
(2008) 06 CHH CK 0007
In the Chhattisgarh High Court

S.K. Tigga

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 23-06-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 325, 34

Citation : (2008) 4 MPHT 42 : (2008) 4 MPJR 1

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—By this petition, the petitioner seeks a writ/direction for quashing of the/charge-sheet dated 06-09-2003 (Annexure P-5) and order dated 03-09-2001 (Annexure P-3), whereby, the pensionary benefits of the petitioner have been withheld on account of pendency of enquiry against the petitioner.

2. The indisputable facts, in nutshell, are that the petitioner was working as Deputy Superintendent of Police (Crime) and posted at Janjgir Champa. The petitioner was the investigating officer in respect of Crime No. 367/2000 registered against the report of the complaint made by one Shobharam on 23-10-2000. The Chief Judicial Magistrate, while framing the charges under the provisions of Section 325/323 and 34 of the Indian Penal Code (for short "IPC"), in Criminal Case No. 572/01 on 03-09-2001 (Annexure P-3), observed that the investigation was suspicious. A copy of the same was sent to the Chief Secretary and Director General of Police, Chhattisgarh.

3. On the basis of above stated observation made by the Chief Judicial Magistrate, a charge-sheet dated 06-09-2003 (Annexure P-5) was issued, which is impugned herein. The petitioner requested for supply of necessary documents vide letter dated 26-09-2003 (Annexure P-6). Despite request, no papers were supplied to the petitioner. It is clear from correspondence dated 08-05-2005 (Annexure P-7) between Asstt. Inspector General of Police and Superintendent of

Police, Janjgir Champa.

4. Pursuant to the charge-sheet, no enquiry officer has been appointed as yet and it appears that the case is still pending. In the meantime, the petitioner retired from service on attaining the age of superannuation on 31-10-2005 (Annexure P-1).

5. Shri Ahluwalia, learned Counsel appearing for the petitioner submits that the charge-sheet may be quashed on account of the fact that the charge-sheet was issued on 06-09-2003 (Annexure P-5) and till date no departmental enquiry has been initiated. The petitioner has retired from service on attaining the age of superannuation on 31-10-2005. Thus, the delay in taking any steps pursuant to charge-sheet has caused harassment and deprived the petitioner from his legal right of pension. Shri Ahluwalia further submits that charge-sheet may be quashed as the delay in initiating departmental proceedings has resulted into harassment, mental agony and uncertainty in the life of the petitioner.

6. Per contra, Shri Ajay Dwivedi learned Deputy Govt. Advocate, appearing for the State, does not controvert the facts with regard to non-initiation of the departmental enquiry as no enquiry officer has been appointed till date. He further submits that departmental enquiry cannot be quashed on the ground of delay. The petitioner has been paid provisional pension and the pension cannot be released till the enquiry is complete. Learned Counsel further submits that he has no information as to when enquiry officer would be appointed and when enquiry would be completed in the present case.

7. I have heard learned Counsel for the parties, perused the pleadings and documents appended thereto. It is evident that after issue of charge-sheet dated 06-09-2003 (Annexure P-5), no further action has been initiated in respect of departmental enquiry. The petitioner was deprived of all the documents which he has requested for submitting his reply to the charge-sheet. The petitioner retired from service on attaining the age of superannuation on 31-10-2005. Thereafter, also nothing has happened till date. The employee has a right that disciplinary proceedings pending, if any, are concluded expeditiously. Delay caused prejudice, defeats the basic purpose of departmental enquiry and justice.

8. The Supreme Court, in the matter of State of Andhra Pradesh Vs. N. Radhakishan, where the issue involved was charge-sheet relating to the incident over ten years stale, observed as under:

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 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 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 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 or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the Court is to balance these two diverse considerations.

9. The High Court of Gujrat in the matter of Mohanbhai Dungarbhai Parmar v. Y.B. Zala and Ors. 1980 (1) SLR 325 while considering the delay, observed that delay by itself constitute denial of reasonable opportunity and amounts to violation of principles of natural justice.

10. Applying the above well settled principles of law to the facts of the present case, wherein the Court of Chief Judicial Magistrate made an observation with regard to conduct of investigation in a criminal case. On the basis of the same a memo of charge-sheet dated 06-09-2003 (Annexure P-5), was issued. Thereafter, the respondent authorities have neither supplied relevant documents to the petitioner nor took any action for initiating departmental enquiry. It is implicit in the rule of natural justice that enquiry or prosecution must be commenced and concluded within a reasonable time frame. It is true that no definite parameters could be laid down, but in absence of any justification on the part of respondents authorities, the memo of charges, which was issued five years back no departmental enquiry was initiated as yet, the delay factor deprived the petitioner further an opportunity to defend himself. He would be handicapped in recalling as to what had happened at an earlier point of time. The petitioner was not supplied copies of relevant documents. The petitioner retired from service on attaining the age of superannuation on 31-10-2005 (Annexure P-1).

11. Looking from all angles, the inordinate delay in commencing and concluding the departmental enquiry is fatal, thus, the impugned order dated 06-09-2003 (Annexure P-5) is quashed and set aside. It is not necessary to pass any order on order dated 03-09-2001 (Annexure P-3) as the petitioner has not raised the said issue on merit. It is accordingly directed that the pensionary benefits shall

be released in accordance with law forthwith.

This petition is allowed to the above extent. No order as to costs.