
(2018) 04 J&K CK 0045
In the Jammu And Kashmir High Court
Case No : SWP No. 250 OF 2008

S.K. SHARMA

APPELLANT

Vs

UNION OF INDIA AND ANOTHER

RESPONDENT

Date of Decision : 24-04-2018

Acts Referred:

Citation : (2018) 04 J&K CK 0045

Hon'ble Judges : SANJEEV KUMAR

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. In this petition, the petitioner has called in question the article of charges dated 07.01.2005 as also the court of enquiry initiated thereon. The

petitioner is also aggrieved of the order dated 14.12.2007 issued by the Principal, Sainik School, Nagrota.

2. Briefly stated, the facts of the case giving rise to the filing of this petition are that the petitioner came to be appointed as TGT (Physics) in

respondent No.2's School on 09.8.1978. Vide order dated 16.01.2000, the services of the petitioner were terminated after holding a court of

enquiry into his misconduct. The order of termination was challenged by the petitioner in SWP No.6/2000 and this court vide order dated 20.01.2000

passed the following order :—

—Notice.— Notice in CMP also.

In the meantime, till next date, the order dated 16th Jan.2000 impugned in this petition is stayed, provided the services have been terminated without

holding inquiry and without hearing the petitioner.—

3. The writ petition was, however, subsequently allowed on 04.02.2002 and a

direction was issued to respondents to hold fresh enquiry after giving reasonable opportunity to the petitioner to defend. The order of the Single Bench dated 04.02.2002 was assailed by the respondents in LPA (SW) No.

161/2002. The LPA preferred by the respondents was, however, dismissed vide order dated 12.7.2002. There is another order passed by the Division

Bench on 12.7.2002, whereby the petitioner was permitted to make a demand for payment of consequential benefits from the respondents

leaving it open to the appropriate authority to consider the same in accordance with law.

4. It appears that on the strength of aforesaid order, the petitioner filed an application for grant of consequential benefits as also for assigning duties in

the school. In terms of order of the Single Bench as upheld by the Division Bench, fresh enquiry was initiated and accordingly the article

of charges for de novo enquiry were served upon the petitioner on 29.01.2005. The petitioner submitted reply to the article of charges (appended

with this petition as Annexure- K). It is the allegation of the petitioner that he was not permitted to contest enquiry and to examine his witnesses. The

respondents, however, concluded the enquiry which was submitted by the court of enquiry vide its No. SSN/211/MO dated 14.8.2007. It is further

claimed by the petitioner that thereafter the remarks of the disciplinary authority were also conveyed to him vide communication dated 03.10.2007.

The petitioner instead of waiting for the conclusion of the enquiry proceeding, approached this court through instant petition.

5. On being put on notice, the respondents filed their objections. In the objections, stand taken by the respondent No. 2 is that earlier the enquiry

proceedings were set aside by the Honable court on the ground that no reasonable opportunity had been given to the petitioner to defend himself

before passing the order impugned. Accordingly, fresh enquiry was conducted. The petitioner was served with fresh article of charges, to which the

petitioner also replied. He was given ample opportunity to defend himself against the charges and instead of participating in the enquiry and

defending the charges, the petitioner rushed to this court by way of instant petition. In short, respondent No. 2 in its objections stated that the enquiry

in accordance with rules has been conducted and ample opportunity was granted to the petitioner to defend himself but he chose otherwise. Today,

when the matter came up for consideration, learned counsel for the respondent who was directed to produce the record of enquiry in terms of this

court order dated 22.11.2017, submitted the record.Â

6. I have perused the record and find that fresh enquiry has been conducted against the petitioner by the respondents pursuant to decision of this court

in which the petitioner was served with article of charges and was given an opportunity to submit his reply. It has come on record that the petitioner

submittedÂ Â his reply but thereafter instead of contesting the charges, the petitioner filed the instant petition. Accordingly, an ex parte enquiry was

concluded and report whereof was submitted by the Enquiry Officer to respondent No. 2 vide communication No.SSN/211/MO dated 31.5.2010. The

disciplinary authority accepted the report and arrived at the conclusion that termination of the petitioner ordered vide communication dated 16.01.2000

was justified and therefore, sustainable. Learned counsel for the petitioner when confronted with the aforesaid position, stated that since he has

challenged the order of initiation of enquiry proceedings as such, in case he succeeds, the whole subsequent proceedings would also be vitiated.Â

7. I have considered the submissions made by the learned counsel for the parties and perused the record.Â Â

8. TheÂ initiation ofÂ proceedingsÂ by the respondents by serving article of chargesÂ on the petitionerÂ on 07.01.2005 have beenÂ challenged

by the petitioner primarily on theÂ ground that there has been delayÂ in initiatingÂ and concluding the proceeding and therefore, the whole

proceedingsÂ are vitiated. He has relied upon theÂ judgmentÂ inÂ State ofÂ Andhra PradeshÂ Vs N. Radhakishan, AIR 1998 Supreme Court

1833Â . Paragraph No. 19 of the judgment which is relevantÂ here, is reproduced hereunder :

â??19.Â 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 for the delay orÂ when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.â??

9. From reading of paragraph No. 19 reproduced above, it is clear that there is no hard and fast rule or yard stick to determine as to when and under what situation, the delay in concluding the disciplinary proceedings would vitiate proceedings. It depends upon the facts and circumstances of each case.

10. Admittedly, in the case in hand, pursuant to enquiry conducted by the respondents, services of the petitioner were terminated way back on 16.01.2000. The order of termination was challenged by the petitioner before the Single Bench of this Court. The writ petition was allowed and the respondents were permitted to holdÂ de novo enquiryÂ after affording an opportunity of being heard to the petitioner.Â The matter was taken to the Division Bench by the respondents. The appeal preferred by the respondents, came to be dismissed on 12.7.2000. Thereafter, the process for initiating fresh proceedings was initiated in the year 2007. Meanwhile, petitioner had been pursuing with the respondent for payment of consequential benefits. The enquiry proceedings were concluded on 31.5.2010 and the

disciplinary authorityÂ Â passed the final order holding that the order of termination of the petitioner was sustainable in law.Â

11. In view of the subsequent development i.e. conclusion of enquiry and order passed by the disciplinary authority thereon, this petition has virtually been rendered infructuous. Plea of the petitioner that the enquiry proceedings are vitiated by delay, is a question of fact which cannot be determined in these proceedings. From perusal of records, it transpires that the enquiry proceedings were delayed because of litigation on the subject matter before this Court and also due to the petitioner not co-operating in the enquiry. There is some gap in between, which, however, has notÂ been explained by the respondents.Â Â Be that as it may, this court does not deem it fit to pronounce on the aforesaid aspect of the matter and the petitioner is left free to agitate the same before appropriate authority, should he choose to challenge the enquiry proceedings and the order passed by the disciplinary authority thereon.Â Â Â

12. In these circumstances, this petition is disposed of as having been rendered infructuous. Respondents, are, however, directed to serve upon the petitioner the copy of the enquiry report dated 31.5.2010 and the decision of disciplinary authority thereon, if not earlier served, within fifteen days from the date of this judgment. The petitioner shall be at liberty to work out his remedy against the enquiry reportÂ and the order of disciplinary authority.

13. The record produced by the counsel for the respondent No. 2, is returned in the open court.