

Tribunal Application

Present:

The Hon'ble Justice Pranab Kumar Chattopadhyay

And

The Hon'ble Justice Md. Abdul Ghani

Judgment on 27.08.2010

W.P.S.T. 264 of 2010

Prabhat Kumar Paul

Versus

State of West Bengal & Ors.

Points:

**Disciplinary proceeding- Delay-** Unexplained inordinate delay in initiating the disciplinary proceedings- Whether the authorities should be allowed to proceed further with the disciplinary proceeding- Service law.

Facts:

Disciplinary proceeding was initiated against the petitioner on the charges issued in February for not giving convincing explanation for acquiring assets disproportionate to the known sources of income during the period between 1990 and 1999. Petitioner moved the West Bengal Administrative Tribunal for quashing the said disciplinary proceeding on the ground of delay and laches and prayed for an interim order. Learned Tribunal refused the said prayer.

Held:

In the present case, it has not been claimed that the delay in initiating the disciplinary proceedings against the petitioner was on account of consumption of time for collecting evidence in relation to the assets of the said petitioner. The respondent authorities never alleged that the petitioner

herein was in any way responsible for the delayed initiation of the disciplinary proceedings. Therefore, after lapse of more than 10 years, this Court cannot permit the respondent authorities to proceed with the disciplinary proceedings as the aforesaid unexplained inordinate delay in initiating the disciplinary proceedings would seriously prejudice the petitioner.

Para 20 and 21

Cases cited:

AIR 1990 SC 1308 [The State of Madhya Pradesh vs. Bani Singh and another]; 2008 (1) CLJ (Cal) 15 [Sri Ranabir Saha vs. Union of India & Ors.]; (2006) 5 SCC 88 [M.V. Bijlani vs. Union of India and others]; (2005) 6 SCC 636 [P.V. Mahadevan vs. MD. T.N. Housing Board]; Sri Ranabir Saha vs. Union of India & Ors. reported in 2008 (1) CLJ (Cal) 15; Union of India and another vs. B.C. Chaturvedi reported in (1995) 6 SCC 750

For the Petitioner : Mr. Kashi Kanta Moitra

Mr. Debabrata Saha Roy

Mr. Pingal Bhattacharyya

For the State Respondents: Mr. Sujit Mitra

Mr. Subrata Banerjee

PRANAB KUMAR CHATTOPADHYAY, J.

The petitioner herein is aggrieved by the order dated 22<sup>nd</sup> April, 2010 passed by the learned West Bengal Administrative Tribunal in O.A. 224 of 2010 since the learned Tribunal by the aforesaid impugned order refused to quash the disciplinary proceedings initiated against the petitioner on the ground of delay and laches but also declined to pass even any interim order restraining the authorities from proceeding with the disciplinary proceedings.

2. From the records we find that a charge-sheet was issued to the petitioner under Memo No. 76/DPS/CON/FA/1P-10/09 dated 22<sup>nd</sup> February, 2010 on the allegation of acquiring assets disproportionate to the known sources of income during the period between 1990 and 1999. In the Article of Charge it has been specifically alleged that the petitioner herein could not give convincing explanation for acquiring assets to the tune of Rs. 1,12,275/- during the aforesaid period.

3. Mr. Kashi Kanta Moitra, learned Senior Counsel representing the petitioner submitted that the Disciplinary Authority initiated disciplinary proceedings on the verge of retirement of the petitioner on the basis of very old and stale charge, which the learned Tribunal failed to appreciate. The learned Senior Counsel of the petitioner further submitted that the alleged charge levelled against the petitioner and mentioned in the charge sheet is absolutely stale since the same is related to the period from 1990 to 1999. According to the learned Senior Counsel, initiation of disciplinary proceedings on the basis of the aforesaid stale charge cannot be sustained in the eye of law.

4. In the Article of Charge framed against the petitioner it has been specifically mentioned that during the period between 1990 and 1999 said petitioner acquired total assets to the extent of Rs. 2,61,100/-, out of which no convincing explanation could be given for an amount of Rs. 1,12,275/- and, therefore, the same was considered to be disproportionate to the known sources of income of the said petitioner.

5. It has been specifically submitted on behalf of the petitioner that since joining every year said petitioner submitted statement of assets before the concerned authority and as such the authority concerned had every knowledge with regard to the assets and property acquired by the petitioner.

According to the petitioner, had there been any irregularity in acquiring any asset then the competent authority could have initiated appropriate proceeding immediately after submission of the statement of assets by the said petitioner. It has further been submitted on behalf of the petitioner that apart from submission of statement of assets in each year, said petitioner on several occasions submitted statement of assets for the period 1990 to 1999 pursuant to the direction of the authorities.

6. Mr. Moitra, learned Senior Counsel of the petitioner submitted that the respondent authorities did not explain the inordinate delay for initiating the disciplinary proceedings on the basis of the absolutely stale charge.

7. From the records we find that by the Memo dated 7th June, 2000, Sub-Divisional Controller, Food and Supplies, Krishnagar directed the petitioner to appear before the Anti-Corruption Inspector at the office of the District Magistrate, Nadia with relevant documents together with the statement of income and expenditure from January, 1990 to December, 1999. It also appears from the records that pursuant to the aforesaid direction petitioner herein appeared before the concerned Inspector, Anti- Corruption Unit on 27th June, 2000 and submitted the documents as desired by the Sub-Divisional Controller, Food and Supplies.

8. After lapse of four years thereafter, in the year 2004, District Magistrate and District Vigilance Officer, Nadia under Memo No. 674/VC(N)/FS-91/1999-ER-6/1999 dated 11th October, 2004 asked the petitioner to appear again before the Enquiry Officer on 15th October, 2004 with relevant documents as were specifically mentioned in the said Memo. The petitioner herein appeared before the said Enquiry Officer in compliance with the aforesaid direction of the District Magistrate, Nadia. Thereafter, the Disciplinary Authority took further six years time to initiate

disciplinary proceedings against the petitioner by issuing the charge sheet.

9. Mr. Kashi Kanta Moitra, learned Senior Counsel of the petitioner urged before this court that the learned Tribunal failed to appreciate that initiation of the disciplinary proceedings after a lapse of more than 10 years on stale charge is in no way permissible and the learned Tribunal should have quashed the disciplinary proceedings on the ground of delay alone. Mr. Moitra referred to and relied on the following decisions in support of his arguments:

- 1) AIR 1990 SC 1308 [The State of Madhya Pradesh vs. Bani Singh and another] (Paragraph 4)
- 2) 2008 (1) CLJ (Cal) 15 [Sri Ranabir Saha vs. Union of India & Ors.]
- 3) (2006) 5 SCC 88 [M.V. Bijlani vs. Union of India and others]
- 4) (2005) 6 SCC 636 [P.V. Mahadevan vs. MD. T.N. Housing Board]

10. Mr. Sujit Mitra, learned Counsel representing the State respondents, however, submitted that the delay in initiating the disciplinary proceedings is not at all fatal in the facts of the present case. Mr. Mitra further submitted that the learned Tribunal did not decide the issue finally on merits and only refused to pass an interim order. Mr. Mitra urged before this court that the learned Tribunal should be allowed to decide the application finally on merits.

11. In the present case, we are to consider whether the respondent authorities should be allowed to proceed further with the disciplinary proceedings against the petitioner in view of the unexplained inordinate delay in initiating the said disciplinary proceedings.

12. The alleged misconduct of the petitioner in relation to the acquisition of assets disproportionate to the known sources of income amounting to Rs. 1,12,275/- took place during the period 1990 to 1999. The petitioner apart

from submitting statement of assets before the concerned authority each year, also submitted statement of assets for the aforesaid period on several occasions in compliance with the direction of the respondent authorities. If the authorities were of the opinion that the petitioner herein had acquired any asset disproportionate to his known sources of income then immediately after submission of the statement of assets or after submission of the relevant papers by the said petitioner on 27th June, 2000, necessary steps could have been taken by the Disciplinary Authority. Even after submission of the relevant documents and year wise statement of income and expenditure for the period from January, 1990 to December, 1999 by the petitioner on 27th June, 2000, no adverse decision was ever taken by the Disciplinary Authority. Subsequently, again in the month of October, 2004 in compliance with the direction of the District Magistrate, Nadia, petitioner herein submitted relevant documents before the Enquiry Officer relating to the acquisition of assets during the aforesaid period in question.

13. The Disciplinary Authority unfortunately, after lapse of further six years decided to initiate disciplinary proceedings against the petitioner by issuing charge sheet on 22nd February, 2010.

14. The learned Senior Counsel of the petitioner submitted that only to harass the petitioner on the verge of retirement, aforesaid disciplinary proceeding was initiated against the petitioner on the basis of the stale charge after lapse of several years.

15. The identical issue was considered by a Division Bench of this Court in the case of Sri Ranabir Saha vs. Union of India & Ors. reported in 2008 (1) CLJ (Cal) 15. In the aforesaid decision, Division Bench of this court has specifically observed as follows:

“13. In the present case, delay is admittedly, too long in view of initiation of the disciplinary proceeding after almost 22 years and there is no reasonable and satisfactory explanation for the aforesaid inordinate delay in issuing the charge-sheet. In our opinion, there was no valid justification for the aforesaid inordinate delay in initiating the disciplinary proceeding after issuing the charge-sheet to the appellant herein. May be, after submission of the representation dated 25<sup>th</sup> August, 1982 by the appellant herein, concerned respondents were not inclined to initiate any disciplinary proceeding. After lapse of almost 22 years since the said respondents decided to proceed against the said appellant herein, this Court cannot permit the said respondents to do so as the aforesaid inordinate delay in initiating the disciplinary proceeding would seriously prejudice the officer concerned.”

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“15. At this stage, therefore, we are of the opinion that the respondent authorities should not be allowed to proceed further with the disciplinary proceeding against the appellant herein and it is a fit case where the Court should interfere and quash the charges on the ground of inordinate delay alone.”

16. In the case of *The State of Madhya Pradesh vs. Bani Singh* and another reported in AIR 1990 SC 1308, Hon’ble Supreme Court held:

“4. The appeal against the order dated 16-12-1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned Counsel. The irregularities which were the subject-matter of

the enquiry is said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April, 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage.....”

17. In the case of M.V. Bilani vs. Union of India and others reported in (2006) 5 SCC 88, Hon’ble Supreme Court observed:

“16.....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.”

18. In the case of P.V. Mahadevan vs. MD, T.N. Housing Board reported in (2005) 6 SCC 636, Hon’ble Supreme Court held:

“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.....”

19. The decision cited by Mr. Mitra, learned Counsel of the State-respondents in the case of Union of India and another vs. B.C. Chaturvedi reported in (1995) 6 SCC 750 cannot be of any assistance to the said respondents in view of the facts of the present case. In Paragraph 11 of the aforesaid judgment, Hon’ble Supreme Court held:

“11.....Each case depends upon its own facts. In a case of the type on hand, it is difficult to have evidence of disproportionate pecuniary resources or assets or property. The public servant, during his tenure, may not be known to be in possession of disproportionate assets or pecuniary resources. He may hold either himself or through somebody on his behalf, property or pecuniary resources. To connect the officer with the resources or assets is a tardy journey, as the Government had to do a lot to collect necessary material in this regard. In normal circumstances, an investigation would be undertaken by the police under the Code of Criminal Procedure, 1973 to collect and collate the entire evidence establishing the essential links between the public servant and the property or pecuniary resources. Snap of any link may prove fatal to the whole exercise. Care and dexterity are necessary. Delay thereby necessarily entails. Therefore, delay by itself is not fatal in these type of cases.....”

20. In the present case, it has not been claimed that the delay in initiating the disciplinary proceedings against the petitioner was on account of consumption of time for collecting evidence in relation to the assets of the said petitioner. All the relevant papers and documents relating to the income and expenditure and also in connection with the assets were regularly submitted before the concerned authority by the petitioner. Furthermore, all

informations relating to the assets and statement of income and expenditure for the period from January, 1990 to December, 1999 were also submitted before the Inspector, Anti-Corruption Unit as far back on 27th June, 2000.

21. The respondent authorities never alleged that the petitioner herein was in any way responsible for the delayed initiation of the disciplinary proceedings. Therefore, after lapse of more than 10 years, this Court cannot permit the respondent authorities to proceed with the disciplinary proceedings as the aforesaid unexplained inordinate delay in initiating the disciplinary proceedings would seriously prejudice the petitioner.

22. For the aforementioned reasons, we are of the opinion that the respondent authorities should not be allowed to proceed further with the disciplinary proceedings against the petitioner herein on the basis of the stale charge and as such it is a fit case where the charge should be quashed only on the ground of inordinate delay alone.

23. This Court cannot permit the respondent authorities to harass an employee on the verge of his retirement by initiating disciplinary proceedings on the basis of stale charge and without furnishing satisfactory explanation for the inordinate delay to issue the charge-sheet for initiating the disciplinary proceedings.

24. The learned Tribunal, in our opinion, should not have allowed the respondent authorities to proceed with the disciplinary proceedings on the basis of the alleged misconduct which took place during the period between 1990 and 1999. By refusing to pass an interim order and allowing the respondent authorities to proceed with the disciplinary proceedings against the petitioner herein, learned Tribunal has committed serious error which cannot be approved by this Court.

25. For the aforesaid reasons and following the decision of this Court in the case of Ranabir Saha (Supra) and also the decisions of the Supreme Court mentioned hereinabove, we are of the opinion that the charge-sheet issued to the petitioner under Memo dated 22nd February, 2010 should be quashed on the ground of unexplained inordinate delay alone. Therefore, we quash the aforesaid chargesheet and also the disciplinary proceedings initiated against the petitioner on the basis of the said charge-sheet on the ground of unexplained inordinate delay.

26. For the identical reasons, the impugned order dated 22<sup>nd</sup> April, 2010 passed by the learned Tribunal cannot be sustained and the same is accordingly, set aside.

27. This writ petition, therefore, stands allowed.

28. In the facts and circumstances of the present case, there will be, however, no order as to costs.

29. Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

[PRANAB KUMAR CHATTOPADHYAY, J.]

MD. ABDUL GHANI, J.

I agree.

[MD. ABDUL GHANI, J.]

