

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No.13894/2009**

% **Date of Decision: 23.12.2009**

UNION OF INDIA & ORS. Petitioners

Through: Mr. Ansul with Mr. Anand Nandan,
Advocate.

Versus

SHRI RAM KISHAN Respondent

Through: Mr. A.K. Behera with Mr. Manjeet
Singh, Advocate for the respondent.

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

VIPIN SANGHI, J.

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1. This writ petition under Article 226 of the Constitution of India is directed against the order dated 20.01.2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in a batch of original applications including O.A. No. 1253/2008 titled "Sh. Ram Kishan Vs. Union of India and Others". The Tribunal by the impugned order allowed the said batch of original applications and quashed the

memorandum of chargesheet issued to the original applicants including the respondent herein on the ground of inordinate delay in the holding of the enquiry.

2. The respondent was appointed as a 'Khalasi' under Northern Railway against an existing vacancy on 28.05.1991. In the year 1994, i.e. after 14 years of employment, a chargesheet was issued to the respondent on 22.03.1994 wherein it was alleged that the respondent had obtained employment as a sub. S&T Khalasi on the basis of a bogus casual service certificate for the period 15.11.1985 to 18.03.1986 i.e. 123 days. It was alleged that the respondent had not worked during the said period and that the certificate had been obtained by the respondent in connivance with Shri Jhelum Singh, Sr. Clerk under PW1/JHL and Shri Rattan Kumar, MCC. It was alleged that the respondent had submitted the said bogus certificate along with the application on a proforma to the Senior DPO/NDLS claiming to have rendered 123 days of service. In the list of documents relied upon by the petitioner in support of the charge, the following documents were mentioned :

"1. Copy of statement of Shri. N.R. Sharma, PW1-II/JHL rendered on 14.08.1991 in three pages.

2. Copy of statement of Sh. Nand L, PWI/ROK recorded on 12.08.1991 and 14.08.1991 in seven pages.

3. Copy of statement of Shri Rattan Kumar, MCC under AEN/JHI recorded on 13.06.1991 in three pages.

4. Copy of statement of Shri Jhelum Singh, Sr. Clerk under PW1/JHL, recorded on 13.06.1991 in two pages, 13.07.1991 in one page, 08.05.1992 and 13.05.1992 in six pages.

5. Affidavit dated _____ submitted by _____

6. Casual labour service certificate submitted by Sh. Ram Kishan, S/o Shri Bhoop Singh showing 123 number of days as C.L. service under PW1/Spl/JH1.

7. Copy of Letter No. 726-5/9/3765/P-3 dated 28.05.1990."

3. The respondent in response to the said charge sheet required production of the documents at serial nos. 5,6 and 7 of the list of documents apart from a legible copy of the statement of Sh. Jhelum Singh. Thereafter there was no progress in the matter.

4. We may notice that the other applicants before the Tribunal were similarly chargesheeted. Some of the chargesheeted employees filed O.A. No. 1357/2007 and 1413/2007 which were disposed off on 19.09.2007. The Tribunal issued a direction to the petitioners to finalize the disciplinary proceedings in respect of the applicants before it, by passing the final orders within a period of three months from the date of receipt of copy of the said orders.

5. However, despite the said direction issued by the Tribunal no development had taken place. Consequently, inter alia, the

respondent preferred the aforesaid Original Application. In the original application filed by the respondent being O.A. No. 1253/2008, to seek a restraint against the holding of the enquiry in respect of the charge sheet dated 22.03.1994 after 18 years, no reply was filed by the petitioner. The Tribunal has noted that only one reply had been filed in O.A. No. 1254/2008 preferred by one Sh. Jagbir Singh and in none of the other O.As. disposed off by the impugned order, replies were filed by the petitioner herein. In the reply filed in O.A. No. 1254/2008 it was disclosed by the petitioner that the records pertaining to the disciplinary proceedings had been misplaced and despite best efforts could not be traced.

6. The petitioner contended before the Tribunal that mere delay in holding the enquiry could not be a reason in itself to quash the enquiry proceedings. The delay should also result in some prejudice being caused to the delinquent. The respondent, on the other hand, relied on various decisions to submit that, in the facts of the case, delay had caused prejudice and that the enquiry should be quashed.

7. The Tribunal took note of the decision of the Supreme Court in ***State of Andhra Pradesh Vs. N. RadhaKishan*** (1998) 4 SCC 154 wherein it had been held as follows:

“It is settled law that delay by itself cannot be a ground to quash the disciplinary

proceedings. While considering such issues the court is required to consider the nature of charges, its complexity, the reason for delay and whether the same is unexplainable. Further if it can be shown that the delinquent official himself is to be blamed for the delay, it may not be held to cause prejudice in self defence."

8. The Tribunal took into account the fact that more than 14 years had elapsed since the issuance of the charge sheet. Despite the judicial direction issued on 19.07.2007, no progress in the enquiry had been made. The petitioner had not filed reply in O.As. including that filed by the respondent and in the only reply filed in O.A. No. 1254/2008 the petitioner had disclosed that the record had been misplaced. How it was misplaced and what steps were taken to recover the record etc. had not been disclosed. It was not even alleged that the respondent was responsible for the record going missing. The Tribunal also took note of the fact that records, such as Muster Rolls or Attendance Register pertaining to the relevant office for the relevant period, did not even appear to have been cross checked. Pertinently, these were not the documents relied upon by the petitioner. Considering these aspects, the Tribunal has quashed the enquiry proceedings, inter alia, initiated against the respondent.

9. Before us, learned counsel for the petitioner has submitted that the petitioner had been able to obtain photocopies of the relevant relied upon documents. It is stated that these documents would be used to reconstruct the record, and on that basis, the

departmental proceedings would be completed. He has also sought to place reliance on the Supreme Court decision in **Government of Andhra Pradesh and Ors. Vs. V. Appala Swamy** (2007) 14 SCC 49 to submit that the Tribunal could not have quashed the enquiry proceedings merely on the ground of delay.

10. The Supreme Court in the aforesaid decision in **V. Appala Swamy** (supra) has held that no hard and fast rule can be laid down in such matters. Each case must be examined on its own facts. The 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.”

11. A case of prejudice, however, is to be made out by the employee before the Enquiry Officer.

12. Having considered the submissions of learned counsel for the petitioner, perused the impugned record and the order, and after taking into account the judgment of the Supreme Court in **V. Appala Swamy** (supra) we are of the view that there is absolutely no error in the impugned order passed by the Tribunal and the Tribunal has rightly quashed the enquiry proceedings against the respondent. We have already enumerated the documents on which the petitioner has

sought to place reliance in support of the charge. It is pertinent to note that while the documents mentioned in the list of documents, or at least some of them, were not supplied to the respondent or the copies which were supplied were illegible, the most relevant record i.e. the Muster Roll or the Attendance Registers of the relevant department, where the respondent claims to have served during the period 15.11.1985 to 18.03.1986, had not even been relied upon, nor produced by the petitioner. In the absence of the said record the charge against the respondent, in any event, may not be sustainable. The petitioners have not even disclosed as to how, suddenly, after the impugned order of the Tribunal, the photocopies of the relied upon documents have been located. Pertinently, even now the original record does not appear to be available. When and why these photocopies were made, is also not stated. Consequently, we find absolutely no merit in this petition and dismiss the same.

VIPIN SANGHI, J.

DECEMBER 23, 2009

ANIL KUMAR, J.

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