
(2009) 08 OHC CK 0015
In the Orissa High Court
Case No : Writ Petition (C) No. 7711 of 2009

Sri M. Gourinath

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Citation : (2009) 2 ILR (Ori) 300 : (2009) 2 OLR 997 Supp

Hon'ble Judges : L. Mohapatra, J;B.N. Mahapatra, J

Bench : Division Bench

Judgement

L. Mohapatra, J.—The Petitioner, who is working as Conservator of Forest in the Office of the Principal Chief Conservator of Forest, Orissa has filed this writ application challenging the legality of the order dated 28.8.2008 passed in O.A. No. 318 of 2008 by the Central Administrative Tribunal, Cuttack Bench, Cuttack.

2. Case of the Petitioner is that while working as Conservator of Forest at Koraput Circle from November, 1995 to July, 2000, the opposite parties took a policy decision to convert uprooted trees to logs and fire woods and transport the same to the depots of Orissa Forest Development Corporation Ltd., on the strength of permits. The policy decision also specifically provided that the salvage operation outlined therein does not cover timber logs originating from illicit felling of trees and prohibited falling. In terms of the policy decision, due care was taken to implement the same with the help of DFO. The Petitioner received some complaints and deputed his P.A., who is in the rank of A.C.F. on 11.5.2000 for verification along with the mobile staff of Jeypore Division but due to some reason, the team had to return back and submit a report on 15.5.2000. The D.F.O. thereafter was directed to cause inquiry in the field and submit a report within fifteen days. Since all the attempts in respect of inquiry on the complaint failed, the Petitioner himself went to the spot on 18.6.2000 along with other forest officials and after physical verification found that not only the dead dry and fallen trees were enumerated but also some numbers of standing trees had been cut. Entertaining a serious doubt with regard to conversion and having found

some irregularity in implementing the policy decision, the Petitioner sent a letter indicating the persons, who are responsible for such illicit felling and cutting of the green and standing trees and also recommended for departmental proceeding against them. The said report was submitted by the Petitioner to the Principal Chief Conservator of Forests as well as the Government on 25.6.2000. After receipt of the report from the Petitioner, the Government directed some officers to enquire into the allegations of illegal felling of trees in the Jeypore Forest Division by M/s. Keshari Traders, R.M.P. engaged by O.F.D.C. for salvaging fallen/uprooted trees. A report was submitted by the team officials to the Government in 2.8.2000 but there was no allegation against the Petitioner. Thereafter the Petitioner was transferred to Bhubaneswar as Regional Joint Director in the Bhubaneswar Social Forest Project and while working as such, a memorandum of charge was communicated on 11.5.2001 and he was placed under suspension. The Petitioner submitted his written statement of defence denying the allegations made in the memorandum of charge, but no action was taken to appoint the enquiry officer and proceed with the enquiry. The Petitioner finding no other way approached the Central Administrative Tribunal in O.A. No. 429 of 2002 with a prayer for quashing of the memorandum of charge on several grounds. During pendency of the said Original Application, an additional article of charge was submitted against the Petitioner and reply was also given. The order of suspension was also revoked during pendency of the Original Application and he was reinstated in service with effect from 27.7.2002. The Tribunal disposed of the Original Application on 30th September, 2004 observing that it is concerned about the progress of departmental proceeding and directed opposite party No. 3 to complete the enquiry by holding day to day proceeding and submit the report by 31.12.2004. It was also directed that after receipt of the inquiry report, the disciplinary authority should take a final view in the matter within a period of 45 days from the date of receipt of the report. In spite of such direction of the Tribunal, the proceeding was not concluded and is continuing till today. In the meantime, because of the pendency of the departmental proceeding, juniors of the Petitioner have been given promotion and the case of the Petitioner has been ignored. The Petitioner, therefore again approached the Tribunal in the present Original Application praying for quashing the departmental proceeding on the ground of delay and also as an interim measure prayed for stay of further proceeding in the departmental inquiry. The Tribunal in the impugned order admitted the Original Application but did not grant the interim order prayed for by the Petitioner. However, the Tribunal directed that a higher post of super time scale of Indian Forest Service be kept vacant until further orders.

3. Shri Routray, the learned Counsel appearing for the Petitioner submitted that the departmental-proceeding was initiated in the year 2001 and though eight years have passed in the meantime, the same has not been concluded. Though the Tribunal by order dated 31st September, 2004 directed opposite party No. 3 to conclude the inquiry by 31st December, 2004 and the disciplinary authority was directed to pass orders on the basis of the inquiry report within 45 days, the

same was not complied with and the proceeding has been dragged unnecessarily with the sole motive of depriving the Petitioner from further promotion. The learned Counsel on the above basis prayed for quashing of the proceeding on the ground of delay and laches on the part of the opposite parties.

Learned Counsel for the State submitted that the proceeding has been concluded in the meantime and report has been submitted and, therefore, at this stage, the Court may not consider the prayer for quashing the departmental proceeding.

4. Undisputedly, the departmental proceeding against the Petitioner was initiated in May, 2001. The Petitioner was put under suspension but the proceeding was not concluded, as a result of which, the Petitioner had to approach the Tribunal in O.A. No. 429 of 2002. During pendency of the Original Application before the Tribunal, the order of suspension was revoked and the Petitioner was reinstated to service with effect from 27.7.2002. The Tribunal disposed of the Original Application on 30th September, 2004 and the operating part of the order of the Tribunal is quoted below:

xxx xxx xxx We, however, observe with great concern that snail's pace at which the enquiry is progressing. We also find that in spite of the instructions from the disciplinary authority the inquiring officer is not expediting his work, causing serious prejudice to the interest of the Applicant. Needless to point out that delay defeats purpose and in this case such inordinate delay in finalizing the enquiry seriously jeopardizes the interest of the Applicant. As the principles of natural justice demand that the disciplinary proceedings should be concluded expeditiously, we feel it necessary to give a direction to Respondent No. 3 to direct the inquiry officer to complete the enquiry by holding day to day proceeding and submit his report by 31.12.2004. On receipt of the report of the inquiry officer the disciplinary authority should take a final view in the matter within a period of 45 days from the date of receipt of the report.

5. In spite of such direction of the Tribunal, the opposite parties did not conclude the proceeding and allowed it to continue and the same is continuing till today. With the above background, the Court is now called upon to decide as to whether the said proceeding should be allowed to continue or the same should be quashed on the ground of delay.

6. In the case of State of Andhra Pradesh Vs. N. Radhakishan, . The Respondent therein was working as City Planner in a Municipal Corporation. The Director General, Anti-Corruption Bureau, sent a report to the State Government about certain unauthorized constructions undertaken in collusion with the Municipal authorities. A charge memo was issued to the Respondent therein on 12.11.1987 and up to March, 1995, several enquiry officers were changed but the inquiry made no significant progress. There was no valid explanation for such delay. Again in July, 1995 another charge memo was issued to the said Respondent on the basis of the new set of rules and during pendency of the charge memo the Respondent became due for consideration for promotion. With this factual

background the said Respondent approached the Tribunal and the Tribunal quashed the memo of charge framed in July, 1995 and directed that the said Respondent be promoted on the basis of recommendation of the DPC, ignoring the subsequent charges which were framed in October 1995 and June 1996. The Hon'ble Supreme Court held that 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 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 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. The Court may consider the same as grounds for quashing the proceeding.

Reliance was placed by the learned Counsel for the Petitioner on a decision of this Court in the case of Union of India (UOI) and Others Vs. Rabindra Behera and Another, . In the said reported case, there was delay in initiation of the departmental proceeding. The opposite party therein approached the Tribunal seeking for quashing of the departmental proceeding and the prayer having been allowed by the Tribunal, the Union of India had filed the writ application challenging the order of the Tribunal. The Court on consideration of the facts therein did not interfere with the order of the Tribunal and dismissed the writ application. While holding thus, the Court not only took note of delay in initiation of a departmental proceeding but also protracted disciplinary proceeding and observed that protracted disciplinary proceeding against the Government employee is to 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 employee.

In the case of P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, , the Hon'ble Supreme Court held that there was inordinate and un-explained delay of ten years in issuance of charge memo and the said delay vitiates the departmental proceeding. It is submitted by the learned Additional Government Advocate that the inquiry report has been submitted in the meantime. Apart from the above, the Original Application filed by the Petitioner is pending and all such argument can be advanced there. Therefore, we do not wish to express any opinion on this issue and leave it to the Tribunal to take a decision.

7. In the case of State of Punjab and Others Vs. Chaman Lal Goyal, , a departmental proceeding was initiated against the Respondent therein five and half years after the incident and a prayer was made for quashing the proceeding. The High Court of Punjab and Haryana quashed the charge memo on the ground of delay and when the matter was brought to the Hon''ble Supreme Court, it was held in the said judgment that on facts of that case the charge memo and appointment of an enquiry officer should not have been quashed but the Respondent therein should have been considered for promotion and, if found fit, should have been granted promotion subject to result of the departmental enquiry. This decision was relied on by this Court in W.P.(C) No. 8440 of 2009 in the case of another Forest Officer and the Court directed for opening the sealed cover for promotion of the Petitioner to selection grade I.F.S Cadre and give effect to the results of such promotion within a time framed. The Court also directed to consider the case of the Petitioner therein for promotion to the rank Conservator of Forest without being influenced by pendency of the departmental proceeding.

8. Undisputedly, the inquiry report has been submitted in the meantime. We, therefore dispose of the writ application with following direction:

The case of the Petitioner for promotion to the higher grade be considered immediately and if he is found fit, he be given promotion within two weeks from today. If the Petitioner's junior have been given further promotion, the case of the Petitioner should also be considered for promotion and necessary orders be passed in that regard within the aforesaid period and such promotion shall be subject to the result of the disciplinary proceeding initiated against him, It is made clear that while effecting the promotion, pendency of the departmental proceeding will not be a ground for denying such promotion. The Original Application filed before the Tribunal be disposed of within two months.

A copy of the judgment be handed over to the learned Counsel for the State for compliance.