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P.V. MAHADEVAN

v.

M.D. TAMIL NADU HOUSING BOARD

AUGUST 8, 2005

B

[RUMA PAL AND DR. AR. LAKSHMANAN, JJ.]

Service Law :

C

Disciplinary proceedings—Delay in initiating of—Effect of—Housing Board—Superintending Engineer—Charged in 2000 for irregularity caused by him in issuing a sale deed in 1990—Held, allowing the Board to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the officer—Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned—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—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 suffer—Charge memo issued against the appellant quashed.

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State of Madhya Pradesh v. Bani Singh and Anr., [1990] Supp. SCC 738 and State of A.P. v. N. Radhakrishan, [1998] 4 SCC 154, relied on.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4901 of 2005.

From the Judgment and Order dated 5.11.2004 of the Madras High Court in W.P. No. 7854 of 2001.

G

V. Prabhakar, R.S. Krishna Kumar, Rakesh Garg, Ashok K. Sadhu Khan and Ms. Revathy Raghavan for the Appellant.

R. Venkataramani, R. Ayyam Perumal and S. Vallinayagam for the Respondent.

H

The Order of the Court was delivered :

Leave granted.

This appeal is directed against the common order passed by the High Court of Madras in Writ Appeal Nos. 297 and 331 of 2001 and Writ Petition No. 7854/2001 filed by the appellant herein. Certain disciplinary actions were initiated against the appellant herein who was working as Superintending Engineer in the Tamil Nadu Housing Board. A charge memo was issued on 8.6.2000. The appellant preferred a writ petition to call for the records, to quash the charge memo by the respondent and to forebear the respondent from in any manner proceeding with the charge memo against the appellant. Certain other consequential prayers have also been made in regard to the disbursement of monetary benefits, etc.

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 Madhya Pradesh v. Bani Singh and Another*, reported in [1990] Supp. SCC 738 and (ii) *State of A.P. v. N. Radhakrishan* reported in [1998] 4 SCC 154 and submitted that the High Court did not even consider any of these judgments, which were specifically referred in the writ petition.

In the first case [1990] Supp. SCC 738, an O.A. was filed by the officer concerned against initiation of departmental enquiry proceedings and issue of charge-sheet on April, 22, 1987 in respect of certain incidents that happened in 1975-76 when the said officer was posted as Commandant 14th Battalion, SAF Gwalior. The Tribunal quashed the charge memo and the departmental enquiry on the ground of inordinate delay of over 12 years in the initiation of the departmental proceedings with reference to an incident that took place in 1975-76.

The appeal against the said order was filed in this Court 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.

A This Court rejected the contention of the learned counsel. While dismissing the appeal this Court observed as follows :

B “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 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. In any case there are no grounds to interfere with the Tribunal’s orders and accordingly we dismiss this appeal.”

D In the second case [1998] 4 SCC 154, the respondent was appointed as Assistant Director of Town Planning in the year 1976. A report dated 7.11.1987 was sent by the Director General, Anti-Corruption Bureau, Andhra Pradesh, Hyderabad to the Secretary to the Government, Housing, Municipal Administration & Urban Development Department, Andhra Pradesh, Hyderabad, about the irregularities in deviations and unauthorized constructions in multi storied complexes in the twin cities of Hyderabad and Secunderabad in collusion with municipal authorities. On the basis of the report, the State issued two memos both dated 12.12.1987 in respect of three officials including the respondent-Radhakishan, the then Assistant City Planner. In this case, till 31.07.1995 the article of charges had not been served on the respondent.

F The Tribunal, however, held that the memo dated 31.7.1995 related to incidents that happened ten years or more prior to the date of the memo and that there was absolutely no explanation by the Government for this inordinate delay in framing the charges and conducting the enquiry against the respondent and that there was no justification on the part of the State now conducting the enquiry against the respondent in respect of the incidents at this late stage.

G H This Court, in para 19, has observed as follows :

“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.”

This Court held that there was hardly any explanation worth consideration as to why the delay occurred. In the circumstances, this Court held that 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. Accordingly, the appeal filed by the State of Andhra Pradesh was dismissed.

Mr. Prabhakar also invited our attention to the affidavit filed by the

A appellant in support of his case. It is stated in para 14 of the affidavit that
 the respondent with the *mala fide* intention issued the present charge memo
 against the appellant even though the alleged incident of issuance of sale deed
 was of the year 1990, which was 10 year prior to the issuance of charge memo
 and that very reason for issuing charge memo was that the appellant could
 B be detained from promoting to the post of Chief Engineer of the Housing
 Board.

The very same ground has been specifically raised in this appeal before
 this Court wherein it is stated that the delay of more than 10 years in initiating
 the disciplinary proceedings by issuance of charge memo would render the
 C departmental proceedings vitiated and that in the absence of any explanation
 for the inordinate delay in initiating such proceedings of issuance of charge
 memo would justify the prayer for quashing the proceedings as made in the
 writ petition.

D Our attention was also drawn to the counter affidavit filed by the
 respondent-Board in this appeal. Though some explanation was given, the
 explanation offered is not at all convincing. It is stated in the counter affidavit
 for the first time that the irregularity during the year 1990, for which
 disciplinary action had been initiated against the appellant in the year 2000,
 came to light in the audit report for the second half of 1994-1995.

E Section 118 and 119 of the Tamil Nadu State Housing Board Act, 1961
 (Tamil Nadu Act No. 17 of 1961 read thus :

F “118. At the end of every year, the Board shall submit to the
 Government an abstract of the accounts of its receipts and expenditure
 for such year.

G 119. The accounts of the Board shall be examined and audited
 once in every year by such auditor as the Government may appoint
 in this behalf.”

H Section 118 specifically provides for submission of the abstracts of the
 accounts at the end of every year and Section 119 relates to annual audit of
 accounts. These two statutory provisions have not been complied with at all.
 In the instant case the transaction took place in the year 1990. The
 expenditure ought to have been considered in the accounts of the succeeding

year. In the instant case the audit report was ultimately released in the 1994-1995. The explanation offered for the delay in finalising the audit account cannot stand scrutiny in view of the above two provisions of the Tamil Nadu Act 17. It is now stated that the appellant has retired from service. There is also no acceptable explanation on the side of the respondent explaining the inordinate delay in initiating departmental disciplinary proceedings. Mr. R. Venkataramani, learned Senior counsel is appearing for the respondent. His submission that the period from the 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 against the appellant has no merit and force. The stand now taken by the respondent in this Court in the counter affidavit is not convincing and is only an afterthought to give some explanation for the delay.

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.

We, therefore, have no hesitation to quash the charge memo issued against the appellant. The appeal is allowed. The appellant will be entitled to all the retiral benefits in accordance with law. The retiral benefit shall be disbursed within three months from this date. No costs.

R.P.

Appeal allowed.