

(2009) 07 DEL CK 0006

In the Delhi High Court

Case No : Writ Petition (C) No. 4757 of 2007

Union of India (UOI)

APPELLANT

Vs

Shri V.K. Sareen

RESPONDENT

Date of Decision : 03-07-2009

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 9

Citation : (2009) 07 DEL CK 0006

Hon'ble Judges : V.K. Jain, J; A.K. Sikri, J

Bench : Division Bench

Advocate : H.K. Gangwani, for the Appellant; M.K. Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.—The respondent was working as Divisional Accountant in Electrical Division-X of CPWD during the period from 12.06.1990 to 12.04.1993. On 13th December, 2002, Central Vigilance Commission recommended initiation of disciplinary proceedings against him for imposition of major penalty. On 28th February, 2003, Charge Sheet for major penalty for 7 Articles of Charge was served upon him. Enquiry Officer was appointed on 22nd April, 2003 and report of enquiry was submitted on 01st Jul, 2005. The decision on the Enquiry Report was still in process when O.A. No. 205/2007 was filed by the respondent on 1st February, 2007, seeking stay and quashing of the Charge-Memo as well as the Enquiry Report. The Tribunal vide order dated 20th march, 2007, quashed the Charge Sheet dated 28th February, 2003 and held that the respondent would be entitled to all consequential benefits in accordance with law.

2. A perusal of the impugned order would show that the Tribunal felt that the department was not at all serious in perusing the charges and that delay had caused prejudice to the respondent.

3. The petitioner has sought to justify the delay on the ground that the instant violation came to light only on 19.03.1996, when the complaint was received by

CPWD. The preliminary report was made available to it on 9th October, 1998. The exercise for collecting documents/bio-data of concerned officers by the vigilance unit of Ministry of Urban Development took some time and the show cause notice was issued on 23rd August, 2002. After receipt of reply from the respondent, the matter was referred to CVC which gave its advice on 30th December, 2002 and the Charge Sheet was issued on 28th February, 2003. It has also been pointed out that the respondent took part in disciplinary proceedings, instead of challenging them before appropriate forum.

4. A perusal of the Charge Sheet would show that the charges pertained to the period between 12.06.1990 to 12.04.1993. Even if we accept that the alleged violation came to the notice of the petitioners only on 19.03.1996, the petitioners are still required to explain the delay of about 7 years, as the Charge Sheet was issued only on 28.02.2003.

5. Though the petitioner claim that the preliminary report was made available to it on 9th October, 1998, it has not disclosed when the decision was taken for holding a preliminary enquiry and why it took more than 21/2 years to obtain a preliminary report. The show cause notice was issued on 23rd August, 2002, though the preliminary report was available to the respondents on 9th October, 1998. It is difficult to justify the delay of more than 3 years only in obtaining documents/bio data of concerned officers. It has to be kept in mind that all the officers against whom disciplinary action was proposed, were working with the petitioner. Had the petitioners acted diligently and promptly, it should not have taken more than a couple of months to obtain the required information. No outside agency was involved either in initiating preliminary enquiry or in obtaining or collecting documents from the offices of CPWD, itself. We find hardly any justification for the time taken by the petitioners in issuing show cause notice to the respondent.

6. Even after submission of Enquiry Report on 01st July, 2005, the petitioners were not vigilant enough and adopted a casual attitude in the matter of taking further action on the Report. The respondent approached the Tribunal only on 01st February, 2007. The petitioner had not been able to take any decision by that time. Thus they had failed to take disciplinary action even after expiry of more than 11/2 years, from submission of the Enquiry Report.

7. A perusal of the Enquiry Report would show that the respondent had requested for inspection of additional documents for his defence. However, the petitioners did not make available Supply Order Registers of Accounts Branch. The following documents were also not made available to the respondent:

? Divisional Accountants observations files relating to the period from June 1990 to June 1993.

? Copies of the non-availability of stores certificates obtained by the then concerned Assistant Engineer while processing the indents for the signature of Executive Engineer before issue.

? Copies of the justification of rates prepared at the time of processing the indents for the signature of Executive Engineer before issue

? Copy of C&AG Audit Reports for the periods 1991-92 & 1992-93.

? Copies of the Special Audit Report held in 1993-94.

? DGS&D and other Government Supply Order Registers for 1990-91, 1991-92, 1992-93 and 1993-94.

? Files relating to DGS&D and other Government Supply Order Registers for 1990-91, 1991-92, 1992-93 and 1993-94.

8. In the present case the respondent failed to take a final decision on the Enquiry Report even when this Court vide order dated August 2, 2008 specifically permitted it to pass an order on the Enquiry Report. When this matter came up for hearing on 12th January, 2009, we were informed that no order had been passed on the Enquiry Report though the respondent was due to retire on 30th November, 2008. When we finally heard this matter on 19th May, 2009 we were again informed that no final decision had been taken on the Enquiry Report. This is indicative of the callous attitude of the officers of the petitioner.

9. This is not the case of the petitioner that the documents which could not be made available to the respondent were not relevant and material. Therefore it cannot be denied that respondent was prejudiced in making his defence on account of non-availability of these documents. Had the petitioner been vigilant and had the disciplinary proceedings been instituted promptly and expeditiously, these documents would have been available and the respondent would not have been prejudiced in making his defence.

10. Admittedly the respondent has retired in the mean while and now the only action that can be taken against him is withholding of pension under Rule 9 of CCS Pension Rules. After his superannuation the respondent has been engaged as a Chief Controller with Government of India Ministry of Health and Welfare vide appointment letter dt. 5th December, 2008. In these circumstances when we find hardly any explanation for the delay not only the instituting the enquiry but also in taking decision on the Enquiry Report, we find it difficult to find fault with the decision of the Tribunal.

11. The learned Counsel for the petitioner has referred to the decision of the Hon"ble Supreme Court in Registrar of Cooperative Societies, Madras and Another Vs. F.X. Fernando, . In that case the Hon"ble Supreme Court noted that Directorate of Vigilance and Anti-Corruption had not been prompt and, therefore, the appellant could not be faulted the delay in initiating of departmental proceedings. However, in the present case it is the petitioner who has been responsible for the delay in initiating the departmental proceedings. As noted earlier, the enquiry pertained to the irregularities alleged to have been committed during the period 12.06.1990 to 12.04.1993 and came to the knowledge of the petitioner on 19th March, 1996. Despite that Charge Sheet was issued only on

28th February, 2003 after a delay of almost 7 years. The preliminary enquiry was also to be conducted by the petitioner and documents/bio-data of the concerned officer was also to be collected from petitioners' own office. Therefore no outside agency was involved except for a few months taken by CVC in giving its advice.

12. The learned Counsel for the petitioner has also referred to the decision of Hon''ble Supreme Court in Government of Tamil Nadu Vs. K.N. Ramamurthy, , where the Hon''ble Court held that the Tribunal had no jurisdiction to go into the correctness or truth of the charges and it cannot take over the functions of the disciplinary authority and can interfere only if no misconduct or irregularities can be said to have been made out or the charges made are contrary to the law. However, in the present case, the observation of the Tribunal on the nature of the charge against the respondent is only incidentally, as primarily, its order passed is based on the inordinate delay conducted by the petitioner in instituting the enquiry. Therefore this judgment does not apply to the facts of the present case. The learned Counsel has also referred to P.D. Agrawal Vs. State Bank of India and Others, In that case the Hon''ble Supreme Court noted that the appellant had not raised any question on the ground of delay or otherwise before any forum. It was further noted that this was not the case of the appellant before the Appellate Authority or before the High Court that due to delay, it had been prejudiced in any manner. The Hon''ble Court however held that the delay itself could be a ground to arrive at a finding that enquiry proceeding was vitiated, if is shown that on account of delay, the delinquent officer had been prejudiced. In the present case, the respondent has clearly been prejudiced in making his defence as some of the relevant documents were not made available to him on the ground that the same were not available. Had the enquiry been held promptly, these documents would have been available to the respondent and he would not have been prejudiced in making his defence on account of non-availability of these documents. A perusal of the reply to the Enquiry Report submitted by the respondent would show that he had specifically claimed that Local Purchase Register which was not made available to him was relevant to the case and that non-production of the record/documents which were relevant to the case tantamount to denial of reasonable opportunity to defend the case. He specifically stated that since there was delay in issuing Charge Sheet, this was a fit case for quashing of all the charges, unless it was shown to be justified. Again, he made a representation to the Chief Controller of Accounts, claiming that there was inordinate delay of about 10/12 years in instituting the enquiry which need to be dropped. Therefore it cannot be said that the respondent was not pressing for dropping the disciplinary proceedings on account of inordinate delay in institution of enquiry.

13. It is trite law that disciplinary proceedings should be conducted soon after the alleged mis-conduct or negligence on the part of the employee is discovered. Inordinate delay cannot be said to be fair to the Delinquent Officer and since it would also make the task of proving the charges difficult, it would also not be in interest of administration. If the delay is too long and remains unexplained, the

court may interfere and quash the charges. However, how much delay is too long would depend upon the facts of each and every case and if such delay has prejudiced or is likely to prejudice the delinquent in defending the enquiry ought to be interdicted.

14. In P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, a charge memo was issued to the appellant on 8th January, 2000 for the irregularity in issuing a sale deed in the year 1990. There was no explanation for the unordinary delay of 10 years in initiating the proceedings. The respondent explained that the irregularities for which disciplinary action had been initiated had come to light only in the second half of 1994-95, when the audit report was released. The Hon"ble Supreme court did not accept the contentions of the respondent that the period from date of commission of the irregularities by the appellant to the date on which it came to the knowledge of the Housing Board cannot be reckoned for the purpose of ascertaining whether there was any delay on the part of the Board in initiating disciplinary proceedings. The Hon"ble Supreme court felt that allowing the respondent to proceed further with the enquiry would be very prejudicial to the petitioner and would cause unbearable mental agony and distress to the officer concerned. During the course of judgment the Hon"ble Supreme court observed as under:-

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.

15. In these circumstances when we find no convincing explanation for the delay in instituting the disciplinary proceedings as well as in taking final decision on the Enquiry Report despite specific order of this Court and also considering the fact that some relevant documents were not made available to the respondent, which prejudiced him in making his defence; he has superannuated during pendency of this Writ Petition and has since been engaged as a Consultant, we do not find any valid justification for interfering with the orders of the Tribunal in exercise of our extra-ordinary powers under Article 226 of the Constitution.

16. The Writ Petition is hereby dismissed.