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

Date of Decision:- 16.05.2024

\+ LPA 390/2024, CM APPL. 29261/2024 -Delay 20 days. & CM APPL. 29262/2024 –Stay & CM APPL. 29263/2024 -Ex.

NTPC LIMITED ..... Appellant

Through: Mr. Puneet Aneja, Mr. Manmohan Singh Narula and Mr. Amit Yadav, Advs.

versus

R S TYAGI ..... Respondent

Through: Mr. Shanker Raju, Mr. Nilansh Gaur and Ms Himantika Saini Gaur, Advs.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI
HON'BLE MR. JUSTICE SAURABH BANERJEE

REKHA PALLI, J (ORAL)

1. The present appeal under Clause X of the Letters Patent seeks to assail the judgment dated 12.03.2024 passed by the learned Single Judge in W.P.(C) 7666/2007. Vide the impugned order, the learned Single Judge has allowed the writ petition preferred by the respondent/writ petitioner and has, consequently, quashed the penalty order dated 28.02.2005 as also the appellate order dated 27.04.2006 whereby the penalty of withholding of promotion for one year from the date when due, imposed on the respondent, was affirmed.
2. At the outset, we may first note the brief factual matrix as emerging

from the record.

3. A contract for 'Jungle Clearance and Construction of Trunk Drains' at district Mirzapur in Uttar Pradesh was awarded by the appellant to one M/s PK Ramiah and Co. (hereinafter referred to as "the Contractor) in the year 1982. Upon execution of the contract, the contractor raised certain bills which were scrutinized by supervisors and engineers including the respondent, who had joined the services of the appellant in 1984 as an Engineer (Civil). It is the case of the appellant that when the bills were examined by the audit branch, it transpired that the respondent had approved bills raised by the contractor seeking inflated amounts. Consequently, a three member committee was constituted by the respondents which furnished its report on 30.09.1989 opining that the rate at which revetment work was done could not be considered as the rebated rate, which was wrongly applied for making higher payment to the Contractor.
4. Based on this report, the appellants started effecting recovery of the excess amount paid to the Contractor, which led to the Contractor invoking arbitration. Upon conclusion of the arbitration proceedings, an award was rendered on 19.05.2000 and it is about two years thereafter that the appellants examined the award from the perspective of deliberate negligence on the part of the employees including the respondent for preparing of the Contractors bills by wrong interpretation of the contractual terms. The appellant then referred the matter to Central Vigilance Commission for its 1st stage advice, which it is stated to have received in October 2003 whereafter the 2nd stage advice was sought and was received in February 2004. It is then that

the appellant issued the charge memorandum to the respondent on 23.03.2004.

5. Though the respondent submitted a detailed reply wherein besides denying the charges he stated that since he had not been provided with copies of the relevant documents, he was unable to submit an effective reply at this belated stage. The respondent's reply was rejected and vide order dated 28.02.2005, a penalty of withholding of promotion for one year was imposed on him, which penalty was affirmed by the appellate authority vide its order dated 27.04.2006. Being aggrieved, the respondent approached this Court by way of a writ petition, which has been allowed under the impugned order primarily on the ground that initiation of disciplinary proceedings against the respondent, after an inordinate delay of about 17 years was not permissible as the cause of action had became stale**.**
6. Before us, learned counsel for the appellant vehemently submits that since the appellant has imposed only a minor penalty on the respondent, the learned Single Judge ought to have considered the *bona fide* of the appellant who was waiting for the arbitral tribunal to render its award before initiating any disciplinary proceedings against the respondent. He contends that the delay in initiation of disciplinary proceedings against the respondent was duly explained and the charge sheet was issued immediately after receiving the CVC's 2nd stage advice, which aspect was overlooked by the Learned Single Judge. He therefore prays that the impugned order be set aside.
7. On the other hand, Mr. Shanker Raju, learned counsel for the respondent, who appears on advance notice, supports the impugned

order and submits that the respondent has been harassed for the last many years only on account of his *bona fide* act which even as per the appellant pertained to the year 1985 i.e., almost 39 years ago. The purported misconduct of the respondent, if any, even as per the appellant pertains to the period between 1985 and 1987 and was noticed by the appellant in 1987 itself. He, therefore, contends that at this belated stage when the appellant was not supplied with the copies of all relevant documents, he was not able to give any effective reply. He, therefore prays that the appeal be dismissed.

8. Having considered the submissions of learned counsel for the appellant and perused the record, we may begin by noting the relevant extracts of the impugned judgment as contained in paragraph nos. 27,28,30 and 31 thereof. The same read as under:

> *"27. Having regard to the fact that the lapse, if any, occurred between the years 1985 through till 1987 and not steps were taken by the respondent in between till the time the Arbitrator had passed his award on 19.05.2000, there is no explanation as to why no action or any disciplinary action was initiated in the interregnum. Infact it goes without saying that during this interregnum, the company would have got its account audited and the bills which were cleared obviously must have gone through scrutiny of the Auditing Department. Despite which no such action was initiated against either the petitioner or the other officers of the NTPC in regard to the said alleged lapses.*
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> *28. That apart, during the course of execution of the work, the Chief Technical Examiner's Organization from Central Vigilance Commission examined the package in the year 1987 thereby alleging excess payments having been made to the concerned Contracting Agency in the matter under consideration. However, the Charge-Sheet was issued to the petitioner at a very belated stage ie. on 23.2.2004 almost*

after a period of about 17 years. This indicates that the lapse, if any, was flagged by the concerned Department (CVC) in the year 1987 itself, however, no action was initiated by the respondent til 2004. Thus to state that action was initiated on the basis of Award dated 19.05.2000 would be factually incorrect. Moreover, such lapses, if any, were flagged by CVC in the year 1987 itself, there was no impediment, legal or otherwise which prevented the respondent from initiating the disciplinary proceedings.

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30. In view of the aforesaid observations of this Court, it is apparent that the lapses or the cause of action for initiating the disciplinary proceedings against the petitioner is stale and the respondent could not have initiated action against the petitioner much less on the ground that the Arbitrator has observed that there was any deliberate or wilful negligence on the part of officials of the respondent including the petitioner. This Court is fortified in its view by the ratio laid down in the judgements of the Supreme Court in ***Bani Singh (supra)*** *and* ***N. Radhakishan (supra)****. The relevant portions are extracted hereunder:-*

In Bani Singh (supra)

"4. The appeal against the order dated December 16, 1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned counsel. The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April 1977 there was doubt about the

involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

In Radhakishan (supra)

"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."

This view has been reiterated by the learned Division Bench of this Court in Union of India & Anr vs. Rattan Lal, reported as Neutral Citation No.2023:DHC:7908-DB.

31. As a consequence of the aforesaid observations that the lapses, if any, for the cause of action is stale and could not have been proceeded with, the proceedings including the penalty orders dated 28.02.2005/09.03.2005 as also the Appellate Authority's order dated 27.04.2006 are quashed and set aside."

9. From a perusal of the aforesaid extracts of the impugned order, it is evident that the learned Single Judge has considered the plea of the appellant that it was waiting for the arbitration proceedings to conclude before issuing a charge sheet to the respondent and has

found that once the purported misconduct of the respondent came to the notice of the appellant in 1987 itself, there was absolutely no justification for waiting till the conclusion of the arbitration proceedings. Furthermore, even after the award was rendered, the appellant took almost about four years to issue a charge sheet to the respondent. In these circumstances, the learned Single Judge was of the view that initiation of disciplinary proceedings against the respondent, after an inordinate delay of about 17 years, was unsustainable.

10. Even before us, learned counsel for the appellant has primarily urged that the appellant was waiting for the arbitration proceedings to conclude, before issuing a charge memorandum to the respondent. Even otherwise, the arbitration proceedings were inter-se the appellant and the contractor, wherein the respondent was admittedly, not a party. Also, there is nothing agitated by the learned counsel for the appellant to contend that there are/is anything specific against the respondent in the award rendered by the arbitral Tribunal. Not that it has any bearing on the facts involved herein and this court is, of course, not bound by the findings arrived by the arbitral Tribunal in the arbitral award. We, however, find no merit in this plea as we are of the considered opinion that if it was perceived by the appellant that the respondent was guilty of any misconduct, it should have initiated disciplinary proceedings in 1987 itself.

11. Furthermore, upon a query being put to learned counsel for the appellant as to whether the CVC was consulted in 1987-88 when the alleged misconduct of the respondent came to light and whether the

CVC gave any such opinion that disciplinary proceedings should be kept in abeyance till the conclusion of the arbitration proceedings, the answer is in the negative.

12. In view of the aforesaid circumstances, we fail to appreciate the rationale on the part of the appellant in waiting for the arbitration proceedings to conclude. Undoubtedly, the respondent was highly prejudiced by the delay in commencement of disciplinary proceedings against him after 17 years from the date of the purported misconduct.

13. For the aforesaid reasons, we are of the view that the learned Single Judge was absolutely justified in quashing the penalty order as also the appellate order passed by the appellant. The appeal, being meritless is, accordingly, dismissed along with all accompanying applications. We specify that, we are refraining from imposing any costs upon the appellant.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

MAY 16, 2024/*acm*