HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 5731/1999

Ramanuj Sharma (deceased) through his LRs

(i) Smt. Ritu Sharma, Aged About 64 Years, Wife Of Shri Rajiv Sharma, Resident Of 640, Vivek Vihar, Shyam Nagar, Jaipur.

(ii) Smt. Niti Sharma, Aged About 62 Years, Wife Of Dr. Ashutosh Sharma, Resident Of 52, New Moti Bag, New Delhi.

(iii) Smt. Nira Dron, Aged 61 years, Wife Of Sh. Ravindra Dron, Resident Of Jagatpura, Jaipur.

(iv) Smt. Seema Sharma, Aged About 57 Years, Wife Of Colonel Piyush Sharma, Resident Of Chitrakoot, Jaipur.

(v) Colonel Ram Madhukar Sharma, Son Of Late Sh. Ramanuj Sharma, Aged About 51 Years, Resident Of 282, Vyas Marg, Raja Park, Jaipur

----Petitioners

Versus

State of Rajasthan through it's Secretary, Department of Personnel, Government of Rajasthan, Secretariat, Jaipur

----Respondent

For Petitioner(s)	:	Mr. Arihant Samdaria for Mr. Sunil Samdaria
For Respondent(s)	:	Mr. K.S. Chandel Addl. GC with Mr. Satyendra Meena

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HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Order

RESERVED ON	::	31.08.2023
PRONOUNCED ON	::	14.09.2023
REPORTABLE		

1. The petitioner has invoked jurisdiction of this Court under Article 226 of the Constitution of India by challenging the punishment order dated 03.06.1999 issued by the respondent by which a penalty of 5% deduction in pension for two years was imposed.

Submissions by the petitioner:

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2. Counsel for the petitioner submits that the due date of retirement of the petitioner was 30.06.1991 but a day prior to his retirement, charge sheet under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (for short 'Rules of 1958') was served upon the petitioner for an incident pertaining to year 1977. Counsel submits that after a delay of 14 years, charge sheet was served with a malafide intention to take action against the petitioner. Counsel submits that though the petitioner forwarded the matter to the competent authority to take action against the jail guards against whom the judgment of conviction and probation was passed but the competent authority did not take any action against those persons. Counsel further submits that even after serving charge sheet to the petitioner, no action was taken against those accused persons to whom benefit of probation was granted by the competent authority of law. Counsel submits that to spoil the past unblemished service career of the petitioner, the unwarranted exercise was done and finally he was punished with the penalty of stoppage of 5% pension for two years. Counsel submits that charge sheet could not have been issued to a delinquent at the fag end of his career i.e. just a day before his retirement.

In support of his contention, counsel has placed reliance upon the following judgments:-

1. **State of Madhya Pradesh Vs. Bani Singh** reported in **1990 (Supp) SCC 738;**
2. **M.V. Bijlani Vs. Union of India** reported in **(2006) 5 SCC 88;**
3. **P.V. Mahadevan Vs. MD, T.N. Housing Board** reported in **(2005) 6 SCC 636;**
4. **State of A.P. Vs. N. Radhakrishnan** reported in **(1998) 4 SCC 154; and**

5. **Shushma Sharma Vs. State of Rajasthan** reported in **2016 SCC OnLine Raj 10368.**

Counsel submits that under these circumstances, interference of this Court is warranted.

Submissions by the respondent:

3. Per contra, counsel for the State-respondent opposed the arguments raised by the counsel for the petitioner and submitted that the petitioner was working on the post of Inspector General (Prison) and he was well aware of the fact that two jail guards were found guilty and benefit of probation was extended to them by the competent Court of law but in spite of knowing these facts, the petitioner did not take any action against those persons and did not forward their matter to the competent authority for initiation of departmental inquiry under Rule 19 of the CCA Rules, 1958. Counsel submits that the petitioner deliberately acted in a malafide way to protect the above two persons, hence, the Department has not caused any illegality in serving charge sheet to the petitioner under the Rules of 1958. Counsel submits that a thorough inquiry was conducted and after the inquiry, impugned punishment order was passed against the petitioner. Counsel submits that finding of fact has been recorded by the competent authority, hence, interference of this Court is not warranted.

Analysis and Reasoning:

4. Heard and considered the submissions made at the bar and perused the material available on the record.

5. Admittedly after attaining the age of superannuation on 30.06.1991, the petitioner stood retire from the post of Inspector General (Prisons). The disciplinary proceedings were initiated against him under Rule 16 of the Rules of 1958 by issuance of

memorandum of charges dated 29.06.1991 (hereinafter referred as 'the charge sheet') which was served upon him i.e. immediately preceding his retirement for the incident pertaining to the year 1977. The following three charges were levelled against him:

(I) That the petitioner did not take any action under Rule 19 (1) of the Rules of 1958 against the jail guards namely Mohammad Ayaz and Chaturbhuj, who were held guilty in Criminal Case No.465/1974 on 18.03.1976 and the benefit of the Probation was granted to them by the Court of Chief Judicial Magistrate, Bikaner and the said judgment was upheld by the Court of District and Sessions Judge on 05.07.1977;

(II) That by misusing his authority, the suspension order of these two jail guards was revoked on 09.09.1977 leaving it upon the Government to take any action against them;

(III) That though guidance of the Government was sought for taking action against these two Jail Guards but no action was taken against these jail guards and undue benefit was given to these guards by misusing his post.

6. The petitioner submitted reply to these charges. The petitioner stated before the Disciplinary Authority that after revocation of the suspension of these two guards, the matter was left at the discretion of the Government with regard to their continuation in service. Hence, the entire episode was well within the knowledge of the authorities since 1977 and if no action was taken by the authorities against these persons under Rule 19 of the Rules of 1958, then the petitioner was not responsible for the same.

7. After considering the reply and defence of the petitioner, the Disciplinary Authority held him guilty for all three charges. This fact was noted by the authority that though departmental proceedings were not initiated against the said two jail guards namely Mohammad Ayaz and Chaturbhuj at the relevant time but finally both were punished with penalty of stoppage of two annual increments with cumulative effect vide order dated 26.11.1997. But, at the same time, it was observed that they were not removed from service under Rule 19 (1) of the CCA Rules, 1958 because of non action on the part of the petitioner at the relevant time when these two persons were found guilty for the offence under Section 466 and 244/119 of the Indian Penal Code and they were granted benefit of probation. The petitioner was punished with stoppage of 5% pension of two years vide impugned order dated 03.06.1999.

8. It is worthy to note that when, once the authorities were well aware of the fact that above both jail guards have been convicted and granted benefit of the probation by the Chief Judicial Magistrate, Bikaner, vide judgment dated 18.03.1976 and their appeal against the same judgment was dismissed on 05.07.1977 by the Court of Sessions Judge and their suspension order was revoked and they were taken back in the service in the year 1977 then why the disciplinary proceedings under Rule 19 (1) of the CCA Rules, 1958 was not initiated against them for removing them from service. Why no disciplinary action was taken against the petitioner for considerable time and why the respondent waited for good considerable time of more than 14 years and why the charge sheet was issued to him on 29.06.1991 i.e. just a day before his

retirement on 30.06.1991. Such action of the respondent is quite arbitrary.

9. If at all the respondent was so keen on taking action against the two guards Mohammad Ayaz and Chaturbhuj on the basis of their conviction and grant of probation for removing them from service by exercising the power contained under Rule 19 (1) of the CCA Rule, 1958, then why a minor punishment order of withholding their two annual increments only with cumulative effect was passed on 26.11.1997. The authority could have taken action against them by following the procedure contained under Rule 19 of the Rules of 1958.

10. Once when no such action was taken against them under Rule 19 of the Rules of 1958 then where was the reason or occasion available with the respondent to serve charge sheet for these charges against the petitioner on the eve of his retirement. Hence, the respondent has acted malafidely and in an arbitrary manner after a lapse of 14 years for the matter pertaining to the year 1977.

11. This Court is of opinion that if at all the petitioner was negligent in discharge of his duties in the year 1977 for not taking action against the jail guards then why no action was taken against these two persons and the petitioner for 14 years by initiating departmental enquiry and it was only on the eve of his retirement that the charge sheet was served upon him. There is absolutely no iota of explanation for not taking any action for 14 years. Hence, it is clear that intentionally the charge sheet was served upon the petitioner on the eve of his retirement and such action cannot be termed bonafide. It has caused severe prejudice

to the petitioner since his retiral benefits were withheld due to pendency of disciplinary enquiry. Apart from this disciplinary enquiry was not completed expeditiously or within a reasonable time and the same was kept in cold storage and the final order of punishment was passed on 03.06.1999. Thus, the disciplinary enquiry has taken 8 years for its completion. There is absolute no iota of explanation for such inordinate delay which has caused mental agony and suffering to the petitioner and finally fighting his battle against the respondent, the petitioner left this world and even his wife had died during pendency of this petition. Thereafter, his legal representatives have been substituted on the record.

12. The legal principles governing the issue of delay in initiating departmental proceeding and its effect has been considered by the Hon'ble Supreme Court in ***1995 (2) SCC 570 State of Punjab V/s. Chaman Lal Goyal*** wherein following principles were laid down.

> "It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, malafides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the fact-, of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of

circumstances. In other words, the court has to indulge in a process of balancing."

13. Again the Hon'ble Supreme Court in **1998 (4) SCC 154 State of Andra Prade*sh V/s. N. Radhakishan***, while dealing with the issue of quashing the enquiry proceedings on the ground of delay laid down the following general proposition of law.

> "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 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 default 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 that 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 his 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."

14. In the case of **M.V. Bijlani (supra)** the Hon'ble Supreme Court has held that initiation of disciplinary proceedings after 6 years and continuation of the same for a period of 7 years prejudiced the delinquent officer and quashing the proceedings, it has been held in para 16 as under:

"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 the 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 it 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 to the delinquent officer."

15. Similar view has been expressed by the Hon'ble Apex Court in the case of **P.V. Mahadevan (supra),** in para 11 which reads as under:-

"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."

16. Likewise in the case of **UCO Bank Vs. Rajendra Kumar Shukla** reported in **2018 (14) SCC 92**, it has been held in para 12 as under:-

> "12. We do not find any reason to interfere with the judgment and order passed by the High Court. However, it is necessary for us to highlight a few facts which were brought to our notice during the course of submissions made by learned Counsel. The first issue of concern is the enormous delay of about 7 years in issuing a charge sheet against Shukla. There is no explanation for this unexplained delay. It appears that some internal discussions were going on within the Bank but that it took the Bank 7 years to make up its mind is totally unreasonable and unacceptable. On this ground itself, the charge sheet against Shukla is liable to be set aside due to the inordinate and unexplained delay in its issuance."

17. Similarly the Division Bench of the Bombay High Court in the case of **Bhupendra Pal Singh Vs. Union of India & Ors.** reported in **2021 SCC OnLine Bom 6073**, has culled out certain principle and the same are summarized as under in para 32:

> "32. The principles that can be culled out from the aforesaid decisions may be summarized as below:
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> a. It would always be desirable to initiate disciplinary proceedings immediately after the alleged misconduct is detected but if charge-sheet is issued after a considerable length of time has passed since such detection, it would be unfair to the charged officer to proceed against him on the basis of stale charges.

b. Disciplinary proceedings may not be interdicted at the stage of charge-sheet and should be allowed to proceed according to the relevant rules since a charge-sheet does not affect any legal right of the delinquent unless, of course, it suffers from an invalidity that strikes at the root of the proceedings.

c. If there is delay in initiation of disciplinary proceedings by drawing up charges against the delinquent and such proceedings are challenged, the disciplinary authority is under an obligation to explain the reasons for the delay; and, depending upon the worth of such reasons, the Court may proceed to decide one way or the other.

d. There cannot be any exact measurement of the length of delay by reference to years to fall into the category of 'too long a delay', and what would amount to the same has to be decided depending upon the facts of a given case.

e. Should the delay be found to be too long and unexplained, that would definitely have a bearing on the seriousness of the disciplinary authority to pursue the charges against the charged officer and the Court may, in a fit and proper case, quash the proceedings because prejudice to the officer in such case would be writ large on the face of it.

f. Even if, in a given case, the delay is satisfactorily explained, the charge-sheet could still be quashed if the charged officer proves to the satisfaction of the Court that he would be severely prejudiced if the proceedings were allowed to continue, a fortiori, lending credence to the claim of unfair treatment.

g. For the mistakes committed by the department in the procedure for initiating disciplinary proceedings, the charged officer should not be made to suffer.

h. Delay in initiation of disciplinary proceedings per se may not be a vitiating factor, if the charges are grave and in such case the gravity of the charges together with the factors, for and against the continuation of the proceedings, need to be balanced before arriving at a just conclusion."

18. Apart, where disciplinary enquiry is completed after retirement, the scope of punishment of such enquiry is very limited. As per Rule 7 of the Rajasthan Civil Service (Pension) Rules, 1996 (for short, 'Rules of 1996'), the punishment in the

form of withholding pension or any part of it, as the authority deemed it fit, can be inflicted where a pensioner is found guilty of grave misconduct allegedly committed during the period of his service. Whereas in the present case, if at all there was any negligence on the part of the petitioner in performing his duties in not recommending the matter of the above two jail guards for initiation of proceedings against them under Rule 19 of the CCA Rules, 1958, such omission *ipso facto* cannot be construed as a grave misconduct so as to inflict penalty of deduction of 5% pension for two years after 22 years from the date of alleged act. Therefore, such situation does not fall within the parameters of Rule 7 of the Pension Rules, 1996.

Conclusion:

16. The totality of the aforesaid discussion leads this Court to conclude that the impugned order of punishment is not sustainable in the eye of law and the same is liable to be quashed and set aside. In the result:-

(A) The writ petition stands allowed.

(B) Impugned order dated 03.06.1999 stands quashed and set aside.

(C) The amount deducted from pension, if any, shall be refunded to the legal representatives of the petitioner within three months with interest @ 9% p.a.

(D) No order as to costs.

(ANOOP KUMAR DHAND),J

Pcg/MR/3