein was discovered in the month of October, 2003 on the basis of source information/complaint received by the Ministry of Shipping.

9. We fail to understand why the respondent authorities took almost 22 years to discover the alleged misconduct of the appellant herein when fact remains that the appellant himself by the written communication dated 25th August, 1982 very fairly disclosed that the resignation submitted by his mother before the concerned employer was not subsequently accepted. The aforesaid written communication of the appellant herein was duly received by the office of the Deputy Chairman in the year 1982.

10. The alleged misconduct admittedly, took place in the month of December, 1981 and the appellant herein submitted the aforesaid written representation dated 25th August, 1982 narrating in details under what circumstances the resignation submitted by the mother of the said appellant was ultimately not accepted and specific prayer was also made by the said appellant for cancellation of the earlier declaration submitted on 16th December, 1981 and to realise the L.T.C. advance which was drawn before, from the next salary bill with immediate effect which goes to show the fairness and honesty of the employee concerned.

11. If the authorities were of the opinion that the appellant herein had committed any misconduct by submitting the earlier declaration of family members allegedly for L.T.C. benefits on 16th December, 1981, then upon receiving the said representation dated 25th August, 1982 could have initiated disciplinary proceeding after issuing the chargesheet. The respondent authorities admittedly, woke up all of a sudden in the month of February, 2004 i.e. after lapse of almost 22 years and issued chargesheet to the appellant herein in connection with an incident which took place almost before 22 years. Furthermore, because of the aforesaid inordinate delay in initiating the disciplinary proceeding, the appellant herein is bound to suffer serious prejudice since a vital witness namely, the mother of the said appellant expired before completion of the said disciplinary proceeding.

12. The decision cited by Mr. Basu in the case of State of Punjab and Ors. (Supra) cannot be of any help to the respondent authorities herein as in the aforesaid decision, Hon"ble Supreme Court in Paragraph 9 has specifically observed as follows:

9. Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer.

Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the Court may well interfere and quash the charges....

13. In the present case, delay is admittedly, too long in view of initiation of the disciplinary proceeding after almost 22 years and there is no reasonable and satisfactory explanation for the aforesaid inordinate delay in issuing the chargesheet. In our opinion, there was no valid justification for the aforesaid inordinate delay in initiating the disciplinary proceeding after issuing the chargesheet to the appellant herein. May be, after submission of the representation dated 25th August, 1982 by the appellant herein, concerned respondents were not inclined to initiate any disciplinary proceeding. After lapse of almost 22 years since the said respondents decided to proceed against the said appellant herein, this Court cannot permit the said respondents to do so as the aforesaid inordinate delay in initiating the disciplinary proceeding would seriously prejudice the officer concerned.

14. Furthermore, one other important factor cannot be ignored at this stage. The learned Single Judge finally disposed of the writ petition on 20th September, 2004 and directed the respondent authorities herein to conclude the disciplinary proceeding within a period of six months from the date of the said order. Admittedly, the respondent authorities failed to comply with the aforesaid direction of the learned Single Judge even though operation of the judgement and order under appeal was not stayed by the Appeal Court.

15. At this stage, therefore, we are of the opinion that the respondent authorities should not be allowed to proceed further with the disciplinary proceeding against the appellant herein and it is a fit case where the Court should interfere and quash the charges on the ground of inordinate delay alone.

16. In the case of P.V. Mahadevan (supra), Hon"ble Supreme Court in Paragraph 11 has observed as hereunder:

11. 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....

17. For the reasons discussed hereinabove and relying on the aforesaid decision of the Supreme Court we have also no hesitation to quash the chargesheet dated February 3, 2004 issued against the appellant herein on the ground of inordinate

delay alone. Therefore, we quash the said chargesheet as well as the disciplinary proceeding initiated against the appellant herein on the basis thereof.

18. This appeal thus stands allowed and the judgement and order under appeal passed by the learned Single Judge is set aside. There will be, however, no order as to costs. Let urgent xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Kalidas Mukherjee, J.

19. I agree.