REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.9303 OF 2013

UNION OF INDIA THR. SECRETARY & ORS. APPELLANT(S)

VERSUS

UDAI BHAN SINGH RESPONDENT(S)

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J.

1. This appeal arises from a judgment of a Division Bench of the High Court of Judicature at Allahabad dated 1 May 2012. While allowing the writ petition filed by the respondent raising a challenge to an order of the Central Administrative Tribunal[1], the High Court came to the conclusion that (i) there was a violation of the principles of natural justice in that the appellants failed to provide relevant documents to the respondent during the course of the departmental inquiry; and (ii) the inquiry was vitiated by delay, following an earlier order of remand of the Tribunal. On these two counts, the High Court interfered with the punishment of dismissal imposed on the respondent and directed reinstatement with full back wages and consequential benefits. The Union of India is in appeal.

1 **"Tribunal"**

2. On 13 December 1978, the respondent was appointed as a Postal Assistant in the Head Post Office at Allahabad. A charge-sheet was issued to him on 31 August 1988. There were four articles of charge pertaining to the conduct of the respondent during the period from 15 July 1985 until 10 February 1986 when he was functioning as a Miscellaneous P.A. at the Allahabad Head Office.

3. The charge of misconduct relates to the appellant authorising payments of commission under the National Savings Certificate Scheme to agents who were found to be fake. Article-I of the charges was in the following terms:

> "Shri Udai Bhan Singh while working as Misc. Asstt. Allahabad HO during the period from 15.07.1985 to 10.02.1986 did not verify the commission bills submitted by NSC Agents properly and did not make entries of payment in ledger of NS Agents. He also did not watch the following particularised irregular and forged NSC commission bills to fake agents. He also managed to prepare money receipts on the number of fake agents and managed their payment. This resulted fraudulent payments of NS commission to the tune of Rs.6,65,693.60 to the following fake agents"

The names of 79 fake agents to whom fraudulent payments of commission were allegedly made were thereafter elucidated. Article II of the charges was in the following terms:

> "That the said Shri Udai Bhan Singh while functioning as Misc. PA Allahabad HO during the period from 15.07.1985 to

10.02.1986 managed to prepare three following particularized money paid receipts in duplicate and managed their payment at Allahabad HO as well as at Allahabad City PO on the following date by using the two copy of each."

A tabulated chart below the charge contained details. Article III was as follows:

"That the said Shri Udai Bhan Singh while functioning as Misc. Asstt. Allahabad RO during the period from 15.07.1985 to 10.02.1986 did not submit prepare schedule of commission paid to authorised agents for sale of NSCs and did not submit the schedule with the voucher and bills to the Audit office though Account branch of Allahabad HO and did not tally the amount of NS commission with those of HO summary and HO cash book in r/o commission paid to the fake authorized NS Agents shown in Article No.1 and put the department into a loss of Rs.6,65,63.60. By his above acts he contravened the provisions of rule 543(10) (b) of P&T Man. Vol.VI Part II."

4. An inquiry officer was appointed to inquire into the charges. The inquiry officer submitted a report dated 18 July 1990. The inquiry officer found that the first charge was proved to the following extent:

"Shri Udai Bhan Singh is not fully proved but it is proved to the extent that he had helped to put in loss to the department by violating the rules for tallying the account putting his initial in token of checking against every payment of commission bill, submission of vouchers and schedule to audit office even though he was fully aware with the rules."

The second head of charge was held to be partially proved while the third charge was held to be proved.

5. Upon receipt of the inquiry report, the disciplinary authority awarded a penalty on 31 August 1990 of a reduction of pay for a period of five years with consequential loss of annual increments. The respondent filed an appeal before the appellate authority. The appellate authority issued a notice of enhancement of punishment. The appellate authority by its order dated 9 March 1992 came to the conclusion that the charge against the respondent was proved and that it warranted his dismissal from service.

6. Aggrieved by the order of the appellate authority, the respondent instituted proceedings before the Central Administrative Tribunal at the Allahabad Bench. By a judgment and order dated 3 July 1992, the Tribunal set aside both the original order dated 31 August 1990 as well as the order of the appellate authority dated 9 March 1992. The proceedings were restored back to the disciplinary authority with liberty to issue a notice to show cause to the respondent and, after allowing him an opportunity of submitting a representation to arrive at a fresh decision.

7. After the order of the Tribunal, a notice to show cause was issued to the respondent by the disciplinary authority on 12 September 2000. The disciplinary authority, by an order dated 2 July 200, agreed with the inquiry officer that the first and second articles of charge were partly proved while the third charge was fully established. The disciplinary authority came to the conclusion that the charges which were proved against the respondent would warrant dismissal from service. An appeal against the order of the disciplinary authority was dismissed by the appellate authority on 28 November 2008.

8. On 18 May 2009, the Central Administrative Tribunal dismissed OA No.151 of 2009 instituted by the respondent. That led to the institution of proceedings before the High Court of Judicature at Allahabad. By its impugned judgment and order, the Division Bench of the High Court interfered with the order of the disciplinary authority and came to the conclusion that there was a violation of the principles of natural justice. The High Court held that there was a failure on the part of the inquiry officer to provide documents to the respondent during the course of the disciplinary inquiry. The High Court was also of the view that a notice was issued by the disciplinary authority, following the first order of the Tribunal, nearly eight years thereafter and there was a violation of "Rule 27 of the Central Administrative Tribunal, Rules regarding execution of its orders". On these grounds, the High Court set aside the order of penalty imposed on the respondent and directed his reinstatement with full back wages and consequential benefits.

9. Ms.Kiran Suri, learned Senior Counsel appearing on behalf of the appellants submitted that the High Court was in error in interfering with the exercise of the disciplinary jurisdiction on both the grounds which have weighed with it. Insofar as the non production of documents is concerned, it was urged on behalf of the appellants that the ground has been correctly assessed both by the appellate authority and by the Tribunal. Ms.Suri submitted that there has been a non application of mind by the High Court. The provisions of Rule 27 of the Central Administrative Tribunal Rules have no bearing on the issue. That apart, it is urged that it was found

by the appellate authority and by the Tribunal that the charges of misconduct were established independently. The respondent failed to indicate before the High Court which specific documents ought to have been supplied or the prejudice, if any, that was caused. Moreover, it has emerged during the course of the proceedings that the receipts were not available for inspection since it was the respondent who was in charge of maintaining them at the relevant time. On the aspect of delay it is urged that this is not a case where there was any delay in the initiation of the disciplinary inquiry. Ms.Suri submitted that the Tribunal had in the first instance remanded the proceedings to the disciplinary authority and the respondent was reinstated in service during the pendency of the further proceedings. It was urged that delay by itself in the present case will not result in the invalidation of the disciplinary proceedings; delay has to be assessed in each case having regard to the prejudice which is caused to the charge-sheeted employee. In the present case, it is submitted, evidence had already been recorded prior to the remand, the documentary evidence was filed and the only ground on which the Tribunal found fault with the disciplinary authority was that it had furnished no reasons for differing with the conclusion which was arrived at by the inquiry officer. Ms.Suri submitted that after the Tribunal rendered its decision in the first instance, the proceedings were at large before the disciplinary authority. On remand, the disciplinary authority agreed with the findings of the inquiry officer, but it came to the conclusion that having regard to the misconduct which was proved, the penalty of dismissal from service was warranted. Hence, it is submitted that no prejudice has been caused to the respondent as a result of the delay which was occasioned on

account of the issuance of a show cause notice and in the conclusion of the proceedings after the order of the Tribunal. In this context, Ms.Suri relied upon decisions of this Court to which we will turn during the course of this judgment.

10. On the other hand, it has been urged on behalf of the respondent by Mr.S.D. Singh, learned counsel that (i) the respondent specifically raised the ground of non production of documents during the course of the disciplinary proceedings; (ii) the charge against the respondent did not indicate any defalcation of funds or loss caused to the department; (iii) after the order of the Tribunal in 1992, a notice to show cause was issued to him eight years later and it was only after a further delay of eight years that a final order was passed by the disciplinary authority. On these grounds, it was submitted that it was not open to the appellant to proceed against the respondent after a lapse of time. Moreover, it was urged that in the absence of documents being made available to the respondent, he was handicapped in preparation of his defence and there was a breach of the principles of natural justice.

11. The rival submissions fall for consideration.

12. The charges against the respondent were essentially based on the failure to verify the bills which had been submitted by so-called NSC agents and the failure to make entries of payment in the ledger. There was a charge that the respondent did not supervise the process as a result of which payments were made to NSC agents who were found to be fake. Receipts were found to be prepared in the names of fake agents as a result

of which payment of NSC commission in the amount of Rs.6.65 lakhs was wrongfully made. The inquiry officer in the course of the disciplinary inquiry found the first and second heads of charge to be partially proved while the third charge was held to be fully proved. The disciplinary authority, however, came to the conclusion that all the three charges were fully proved and, in consequence, directed a penalty of reduction in scale for a period of five years with a consequential loss of increments. There was evidently a failure on the part of the disciplinary authority to give a notice to the charge-sheeted employee before differing with the findings of the inquiry officer on the first and second heads of charge which had been held to be partially proved. When the respondent filed an appeal, the appellate authority issued a notice of enhancement which eventually resulted in an order of dismissal from service. In this backdrop, the Tribunal by its judgment dated 3 July 1992 set aside the order of the appellate authority as well as the order of the disciplinary authority and remanded the proceedings back to the disciplinary authority. The disciplinary authority was directed to issue a fresh notice to the respondent before it came to a conclusion in the matter. It was following the order of the Tribunal that a notice was issued to the respondent. While issuing its notice on 22 September 2000, the disciplinary authority did not propose to differ with the findings of the inquiry officer on the charges of misconduct. The disciplinary authority held that the first and second articles of charge were partially proved and the third was fully proved in terms of the findings of the inquiry officer. However, the disciplinary authority came to the conclusion that the charges which were proved against the respondent were serious enough to warrant a punishment of dismissal. Following the order of

the Tribunal in the first instance, the disciplinary authority was at liberty to take a fresh view of the matter after issuing a notice to show cause and furnishing an opportunity of making a representation to the respondent. This, the disciplinary authority did by issuing a notice which furnished to the respondent an opportunity to submit his response.

13. This leads us to the issue as to whether there was a breach of the principles of natural justice. The submission found favour with the High Court in the impugned judgment. The question as to whether there was a failure of natural justice was dealt with by the disciplinary authority. Thereafter, the issue was considered by the appellate authority. The Tribunal, while dealing with the submission, came to the conclusion that the respondent was attempting to take undue advantage of the non availability of cash receipts but the payment could be verified from other records and documents which were maintained in the Head Post Office. In other words, according to the Tribunal, the non availability of a particular document on the record did not make any difference to the charge of misconduct which was established by other materials which were available on the record. The High Court merely observed that the respondent was not provided the documents which were relied upon and that there was an error apparent on the face of the record in the order of the Tribunal. The High Court did not consider which documents were not supplied, the relevance of those documents to the charge of misconduct and the prejudice, if any, that resulted to the respondent by the non availability of the relevant documents.. In fact, in the pleadings of the respondent, the plea that there was a failure

to supply documents was vague and there was no reference to which specific document ought to have been made available. Without analyzing this aspect of the case, the High Court interfered with the disciplinary jurisdiction of the appellant on a vague plea that documents were not supplied. The High Court ought to have enquired into the question of prejudice. There is also substance in the submission which has been urged by Ms.Suri, learned Senior Counsel with regard to the erroneous reference to Rule 27 of the Central Administrative Tribunal Rules. Rule 27 has no bearing at all on the controversy in the present case. Section 27 of the Administrative Tribunals Act 1985 deals with execution of the orders of the Tribunal.

14. The aspect of delay must be considered in the context of the admitted facts. The inquiry had been concluded by the inquiry officer. Evidence was recorded during the course of the inquiry. The order of the disciplinary authority holding that all the three charges had been proved was without issuing a notice to the respondent on the reasons for disagreement with the report of the inquiry officer. The appellate authority enhanced the punishment without indicating adequate reasons. The Tribunal restored the proceedings back to the disciplinary authority to enable the appellants to issue a fresh notice to show cause to the respondent and to arrive at a conclusion on the nature of the misconduct, if any, after furnishing an opportunity to the respondent of making a representation. Neither was the inquiry required to be held afresh nor was fresh evidence to be recorded. After the order of the tribunal, a notice to show cause was issued to the

respondent after eight years. But it must equally be noted that the respondent had been reinstated following the order of the tribunal setting aside the disciplinary action, pending the conclusion of the process by the disciplinary authority. Hence, the delay on the part of the disciplinary authority in issuing a show cause notice in the first instance and in passing a final order thereafter is not a matter of any prejudice to the respondent.

15. Now, it is well settled that the aspect of delay has to be dealt with on the facts of each case. In the decision of this Court in **State of Madhya Pradesh** vs. **Bani Singh and Another**[2], the irregularities, which were the subject matter of an inquiry related to 1975-1977. Hence this Court held that it was not reasonable that the department had taken more than twelve years to initiate a disciplinary proceeding despite being aware of the irregularities. That was a case where there was an unexplained delay in the initiation of disciplinary proceedings. Subsequently, the position of law has been clarified by the decisions of this Court in **State of Punjab and Others** vs. **Chaman Lal Goyal**[3], **State of A.P.** vs. **N.Radhakishan**[4] and **Secretary, Forest Department and Others** vs. **Abdur Rasul Chowdhury**[5]**.** In **Government of Andhra Pradesh and Others** vs. **V.Appala Swamy**[6]**,** this Court after referring to the earlier decisions held thus:

> "12.. So far as the question of delay in concluding the departmental proceedings as against a delinquent officer is

2 **1990 (Supp) SCC 738**
3 **(1995) 2 SCC 570**
4 **(1998) 4 SCC 154**
5**(2009) 7 SCC 305**
6**(2007) 14 SCC 49**

concerned, in our opinion, no hard-and-fast rule can be laid down therefor. Each case must be determined 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.

Such a case of prejudice, however, is to be made out by the employee before the inquiry officer.

13. This aspect of the matter is now squarely covered by the decisions of this Court in **Secy. to Govt., Prohibition & Excise Deptt.** v. **L. Srinivisan;**[7] **P.D.Agrawal** v. **State Bank of India**[8]**; Registrar, Coop. Societies** v. **Sachindra Nath Pandey**[9]."

16. In the present case, the appellants have not condoned the lapse on the part of the respondent. The delay was not a matter of prejudice.

17. For the above reasons, we have come to the conclusion that the High Court was in error in interfering with the exercise of the disciplinary jurisdiction of the appellants. The misconduct was proved. The penalty which has been imposed cannot be held to be disproportionate or arbitrary. The High Court was in error in setting aside the punishment and ordering reinstatement with back wages and continuity of service.

18. Accordingly, we allow the appeal and set aside the impugned judgment and order of the High Court dated 1 May 2012. We affirm the judgment of the Central Administrative Tribunal dismissing the Original

7 **(1996) 3 SCC 157**
8 **(2006) 8 SCC 776**
9 **(1995) 3 SCC 134**

Application filed by the respondent and uphold the finding and penalty imposed in the disciplinary proceedings. Since the respondent was reinstated following the first order of the Tribunal dated 3 July 1992, no recovery shall be made from him for the period for which he has worked and during which salary has been paid to him. There shall be no order as to costs.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Ajay Rastogi]

New Delhi;
November 21, 2019

ITEM NO.101 COURT NO.8 SECTION III-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s).9303/2013

UNION OF INDIA THR. SECRETARY & ORS. APPELLANT(S)

VERSUS

UDAI BHAN SINGH RESPONDENT(S)

(IA No.4/2017-APPL. FOR DIRECTION and IA No.5/2017-EXEMPTION FROM FILING O.T.)

Date : 21-11-2019 This appeal was called on for hearing today.

CORAM :
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE AJAY RASTOGI

For Appellant(s)
Ms.Kiran Suri, Sr.Adv.
Mr.Merusagar Samantaray, Adv.
Mr.Sachin Sharma, Adv.
Ms.Smita Choudhury, Adv.
Mr.Gurmeet Singh Makker, Adv.
Ms.Aishwarya Kumar, Adv.

For Respondent(s)
Mr.S.D.Singh, Adv.
Ms.Bharti Tyagi, Adv.
Mrs.Surabhi Shukla, Adv.
Mr.Ram Kripal Singh, Adv.
Mr.Dhiraj Kumar, Adv.
Mr.Jitender Singh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed reportable Judgment.

Pending applications, if any, stand disposed of.

(Ashok Raj Singh) (Saroj Kumari Gaur)
Court Master Court Master
(Signed reportable Judgment is placed in the file)