

GAHC010010132012



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WP(C)/5809/2012

MANORANJAN NARZARY
S/O LATE LALIT NARZARY, R/O MATHURA NAGAR, P.O. and P.S. DISPUR,
GHY-6, DIST- KAMRUP, ASSAM

VERSUS

THE UNION OF INDIA and 2 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, IN THE
MINISTRY OF YOUTH WELFARE and SPORTS. SHASTRI BHAWAN, NEW
DELHI-1

2:THE UDNER SECRETARY TO THE GOVT. OF INDIA NSS
MINISTRY OF YOUTH WELFARE and SPORTS. SHASTRI BHAWAN
NEW DELHI-1

3:THE YOUTH OFFICER
REGIONAL CENTRE
NATIONAL SERVICE SCHEME
GUWAHATI
ASSAM MATHURA NAGAR UNDER P.O. and P.S. DISPUR
GHY-6
DIST- KAMRUP
ASSA

Advocate for the Petitioner : MR. G CHOUDHURY

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Judgment & Order(Oral)

Date : 10.06.2024

Heard Mr. G. Choudhury, learned counsel for the petitioner. Also heard Mr. S. S. Roy, learned CGC representing the respondents.

2. The petitioner in the present proceeding has assailed a Memorandum dated 17.08.2012, by which a Disciplinary proceeding came to be instituted against him in the matter on the ground that such institution was with long unexplained delay and after the criminal case instituted in the matter against the petitioner was dismissed by the Trial Court acquitting the petitioner from the charge as framed against him therein.

3. The petitioner has projected in the writ petition that he was initially appointed as a LDC cum Cashier in the Regional Centre, National Service Scheme, Guwahati. Thereafter, while the petitioner was working as a Youth Assistant (YA)-II in the said establishment, the Youth Officer lodged an FIR on 18.03.1997 to the extent that a Cheque bearing No. 131923 was stolen from the office and was encashed with the State Bank of India, Dispur Branch, Guwahati on 01.03.1997 for an amount of Rs. 2,50,000/- (Two lakhs fifty thousand). Accordingly, it was prayed that an investigation into the matter is to be made. On receipt of the said FIR, the Police registered the Dispur Police Case No. 250/1997, under Section 380 of the IPC. It is seen that the petitioner was placed under arrest in connection with the said

Police case and accordingly, he came to be placed under suspension vide a notification dated 21.04.1997. The Police on completion of the investigation in Dispur P. S. Case No. 250/1997, proceeded to submit a Charge-sheet in the matter and thereafter, the Trial Court, on examination of the evidences on record, proceeded to consider the same and vide the Judgment dated 15.12.2000 hold that the prosecution has failed to link the Cheque involved with the accused persons, which include the petitioner herein and accordingly, the accused persons including the petitioner herein were held to be not guilty of the charges so leveled against them in the said criminal case.

4. In pursuance to the said Judgment dated 15.12.2000, the respondent authorities vide an order dated 18.04.2001, proceeded to revoke the order of suspension of the petitioner. Thereafter, the competent authority having approved the regularization of the period of suspension of the petitioner, vide an office order dated 17.06.2018, the period of suspension undergone by the petitioner w.e.f. 18.03.1997 to 18.04.2001 was directed to be treated as on duty and the petitioner was directed to be eligible for full pay and allowances for the said period subject to deduction of the subsistence allowances already drawn by him. The matter having rested at that stage, it is the contention of the petitioner that after around 12 years from the Judgment pronounced in the criminal case and after around 15 years after detection of the Cheque No. 131923 missing from the office, the respondent authorities proceeded to issue a Memorandum dated 03/17.08.2012 instituting a Disciplinary proceeding against the petitioner. The petitioner being aggrieved by the issuance of the said Memorandum,

dated 3/17.08.2018 had instituted the present proceeding presenting a challenge to the same.

5. The learned counsel for the petitioner by referring to the sequence of events taking place in the matter has contended that the respondent authorities were in the know-how of the Cheque involved to be missing from the office and its encashment for an amount of Rs. 2,50,000/-, way back in the month of March, 1997 and accordingly, a criminal case was so instituted in the matter wherein the petitioner herein was also entangled and resultantly, he was placed under detention leading to an order of suspension against him. The learned counsel for the petitioner has submitted that after the criminal case was so disposed of vide a Judgment dated 15.12.2000 holding the accused therein, including the petitioner to be not guilty of the charges as leveled against him and acquitting them from the said case, the respondent authorities without bringing on record any explanation in the matter have after around 12 years from the date of disposal of the said criminal case, proceeded to institute a Disciplinary proceeding against the petitioner vide issuance of the Memorandum 3/17.08.2012.

6. Mr. G. Choudhury, learned counsel for the petitioner submits that the petitioner in no way is connected with either the missing of the Cheque involved and/or its encashment and the said aspects of the matter were known to the respondent authorities. The learned counsel further submits that the facts as involved in the criminal case as well as in the Disciplinary

proceedings initiated against the petitioner in the year 2012 are based on the same facts and accordingly, the criminal case having resulted in the acquittal of the petitioner herein, the authorities are not entitled to initiate a Disciplinary proceeding basing on the same facts and that too after a long delay of around 15 years from the date of detection of the Cheque in question missing from the office and its encashment.

7. Mr. Choudhury, learned counsel by taking this Court to the order of the Trial Court in the criminal case has submitted that the points for determination as culled out by the Trial Court in the matter was as to whether the accused persons therein including the petitioner had cheated the State Bank of India and or, whether the accused persons, including the petitioner herein had committed a theft of a Cheque bearing No. 131923..and facilitated encashment of the same for an amount of Rs. 2,50,000/-. Mr. Choudhury, learned counsel has submitted that the same having not been established by the prosecution in the trial so held, the Trial Court had proceeded vide the Judgment dated 13.12.2000 to acquit the accused therein, including the petitioner herein from the charges so leveled against him. Mr. Choudhury, learned counsel has further submitted that the Disciplinary proceeding as initiated in the year 2012 being related to the same facts is not permissible and requires an interference of this Court.

8. The learned CGC, appearing for the respondent Union of India by referring to the affidavit filed in the matter has contended that the Cheque in question was in the custody of the petitioner and accordingly, he having

negligently dealt with the same and the same having resulted in a loss occasioning to the establishment, the initiation of Disciplinary proceeding in the matter ought not to be interfered by this Court. It was further stated that the initiation of a Disciplinary proceeding was delayed on account of the fact that the main case file was not traceable and also because of the frequent transfer of the officers and employees of the section concerned, resulting in the matter not being processed in the manner required at the relevant point of time. It was contended that the files being reconstructed and the documents collected from different sources, the Memorandum, initiating a Disciplinary proceeding against the petitioner came to be issued in the year 2012.

9. It was further contended that the initiation of the Disciplinary proceeding against the petitioner was also based on the advice given in the matter by the Central Vigilance Commission as no action was taken in the matter against the petitioner herein. With regard to the Disciplinary proceeding being based on the same facts as involved in the criminal case instituted against the petitioner, it was contended that in the present Disciplinary proceeding, it is the negligence of the petitioner in maintaining the Cheque kept in his custody which is in issue and the same has got no nexus with the allegation as leveled against the petitioner in the criminal case instituted against him.

10. I have heard the learned counsel for the parties and also perused the materials available on record.

11. At the outset, it is to be noted that this Court vide an order dated 06.12.2012 while issuing notice in the matter and considering the issues arising was pleased to direct as an interim measure that the Disciplinary proceeding as instituted against the petitioner vide the Memorandum dated 03/17.08.2012 be not proceeded with. The said interim order continues to hold the field as on date.

12. It is not in dispute that a Cheque bearing No. 131923 was missing from the office and it was later, on reconciliation of the Bank statement found to have been encashed from the SBI, Dispur Branch for an amount of Rs. 2,50,000/- on 01.03.1997. On detection of the said anomaly, the Youth Officer i.e. the respondent no. 3 proceeded to file an FIR before the Police of the Dispur Police Station, leading to registration of Dispur P.S. Case No. 250/1997. The petitioner was placed under detention in connection with the said police case on 18.03.1997 till 01.04.1997. On being placed under detention, the respondent authorities vide an order dated 21.04.1997, proceeded to place the petitioner under suspension w.e.f. 18.03.1997. The police on completion of the investigation as involved had submitted a Charge-sheet in the matter and the case was proceeded for trial. On conclusion of the trial and basing on the materials coming on record, the Trial Court vide Judgment dated 15.12.2000, proceeded to hold that the prosecution has failed to bring on record convincing evidence to proof the guilt of the accused persons including the petitioner herein. Basing on the said conclusion, the accused persons in the said case, including the petitioner herein were held to be not guilty for the charges so framed

against them in the said case and accordingly, they were acquitted from the same. Thereafter, it is seen that the respondent authorities revoked the suspension of the petitioner vide issuance of an order dated 18.04.2021. On the order of his suspension being revoked, the respondent authorities by invoking the power under FR 54 'B' (3), proceeded to regularize the period of suspension of the petitioner w.e.f. 18.03.1997 to 18.04.2001 as on duty and he was further held to be entitled to receive full pay and allowances subject to the deduction of the subsistence allowance already released to him.

13. The provisions of FR 54 B (3) being relevant, the same is extracted herein below:-

"(3)" Where an authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended."

14. It is seen that on the conclusion of the criminal trial against the petitioner and his reinstatement in service as of 18.04.2001, on revocation of his order of suspension, the respondent authorities even as of 17.06.2008, while deciding to treat the period of suspension undergone by the petitioner "as on duty" with all the consequential benefits had not contemplated to proceed against the petitioner by way of instituting a Disciplinary proceeding against him in the matter.

15. However, after 4 years from the date of regularization of his period of suspension and after around 15 years from the date of detection of the missing of the Cheque in question and its unauthorized encashment in the year 1997, the respondent authorities proceeded to issue the Memorandum dated 03/17.08.2012, leveling against the petitioner three Article of charges. The three Article of charges being relevant is extracted herein below:-

Article-I

“That during the aforesaid period and while functioning in the aforesaid office the said Shri. Manoranjan Narzary, should have exercised necessary checks on a daily basis to see that the leaves taken off from the chequebook have been issued for authorised purposes only and that the amount drawn are correct and in accordance with the authorisation given by the competent authority.

Article-II

That the operation of the chequebook and its safe custody is the personal responsibility of the officer/official authorised to operate the bank account. All the chequebooks are to be kept under lock and key in the personal custody of Shri Narzary. Thus, Shri Narzary, being cashier of the office did not ensure proper safe keeping of the pre-signed blank cheques and was very casual in handling the financial instruments.

Article-III

That during the aforesaid period and while functioning in the aforesaid office the said Shri. Manoranjan Narzary being cashier of the office utilized/encashed 3 cheques under instructions from Head of Office (Cheque No. 131920 dt. 1.2.97 for 20,927/-, Cheque No. 131921 dt. 5.2.97 for ₹5,000/- and Cheque No. 131922 dt. 12.2.97 for ₹40,000/-), Shri Uttaray who was posted to Kolkata came back to

Guwahati on 12.03.1997 for handing over the charge of DDO. During this process, the monetary transactions of the office were checked. An anomaly was noticed and after going through the bank balance vis-à-vis the cashbook of the office it was noticed from the Bank Statement, that there was a withdrawal of 22.5 lakhs against Cheque no. 131923 dated 1.3.1997. This cheque was one of the pre-signed blank cheques. However, he failed to return the unused pre-signed cheques to the Head of Office for safe keeping, which resulted in loss to the Govt. exchequer amounting to 2.5 lakhs."

16. A perusal of the allegations now leveled against the petitioner would bring to the forefront two aspects of the matter; that it pertains to the loss of the Cheque in question, which had so occasioned in the year 1997 and detection of the same to have been encashed in the month of March, 1997. The allegations involved in the proceeding now initiated against the petitioner being so available and to the knowledge of the respondent authorities since March, 1997, it is not disclosed as to why a Disciplinary proceeding was not instituted against the petitioner. Further, the loss of Cheque being a fact involved also in the criminal case and the same after trial having been held to not established against the petitioner herein by the Trial Court vide its Judgment dated 15.12.2000, it is to be examined as to whether the Disciplinary proceeding as instituted against the petitioner vide the Memorandum dated 03.08.2012 can now required to be permitted to be continued with.

17. At the first instance, this Court would examine as to whether on conclusion of the said criminal trial in the matter against the petitioner herein, the Disciplinary proceeding based on the same facts is permissible

to be instituted against the petitioner.

18. The Hon'ble Supreme Court in the case of *G.M. Tank Vs. State of Gujarat & Ors.*, reported in (2006) 5 SCC 446, on the above noted issue in Paragraphs no. 30 & 31 have recorded the following conclusions:-

"30. The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles there from. The Investigating Officer Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

31. *In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony case will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."*

19. Applying the conclusions of the Hon'ble Supreme Court in the case of *G.M. Tank (supra)* to the facts involved in the present case, it is found that the proceedings in the criminal case as well as in the Disciplinary proceeding initiated against the petitioner in the year 2012 are based on the same facts and accordingly, the Trial Court in the criminal case having considered the matter in details and having concluded that there exist no material to prove the guilt of the accused person in the matter, including the petitioner herein and having held the petitioner to be not guilty of the charge so framed against him, this Court is of the considered view that the Disciplinary proceedings so initiated vide the Memorandum dated 03/17.08.2012 being so based on the same facts as involved in the already decided criminal case, the Disciplinary proceeding cannot be permitted to be continued.

20. At this stage, the contentions as raised by the learned counsel for the

petitioner to the effect that the Disciplinary proceeding initiated in the year 2012 against the petitioner herein cannot be permitted to continue on account of the delay so occasioning in the matter, is now to be considered.

21. Admittedly, the detection of the Cheque in question being missing and its unauthorized encashment was detected by the respondent authorities, way back in the month of March, 1997 and a criminal case was so instituted in the matter by them. The materials as available for drawal of Disciplinary proceedings against the petitioner including the fact that the same was kept in his custody was to the knowledge of the respondent authorities as way back as of March, 1997. However, it is seen that while the criminal case was permitted to proceed with, the petitioner on his arrest therein was also placed under suspension vide an order dated 21.04.1997, which after conclusion of the criminal proceeding instituted against him came to be revoked vide an order dated 18.04.2001. It also needs to be noted that the respondent authorities without any conditions attached had proceeded vide an order dated 17.06.2008 to regularize the suspension period of the petitioner as on duty with all consequential benefits. As of 2008 also, it is not seen that the respondent authorities contemplated to draw up a Disciplinary proceeding against the petitioner.

22. In the affidavits so filed by the respondents, it has been projected that the delay that had occasioned in instituting the proceedings against the petitioner was on account of the fact that the main case file was not traceable and also on account of the fact that the officers involved, who

were required to process the matter were being frequently transferred. The said contentions as made in the matter is not supported by any document to show that the case file was in fact missing and the petitioner was responsible for the same. The facts as involved in the matter reveal that as on March, 1997 itself, the respondent authorities had the materials requisite for instituting a Disciplinary proceeding against the petitioner herein; however, they refrained from instituting any such proceeding and after around 15 years from the date of missing of the Cheque in question and its encashment was detected, proceeded to issue the Memorandum dated 03/17.08.2012, instituting a Disciplinary proceeding against the petitioner. The explanation for the delay as put forth in the affidavit in absence of any materials being brought on record to justify the same and also connect the petitioner to the same, does not inspire confidence of this Court.

23. The Hon'ble Supreme Court in the case of *P.V. Mahadevan Vs. M.D. Tamil Nadu Housing Board*, reported in (2005) 6 SCC 636, had on noticing the inordinate delay of 10 years in initiating Disciplinary enquiry against the delinquent and in absence of any convincing explanation given in the matter by the respondent authorities, the Hon'ble Supreme Court had held that allowing the Disciplinary proceeding to proceed at this distant point of time would be prejudicial to the appellant therein. The Hon'ble Supreme Court, basing on the said conclusion had proceeded to quash the initiation of departmental proceeding against the delinquent therein on the ground of inordinate delay in initiating such Disciplinary proceeding.

24. In view of the above position, it is clear that in the present matter there is undoubtedly a delay of 15 years in instituting the Disciplinary proceeding against the petitioner. The question which arises is, whether the said delay warrants the interference by this Court with the Memorandum so issued in this connection.

25. It is settled position of law that Disciplinary proceeding must be so conducted soon after the misconduct so committed or, soon after the discovering the irregularities involved. The Disciplinary proceedings cannot be permitted to be initiated after lapse of a considerable period of time inasmuch as it could not be fair to the delinquent involved. It is also to be noticed that such delay also makes the task of proving the charge difficult and is thus, not also in the interest of the administration. Delayed initiation of proceedings is bound to give room for allegation of bias, malafide and misuse of power. If the delay is too long and is unexplained, the Court may well interfere and quash the charges. But, however, what is to be noticed is how long a delay is too long, always depends upon the facts of a given case. In such a situation, it is to be noted that whether such delayed institution of a Disciplinary proceeding against the delinquent would cause a prejudice to him in defending himself and if the answer is in positive, such proceeding requires to be interdicted by the Court.

26. On perusal of the charges now leveled against the petitioner, this Court is of the considered view that the same in addition to be based on the criminal case concluded against the petitioner is also not a severe

charge mandating initiation of such proceedings against the petitioner after a lapse of around 15 years from the date of detection of missing of the Cheque in question and its unauthorized encashment. Further, mere negligence cannot be deemed to be a misconduct.

27. Accordingly, considering that the respondent authorities have not brought on record any cogent reasons towards explaining the delay of around 15 years so occasioning in institution of the proceedings against the petitioner and the reasoning as advanced in the matter to the extent that the main case file was not traceable and also the frequent transfer of the officers and employees involved, who were required to process the matter, resulted in delay in instituting the Disciplinary proceedings against the petitioner as already held herein above, does not inspire the confidence of this Court, inasmuch as, such contention has been so made without even alleging that the missing case file was on account of steps taken in the matter by the petitioner herein.

28. In view of the conclusions as reached herein above, the petitioner also having been found to have superannuated from his services during the pendency of this proceeding, this Court is of the considered view that the Memorandum dated 03/17.08.2012, cannot be sustained on the ground of the delay in issuance of the same as well as the charges leveled against the petitioner therein being already decided in the criminal case so instituted against him, this Court proceeds to set aside the Memorandum dated 03/17.08.2012.

29. In view of the interference made in the Memorandum dated 03/17.08.2012, the writ petition stands allowed.

JUDGE

Comparing Assistant