
(2008) 04 MAD CK 0088
In the Madras High Court
Case No : Writ Petition No. 33358 of 2003

Smt. Lakshmi

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 02-04-2008

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14

Citation : (2008) 04 MAD CK 0088

Hon'ble Judges : K. Chandru, J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : V. Parthiban, for the Appellant; V. Ravi, ACGSC, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard the arguments of Mr. V. Parthiban, learned Counsel for the petitioner and Mr. V. Ravi, learned Additional Central

Government Standing Counsel and have perused the records.

2. The petitioner is aggrieved by the order of the Central Administrative Tribunal [for short "Tribunal"] made in OA. No. 8 of 2003 dated

12.9.2003 and has filed the present writ petition.

3. The petitioner was given a Memo dated 29.12.1992 asking her explanation as to under whose orders she and another officer they conducted

examination/verification of Seals in respect of the consignment belonging to a shipping bill. Thereafter a charge memo was given to her under Rule

14 of CCA [CCS] Rules, 1965 only on 24.4.1998. Subsequent to the charge memo, an enquiry was conducted and it was held that the petitioner

who was an Examiner, without physically examining the goods on 02.11.1992 certified the said goods.

4. In her reply the petitioner had stated that the charge memo was issued after six years. Though she had stated that she wrote the examination

report on 02.11.1992 whereas the Ship M.V. Tiger Star had left with the Container on 31.10.1992 itself. The Enquiry Officer held that the first

charge was not substantiated but the second charge was proved. After getting the explanation from the petitioner a final order was passed by the

Disciplinary Authority imposing a penalty of reduction in her pay by four stages from Rs. 8,300 basic to Rs. 7,600 basic in the time scale of pay of

Rs. 6500-175-9000 with immediate effect. While passing the order the Disciplinary Authority took into account that it was a case of imposing

major penalty. But considering that the incident had taken place ten years ago, she need not be given a major penalty. As against the said order,

she filed an appeal to the Appellate Authority at New Delhi and the Appellate Authority rejected her appeal by an order dated 24.10.2002. It was

thereafter, she filed the original application before the Tribunal.

5. The official respondent has filed a reply and stated that the delay was due to the reason that the matter was taken by the Central Vigilance

Commission and their concurrence was obtained and it took some time for getting the said order. But however, in the present case, the petitioner

was aware of charges as a show cause memo was given in the year 1992 itself. The Tribunal held that there was no prejudice caused to the

petitioner due to the six years delay and that in the present case, there was no need to follow elaborate procedure and the petitioner had also

submitted her written statement for the enquiry report.

6. The Tribunal also relied upon the judgment of the Supreme Court reported in Secretary to Government, Home Deptt. and Others Vs.

Srivaikundathan, for the proposition that the Tribunal cannot sit in appeal over the decision of the Enquiry Officer and the Tribunal was not

required to examine the nature of the evidence as if it was a criminal trial. In the present case, we have also gone through the records independently

and found that the petitioner had admitted her charge of certifying the consignment without physical verification.

7. Mr. V. Parthiban, learned Counsel relied upon the judgments of this Court reported in 1984 TNLJ 123 [V.S. Ramanarayanan v. The Food

Corporation of India Represented by its Zonal Manager, Madras-6] and of the

Supreme Court reported in The State of Madhya Pradesh Vs.

Bani Singh and another, . The learned Counsel relied on the above judgments for the purpose of showing that when there was an inordinate delay

in conducting an enquiry, the court can interfere with the enquiry itself. The Supreme Court in the Bani Singh's case [cited above [the delay was

twelve years and it was found by the Supreme Court that the said delay was not explained by the Department and in that view of the matter relief

was granted. The same was the position in the decision rendered by this Court in Ramanarayanan's case cited supra.

8. The learned Counsel also relied upon the Judgment of this Court reported in 2003 [3] MLJ 372 [Union of India, Ministry of Home Affairs, rep.

by The Director General, CISF, New Delhi, and Ors. v. T.K. Choudhuri] wherein this Court had followed the above two decisions as referred to

above. Lastly, the learned Counsel relied upon the Judgment of this Court in T.S. Jayachandar v. The Central Administrative Tribunal and Ors. an

unreported decision rendered in WP. No. 33978/2002 dated 11.12.2003. In that case, another person of the same department was charge

sheeted. There was a delay and it was not explained. It was held that if the delay was not explained, a charge memo can be quashed.

9. However, it is relevant to refer to paragraph 10 of the said decision of this Court which is extracted below:

10.First, let us proceed to consider the question of delay in the Departmental proceeding against the writ petitioner. The Supreme court, in the

decision reported in State of Andhra Pradesh Vs. N. Radhakishan, , has pointed out that it is not possible to lay down any predetermined

principles applicable to all cases and in all situations where there is a delay in concluding the disciplinary proceedings and that the court has to take

into consideration all the relevant details. The Supreme Court made it clear that the delinquent employee has a right that disciplinary proceedings

against him are concluded expeditiously and he is not made to undergo mental agony. The court has to take into consideration, in deciding a given

case, the nature of charges, its complexity and on what account the delay has occurred and if the delay is unexplained, prejudice to the delinquent

employee is writ large on the face of it.

10. We do not know as to how these two decisions render any assistance to the

petitioner, especially in the present case there was no considerable delay and the same was also explained. Further, the petitioner never expressed any prejudice because of the delay and the present case the issue was whether the petitioner had certified the goods when the ship was in the Port or after it had left the Port. In her own explanation she had admitted the charge and the department had also granted leniency in the matter of imposition of penalty.

11. Further, the Supreme Court in the decision reported in Deputy Registrar, Cooperative Societies, Faizabad Vs. Sachindra Nath Pandey and

Others, held that the delay in framing charge cannot be a ground to interfere with the charge memo and the relevant passage found in paragraph 7

of the said judgment is extracted below:

Para 7: On a perusal of charges, we find that the charges are very serious. We are, therefore, not inclined to close the matter only on the ground

that about 16 years have elapsed since the date of commencement of disciplinary proceedings, more particularly, when the appellant alone cannot be said responsible for this delay....

12. The Supreme Court in Secretary to Government, Prohibition and Excise Department Vs. L. Srinivasan, , has held that the charge cannot be

quashed only on the ground of delay and any finding recorded by the court will prejudice the enquiry. The Supreme Court has also pulled up the

member of the Administrative Tribunal for having interfered with the charge memo as if the Tribunal is the appellate authority. The following

passage found in paragraph 3 of the said judgment makes the position very clear: Para 3:

We are informed that charge-sheet was laid for prosecution for the offences of embezzlement and fabrication of false records etc., and that the

offences and the trial of the case is pending. The Tribunal had set aside the departmental enquiry and quashed the charge on the ground of delay in

initiation of disciplinary proceedings. In the nature of the charges, it would take a long time to detect embezzlement and fabrication of false records

which should be done in secrecy. It is not necessary to go into the merits and record any finding on the charge levelled against the charged officer

since any finding recorded by this Court would gravely prejudice the case of the parties at the enquiry and also at the trial. Therefore, we desist

from expressing any opinion on merit or recording any of the contentions raised by the counsel on either side. Suffice it to state that the

Administrative Tribunal has committed grossest error in its exercise of the judicial review. The member of the administrative tribunal appears to

have no knowledge of the jurisprudence of the service law and exercised power as if he is an appellate forum dehors the limitation of judicial

review. This is one such instance where a member had exceeded his power of judicial review in quashing the suspension order and charges even at

the threshold. We are coming across such orders frequently putting heavy pressure on this Court to examine each case in detail. It is high time that

it is remedied.

13. Very recently, the Supreme Court in 2007 AIR SCW 1639 [Government of A.P. and Ors. v. Appala Swamy] had indicated the parameters

while interfering with a charge sheet on grounds of delay in paragraphs 10,12 and 13 which reads as follows:

Para 10: So far as the question of delay in concluding the departmental proceedings as against a delinquent officer is concerned, in our opinion, no

hard and fast rule can be laid down therefor. Each case must be determined on its own facts. The principles upon which a proceeding can be

directed to be quashed on the ground of delay are:

[1] Where by reason of the delay, the employer condoned the lapses on the part of the employee.

[2] Where the delay cause prejudice to the employee.

Such a case of prejudice, however, is to be made out by the employee before the Inquiry Officer.

Para 12: Learned Counsel appearing on behalf of the respondent, however, placed strong reliance on a decision of this Court in M.V. Bijlani Vs.

Union of India (UOI) and Others, . That case was decided on its peculiar facts. In that case, even the basic material on which a departmental

proceedings could be initiated was absent. The departmental proceedings was initiated after 6 years and continued for period of 7 years. In that

fact situation, it was held that the appellant therein was prejudiced.

Para 13: Bijlani [supra], therefore, is not an authority and, in fact, as would appear from the decision in P.D. Agarwal [supra], for the proposition

that only on the ground of delay the entire proceedings can be quashed without

considering the other relevant factors therefor.

14. In the light of the above decisions of the Supreme Court, the three orders of this Court cited by the learned Counsel had lost its efficacy. In the

light of the same, we do not find any infirmity in the orders passed by the Tribunal and accordingly, the writ petition stands dismissed. However,

there will be no order as to costs.