
(2015) 02 JH CK 0170

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2464 of 2014

State of Jharkhand

APPELLANT

Vs

Pradeep Kumar

RESPONDENT

Date of Decision : 20-02-2015

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2015) 4 AJR 156

Hon'ble Judges : Dhirubhai Naranbhai Patel, J; Pramath Patnaik, J

Bench : Division Bench

Advocate : Ajit Kumar, A.A.G., for the Appellant; Bharti Kumari, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dhirubhai Naranbhai Patel, J.—This writ petition has been preferred by the State against the order passed by the Central Administrative Tribunal in O.A. No. 103 of 2013(R). The order has been passed by the Central Administrative Tribunal, Circuit Bench at Ranchi and the application preferred by the respondent was allowed vide order dated 19th November, 2013, which is at annexure 4 to the memo of this writ petition. While allowing the application preferred by the respondent, the long drawn pending enquiry for the so called misconduct of 1996 has been quashed and set aside by the Central Administrative Tribunal mainly for the reason that the cause was stale cause and there was also a direction given previously by the Central Administrative Tribunal in O.A. No. 97 of 2003 dated 16th February, 2006 to complete the departmental proceedings against the respondent, but, as usual, the State of Jharkhand was unable to complete the departmental proceedings and, therefore, Central Administrative Tribunal has quashed and set aside the enquiry. Too much lethargy for longer time is fatal, this is the gist, sum and substance of the impugned order and, therefore, the State of Jharkhand has preferred this writ petition.

2. Learned counsel appearing for the State of Jharkhand submitted that time

limit to complete enquiry depends upon the nature of misconduct. Grave the misconduct, larger time should be given to complete the enquiry. It is further submitted by the counsel for the State of Jharkhand that the time has lapsed partly because of State of Jharkhand and partly due to several other factors which has been written in the written statement filed in O.A. No. 103 of 2013(R) before the Central Administrative Tribunal, which has been mentioned in para 4 of the impugned order. Time and again the letters were written by the State of Jharkhand to the Central Government and there is long correspondence between the Central Government and State Government and, therefore, enquiry could not be completed.

3. Learned counsel appearing for the petitioner has relied upon the decisions rendered by the Hon''ble Supreme Court reported in:--

"(a) The Secretary, Min. of Defence and Others Vs. Prabhash Chandra Mirdha, AIR 2012 SC 2250 : (2012) 134 FLR 1 : (2012) 5 SCALE 734 : (2012) 11 SCC 565 : (2013) 1 SCC(L&S) 121 : (2012) AIRSCW 3470

(b) Chairman, LIC of India and Others Vs. A. Masilamani, (2013) 136 FLR 81 : (2013) LLR 301 : (2012) 11 SCALE 413 : (2013) 6 SCC 530 : (2013) 2 SCT 283

(c) Shri Anant R. Kulkarni Vs. Y.P. Education Society and Others, (2013) 3 ABR 1404 : (2013) 7 AD 136 : AIR 2013 SC 2098 : (2013) 138 FLR 168 : (2013) LabIC 2341 : (2013) LLR 654 : (2013) 6 SCALE 425 : (2013) 6 SCC 515 : (2013) 2 SCC(L&S) 593 : (2013) 3 SCT 188 : (2013) AIRSCW 2573 : (2013) 3 Supreme 475 "

On the basis of the aforesaid decisions, it is submitted by the counsel for the State that still more time should have been given to complete the enquiry for the misconduct of the year 1996, which is pending since 1996 onwards. This aspect of the matter has not been properly appreciated by the Central Administrative Tribunal and hence this order may kindly be quashed and set aside and further suitable time to the State may be given to complete the enquiry and departmental proceeding pending against the respondent.

4. Learned counsel appearing for the respondent submitted that the respondent has not committed any misconduct as alleged by the State. The so called misconduct is of the year 1996 and it could not be completed for several months. Ultimately, the application bearing O.A. No. 97 of 2003 was preferred by the present respondent before Central Administrative Tribunal, which was finally disposed of by Central Administrative Tribunal vide order dated 16th February, 2006 and a direction was given to the State of Jharkhand to complete the departmental proceedings as early as possible to conclude the departmental proceedings expeditiously. Despite this order passed by the Central Administrative Tribunal for several years again this respondent waited, waited and waited. Several chances of promotions have also been lost. The whole service career of the respondent was at stake. Nobody was listening this respondent. Every state of affair of the State of Jharkhand for holding the

departmental enquiry was at chaos. Everything was within the files, nothing was proved at all. Proceedings were adjourned frequently without any justifiable reasons, at the behest of the State of Jharkhand for one or other whimsical and non-sustainable grounds. Therefore, once again the respondent approached the Central Administrative Tribunal and preferred O.A. No. 103 of 2013(R) in which order has been passed by the Central Administrative Tribunal for quashing and setting aside the departmental proceedings against the misconduct was so stale that now it was not thought fit for Central Administrative Tribunal to give more time to the State of Jharkhand. Enough is enough. No employee of the State can wait for decades to come and lose every chance of promotion in a service career. Perhaps, the delay might have been caused because others can be promoted leaving aside this respondent. The order was passed by the Central Administrative Tribunal on 19th November, 2013 and thereafter, this respondent was promoted vide order dated 03rd April, 2014 as Additional Principal Chief Conservator of Forest and this writ petition has been preferred after giving promotion to this respondent on 07th May, 2014. Now this respondent is at the fag end of his service career and he is reaching his age of superannuation in the year 2016. Most of the years of his service career have been wasted by the State of Jharkhand and no error has been committed by the Central Administrative Tribunal in quashing and setting aside the long drawn pending departmental proceedings for the so called misconduct of the year 1996. In fact, the land in question was never given by this respondent alone. There are several officials of the State and promotion of high ranking officers is a must. It is not a one man's job. Several things respondent can speak, so far as denial of the charges are concerned, but the fact remains that nothing has been proved so far by the State of Jharkhand and in the next year this respondent is going to the age of superannuation. Hence, this writ petition may not be entertained by this Court.

Reasons

5. Having heard the learned counsels for both the sides and looking to the facts and circumstances of the case, we see no reason to entertain this writ petition mainly for the following facts and reasons:

"(I) The respondent is a delinquent employee against whom there is misconduct of the year 1996. For the said misconduct the departmental proceedings were initiated in the year 2001.

(II) It appears that initially ex-parte enquiry was conducted. Though the respondent was in job of the State of Jharkhand, an opportunity of being heard was given. Thereafter, again the enquiry commenced which is continued for indefinite time because the State of Jharkhand has no evidence at all neither oral nor documentary and no witnesses.

(III) It further appears that for several months together the enquiry was not completed and the respondent was losing several chances in service career and, therefore, a case was instituted before Central Administrative Tribunal bearing

O.A. No. 97 of 2003. The Central Administrative Tribunal gave direction to the State of Jharkhand to expedite the departmental proceedings pending since long. This order was passed on 16th February, 2006.

(IV) By virtue of the order of the Central Administrative Tribunal, the brake applied by the State of Jharkhand was lifted and departmental proceedings were accelerated, but, once again nothing was concluded for several months together and similar was the approach of the State of Jharkhand which was prevailing prior to the order of Central Administrative Tribunal. No effect has taken place upon the speed of the holding of the enquiry by the State of Jharkhand.

(V) It further appears from the facts of the case that State of Jharkhand has given several reasons for not to complete the departmental proceedings and main reason is about the correspondence with the Central Government. It ought to be kept in mind to the State of Jharkhand that departmental proceedings cannot be completed in this fashion and in this manner. The State of Jharkhand should have appointed efficient investigating officer. Prima facie, it appears that there is a total lethargic approach on the part of the State of Jharkhand. There cannot be any departmental proceeding which can be continued for more than one decade. Either the State of Jharkhand has no zeal to complete the enquiry or they do not have will or wish to complete the enquiry.

(VI) Looking to the nature of charges levelled against the respondent it appears that the whole case of the State of Jharkhand is based upon the documentary evidence. The sum and substance of the charges levelled against the respondent is that he had recommended some land to be transferred to the applicant, who had applied for Government land and it is alleged by the State that the respondent-officer has not properly verified the fact that it was a forest land whereas the officer says that looking to the land revenue records, which is maintained by the State Government, the land for which proposal was being prepared, was not a forest land at all. Thus, in fact, the allegations can be enquired into on the basis of documents, but, unnecessarily the enquiry has not been completed by the State. In fact, it has been rightly observed by the Central Administrative Tribunal in the impugned order that there is neither physical nor financial loss caused to the Government exchequer. The recommendation of one officer is not a final, but, it has to be appreciated by the State of Jharkhand later on for handing over the land to the applicant. At the highest, the delinquent has committed an error in the thinking process of grant of land to the applicant and the report prepared by the delinquent officer may have certain errors, but, the enquiry could have been completed much earlier by the State of Jharkhand because the whole case is based upon the documentary evidences.

(VII) If the departmental proceedings are pending for more than one decade, it is a high time for the State of Jharkhand to introspect. It is also high time for the State of Jharkhand to put their house in order. No enquiry can be continued against the employees for more than one decade because the employees are always losing several chances in their service career. If any delinquent has

committed any misconduct he should be adequately and proportionately punished after the charges are being proved. These are several ramifications, not only to give punishment to the delinquent, but, also it gives a warning to other similarly situated employees for not to commit a misconduct. It has a deterrent effect also. If the proceedings are kept pending, it encourages other employees to commit misconduct because they will also start thinking that State of Jharkhand has no speed to complete the enquiry. High ranking administrative officer of the State of Jharkhand should take step for the long drawn pending departmental proceedings in the State of Jharkhand, especially, when it is pending against Indian Administrative Service, Indian Police Service or Indian Forest Service cadre officers. Too much brotherhood in the departmental proceeding should be avoided. If the departmental enquiry is not completed for one decade, it is a time for the State of Jharkhand to awake their senses and to hold enquiry against those lethargic officers who are causes hindrance in completing departmental proceedings. If the departmental proceedings are conducted for unreasonably excessive period and without any justifiable reasons for delay, it causes serious prejudice to the delinquent.

(VIII) The State of Jharkhand has also not geared up the departmental proceedings despite the order passed by the Central Administrative Tribunal in O.A. No. 97 of 2003, order dated 16th February, 2006. Same lethargic approach has been continued after the order of the Central Administrative Tribunal. It appears that the State of Jharkhand is not interested at all in completing the departmental proceedings, otherwise, there was ample time and ample opportunities given by the Central Administrative Tribunal vide order dated 16th February 2006. In fact, State of Jharkhand should initiate enquiry against those officers who have caused the delay in completing the enquiry. Of course, there cannot be any mathematical time limit for completion of the enquiry, but, that does not give, open ended time limit, to the State that for more than 10 to 15 years the enquiry should be kept pending and let the delinquent be retired without any promotion. This approach and methodology of the State of Jharkhand should be brought to an end forthwith.

(IX) Learned Counsel appearing for the respondent has relied upon the decision rendered in case of State of Andhra Pradesh Vs. N. Radhakishan, (1998) 3 AD 581 : AIR 1998 SC 1833 : (1998) 3 JT 123 : (1998) 2 SCALE 672 : (1998) 4 SCC 154 : (1998) SCC(L&S) 1044 : (1998) 2 SCR 693 : (1998) 1 UJ 693 : (1998) AIRSCW 1629 : (1998) 3 Supreme 584 It has been held by the Hon"ble Supreme Court in paragraph Nos. 17, 19 and 20, which are as under:

"17. One of the grounds on which the Tribunal quashed memo dated 31-7-1995, issued under the 1991 Rules, was that without cancelling the earlier Memo No. 1412 dated 22-12-1987 issued under the 1963 Rules, the latter memo could not be issued. We have seen that under Rule 45 of the 1991 Rules the inquiry proceedings initiated under the 1963 Rules could be continued even after coming into force of 1991 Rules. It is correct that inquiry proceedings did progress after

issuance of Memo No. 1412 dated 22-12-1987 to the extent that an Enquiry Officer was appointed and should have been concluded under the 1963 Rules. If memo of charge had been served for the first time before 1991 there would have been no difficulty. However, in the present case it could be only an irregularity and not an illegality vitiating the enquiry proceedings inasmuch as after the Enquiry Officer was appointed under Memo No. 1412 dated 22-12-1987, there had not been any progress. If a fresh memo is issued on the same charges against the delinquent officer it cannot be said that any prejudice has been caused to him. He can always challenge the second memo and, rather, even the first one on the ground of delay which he did.

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 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 the 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 their 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.

20. In the present case we find that without any reference to records merely on the report of the Director General, Anti-Corruption Bureau, charges were framed against the respondent and ten others, all in verbatim and without particularizing the role played by each of the officers charged. There were four charges against the respondent. With three of them he was not concerned. He offered explanation regarding the fourth charge but the disciplinary authority did not examine the same nor did it choose to appoint any enquiry officer even assuming that action was validly being initiated under the 1991 Rules. There is no

explanation whatsoever for delay in concluding the enquiry proceedings all these years. The case depended on records of the Department only and the Director General, Anti-Corruption Bureau had pointed out that no witnesses had been examined before he gave his report. The Enquiry Officers who had been appointed one after the other had just to examine the records to see if the alleged deviations and constructions were illegal and unauthorized and then as to who was responsible for condoning or approving the same against the bye-laws. It is nobody's case that the respondent at any stage tried to obstruct or delay the enquiry proceedings. The Tribunal rightly did not accept the explanations of the State as to why delay occurred. In fact there was hardly any explanation worth consideration. In the circumstances the Tribunal was justified in quashing the charge memo dated 31.7.1995 and directing the State to promote the respondent as per recommendation of the DPC ignoring memos dated 27.10.1995 and 1.6.1996. The Tribunal rightly did not quash these two latter memos."

(Emphasis Supplied)

(X) It has further been held by the Hon"ble Supreme Court in the case of P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, AIR 2006 SC 207 : (2005) 4 CTC 403 : (2005) 7 JT 417 : (2005) 3 LLJ 527 : (2005) SCC(L&S) 861 : (2005) 2 SCR 474 Supp : (2006) 1 SLJ 67 : (2005) AIRSCW 5690 : (2005) 5 Supreme 611 , which are as under:

"3. Mr. V. Prabhakar, learned counsel for the appellant submitted that the charge memo had been issued in the year 2000 for the irregularity in issuing a sale deed in 1990 to one Mr. A.N. Beemaiah who was an employee of the Housing Board and was to superannuate shortly. Mr. Prabhakar also submitted that though the records were very much available with the respondent, no action has been taken against the appellant since 1990 for about 10 years; that no explanation whatsoever was offered by the Housing Board for the inordinate delay in initiating the disciplinary action against the appellant. Mr. Prabhakar placed strong reliance on the following two decisions of this Court in (i) State of M.P. v. Bani Singh and (ii) State of A.P. v. N. Radhakishan and submitted that the High Court did not even consider any of these judgments, which were specifically referred in the writ petition.

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. The appellant had already suffered enough and more on account of the

disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer."

(Emphasis Supplied)

(XI) It has also further been held by the Hon"ble Supreme Court in the case of M.V. Bijlani Vs. Union of India (UOI) and Others, AIR 2006 SC 3475 : (2006) 102 CLT 635 : (2006) 109 FLR 717 : (2006) 4 JT 469 : (2006) 2 LLJ 800 : (2006) 4 SCALE 146 : (2006) 5 SCC 88 : (2006) SCC(L&S) 919 : (2006) 3 SLJ 184 : (2006) AIRSCW 2096 : (2006) 3 Supreme 393 , which are as under:

"1. The appellant was working as a Junior Engineer at Jagdalpur in the year 1969-70. He allegedly failed and/or neglected to maintain a register known as ACE-8 Register. After he had handed over charge to his successor Shri K.C. Sariya, on or about 11-4-1975, a disciplinary proceeding was initiated against him on the following charges:

"(i) that he had failed to maintain ACE-8 Register showing acquisition and utilization of 4000 kg of telegraph copper wire received from SDOT, Raipur, through Sub-Inspectors Kashiram and Badul Quadir on 22-10-1969, 30-10-1969 and 2-12-1969 or utilization on Geedam-Bairagarh truck ling against Estimate No. 2162 duly approved.

(ii) that he had failed to supervise the working of the line and utilization of copper wire while the rules require the personal supervision and accountability of the said wire; and

(iii) that he also showed misleading entries on the bills of transportation for transportation of the material.

"2. The disciplinary proceedings remained pending for a period of seven years. A report was submitted by the enquiry officer only in the year 1982. In the disciplinary proceeding, the first two charges were held to have been proved against the appellant but the third charge was not proved. He was directed to be removed from service by the disciplinary authority by an order dated 21-12-1983. An appeal preferred thereagainst came to be dismissed by the Appellate Authority by an order dated 21-2-1991 i.e. after a period of seven years, holding:

"The ACE-8 sheets were still not available in estimate files of 2160 D(a) and 2161 D(a) for the years 1969-70. If the statement of Shri Bijlani is taken to be correct that ACE-8 were prepared and kept in respective estimate files and were made over to Shri Sariya, then in should not have been necessary for Shri Bijlani to prepare ACE-8 again on 25-12-1973. He could have mentioned that numerical account of 150 lb copper wire can be made from ACE-8 slips kept in the respective estimate files. The statement of Shri Bijlani that he prepared ACE-8 of

150 lb copper wire on 25-12-1973 on the basis of limited records shown to him is also not acceptable. He could have demanded access to all the records for preparing numerical account of 150 lb/mile copper wire. The EO has therefore rightly recorded 150 lb/mile wire in ACE-8 (DOC-1). 150 mile copper wire was issued to East jagdalpur on 22-10-1969 (2204 lb), 30-10-1969 (2218 lb) and 2-12-1969 (4398 lb). By 20-10-1969 (2218 lb/mile) copper wire received 8820 lb of 150 lb/mile copper wire but he did not keep its numerical account in ACE-8 and could not prove its utilization properly."

16. So far as the second charge is concerned, it has not been shown as to what were the duties of the appellant in terms of the prescribed rules or otherwise. Furthermore, it has not been shown either by the disciplinary authority or the Appellate Authority as to how and in what manner the maintenance of ACE-8 Register by way of sheets which were found attached to the estimate file were not appropriate so as to arrive at the culpability or otherwise of the appellant. The Appellate Authority in its order stated that the appellant was not required to prepare ACE-8 Register twice. The appellant might have prepared another set of register presumably keeping in view the fact that he was asked to account for the same on the basis of the materials placed on records. The Tribunal as also the High Court failed to take into consideration that the disciplinary proceedings were initiated after six years and they continued for a period of seven years and, thus, initiation of the disciplinary proceedings as also continuance thereof after such a long time evidently prejudiced the delinquent officer."

(Emphasis Supplied)

In the aforesaid decisions the year of misconduct are 1987, 1975-76 and 1969-70 and the decisions have been rendered by Hon"ble Supreme Court in the year 1998, 2005 and 2006 respectively. The departmental proceeding in the first decision was quashed and set aside within one decade whereas in other two matter, the departmental proceeding was quashed after three decades and more. Here also there is unexplained delay on the part of the State of Jharkhand. More than one decade period has been lapsed from initiation of the inquiry, in the year 2001 and from the year of the misconduct i.e. 1996. More than one and half decade period has been lapsed. In the facts of the present case, previously this respondent had also preferred O.A. No. 97 of 2003 and one chance was given to the State of Jharkhand by order of Central Administrative Tribunal dated 16th February, 2006 to complete the enquiry and despite the order of the Central Administrative Tribunal also the enquiry was not completed. This fact makes the present case different from the facts of the decision cited by the Counsel for the petitioner and therefore, being ratio decidendi, the decision cited by the learned counsel for the petitioner is not applicable in the facts of the present case.

(XII) There is one more important aspect in this matter that the State-"within the meaning of Article 12 of the Constitution of India" has several resources and a battalion of several efficient officers are at the back and call of the State and the State is getting help from every corner. If the State has wish, will, desire and

zeal to complete the departmental proceedings, there can never be a departmental proceeding which continues for one decade. This reflects inefficiency on the part of the State of Jharkhand. Either they have not used their human resources or the State of Jharkhand has no evidence at all to prove the charges levelled against the respondent. The delinquent has not caused any obstruction. An unexplained long delay in completion of the enquiry cannot be tolerated. The present respondent is facing departmental proceedings from 2001 onwards. The State of Jharkhand has been bifurcated from the erstwhile State of Bihar on 15th November, 2000 and it was duty of the State of Jharkhand to complete the proceedings. It is not only the power of State, but, it is power of the State coupled with the duty to complete the departmental proceedings at the earliest.

(XIII) Even after the order of the Central Administrative Tribunal which is under challenge the State of Jharkhand has given promotion to the respondent on 3rd April, 2014 on the post of Additional Principal Chief Conservator of Forest. Thus, the State of Jharkhand has accepted decision rendered by the Central Administrative Tribunal in O.A. No. 103 of 2013(R) after giving promotion to the respondent, this writ has been preferred by the State of Jharkhand.

(XIV) The respondent has lost several chances in his service career because of pendency of the departmental proceedings for the alleged misconduct of the year 1996. It is submitted by the learned counsel for the respondent that now respondent is reaching to the age of superannuation in the year 2016. Enough is enough. No further time can be given to the State to continue with the departmental proceedings, but, as stated hereinabove it is high time of the State of Jharkhand to initiate the proceedings against those officers who are lethargic in concluding the departmental proceedings."

6. As a cumulative effect of the facts, reasons and judicial pronouncement, there is no substance in this writ petition. Hence, the same is hereby dismissed.