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IN THE HIGH COURT OF DELHI AT NEW DELHI

WP(C) No. 1811/1999

Hari Chand Petitioner
! through: Mr.Ravi Gupta, Advocate.

VERSUS

\$ Food Corporation of India &
Anr. Respondent
^ through: Mr.K.K.Sud, ASG with
Mr.Jagat Singh and
Mr.Neeraj Jain, Advocates.

RESERVED ON: 05-04-2004

% DATE OF DECISION: 12 -04-2004

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.**

For orders, see WP(C) No.618/1999.


PRADEEP NANDRAJOG, J.

April 12, 2004
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2. WRITE IN BLOCK CAPITAL LETTERS. 4. DO NOT Staple the Sheet.

IN THE HIGH COURT OF DELHI AT NEW DELHI

Case Type

Number

Year

EW

1811

OF

1999

IN THE MATTER OF:-

NAME ARI CHAND

..... PLAINTIFF /
PETITIONER

VS

NAME FCI

DEFENDANT /
RESPONDENT

1 (a) Case Category

501 . 07

(b) Case Category

2 Date of Imposed order

03 / 12 / 1996

2a. Case Type / Number

OF

3 (a) Similar Matter
Case Type / Number

EW

618

OF

1999

4 Statute Involved

Criminal Matters - Code 100 to 105

FIR No.

FIR Date

Police Station

Service Matters - Code 500 to 505

Department / Authority /
Organization etc.

FCI

Insurance Company

Moters Accident Claim Matters - Code 600

Lawyers Code

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! through: Mr.Gulab Chandra, Advocate.

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: **PRADEEP NANDRAJOG, J.**

1. Factual setting and legal issues which arise being common to the two captioned petitions, they are being disposed of by a common judgment and order.

2. At the hearing, counsel for the petitioner restricted the challenge on two grounds:-

- a) Delay in issuing the charge-sheet;
- b) Since the petitioner is facing a criminal prosecution on the same set of facts as constitutes the basis of statement of imputation in the charge-sheet, disciplinary proceedings could not be simultaneously conducted.

3. As noted in the order dated 5.4.2004, when arguments were heard and judgment was reserved, liberty was sought by the petitioners that if the writ petition fails on the two grounds urged, petitioners be permitted to challenge the enquiry report by way of a separate petition. Said liberty

was granted.

4. Petitioner in WP(C) No.618/1999 joined service under FCI in the year 1969 in Grade AG-III. Petitioner was posted as Cashier in Delhi in the year 1973. In the year 1976, he earned promotion to Grade AG-I and was posted in the Accounts Department in the CPF Division of the Corporation at the head office. Petitioner in WP(C) No.1811/1999 joined service as a Junior Clerk under the Government of India on 24.4.1963. On 18.8.66, he was promoted as Senior Clerk. On 31.1.1968 his services were transferred to FCI. He earned his promotions from time to time. On 2.5.1989, he was given charge of CPF Section XI at New Delhi.

5. On 5.4.1991, CBI conducted a raid in the CPF Accounts Department on the basis of some source information. Investigation was conducted by CBI. A large volume of record had to be scrutinized.

6. After a prolonged investigation, on 21.8.1996, CBI informed FCI that there was sufficient material to prosecute the petitioners. Sanction for prosecution of the petitioners

urged that the alleged misconduct, if at all committed by the petitioners, saw the light of the day in the month of April, 1991. The charge-sheet issued on 3.12.1996 was highly belated and was thus required to be quashed. It was urged that no explanation is forthcoming as to what was the department doing for 5 years and 8 months after the alleged misconduct came to its notice. As noted above, second submission was that on the same set of facts, departmental proceedings could not be initiated till criminal proceedings were pending.

11. When should the courts bring to an end disciplinary proceedings on ground of delay at the threshold by quashing the charge-sheet, has received judicial attention from time to time. In the decision reported as AIR 1990 SC 1308, State of M.P. Vs. Bani Singh, where there was a delay of 12 years in initiating departmental proceedings and no satisfactory explanation for the inordinate delay forthcoming on record, it was held that it would be unfit to permit the department to proceed at such a belated stage, charge-sheet was quashed. In the decision reported as 1994

(2) SCC 746, Registrar of Co-operative Societies, Madras Vs. F.X. Fernando, charge-sheet was served after a delay of about 5 years. Repelling the challenge to the charge-sheet on ground of delay being fatal, Supreme Court noted that Vigilance and Anti-Corruption Department took time to investigate and, therefore, it could not be said that the disciplinary authority slept over the matter. In the decision reported as 1995 (2) SCC 570, State of Punjab Vs. Chaman Lal Goyal, considering the issue as to what was the effect of delay vis-a-vis disciplinary proceedings, Supreme Court held:-

"Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. 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 thus not also in the interest of administration of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, male fides 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 facts 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 weight 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."

Thereafter, in paragraph 12 of the judgment, it was concluded that:-

"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 ordered be allowed to be completed."

12. In the decision reported (1995) 3 SCC 134 Deputy Registrar, Co-operative Societies, Faizabad Vs. Sachindra Nath Pandey & Ors., the Hon'ble Supreme Court held:-

"On a perusal of charges, we find that the charges are very serious. We are, therefore, not inclined to close the matter only on the ground that about 16 years have elapsed

since the date of commencement of disciplinary proceedings, more particularly when the appellant alone cannot be held responsible for this delay."

13. In the decision reported as (1995) Supl. (1) SCC 180 Union of India Vs. Kacker, while reversing the order of the Central Administrative Tribunal quashing the inquiry proceedings, the Hon'ble Supreme Court observed that since the delinquent had not submitted his reply to the charge-sheet, it was not the stage at which the Tribunal ought to have entertained the petition for quashing the charge-sheet. The appropriate course for the delinquent to adopt was to file his reply to the charge-sheet and invite the decision of the disciplinary authority thereon.

14. In the decision reported as (1995) 6 SCC 749, B.C. Chaturvedi Vs. UOI and Others, in Para 11, the Hon'ble Supreme Court held as under:-

"The next question is whether the delay in initiating disciplinary proceeding is an unfair procedure depriving the livelihood of a public servant offending Article 14 of 21 of the Constitution. Each case depends upon its own facts. In a case of the type on hand, it is difficult to have evidence of disproportionate pecuniary resources or assets or property.

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The public servant, during his tenure, may not be known to be in possession of disproportionate assets or pecuniary resource. He may hold either himself or through somebody on his behalf, property or pecuniary resources. To connect the officer with the resources or assets is a tardy journey, as the government has to do a lot to collect necessary material in this regard. In normal circumstances, an investigation would be undertaken by the police under the Code of Criminal Procedure, 1973 to collect and collate the entire evidence establishing the essential links between the public servant and the property or pecuniary resources. Snap of any link may prove fatal to the whole exercise. Care and dexterity are necessary. Delay thereby necessarily entails. Therefore, delay by itself is not fatal in these type of cases. It is seen that the CBI had investigated and recommended that the evidence was not strong enough for successful prosecution of the appellant under Section 5(1)(e) of the Act. It had, however, recommended to take disciplinary action. No doubt, much time elapsed in taking necessary decision at different levels. So, the delay by itself cannot be regarded to have violated Article 14 or 21 of the Constitution."

15. In (1996) 3 SCC 157, Secretary To Government Prohibition & Excise Department Vo. L.Srinivasan, it was held:

"In the nature of the charge, it would take a long time to detect embezzlement and fabrication of false record which should be

done in secrecy. In quashing the suspension and the charges on the ground of delay in initiation of the disciplinary proceedings, the Administrative Tribunal has committed grossest error in its exercise of the judicial review."

I may note that the charge related to offence of embezzlement and fabrication of false records. As noted in the judgment, this is done in secrecy and by its very nature, takes time to be detected. It was a case where detection took time. It was not a case of delay post detection.

16. In the judgment reported as (1996) 3 SCC 364, State Bank of Patiala Vs. S.K. Sharma, the Hon'ble Supreme Court held:-

"Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice."

17. In the decision reported as (1997) 4 SCC 255 Secretary to Government Vs. K. Munniappan dealing with a case where as a result of concerted and confabulated action on the part of the employees, an embezzlement of funds of the Government, to the tune of Rs.7.82 crores took

place and the delinquent at the relevant time was functioning as the Divisional Accountant, the Hon'ble Supreme Court observed:-

"It is true that there is a time gap, but in a case involving embezzlement of public funds by several persons in a concerted way, a thread bare investigation is required to be undertaken by the investigating officer and, therefore, in the nature of the situation, it would be difficult to find fault with the authorities for not completing investigation expeditiously."

18. In (1998) 4 SCC 154 State of Andhra Pradesh Vs. N. Radhakishan in Para 19, the Hon'ble Supreme Court held as under:-

"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 determined 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

"In our opinion the legal position, when an action is brought seeking quashing of a charge-sheet on grounds of issuance of the charge-sheet or grounds of inordinate delay in completion of the disciplinary inquiry may be crystallised as under:-

(i) Unless the statutory rules prescribe a period of limitation for initiating disciplinary proceedings, there is no period of limitation for initiating the disciplinary proceedings;

(ii) Since delay in initiating disciplinary proceedings or concluding the same are likely to cause prejudice to the charged employee, courts would be entitled to intervene and grant appropriate relief where an action is brought;

(iii) If bone fide and reasonable explanation for delay is brought on record by the disciplinary authority, in the absence of any special equity, the court would not intervene in the matter;

(iv) While considering these factors the court has to consider that speedy trial is a part of the facet of a fair procedure to which every delinquent is entitled to vis-a-vis the handicaps which the department may be suffering in the initiation of the proceedings. Balancing all the factors, it has to be considered whether prejudice to the defence on account of delay is made out and the delay is fatal, in the sense, that the delinquent is unable to effectively defend himself on account of delay.

(v) In considering the factual matrix, the court would ordinarily lean against preventing trial of the delinquent who is facing grave charges on the mere ground of delay. Quashing would not be ordered solely because of lapse of time between the date of commission of the offence and the date of service of the charge-sheet unless, of course, the right of defence is found to be denied as a consequences of delay.

(vi) It is for the delinquent officer to show the prejudice caused or deprivation of fair trial because of the delay.

(vii) The sword of damocles cannot be allowed to be kept hanging over the head of an employee and every employee is entitled to claim that the disciplinary inquiry should be completed against him within a reasonable time. Speedy trial is undoubtedly a part of reasonableness in every disciplinary inquiry.

In determination of this, the first question which would have to be answered is whether on facts, is there a delay? If yes, how long? Was the delay inevitable having regards to the nature of the charge? Was the delay beyond the control of the employer? Whether the employee willfully contributed to the delay or was responsible for the delay? Has prejudice caused to the defence?

All questions would have to be answered. In a nutshell, the court would have to weigh all the factors, both for and against the employee and come to the conclusion whether in the facts and

circumstances prejudice has been shown as having been occasioned to the employee, justifying quashing of the charge-sheet either on account of delay in issuance of the charge-sheet or on account of delay in completion of the disciplinary proceedings."

20. In light of the legal position noted above, it is to be noted that the mis-conduct was first noted in April, 1991 when CBI conducted the raid. CBI investigation continued till August, 1996. The charge-sheet would show that there was fabrication of record, falsification of account and a cover up action. Individual accounts of employees had to be scrutinized. Bills, vouchers, sanction orders etc. had to be tallied and account by account tally had to be done before the extent of the exact defalcation committed could be ascertained. Investigation was completed by August, 1996 and the charge-sheet was issued within less than 4 months thereafter. It cannot, therefore, be said that there is inordinate delay in issuing the charge-sheet. In any case, merely stating that there is delay in issuing the charge-sheet is not enough. In what manner prejudice has been caused by delay, needs also to be stated. Reason as to why a

belated charge-sheet has to be quashed is that with the passage of time, evidence disappears. It causes prejudice to the employee to defend himself. No plea has been raised in the writ petition that record is not available. No plea has been raised in the writ petition as to in what manner delay has caused prejudice to the petitioners. I accordingly reject the challenge to the charge-sheet on the ground of delay. In the facts of the case, there is no delay in issuing the charge-sheet.

21. Law on the subject pertaining to the second ground of challenge may be noted.

22. Criminal and departmental proceedings operate in their own distinct and mutually exclusive jurisdictional areas. In a disciplinary proceeding, the area of investigation covers the field of (a) enforcement of discipline, (b) level of integrity, and (c) Misconduct pertaining to devotion to duty. In a criminal proceedings the area of investigation covers the culpability from the point of view of criminal law. Standard of proof in the two proceedings is entirely different. In the former it is '*preponderance of the*

probabilities', in the latter, it is 'proof beyond reasonable doubt'.

23. In AIR 1960 S.C.806 Delhi Cloth & General Mills Ltd. Vs Kushal Bhan, it was held:-

" (3) It is true that very often employers stay enquiries pending the decision of the criminal trial courts and that is fair; but we cannot say that principles of natural justice require that an employer must wait for the decision at least of the criminal trial court before taking action against an employee. In Shri Bimal Kanta Mukherjee v. Messrs Newsman's printing Works, 1956 Lab AC 188, this was the view taken by the Labour Appellate Tribunal. We may, however, add that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced."

This decision was followed in AIR 1965 SC 195 Tata Oil Mills Co.Ltd. vs. Workmen. Applied again with approval in AIR 1969 SC 30 Jang Bahadur Singh vs. Baij Nath Tiwari.

24. The common ratio of the three decisions aforesaid is that "there is no bar to simultaneously proceed with departmental proceedings and a criminal case, but

where the case is of a grave nature or involves question of law or fact which are not simple, it would be advisable to await the decision of the criminal court'. Basis for this being that 'defence of the employee in the criminal case may not be prejudiced.'

25. In the judgement of the Hon'ble Supreme Court reported as AIR 1997 SC 13, State of Rajasthan vs. B.K.Meena commenting on the ground 'the defence of the employee in the criminal case may not be prejudiced' for not proceeding with departmental proceedings it was qualified in para 14 as under:-

" 14. It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary

proceedings is "that the defence of the employee in the criminal case may not be prejudiced." This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability' or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case..... One of the contending consideration is that the disciplinary enquiry cannot be - and should not be delayed unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality in spite of repeated advise and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good Government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the

administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely. i.e. for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest."

26. Taking note of the aforesaid judgement, in the decision reported as AIR 1999 SC 1416 Capt.M.Paul Anthony vs. Bharat Gold Mines Ltd. the Hon'ble Supreme Court held:-

" 20. This decision has gone two steps further to the earlier decisions by providing:
1. The 'advisability', 'desirability' or propriety' of staying the departmental proceedings " go in to the scales while judging the advisability or desirability of staying the disciplinary proceedings" merely as one of the factors which cannot be considered in isolation of other circumstances of the case. But the charges in the criminal case must, in any case, be of a grave and serious nature involving complicated questions of fact and law.

2. One of the contending considerations would be that the disciplinary enquiry cannot- and should not be- delayed unduly. If the criminal case is unduly delayed, that may itself be a good ground for going ahead with the disciplinary enquiry even though the disciplinary proceedings were held over at an earlier stage. It would not be in the interests of administration that persons accused of serious misdemeanour should be continued in office indefinitely awaiting the result of criminal proceedings."

27. Law on the subject was summarised in para 22 of the judgement in Capt.M.Paul Anthony's case (supra) as under:-

"22. The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

for offences under Section 120-B, 420, 467, 471 IPC and Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988 was sought.

7. Disciplinary departmental proceedings were initiated and charge-sheet was served upon the petitioners on 3.12.1996.

8. In a nutshell, allegation against the petitioner was that in connivance with Sh.V.P. Hasija, the then Assistant Manager (CPF), who had since expired, they had entered into a criminal conspiracy and had siphoned of Rs.60.36 lakhs from the Provident Fund Accounts of different persons by manipulating and forging record. It was alleged that the beneficiaries did not receive the complete Provident Fund and the same was illegally taken away by the petitioners and Sh.V.P. Hasija, who opened fictitious bank accounts.

9. Substance of the FIR registered by the CBI and the challan filed by the CBI in the criminal court is substantially the same.

10. Counsel for the petitioners, during arguments, as noted above, confined the challenge on two grounds. It was

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 fact 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."

19. A division bench of this court, considered the judgments on the issue. In its judgment delivered on 29th October, 2003 in LPA No.39/1999, Delhi Development Authority Vs. D.P. Bambah & Anr., it was held:-

to stay a departmental proceedings if there is identity of facts and complicated questions of law and facts arise. This is only a leaning factor in favour of staying the disciplinary proceeding. It is not conclusive. Departmental proceedings cannot be unduly delayed and if it is noted that a criminal case is not proceeding, notwithstanding the complicated nature of questions of facts and law involved, disciplinary proceedings must be allowed to continue.

29. During arguments, counsel conceded that at the criminal trial, apart from framing charges, there was hardly any progress. It was stated at the Bar that only one prosecution witness has been examined in the criminal proceedings.

30. A perusal of the charge-sheet would reveal that hardly any complicated questions of law or fact arise for adjudication. Magnitude of the scam may be large but the *modus operandi* as per the statement of allegations is precise and surgical. Sanctions were obtained from the competent authority to pay amount to the subscriber. Either lesser amount was paid to the subscriber by forging

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another forwarding letter and siphoning away the balance amount or by replacing the names of the beneficiaries. Thereafter, cover up action was done by forging requisition slip, interpolating the record etc. Since this was repeatedly done in case after case would not mean that complicated question of law or of fact arises. Be that as it may, CBI filed the challan in the criminal court in the year 1996 and 8 years have gone by without the criminal trial coming to an end. This itself is sufficient to repel the challenge to the simultaneous maintenance of disciplinary proceedings and criminal prosecution.

31. I find no merit in the writ petitions. The same are dismissed with costs against the petitioners in the sum of Rs.10,000/- each, to be paid to FCI.


PRADEEP NANDRAJOG, J.

April 12, 2004
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