

Ajit Singh and another v. The Food Corporation of India and 229
others (G. R. Majithia. J.)

in view of the fact that the students have already studied for a period of more than seven months, are protected. There shall, however, be no order as to costs.

(8) Copies of this judgment be given *dasti* to learned counsel for the parties under the signatures of the Reader of this Court.

J.S.T.

Before Hon'ble G. R. Majithia & V. K. Jhanji, JJ.

AJIT SINGH AND ANOTHER,—Petitioners.

versus

THE FOOD CORPORATION OF INDIA AND OTHERS,
—Respondents

Civil Writ Petition No. 13907 of 1993

March 31, 1994.

Constitution of India, 1950—Arts. 226/227—Delay in initiation of disciplinary enquiry—Such delay not causing any prejudice—No ground to quash enquiry.

Held, that mere delay in the issuance of charge-sheet or concluding the disciplinary proceedings would not by itself be sufficient ground to quash the disciplinary proceedings. However, if the delinquent official can establish that the delay has caused him prejudice or deprived him of fair trial, the disciplinary proceedings would be liable to be quashed. Prejudice has to be established before challenging the enquiry on the ground of delay and laches.

(Para 14)

G. S. Bal, Advocate, for the Petitioners.

Hemant Kumar, Advocate with Rajesh Garg, Advocate, for the Respondents.

JUDGMENT

(1) This judgment disposes of two bunches of writ petitions—one comprising of C.W.P. Nos. 13907, 4201, 10715, 12547, 13366, 13793,

13908, 13966, 13977, 14214, 14301, 14302, 14303, 14304, 14803, 14835 of 1993, 84, 85 and 725 of 1994, and the second bunch comprising of C.W.P. Nos. 939, 1834 and 1835 of 1994. In the second bunch of writ petitions, notice was not issued to the respondents and the same were ordered to be disposed of with the first bunch of writ petitions as the subject-matter of dispute was the same.

(2) In these petitions, a challenge has been made to the charge-sheets served upon the petitioners and the appointment of Inquiry Officer. In order to appreciate the contentions raised at the Bar, a brief reference to the relevant facts is being made from the pleadings of C.W.P. No. 13907 of 1993.

(3) Petitioner No. 1 joined the Food Corporation of India (the Corporation, for brevity) as Assistant Grade-III (Depot) on December 31, 1971. He was promoted as Assistant Grade-II (Depot) and Assistant Grade-I (Depot),—*vide* orders issued by respondent No. 2, i.e. the Zonal Manager (North) of the respondent-Corporation and he joined these posts on September 25, 1979 and December 31, 1991, respectively. Petitioner No. 2 was initially appointed as Watchman,—*vide* order issued by Respondent No. 3 with effect from July 16, 1971. He was promoted as Assistant Grade-III (Depot) by the Zonal Manager (North) and he joined the post on June 15, 1978.

(4) During the year 1986 when the petitioners were posted at FSD, Talwandi Bhai, District Ferozepore, rice was despatched from Talwandi Bhai to Manmad in Maharashtra State and shortage of rice stock as detected. A complaint in this regard was received in the Corporation Office on May 19, 1986, but the charge-sheets on the basis of that complaint were issued to the petitioners on March 6, 1993 and the same were served upon them in April, 1993, i.e., after a lapse of about 7 years.

(5) The principal ground of attack is that there was inordinate and unexplained delay in initiating the disciplinary proceedings and also that the petitioners were promoted by the Zonal Manager, but the disciplinary proceedings have been initiated by the Senior Regional Manager of the Corporation.

(6) In the written statement filed on behalf of the respondents, a preliminary objection has been taken that the petitioners have got an equally efficacious remedy of appeal and review against the charge memos as provided under regulations 67 and 74 of the Food Corporation of India (Staff) Regulations, 1971 (Staff Regulations, for

brevity). On merits, it was pleaded therein that the petitioners collectively indulged in short loading to the extent of 729-14-200 Quintals of dice special meant for Southern Region, thereby causing a huge pecuniary loss to the Corporation and swindled public money. In the case of short loading, a lengthy administrative procedure has to be followed by the Corporation in serving the charge-sheet. According to the guidelines in the case in which a complaint of short loading is made, the procedure adopted is that after a complaint is received from the consignee region in the Regional Office, **the Regional Office directs the consignee District Office to send/call the complete record, i.e. seal intact certificates of the wagons from the Railways authorities, Railways delivery book remarks, record of weighment, i.e. weighment card, or mode of weighment whether it is 10 per cent or 100 per cent.** On receipt of the relevant record, if found necessary, investigation is conducted into the complaints regarding the reported shortages. After the complaint is found genuine, responsibility of the despatching staff is fixed and the matter is remitted to the Regional Office for further action with the approval of the competent authority. The Corporation despatches more than 3000 specials per year to different States consisting of more than 70 wagons containing approximately 20,000 bags in each special. In one region, large number of employees are involved in the process of despatch, quality check, etc. The staff working in the offices is limited due to ban on fresh recruitment by the Government of India. The staff deals with large number of cases and each **case involves good number of employees which takes some time in finally issuing the charge-sheets.** It was denied that there was any delay on the part of the Corporation in issuing the charge-sheets, much less inordinate or unexplained. The petitioner's replies were considered by the competent authority, which were not found satisfactory and thereafter the charge-sheets were issued, and served upon them. The orders of promotion were issued by the Deputy Zonal Manager in his capacity as Chairman of the Departmental Promotion Committee constituted for promotion of Category III staff. The unit for promotion/reversions etc. in respect of Category II and III posts is the Zone of the Food Corporation of India as contemplated under the Staff Regulations. The matter of promotion of the petitioners was never placed before the Zonal Manager either for approval or for deciding the place of posting. The appointing/disciplinary authority of the petitioners as per the Staff Regulations is the Senior Regional Manager and not the Zonal Manager as alleged by the petitioners. The disciplinary proceedings have been initiated by the Senior Regional Manager, who is the competent authority under the Staff Regulations.

(7) The arguments in the case were addressed by Mr. G. S. Bal, Advocate. Before commencement of the arguments, Mr. Jasdeep Singh wasu, Advocate, appearing before us, stated that identical matters were pending before a learned single Judge for adjudication and that he may also be allowed to address arguments as the decision rendered by us was likely to affect his clients. We permitted him to intervene and address arguments. But after Mr. Bal concluded his arguments, Mr. Wasu stated that he would adopt the arguments addressed by Mr. Bal and he had nothing else to urge. Mr. Kansal, Advocate, who also counsel for the petitioners in some of the cases, did not address arguments on the merits of the contentions raised in the writ petitions, but submitted that the Inquiry Officer had not supplied him copies of the documents on which reliance was placed by the Corporation in support of the charge-sheets.

Mr. Bal made the following submissions :—

- (i) There is an inordinate delay in initiating the disciplinary proceedings and the charge-sheet is liable to be quashed on this ground alone ;
- (ii) Charge-sheets have not been issued by the competent authority. Senior Regional Manager is not the disciplinary authority in the case of the petitioners as they were promoted to the higher posts by the Zonal Manager and in their case, the Zonal Manager is the disciplinary authority.
- (iii) The disciplinary authority has pre-judged the guilt of the petitioners.

Point No. (i) : What is the effect of delay in issuance of charge-sheet in disciplinary proceedings ?

(8) The concept of delay in initiating disciplinary proceedings has its genesis in criminal law where a right to speedy trial is considered of essence and delay in the trial by itself is considered to constitute denial of justice. Though in the Constitution the right speedy trial is not enumerated as a fundamental right, yet it has been considered implicit in the sweep and content of Article 21 of the Constitution. In *Smt. Maneka Gandhi v. Union of India and another* (1), the apex Court took the view that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty

(1) A.I.R. 1978 S.C. 597.

except in accordance with the procedure prescribed by law. 'Procedure' further is required to be reasonable, fair and just and deprivation of such procedure is violative of Article 21. The right to speedy trial was held to be a part of reasonable, fair and just procedure. In *State of Maharashtra v. Champalal Punjaji Shanu* (2), the apex Court, however, held that while a speedy trial is an implicit ingredient of a fair trial, the converse is not necessarily true and that delayed trial is not necessarily unfair trial. The question whether a conviction should be quashed on the ground of delayed trial was held to be dependent upon the facts and circumstances of each case and if, on account of delay, the accused is found to have been prejudiced in his defence, the conviction would have to go. The same view was reiterated by the apex Court in *State of Andhra Pradesh v. P. V. Pavithran* (3), where it held that the Court has to consider whether delay on the part of the investigating agency has caused grave prejudice or disadvantage to the accused. For the said assessment, the apex Court further held that the factors vary from case to case and that no general and wide proposition of law can be formulated to state that delay *ipso facto* would provide a ground for quashing the first information report or proceedings arising therefrom.

(9) So far as the matter of delay and laches in initiating the disciplinary proceedings is concerned, it was first considered by a Single Judge of the Gujarat High Court in *Jitendra Jyantilal Joshi v. State of Gujarat and others* (4). In that case, the instructions of the Government of Gujarat were impugned on the ground that the same did not prescribe a time limit within which the enquiry was to be completed. The learned Single Judge held that no rigid or inflexible time limit could be laid down for completing such enquiry. However, it was further held that a departmental enquiry must be completed within a reasonable time and if an enquiry was unduly prolonged and on that account the delinquent suffered prejudice, that particular enquiry could be called into question.

(10) In this Court, the question of delay in initiating the disciplinary proceedings was considered by a Division Bench in the case reported as *Dr. B. S. Sandhu v. The State of Punjab* (5). In that

(2) A.I.R. 1981 S.C. 1675.

(3) A.I.R. 1990 S.C. 1266.

(4) 1978 (2) S.L.R. 728.

(5) 1989 (1) Northern Legal Reports 213.

case, charge-sheet pertaining to events which took place in 1974-75, was served on the petitioner after 1988. The charges pertained to embezzlement and in the interregnum the petitioner had earned a number of promotions. The Bench found that the action of the respondents was totally unjustified and, if not *mala fide*, smacked of unfairness especially in view of the fact that the trial of the co-accused had ended in acquittal.

(11) The matter of delay and laches in initiating the disciplinary proceedings was considered by the apex Court in *The State of Madhya Pradesh v. Banu Singh and another* (6). In that case, the Central Administrative Tribunal quashed the disciplinary proceedings on the ground of delay of over 12 years in the initiation of departmental proceedings with reference to an incident that took place between 1975 and 1976. In appeal against the judgment of the Central Administrative Tribunal, it was urged that merely on the ground of delay and laches the proceedings could not have been quashed. The apex Court upheld the decision of the apex Court observing thus :—

“The appeal against the order dated 16th December, 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 matters 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 been taken place between the years 1975—1977. 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. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal.”

(6) A.I.R. 1990 S.C. 1308.

The crux of the judgment is that the apex Court held that there was no satisfactory explanation for the 12 years' delay in initiating the departmental proceedings and, therefore, it would be unfair to permit the departmental enquiry proceedings to continue. The judgment rendered in *Bani Singh's* case was followed by this Court in C.W.P. No. 564 of 1989 (*Surinder Mohan Pandit v. The State of Punjab*), decided on October 11, 1990. In that case, for irregularities committed in the years 1973-74, for which the explanation of the petitioner had been called on October 8, 1974, the charge-sheet was issued after his retirement on October 3, 1988. The learned Single Judge held thus :—

“Had there been his involvement, the department would have been prompt in taking action and his promotion would have been withheld. There is no satisfactory explanation for the inordinate delay in issuing the charge-sheet after the lapse of more than a decade.”

Accordingly, on the ground of delay and laches this Court quashed the charge-sheet.

(12) The apex Court's judgment in *Bani Singh's* case (supra) was again followed by this Court in *B. D. Mathur v. The State of Punjab and others* (7). In that case, there was 12 years' delay in issuing charge-sheet in departmental proceedings. It was contended on behalf of the petitioner and accepted by a learned Single Judge that by mere lapse of time the true sequence of events had been forgotten and it was not possible for the petitioner to defend himself effectively. On that basis, the Court held that the delay was sufficient to quash the departmental proceedings.

(13) A Full Bench of this Court in *Dr. Ishar Singh v. The State of Punjab and another* (8), has also gone into the matter of delay and laches in initiating the disciplinary proceedings. The questions posed before the Full Bench are noticed in the opening paragraph of the judgment. Questions No. (3) and (4) read as under :—

“(3) Whether the Government can initiate or continue with the departmental enquiry long after the date of alleged lapse

(7) 1992 (4) S.L.R. 510.

(8) 1993 (4) S.L.R. 655.

in spite of the fact that the officer had retired from service many years back.

- (4) Should the enquiry proceedings be quashed on the ground of long pendency alone."

These questions are dealt in paragraphs No. 71 onwards of the judgment. In paragraph 71, the Full Bench has held that there is no limitation prescribed for initiating disciplinary proceedings, but in case there is any delay, there must be *bona fide* explanation for the same. If the delay is found to have caused prejudice to the employee, the Court would normally interfere in the matter. However, the Court would not exonerate a person solely because of lapse of time. It is for the delinquent officer to show as to how he has been prejudiced or deprived of fair trial on account of delay and if defence is found to have been denied due to delay, the final order may be quashed. Delay by itself has been held not to be a ground for quashing the disciplinary proceedings. Thus, the ratio of the Full Bench judgment is that only where prejudice is shown to have been caused on account of delay, the proceedings can be quashed.

(14) From the above, it can be concluded that the preponderance of judicial opinion seems to be that mere delay in the issuance of charge-sheet or concluding the disciplinary proceedings would not by itself be sufficient ground to quash the disciplinary proceedings. However, if the delinquent official can establish that delay has caused him prejudice, the disciplinary proceedings would be liable to be quashed. The learned counsel for the petitioners has not laid any foundation in the pleadings or brought any material at the time of arguments to show that the petitioners are likely to be prejudiced or deprived of a fair trial because of delay. Prejudice has to be established before challenging the inquiry on the ground of delay and laches. No such prejudice has been shown.

(15) The learned counsel also referred to some unreported judgments to show that the charge-sheet was quashed on the ground of delay and laches. The charge-sheet was quashed on the peculiar facts of those cases and case had been decided on its own facts. The ratio of those decisions cannot be applied generally to quash the disciplinary proceedings.

Point No. (ii) :

(16) The learned counsel submitted that the orders of promotion in the case of the petitioners were issued by the Zonal Manager and

such was the disciplinary authority and the charge-sheets had been issued by the Senior Regional Manager, who is not the disciplinary authority. We find no merit in this submission. In the written statement, the respondents have taken a positive plea that the Departmental Promotion Committee is constituted under the Chairmanship of the Deputy Zonal Manager for promotion of Category III employees. The unit for promotion/reversion etc. in respect of the Category II and III posts is the Zone of the Corporation. The Deputy Zonal Manager was the Chairman of the Departmental Promotion Committee and the promotion orders in the case of the petitioners were issued by him as a Chairman of the Departmental Promotion Committee. The appointing authority for category III posts is the Senior Regional Manager. In exercise of the powers conferred by Section 45 of the Food Corporation Act, the Corporation made the Staff Regulations. Regulation 56 deals with disciplinary authority. Explanation added to this regulation says that the appointing authority in relation to an employee shall be the authority empowered to make appointment to the post/grade. Appendix I to the Staff Regulations contains statements showing the various categories of posts, scales of pay, mode of recruitment, etc. in the Corporation. Category III posts are Labour Inspector, Assistant Grade-I (Depot), Assistant Grade-II (Depot) and Assistant Grade-I (Depot). Appendix 'B' to the Staff Regulations enumerates the disciplinary and appointing authorities. For Category-III employees, the appointing authorities are Regional Manager/Joint Manager. Authorities competent to impose the minor penalties are the District Manager/Deputy Manager (Administration) and other penalties are imposable by Regional/Joint Manager. In the instant case, the disciplinary proceedings have been initiated by the Senior Regional Manager, who is the competent authority under the Staff Regulations. Thus, the submission of the learned counsel that the disciplinary proceedings have not been initiated by the competent authority is not only factually incorrect but legally unsustainable.

Point No. (iii) : The disciplinary authority has pre-judged the guilt of the petitioners.

(17) A reading of the charge-sheets is not indicative of such a conclusion. The disciplinary authority has appointed an Inquiry Officer and the matter is under examination and the enquiry could not proceed because of the interim directions issued by this Court.

All the three submissions made by the learned counsel for the petitioners are devoid of any merit.

(18) For the reasons stated above, the first bunch of writ petitions comprising of C.W.P. Nos. 13907, 4201, 10715, 12547, 13366, 13793, 13908, 13966, 13977, 14214, 14301, 14302, 14303, 14304, 14803, 14835 of 1993, 84, 85 and 725 of 1994, is dismissed with costs quantified at Rs. 3,000 in each case and the second bunch of writ petitions comprising of C.W.P. Nos. 939, 1834 and 1835 of 1994 is dismissed but with no order as to costs as no notice was issued to the respondents.

J.S.T.

Before Hon'ble of A. L. Bahri, Ashok Bhan, & J. L. Gupta, JJ

DEVA NAND,—*Petitioner.*

versus

STATE OF HARANA AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 12267 of 1993.

October 25, 1994.

Constitution of India, 1950—Arts. 226/227—Punjab Civil Service Rules, Vol. I, as applicable to the State of Haryana—Rule 3.26 (a) & (d)—Compulsory retirement—Retention in service beyond 55 years—Overall assessment—Condition that more than 70 per cent of last 10 years confidential reports should be good for retention is not contrary to rule 3.26—Principle of—Government instructions making communication necessary of average reports—Instructions are intra vires of Rl. 3.26—When communication necessary, average record has to be treated as adverse—Compulsory retirement on the basis of average reports can be ordered in public interest.

Held, that after examining the entire service record if the competent authority comes to the conclusion that it would be in the public interest to retain the Government servant in service beyond 55 years on the basis of meritorious record or in other words good record the same cannot be held to be against the object or the principle embedded in the Rules. The second category of cases would be where the service record contains some adverse entry/entries and on that account such persons are to be weeded out of the service being dead wood. That again cannot be held to be against the Rules. It is the third category of case where the service record is 'average' throughout which is neither good nor bad, that a question has been posed as to whether such a person should be retained in service or should be weeded out. That requires consideration.

(Para 14)