HIGH COURT OF ANDHRA PRADESH

WEDNESDAY ,THE TWENTY SEVENTH DAY OF JANUARY

TWO THOUSAND AND TWENTY ONE

PRSENT

THE HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO: 18617 OF 2020

Between:

1. Md Sardar S/o. Md Lal Saheb, aged 58 years,
   R/o. Flat No. 112, Padmavathi Enclave,
   Ajit Nagar P.S. Road, New Raja Rajeshwaripet,
   Vij ayawada, Krishna District.

...PETITIONER(S)

AND:

1. The State of Andhra Pradesh, Rep. by its Principal Secretary
   Home Department, Secretariat Buildings, Velagapudi, Amaravathi, Guntur District.
2. The Director General of Police, Government of Andhra Pradesh
   Mangalagiri, Guntur District.
3. The Commissioner of Police Vijayawada City, Krishna District.

...RESPONDENTS

Counsel for the Petitioner(s): G V SHIVAJI

Counsel for the Respondents: GP FOR HOME

The Court made the following: ORDER

HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

****

WRIT PETITION No.18617 OF 2020

Between:

Md.Sardar

... Petitioner

And

The State of Andhra Pradesh,
Represented by its Principal Secretary,
Home Department, Secretariat Buildings,
Velagapudi, Amaravati, Guntur District and others.

... Respondents.

JUDGMENT PRONOUNCED ON 27.01.2021

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes

* **THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

+ WRIT PETITION No.18617 of 2020

% 27.01.2021

Md.Sardar

....Petitioner

v.

$ The State of Andhra Pradesh,
Represented by its Principal Secretary,
Home Department, Secretariat Buildings,
Velagapudi, Amaravati, Guntur District and others.

.... Respondents

! Counsel for the Petitioner : Sri G.V.Shivaji

Counsel for Respondents: Government Pleader for Services - I

<Gist :

>Head Note:

? Cases referred:

1. AIR 2001 SC 2398
2. AIR 1998 SC 2713
3. AIR 1999 SC 3734
4. (1995) 2 SCC 570
5. AIR 1998 SC 1833
6. LAWS(APH)-1974-11-2
7. 1976-2-LLJ-17
8. 1979 (2) S.L.R. 228
9. 1971-1-LLJ-427
10. 1991 (21) DRJ 171
11. 1999 (1) SCC 733
12. 2007 (11) SCC 517
13. [1987]164ITR1(SC)
14. (1996)ILLJ982SC
15. 1994 AIR SCW 2901

16.[1998]1SCR1090
17.(1998)ILLJ1217SC
18.AIR 2016 SC 101
19.(2013) 6 SCC 530
20.(2005) 6 SCC 636
21.(2007) 14 SCC 49
22.(2009) 7 SCC 305
23.2017(4)ALD436

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.18617 of 2020

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:

"to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus

(a) declaring the impugned action of the 3rd respondent in issuing impugned proceedings C.No.11/PR/05, dated 22.01.2014, dissenting with Enquiry report dated 07.01.2014 thereby ordering *De novo* enquiry into the same charges through the charges were held not proved in the Enquiry Report dated 07.01.2014 as illegal, arbitrary and violative of Article 14 and 16 of the Constitution of India, apart from violative of principles of natural justice and also law laid by the Hon'ble Supreme Court in AIR 2001 SC 2398 in the case of SBI v. Arvind K.Shukla; AIR 1998 SC 2713 in the case of Punjab National Bank v. Kunj Bihari Misra and AIR 1999 SC 3734 in the case of Yoginath D Bagde v. State of Maharashtra and pass such other order or orders may deem fit and proper in the circumstances of the case.

(b) declaring the continuation of disciplinary proceedings in pursuance of Charge Memo dated 24.07.2008 for more than 12 years as being contrary to the Judgment of the Hon'ble Supreme Court in State of Punjab vs. Chamanlal Goyal reported in (1995) 2 SCC 570 and in the case of State of A.P. vs. V.N.Radha Krishna reported in AIR 1998 SC 1833, by further declaring the impugned action of the respondents denying promotion of the petitioner to the post of Head Constable (Civil) only on ground of delayed Departmental proceedings, while promoting several of his juniors as highly illegal, arbitrary and contrary to the law laid down by the Hon'ble Supreme Court in various Judgments and consequently direct for promoting the petitioner to the post of Head Constable (Civil) with notional date w.e.f. the date of promotion of his juniors, with all attendant benefits and pass such other order or orders may deem fit and proper in the circumstances of the case.

It is the case of the petitioner that he was initially appointed as Police Constable in A.P. Subordinate Service, way back on 31.07.1983 and he rendered unblemished service and for his sincere efforts in detection of crime, the petitioner was given cash

rewards 70 in number, and while working at various Police Stations i.e. Krishnalanka P.S, IV Town (Crime) Vijayawada City, CCS, II Town P.S. (Crime), Kankipadu P.S. and lastly Gannavaram P.S. while the petitioner was working at Gannavaram P.S., Vijayawada City Commissionerate, allegations were made against petitioner, by a known Rowdy Sheeter who was even convicted in a criminal case in which petitioner has arrested him, alleging that the petitioner has collected boodle under threat and on the basis of such oral allegations and upon oral instructions said to have been issued by respondent No.3, an enquiry behind back of the petitioner said to have been conducted by an officer in the rank of Circle Inspector and submitted report dated 14.04.2005, on the basis of which, straightaway an order was passed removing the petitioner from service vide proceedings dated 26.04.2005 issued by respondent No.3.

Aggrieved by the order of termination of petitioner from service vide proceedings dated 26.04.2005, the petitioner filed O.A.No.5538 of 2005 and upon hearing, the said O.A. was allowed vide order dated 22.02.2007 setting aside the order of removal. Thereupon, the respondents have preferred W.P.No.13798 of2007 before this Court. However, while the above writ petition was pending, the petitioner made representation to respondent No.2, who in-turn considered the same and passed an order dated 26.10.2007, setting aside the removal order and directed reinstatement of petitioner while holding that the removal of the petitioner was not proper. Therefore, directed for conducting detailed enquiry, consequent upon that respondent No.3 issued proceedings dated 21.06.2008, reinstating the petitioner,

but without back wages and upon reinstatement, the petitioner was kept under suspension by an order issued by respondent No.3 dated 27.06.2008. Thereafter, Charge Memo dated 24.07.2008 was issued by respondent No.3, by appointing an Enquiry Officer in the Rank of Assistant Commissioner of Police.

A detailed enquiry was conducted even by examining the complainant Rowdy Sheeter as well as another person of his close associate including all connected, apart from giving opportunity to the petitioner and enquiry report was submitted vide proceedings C.No.11/PR/2005, dated 07.01.2014, the above would show that though Charge Memo was issued on 24.07.2008, the enquiry was delayed for 6 years, for no fault on part of the petitioner. All though this period i.e. period of removal from 26.04.2005 up to reinstatement on 21.06.2008 and further from the date of Charge Memo dated 24.07.2008 up to the date of submission of Report on 07.01.2014, the petitioner was not even considered for any promotion though several of his juniors were promoted.

The petitioner is continuing under suspension after reinstatement for a period of 18 months i.e. up to 15.02.2010, during which petitioner was paid only subsistence allowance, in spite of such continuous harassment, the petitioner is cooperating with the enquiry and as per the report dated 07.01.2014, the charges were held not proved. In spite of that, for best reasons known to respondent No.3, the impugned proceedings in C.No.11/TR/05, dated 22.01.2014 was issued, ordering *De novo* Enquiry which order itself is illegal for the reason that respondent No.3 referred to the Enquiry Report dated 07.01.2014, wherein it is stated that the

charges were held not proved, but without considering the said Report and without assigning any reasons for disagreement with the findings and conclusions in the Enquiry Report dated 07.01.2014, the respondents issued the impugned order, directing *De novo* Enquiry, which is manifestly illegal and contrary to the law laid down by the Supreme Court in "***SBI v. Arvind K. Shukla***[1]"; "***Punjab National Bank v. Kunj Bihari Misra***[2]" and "***Yoginath D Bagde v. State of Maharashtra***[3]", wherein the Apex Court categorically held that when an enquiry was conducted and Report was submitted by the Enquiry Officer, if the disciplinary authority is disagreeing with such report or finding or conclusions therein, a reasoned order showing specific reasons or such disagreement shall be specifically reduced into writing and be communicated to the delinquent employee, calling for explanation. In the instant case, a bare look at the impugned order of *De novo* Enquiry dated 22.01.2014 does not show a single reason for disagreeing with the Enquiry Report, dated 07.01.2014, on this count itself the impugned order of respondent No.3 in proceedings C.No.11/TR/05, dated 22.01.2014 and all consequential proceedings taken place thereunder are liable to be quashed.

The other contention of the petitioner is that, in pursuance of the impugned *De novo* Enquiry order, enquiry was conducted again and upon cooked up Report dated 21.08.2014 i.e. within a short period the enquiry was closed and report was submitted on the basis of which final show cause notice was issued against the petitioner

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[1] AIR 2001 SC 2398
[2] AIR 1998 SC 2713
[3] AIR 1999 SC 3734

dated 28.08.2014, by holding the charges held proved, to which the petitioner submitted explanation dated 10.09.2014, since then no final orders was passed.

The respondents though issued seniority list of Police Constables (Civil) up to year 2009, as on 31.12.2018, the petitioner's name has not been shown anywhere in the seniority list. All the persons shown in the seniority list dated 24.07.2019 are all appointed after 1983, while the petitioner was initially appointed on 31.07.1983. Thus, the said action of the respondents is arbitrary and illegal.

The petitioner is likely to be retired within two (2) years as he is aged 58 years by the date of filing of the writ petition.

The Apex Court categorically held that, delayed disciplinary proceedings shall not result in denial of promotion to the delinquent in "***State of Punjab v. Chamanlal Goyal***[4]" and "***State of A.P v. N.Radhakishan***[5]" categorically held that, if there is inordinate delay in completion of disciplinary proceedings and if the delinquent is not the reason for such delay, the disciplinary proceedings shall be quashed. In the instant case, in response to final show cause Notice dated 28.08.2014, the petitioner submitted explanation on 10.09.2014 i.e. within 15 days. However the proceedings have been kept pending for the past 6 years. Therefore, disciplinary proceedings in pursuance of Charge Memo dated 24.07.2008 are liable to be quashed, requested to allow the petition.

Respondents filed common counter admitting about the orders passed in various proceedings, issue of notice calling for explanation

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[4] (1995) 2 SCC 570
[5] AIR 1998 SC 1833

within 15 days, and submission of explanation by the petitioner, while contending that the enquiry was delayed for his no fault is not true as the petitioner himself delayed the proceedings in the enquiry on the pretext of supplying of one or other documents with an intention to drag the time before the initiation of disciplinary proceedings and also during the oral enquiry. For non-consideration of the name of the petitioner for promotion, it is contended that since the departmental enquiry is pending against him for the grave allegation on his conduct, his candidature was not considered for promotion. The Enquiry officer conducted enquiry and submitted minutes. But the disciplinary authority found certain procedural lapses in conducting the enquiry and in examination of the witnesses. The minutes were returned to enquiry officer with a direction to attend the lapses and resubmit after following the due procedure. While the matter stood thus, the enquiry officer was transferred and Sri D.V.Nageswara Rao, who conducted preliminary enquiry in the present case was posted as ACP, Central Zone. The enquiry officer was changed and Assistant Commissioner of Police, CTC, Vijayawada was appointed as enquiry officer to conduct the enquiry. As there were certain procedural lapses, which could not be corrected by a new Enquiry Officer appointed at that point of time, the ACP, CTC returned the entire OE file and requested to start a fresh enquiry. Considering the request of the enquiry officer, the Disciplinary Authority in exercise of powers conferred by sub-rule (2) of Rule 20 of A.P. Civil Services (CC&A) Rules, appointed ACP, CTC to conduct fresh Enquiry. The contention of petitioner that ordering *de novo* enquiry was illegal, and not correct as the control of the

disciplinary proceedings is always with the authority competent and it is open to such authority to intervene at an appropriate stage to set right any illegality or irregularity that might have been committed in the course of the enquiry which might vitiate the enquiry. In "***P.Mohan Rao v. Deputy Inspector General of Police, Hyderabad***[6]", this Court also observed the same.

The Asst. Commissioner of Police, CTC followed the due procedure, obtained the statement of defense from the petitioner, drew the minutes and submitted Minutes along with OE file, stating that the evidence available on records proved that the Charged Officer extorted Rs.120/- from the suspect sheeter for Non-Veg food and demanded him Rs 2500/-. He held the charges against the petitioner, proved beyond any doubt. Subsequently, a show cause notice was issued to the petitioner and his further representation was called for. The petitioner submitted his further representation on 10.09.2014. Since the demand and acceptance of illegal gratification of Rs.120/- and demanding Rs.2500/- from a suspect sheeter attracted vigilance angle, as per the directions issued by the Government Memo No.965/Sc.A/A3/2015,-5, Home (Sc.A) Department dated 29.01.2015, entire PR file was submitted to AP Vigilance Commission through the DGP, AP for taking further necessary action.

It is further contended that as the departmental proceedings on Major Charges are pending against the petitioner as per Rule-8 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991, the name of the petitioner was not considered for the promotion.

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[6] LAWS(APH)-1974-11-2

It is also contended that the petitioner is facing enquiry on the grave charges, which attracted vigilance angle and action is to be taken against him. A *de novo* enquiry was ordered by the disciplinary authority in exercise of powers conferred by sub rule (2) of Rule 20 of AP Civil Services (CC&A) Rules, as the control of the disciplinary proceeding is always with the authority competent and it is open to such authority to intervene at an appropriate stage to set right any illegality or irregularity that might have been committed in the course of the enquiry.

It is further contended that a Police Constable who was supposed to deter the crime, caused the crime to take place by abetting a criminal for committing offenses. The criminal had no other go than committing offenses for meeting the demands of the Petitioner. The police force is a disciplined force and it shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A police man must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal attitude of encouraging the criminals for committing crime imposes a threat to the discipline of the police force. Police personnel behaving in a wayward manner by misusing powers for their personal gains, should be discouraged in all aspects. In this instance case, extorting money form a known property offender which forced him to relapse into stealing goes against the basic ethics of police department. The conduct of petitioner is prejudicial to basic principle of human rights and also to the dignity and honour of the police department. The Disciplinary Authority

rightly adopted the due procedure in ordering enquiry and also in seeking the decision of the appropriate authority as there is vigilance angle in this case. The petitioner is facing enquiry on grave allegations and he does not deserve any promotion on the basis of existing Rules, requested to dismiss the petition.

Sri G.V.Shivaji, learned counsel for the petitioner, while reiterating the contentions urged in the petition, has drawn the attention of this Court to the lapses committed by the disciplinary authority at different stages and dragging the proceedings sufficiently for long time, such act of the respondents is illegal in view of the judgments in "***SBI v. Arvind K. Shukla***", "***Punjab National Bank v. Kunj Bihari Misra***", "***Yoginath D Bagde v. State of Maharashtra***", "***State of Punjab v. Chamanlal Goyal***" and "***State of A.P v. N.Radhakishan***" (referred supra), requested to grant relief as claimed by the petitioner.

Learned Government Pleader for Services-I supported the action of the respondents in all respects, requested to dismiss the petition.

Considering rival contentions, perusing the material available on record, the points that arose for consideration are:

1. ***Whether ordering de novo enquiry into the same charges which were the subject matter of earlier inquiry is illegal, arbitrary and violative of principles of natural justice and the law laid down by the Apex Court in "SBI v. Arvind K. Shukla", "Punjab National Bank v. Kunj Bihari Misra", "Yoginath D Bagde v. State of Maharashtra" (referred supra)? If so, whether the proceedings in C.No.11/PR/05 dated 22.01.2014***

based on enquiry report dated 07.01.2014 be declared as illegal and arbitrary?

2. ***Whether the delay of 12 years approximately in conclusion of disciplinary proceedings is a ground to declare the action of the respondents in denying promotion to the petitioner to the post of Head Constable (Civil) is illegal, arbitrary and contrary to the principles laid down by the Apex Court in "State of Punjab v. Chamanlal Goyal" and "State of A.P v. N.Radhakishan" (referred supra)? If so, whether the action of the respondents be declared as illegal and void while directing the respondents to promote the petitioner to the post of Head Constable (Civil) with notional benefit with effect from the date of promotion of juniors with all other benefits?***

P O I N T Nos.1 and 2:

As both points are interconnected, I find it expedient to decide both the points by common discussion.

The first and foremost contention of the petitioner before this Court is that when an enquiry was ordered and conducted by the Inspector of Police, on the basis of the allegation made against the petitioner by a rowdy sheeter, without affording any opportunity, it was challenged before the Andhra Pradesh Administrative Tribunal in O.A.No.5538 of 2005 and upon hearing, the said O.A. was allowed vide order dated 22.02.2007 setting aside the order of removal. Thereupon, the respondents filed W.P.No.13798 of 2007 before this Court. However, while the above writ petition was pending, the petitioner made representation to respondent No.2, who in-turn considered the same and passed an order dated 26.10.2007, setting aside the removal order and directed reinstatement of petitioner

while holding that the removal of the petitioner was not proper. Therefore, directed for conducting detailed enquiry, consequent upon that respondent No.3 issued proceedings dated 21.06.2008, reinstating the petitioner, but without any back wages and upon reinstatement, the petitioner was kept under suspension by an order issued by respondent No.3 dated 27.06.2008. Thereafter, Charge Memo dated 24.07.2008 was issued by respondent No.3. Enquiry officer was appointed, a detailed enquiry was conducted, submitted a report vide proceedings C.No.11/PR/2005 dated 07.01.2014.

Respondent No.3 found the petitioner not guilty in the final report dated 07.01.2014. Despite finding the petitioner not guilty by respondent No.3, the proceedings in C.No.11/TR/05, dated 22.01.2014 was issued, ordering *De novo* Enquiry and the same is illegal. These facts are not in dispute and the respondents did not deny these contentions, but explained the reason for ordering *de novo* enquiry in the counter specifically asserting that as the enquiry officer Sri D.V.Nageswara Rao, who conducted preliminary enquiry in the present case was posted as ACP, Central Zone, the enquiry officer was changed and Assistant Commissioner of Police, CTC, Vijayawada was appointed as enquiry officer to conduct the enquiry. As there were certain procedural lapses, which could not be corrected by a new Enquiry Officer appointed at that point of time, the ACP, CTC returned the entire OE file and requested to start a fresh enquiry. Considering the request of the enquiry officer, the Disciplinary Authority in exercise of powers conferred by sub-rule (2) of Rule 20 of A.P. Civil Services (CC&A) Rules, appointed ACP, CTC to conduct a fresh Enquiry. It is contended by the petitioner that

ordering *De novo* Enquiry, without assigning any reasons for disagreement with the findings and conclusions in the Enquiry Report dated 07.01.2014, is illegal and contrary to the law laid down by the Supreme Court in "***SBI v. Arvind K. Shukla***"; "***Punjab National Bank v. Kunj Bihari Misra***" and "***Yoginath D Bagde v. State of Maharashtra***" (referred supra).

In view of these rival contentions, it is for the Court to decide whether *de novo* enquiry be ordered when certain procedural lapses were found in the enquiry report submitted by respondent No.3.

The petitioner is governed by the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991. Rule 20 prescribes procedure for conducting enquiry. Rule 21 deals with procedure to be followed when the disciplinary authority/appointing authority did not accept the findings recorded by enquiry officer or differ with any findings. According to Rule 21, the disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 20 as far as may be. The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority a copy of the report of the inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written

representation of submission to the disciplinary authority within fifteen days, irrespective of whether the report is favorable or not to the Government servant. Thereupon, the disciplinary authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in the sub-rules (4) and (5) below.

Therefore, the procedure prescribed under Rule 21 of Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 permits the disciplinary authority to remit the case to the inquiring authority for further enquiry and report after recording reasons for such remittance, in case the disciplinary authority did not agree with the report submitted by the inquiry officer.

If the disciplinary authority is in disagreement with any of the findings recorded, then the procedure under sub-rule (2) of Rule 21 is to be followed.

Here, in the present case, *de novo* enquiry was ordered as there were procedural lapses, which could not be corrected by new enquiry officer appointed at that point of time. The reasons recorded for ordering *de novo* enquiry is only procedural lapses which cannot be rectified except by conducting enquiry afresh.

There can be no dispute with the proposition that whatever rules are framed they have to be strictly adhered to. It is true that the said rules do not specifically state that the disciplinary authority can order *de novo* enquiry. On the other hand the rules do not prohibit any such order being passed. Sub-rule (x), inter alia, provides that on the receipt of the enquiry report the disciplinary authority shall pass his orders on the enquiry on each charge. This

provision is very widely worded and does not indicate as to what type of order may be passed. That apart, there are at least three observations of the Supreme Court wherein it has been held that the disciplinary authority can always order fresh enquiry.

In "***The State of Assam v. J. N. Roy Biswas***[7]" it was observed by the Supreme Court at page 19 as follows;

> "We may however make it clear that no Government servant can urge that if for some technical or other good ground, procedural or other, the first enquiry or punishment or exoneration is found bad in law that a second enquiry cannot be launched."

The aforesaid decision was followed by the Supreme Court in a case of "***Anand Narain Shukla v. State of Madhya Pradesh***[8]" In this case enquiry proceedings had been completed, but on a writ petition filed, the same were quashed. Then fresh proceedings on the same charges were held and the officer concerned was found guilty of certain charges. Punishment was again awarded. The second writ petition was filed in which it was, inter alia, contended that on the same old charges a fresh enquiry could not have been held. The High Court dismissed the writ petition. The Supreme Court upheld the decision of the High Court and observed that :

> "The earlier order was quashed on the technical ground. On merits, a second enquiry could be held. It was rightly held."

In "***K. R. Deb v. The Collector of Central Excise, Shillong***[9]" the Court held as follows:

> "It seems to us that Rule 15, on the fact of it, really provides for one inquiry, but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at that time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask

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[7] 1976-2-LLJ-17
[8] 1979 (2) S.L.R. 228
[9] 1971-1-LLJ-427

the Inquiry officer to record further evidence. But there is no provision in Rule 15 for completely settings aside the previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its owns conclusion under Rule 9."

Following the above principles, in "***Nahar Singh v. Union of India***[10]", the Delhi High Court held that, depending on the facts of each case it is possible to order *de novo* enquiry if there has been no proper enquiry because of any serious defect. If, for example, principle of natural justice have been violated then it is open to the disciplinary authority to come to the conclusion that a *de novo* enquiry should be held.

In "***Union of India and others v. P. Thayagarajan***[11]", a de-novo enquiry was ordered in purported exercise of power under Rule 27(c) of Central Reserve Police Force Rules, 1955 (hereinafter referred to as "CRPF Rules 1955"). The Court distinguished the decision in "***K. R. Deb v. The Collector of Central Excise, Shillong***" (referred supra) and held in para 8 of judgment as under:

"A careful reading of this passage will make it clear that this Court notices that if in a particular case where there has been no proper enquiry because of some serious defect having crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined, the Disciplinary Authority may ask the Inquiry Officer to record further evidence but that provision would not enable the Disciplinary Authority to set aside the previous enquiries on the ground that the report of the Enquiry Officer does not appeal to the Disciplinary Authority. In the present case the basis upon which the Disciplinary Authority set aside the enquiry is that the procedure adopted by the Enquiry Officer was contrary to the relevant rules and affects the rights of the parties and not that the report does not appeal to him. When important evidence, either to be relied upon by the department or by the delinquent official, is shut out, this would not result in any advancement of any justice but on the other hand result in a miscarriage thereof. Therefore we are of the view that Rule 27(c) enables the Disciplinary Authority to record his findings on the report and to pass an

[10] 1991 (21) DRJ 171
[11] 1999 (1) SCC 733

appropriate order including ordering a *de novo* enquiry in a case of present nature."

(Emphasis supplied)

A similar issue was raised again in "***Kanailal Bera v. Union of India***[12]". It was also a case arising from CRPF Rules 1955. Appellant therein Kanailal Bera was dismissed from the post of Constable in CRPF. He was unauthorisedly absent for a period of 167 days. On this charge he was sentenced to seven days confinement to Civil Lines. There against he made a representation. Authorities however ordered another enquiry in which charges were held partly proved and he was dismissed from service. Court held that a second enquiry after finding charges partly proved in an earlier enquiry was not permissible under Rule 27 of CRPF Rules 1955 and placed reliance "***K. R. Deb v. The Collector of Central Excise, Shillong***" (referred supra). In para 5 of the judgment Court said:

"The question as to whether a punishment of confinement to Civil Lines could have been directed or not should not detain us as we agree with the contention raised by learned counsel for the appellant that the purported order dated 5.4.1995 of the disciplinary authority was unsustainable in law. Rule 27 of the Central Reserve Police Force Rules 1955, inter alia, lays down the procedure for conducting a departmental inquiry. Once a disciplinary proceeding has been initiated, the same must be brought to its logical end meaning thereby a finding is required to be arrived at as to whether the delinquent officer is guilty of charges levelled against him or not. In a given situation further evidences may be directed to be adduced but the same would not mean that despite holding a delinquent officer to be partially guilty of the charges levelled against him another inquiry would be directed to be initiated on the self same charges which could not be proved in the first inquiry."

(Emphasis supplied)

The facts in "***Kanailal Bera v. Union of India***" (referred supra) shows its difference inasmuch as therein on the earlier

[12] 2007 (11) SCC 517

enquiry charge was particularly found proved and punishment of seven days confinement to Civil Lines was imposed. There against delinquent employee filed appeal/representation and thereupon another enquiry in respect to charge which was not found proved was directed and then another order of punishment of dismissal was passed. Once an enquiry had already completed and punishment was also imposed after finding delinquent employee guilty of some charge, while exonerating in another, then again in respect to charge which was found not proved another enquiry is not permitted on the appeal preferred by employee. It is also barred by the principle of double jeopardy. Regulation 27 also does not permit any such second enquiry after imposing punishment. Therefore, neither decision in "***K. R. Deb v. The Collector of Central Excise, Shillong***" (referred supra) nor "***Kanailal Bera v. Union of India***" (referred supra) will help the petitioner in order to contend that no enquiry de-novo could have been directed by disciplinary authority.

Disciplinary authority while directing de-novo enquiry required oral enquiry to be conducted again. A charge-sheet is a part of departmental enquiry but oral enquiry commences after issue of a charge-sheet. It is well established that disciplinary proceedings commences with service of charge-sheet but it does not constitute integral part of oral enquiry inasmuch as oral enquiry would commence after service of charge-sheet and reply given by delinquent employee, or in a given case, when Enquiry Officer is appointed, the charge-sheet may be issued by Enquiry Officer himself and thereafter oral hearing may be proceeded.

Thus, in view of the law declared above, *de novo* enquiry can be ordered when manifest errors are committed in completion of enquiry by the enquiry officer earlier. So far as, the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 are concerned, Rule 21 (1) only permits remitting the matter to the inquiry officer for further enquiry and report after recording reasons for such remittance. No *de novo* enquiry is contemplated under Rule 21 though procedural lapses were found in the report submitted by the inquiry officer finding the petitioner not guilty. At best, in the absence of any rule, which permits disciplinary authority to order *de novo* enquiry, normal procedure to be followed is under sub-rule (1) of Rule 21 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991. However, in "***Kanailal Bera v. Union of India***" (referred supra), though rule did not specifically permits ordering *de novo* enquiry, when there is substantial non-compliance of procedure under the Civil Services (Classification, Control and Appeal) Rules, the disciplinary authority may order *de novo* enquiry. Therefore, ordering *de novo* enquiry by the disciplinary authority, though the petitioner was found not guilty in the report submitted by respondent No.3 in C.No.11/PR/2005, dated 07.01.2014, cannot be held to be illegal or irregular, as such de novo enquiry was ordered due to commission of serious procedural lapses by earlier enquiry officer.

One of the grounds raised by the learned counsel for the petitioner before this Court is that the alleged incident of misconduct took place in 2005, thereafter, report was submitted by the enquiry officer i.e. Circle Inspector of Police without following procedure, and

the was set aside by the Andhra Pradesh Administrative Tribunal in O.A.No.5538 of 2005 on 22.02.2007, thereafter W.P.No.13798 of 2007 was filed by the State before the Common High Court of Andhra Pradesh, while the writ petition is pending, on the representation of the petitioner, respondent No.2 ordered reinstatement of the petitioner. Accordingly, the petitioner was reinstated, but within one week thereafter, he was kept under suspension by respondent No.3 by order dated 27.06.2008. Thereafter, a charge memo was issued and respondent No.3 was appointed as inquiry officer, who in turn submitted report on 07.01.2014 finding the petitioner not guilty. As there were incurable defects in the procedural aspects while conducting enquiry by respondent No.3, *de novo* enquiry was ordered, it is sustainable as per my findings in the earlier paragraphs. The proceedings were delayed for one reason or other, but that itself is not a ground to quash the proceedings ordering *de novo* enquiry.

Learned counsel for the petitioner relied on "***SBI v. Arvind K. Shukla***" (referred supra), wherein the Apex Court considered the delay in conclusion of disciplinary proceedings. In the said judgment, the Apex Court referred to a 3-Judge Bench decision of the Apex Court in the case of "***Punjab National Bank v. Kunj Behari Misra***" (referred supra), which the petitioner relied on. The Bench in the aforesaid case relied upon the earlier decision in "***The Institute of Chartered Accountants of India v. L.K. Ratna***[13]" as well as the "***Ram Kishan v. Union of India***[14]" and came to hold that the view

[13] [1987]164ITR1(SC)
[14] (1996)ILLJ982SC

expressed in "***State Bank of India v. S. S. Koshal***[15]" and "***State of Rajasthan v. M.C.Saxena***[16]" cases do not lay down the correct law. But on examining the decision in the case of "***Union Bank of India v. Vishwa Mohan***[17]" the Apex Court is of the view that the question which arose for consideration in the "***Punjab National Bank v. Kunj Behari Misra***" (referred supra) was not really there before the Court and held as follows:

> "The Court was examining the question as to what would be the effect, if copy of the enquiry report is not furnished to the delinquent employee. The Court obviously relied upon the Constitution Bench decision of this Court in "Managing Director, ECIL v. B. Karunakar (1994)ILLJ162SC" . In the absence of any contrary decision of a 3-Judge Bench decision on the question in issue, we are bound by the earlier Judgment of this Court in Punjab National Bank case, necessarily, therefore we do not find any merit in this appeal, which stands dismissed."
>
> (Emphasis supplied)

The first issue raised in the above judgment is the delay in conclusion of enquiry, the same was accepted by the Court.

In "***Prem Nath Bali v. Registrar, High Court of Delhi***[18]" the Apex Court considered the undue delay in conclusion of disciplinary proceedings, held as follows:

> "29. One cannot dispute in this case that the suspension period was unduly long. We also find that the delay in completion of the departmental proceedings was not wholly attributable to the Appellant but it was equally attributable to the Respondents as well. Due to such unreasonable delay, the Appellant naturally suffered a lot because he and his family had to survive only on suspension allowance for a long period of 9 years.
>
> 30. We are constrained to observe as to why the departmental proceeding, which involved only one charge and that too uncomplicated, have taken more than 9 years to conclude the departmental inquiry. No

[15] 1994 AIR SCW 2901
[16] [1998]1SCR1090
[17] (1998)ILLJ1217SC
[18] AIR 2016 SC 101

justification was forthcoming from the Respondents' side to explain the undue delay in completion of the departmental inquiry except to throw blame on the Appellant's conduct which we feel, was not fully justified.

31. Time and again, this Court has emphasized that it is the duty of the employer to ensure that the departmental inquiry initiated against the delinquent employee is concluded within the shortest possible time by taking priority measures. In cases where the delinquent is placed under suspension during the pendency of such inquiry then it becomes all the more imperative for the employer to ensure that the inquiry is concluded in the shortest possible time to avoid any inconvenience, loss and prejudice to the rights of the delinquent employee.

32. As a matter of experience, we often notice that after completion of the inquiry, the issue involved therein does not come to an end because if the findings of the inquiry proceedings have gone against the delinquent employee, he invariably pursues the issue in Court to ventilate his grievance, which again consumes time for its final conclusion.

33. Keeping these factors in mind, we are of the considered opinion that every employer (whether State or private) must make sincere endeavor to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of inquiry but not more than a year.

34. Now coming to the facts of the case in hand, we find that the Respondent has fixed the Appellant's pension after excluding the period of suspension (9 years and 26 days). In other words, the Respondents while calculating the qualifying service of the Appellant for determining his pension did not take into account the period of suspension from 06.02.1990 to 01.03.1999.

35. Having regard to the totality of the facts and the circumstances, which are taken note of supra, we are of the view that the period of suspension should have been taken into account by the Respondents for determining the Appellant's pension and we accordingly do so.”

(Emphasis supplied)

The departmental enquiry shall be concluded as expeditiously as possible so as to do complete justice both to the Government Servant and to the victim of such misconduct.

In "***Chairman, Life Insurance Corporation of India and others v. M. Masilamani***[19]", it was alleged that there were irregularities and deviations in construction of house by the employee and the housing loan was obtained, upon non-disclosure of the facts. Charge sheet was drawn on 06.01.1998; employee filed his reply; not satisfied with the reply, domestic enquiry was ordered. Based on the report of the enquiry, penalty of reduction in the basic pay was imposed on the employee. The appeal and review were rejected. Challenging the order of punishment, employee preferred writ petition. Writ petition was allowed observing that witnesses were examined in violation of the statutory rules and principles of natural justice; that employee was not accorded adequate opportunity to cross examine the witnesses; that appellate authority failed to observe that there were procedural violations by the enquiry officer as well as by the disciplinary authority. It was also held that mere concurrence by the appellate authority with the findings recorded by the enquiry officer and without adequate reasoning cannot be said to amount to adequate application of judicial mind by the appellate authority. The appeal filed by the corporation was dismissed. Aggrieved thereby, on behalf of LIC appeal was preferred before the Supreme Court.

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[19] (2013) 6 SCC 530

Dealing with various contentions, the Supreme Court observed as under:

> "18. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is dehors the limits of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show-cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by the court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question have to be examined taking into consideration the gravity/magnitude of charges involved therein. The essence of the matter is that the court must take into consideration all relevant facts and to balance and weigh the same, so as to determine if it is in fact in the interest of clean and honest administration, that the judicial proceedings are allowed to be terminated only on the ground of delay in their conclusion. (Vide State of UP. v. Brahm Daft Sharma [(1987) 2 SCC 179], State of M.P. v. Bani Singh [AIR 1990 SC 1308], Union of India v. Ashok Kacker [1995 Supp (1) SCC 180].
>
> (Emphasis supplied)

Learned counsel for the petitioner relied on "***State of Punjab and others v. Chaman Lal Goyal"*** (referred supra), it was a case of inordinate delay in initiation and conclusion of disciplinary proceedings and denial of promotion on the ground that disciplinary proceedings are pending. The High Court quashed the memo of charges. This issue was considered in detail. The Supreme Court held that the right of speedy trial is fundamental right and the same principle would apply to the domestic enquiries also. The Supreme Court further held that whenever there is delay in conclusion of the disciplinary proceedings, the Court has to resort to 'balancing test or balancing process' and determine in each case whether the right of speedy trial is denied and to pass appropriate orders. Having regard to the delay in conclusion, though the Court declined to set aside the

disciplinary proceedings, at the same time, directed consideration for promotion without reference to pending disciplinary proceedings. In the said case, there was delay of more than five years in initiation of the disciplinary proceedings.

Dealing with delay in initiation and conclusion of disciplinary proceedings and promotion, Supreme Court held as under:

> "12. Applying the balancing process, we are of the opinion that the quashing of charges and of the order appointing enquiry officer was not warranted in the facts and circumstances of the case. It is more appropriate and in the interest of justice as well as in the interest of administration that the enquiry which had proceeded to a large extent be allowed to be completed. ***At the same time, it is directed that the respondent should be considered forthwith for promotion without reference to and without taking into consideration the charges or the pendency of the said enquiry and if he is found fit for promotion, he should be promoted immediately. This direction is made in the particular facts and circumstances of the case though we are aware that the rules and practice normally followed in such cases may be different.*** The promotion so made, if any, pending the enquiry shall, however, be subject to review after the conclusion of the enquiry and in the light of the findings in the enquiry. It is also directed that the enquiry against the respondent shall be concluded within eight months from today. The respondent shall cooperate in concluding the enquiry. It is obvious that if the respondent does not so cooperate, it shall be open to the enquiry officer to proceed ex parte. If the enquiry is not concluded and final orders are not passed within the aforesaid period, the enquiry shall be deemed to have been dropped."
>
> (Emphasis supplied)

In "***State of A.P. v. N. Radhakishan***" (referred supra), Charge memo was issued to the employee on 31.07.1995 on incidents relating to years 1978, 1979 and 1984. The Tribunal quashed the disciplinary proceedings on the ground of delay. It appears three different memos were issued, but only memo dated 31.07.1995 was quashed on the ground of delay and memos dated

27.10.1995 and 01.06.1996 were not disturbed but Tribunal directed consideration for promotion without reference to the said memos. Supreme Court upheld quashing of memo dated 31.07.1995 and directed the State to consider the claim of the employee for promotion ignoring the memo dated 27.10.1995 and 01.06.1996. It is appropriate to extract paragraph 19 of the decision.

> "19. 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."
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> (Emphasis supplied)

In "***P.V. Mahadevan v. M.D., T.N. Housing Board***[20]", again the very issue of delay in initiation/conclusion of disciplinary proceedings has come up for consideration. Charge memo was issued in the year 2000 alleging irregularities in issuing the sale deed in the year 1990 i.e., delay of ten years. Supreme Court noticed that there was no acceptable explanation for the inordinate delay in initiating disciplinary proceedings by relying on the decision of Supreme Court in "State of M.P. v. Bani Singh" [1990 Supp SCC 738] and "State of A.P. v. N. Radhakishan" (referred supra), and quashed the charge memo.

The Supreme Court held that, "the protracted disciplinary enquiry against a Government employee issued, therefore, be avoided not only in the interests of Government employee, but in the public interest and also in the interest of inspiring confidence in the minds of the Government employees".

In "***Government of Andhra Pradesh and others v. V. Appala Swamy***[21]" the High Court quashed the charge memo on the ground of delay in initiation and conclusion. Supreme Court observed that, merely on the ground of delay in concluding the proceedings, the disciplinary proceedings should not be quashed and set aside the decision of the High Court, and held as under:

"12. So far as the question of delay in concluding the departmental proceedings as against a delinquent officer is concerned, in our opinion, no hard-and-fast rule can be laid down there for. Each case must be determined on its own facts. The

[20] (2005) 6 SCC 636
[21] (2007) 14 SCC 49

principles upon which a proceeding can be directed to be quashed on the ground of delay are:

> (1) where by reason of the delay, the employer condoned the lapses on the part of the employee;
>
> (2) where the delay caused prejudice to the employee.
>
> Such a case of prejudice, however, is to be made out by the employee before the inquiry officer."

In "***Secretary, Forest Department and others v. Abdur Rasul Chowdhury***[22]", the Supreme Court observed that delay in concluding the disciplinary proceedings is not fatal to the proceedings. It depends on the facts and circumstances of a case. The unexplained protracted delay on the part of the employer may be one of the circumstances in not permitting the employer to continue with the disciplinary enquiry proceedings. At the same time, if the delay is explained satisfactorily then proceedings should be permitted to continue.

So far as the question of delay in conducting departmental proceedings as against the delinquent officer is concerned, following the same principles, the learned Single Judge of Common High Court of Andhra Pradesh in "***K.Samuel John v. The Commissioner of Labour, State of Telangana***[23]" concluded that on the ground of delay, disciplinary proceedings cannot be quashed.

In view of the principles laid down in the above judgments, delay in initiation of the proceedings or delay in conclusion of the proceedings alone is not a ground to quash the disciplinary

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[22] (2009) 7 SCC 305
[23] 2017(4)ALD436

proceedings, if reason for delay is explained satisfactorily. Hence, I find no ground to quash the impugned proceedings. In the "***State of Punjab v. Chamanlal Goyal***" (referred supra) though the Court recorded certain findings, at the end, disciplinary authority was directed to complete disciplinary proceedings within the time frame. Therefore, by applying the principles laid down in "***State of Punjab v. Chamanlal Goyal***" (referred supra), respondents are directed to pass final order considering the enquiry report dated 07.01.2014 and the written representation of the petitioner dated 10.09.2014 within two (2) weeks from today. In case, no final order is passed within the stipulated time, the respondents are directed to consider the candidature of the petitioner for promotion to the next higher cadre keeping in view the G.O.Ms.No.257 General Administration (SER-C) Department dated 10.06.1999.

With the above directions, the writ petition is disposed of. No costs.

Consequently, miscellaneous applications pending if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

27.01.2021

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