**Court No. - 36**

**Case :-** WRIT - A No. - 7132 of 2020

**Petitioner :-** Neelu Dwivedi

**Respondent :-** Artificial Limbs Manufacturing Corporation Of India And 4 Ors.

**Counsel for Petitioner :-** Tarun Varma **Counsel for Respondent :-** Bal Mukund

**Hon'ble Mrs. Sunita Agarwal,J.**

**Order on Civil Misc. Amendment Application:**

An amendment application has been filed today to incorporate certain facts which could not be brought on record at the time of filing of writ petition.

Learned Standing Counsel has no objection.

The amendments are formal in nature. Accordingly, the amendment application is allowed.

Let the necessary corrections be made.

**Order on Petition:**

Heard Sri Tarun Varma, learned counsel for the petitioner and Sri Rahul Shukla, learned Advocate holding brief of Sri Bal Mukund, learned counsel for the respondent no.1.

By means of the present petition, the petitioner seeks for quashing of five charge-sheets (two dated 13.03.2020 and three dated 01.06.2020, 12.06.2020 and 13.06.2020), as also the suspension order dated 16.12.2019.

It is argued that the charges in the first charge-sheet dated 13.03.2020 are stale, inasmuch as, they pertain to the year 2000 when the petitioner was appointed with the respondents. The contention is that the the petitioner did Shorthand Course while doing B.Sc. from Kanpur University which was a part time course. The allegations in the charge-sheet that the petitioner had pursued and completed two regular full time courses in the same year i.e. 1996 is, thus, incorrect. It is then argued that the charges being stale, the inquiry cannot proceed.

Another charge-sheet dated 13.03.2020 also relates to the year 2009-11. It is contended that the respondent in a *mala fide* manner have proceeded to issue charge-sheet on the allegations which are stale. With regard to the charge-sheet dated 01.06.2020, it is stated that the allegations have been levelled only in order to harass the petitioner. The allegations in the charge-sheet dated 12.06.2020 are with regard to a recruitment process, completed in the year 2013. The contention is that the inquiry cannot proceed for the charges being stale. The allegations in the charge-sheet dated 13.06.2020 pertain to the year 2018-19. It it contended that the assertion therein that prior sanction of the competent authority had not been taken before proceeding on leave and that the petitioner remained habitually absented from the workplace is a result of an afterthought.

Reliance has been placed on the decisions of this Court in ***P.V. Mahadevan v. State of Tamilnadu Housing Board, JT 2005 (7) SC 417***; ***State of Andra Pradesh v. N. Radhakishan, AIR 1998 SC 1833***; ***State of Punjab and others v. Chaman Lal Goyal, 1995 (2) SC JT 18*** to submit that the inquiry cannot proceed on stale charges.

It is further argued that an interim order dated 29.09.2020 was passed by this Court whereby further proceedings pursuant to the charge-sheet dated 13.03.2020 and the suspension order dated 16.12.2019 had been stayed. The respondents, however, had proceeded in the inquiry with regard to three charge-sheets dated 01.06.2020, 12.06.2020 and 13.06.2020. The inquiry officers are conducting inquiry through video conferencing. The contention is that the act of the respondent in proceeding with the disciplinary inquiry despite the interim order passed by this Court shows their extreme hostility and that they want to dispose of the matter in a haste manner.

Sri Rahul Shukla, learned Advocate holding brief of Sri Bal Mukund, learned counsel for the respondent no.1, however, states that the respondent undertake to conduct physical inquiry by providing opportunity to the petitioner to appear personally before the inquiry officers. He states that a *de novo* inquiry be ordered by this Court ignoring the inquiry already conducted by virtual mode.

On the allegations that the charges are stale, it is contended that the petitioner had obtained appointment by giving misleading information. In the application form only information was that the secretarial course with shorthand and typing was completed by the petitioner from ITI, Kanpur but she had deliberately concealed the year of passing of the said examination.

Two regular full time courses could not have been pursued and completed in the same year 1996. The inquiry was initiated as soon as the said fact came to the knowledge of the appointing authority. It is argued that a person who gets appointment by illegal means cannot be allowed to challenge the initiation of departmental inquiry on the ground that the charges are stale. As regard other charge-sheets, it is stated that the charges are serious in nature and the disciplinary inquiry regarding misconduct for absence without leave and misleading information provided by the petitioner cannot be set aside.

Before dealing with the submissions of learned counsel for the petitioner, it would be relevant to go through the judgements relied upon by the learned counsel for the petitioner.

In the first case ***P.V. Mahadevan*** (*supra*), the inquiry was initiated in the year 2000 at the time when the employee was about to superannuate, on the allegations of irregularity in issuing a sale-deed in the year 1990. The Court in the facts and circumstances of that case held that the irregularity during the year 1990, for which disciplinary action had been initiated in the year 2000, came to light in the audit report for the second half of 1994-95. Under the said circumstance, it was held that allowing the respondent to proceed further with the departmental inquiry, at that distance of time, would be prejudicial to the appellant. The charge-sheet was, accordingly, quashed.

In the case of ***State of Andra Pradesh v. N. Radhakishan*** (*supra*), the question was as to whether the delay vitiated the disciplinary proceedings. It was held therein as under:

*"19. It is not possible to lay down any pre-determined 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 relevant factors and to balance and weight 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 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 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 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 its 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 be 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 consideration."*

For the facts and circumstances of the case, it was held therein that the inquiry proceeding had been protracted without any fault of the employee. The employee did not try to obstruct or delay the inquiry proceedings at any time. No explanation was offered by the State as to why delay occurred. The charge-sheet was issued to the employee therein in the year 1995 related to the incidents that happened in the years 1978, 1979 and 1984.

In the third case of ***State of Punjab and others v. Chaman Lal Goyal*** (*supra*), it was found that the memo of charges was issued to the petitioner in the year 1992 for an incident occurred in jail on January 9, 1987, when he was posted as the

Superintendent Jail. It was held therein that:

*"10. 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 is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, malafides 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 weigh 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. "*

It was held, thus, that wherever delay is put forward as a ground for quashing of the charges, the Court has to weigh all the factors both, for and against the delinquent officer and come to a conclusion which is just and proper in the circumstances. In the facts and circumstance of that case, applying balancing process, it was opined that quashing of charge-sheet and the order appointing inquiry officer was not warranted.

Considering the law laid down by the Apex Court in the above noted decisions, it is evident that in considering as to whether delay has vitiated the disciplinary proceedings, the Court has to consider nature of charge, its complicity and on what ground the delay has occurred. Normally, the disciplinary proceeding is to be allowed to take its own course**.** If the delay is too long and is unexplained, the Court may interfere and quash the charges. Wherever, such plea is raised, the Court has to weight the factors appearing for and against the said plea and take a decision in the totality of circumstances. In another word, the Court has to indulge in a process of balancing.

In light of the above, the Court proceeds to see what are the factors for and against the petitioner.

In the instant case, the petitioner had joined on the post of Secretary to the Chairman-cum-Managing Director, Artificial Limbs Manufacturing Corporation of India, Kanpur on 01.06.2000. She was selected against an open advertisement No.AD/01/2000 dated 10.05.2000 on the basis of the qualifications mentioned by her in her application form dated 24.02.2000. The educational qualifications prescribed in the advertisement was:-

1. Graduate in any discipline with a speed 100/40 wpm inShorthand/Typing and
2. Diploma in Secretarial Practice from a recognised

institution

The article (i) of the charge-sheet dated 13.03.2020 states that the petitioner had provided misleading information in her above application. Only secretarial course with shorthand and typing was done by the petitioner from ITI, Kanpur and she had passed B.Sc. from Kanpur University, but she deliberately concealed that both regular and full time courses were completed by her in the same year 1996. The year of passing of shorthand/typing course from ITI Kanpur had not been disclosed in the application form. It, thus, appears that the petitioner was not qualified at the time of her initial recruitment in service. The article (ii) of the said charge-sheet states that the petitioner lacked five years experience which was prescribed condition for appointment to the post of Secretary.

The second charge-sheet dated 13.03.2020 further contained one charge which states that at the time of applying for the post of Deputy Manager P & A in Artificial Limbs Manufacturing Corporation of India, Kanpur, false and misleading information was provided by the petitioner pertaining to her qualification intimating therein that she had passed B.Sc. in the year 1996 and shorthand, one year course, from ITI, Kanpur in the year 1997, whereas in her application for initial appointment on the post of Secretary, against advertisement dated 10.05.2000, she had mentioned that both these courses were passed by her in the same year, 1996.

The third charge-sheet dated 01.06.2020 relates to some act of the petitioner in the year 2018. The charges in the fourth charge-sheet dated 12.06.2020 relate to some irregularity committed in the recruitment process during the year 2013 for the post of Officer (P & O). It is stated that the petitioner arbitrarily, advertently and knowingly did not include the name of one candidate Shri Jitendra Kumar in the shortlisted candidates though he was recommended by a duly constituted scrutiny committee for inclusion in the selection process. The charge-sheet dated 13.06.2020 relate to some period of absence from duty during August, 2018 to December, 2019. Article (ii) of the charge states that the petitioner had availed earned leave in violation of the statutory rule.

Considering the nature of the charges in five charge-sheets issued in the year 2020, the plea of the learned counsel for the petitioner that charges are stale and disciplinary inquiry cannot be proceeded, is not worthy of acceptance.

The first and second charge-sheets relate to some misinformation/concealment of correct information in the application form to obtain appointment. It is expected from every candidate who participates in a selection process for selection to a civil post that correct and complete information shall be provided in the application form. Any concealment or misrepresentation on the part of the government servant may be seen as a misconduct and appointment obtained on such misleading information can be cancelled at any point of time during employment. It cannot be said that the qualification, with regard to which mis-information is stated to be given by the petitioner in her application form, was not an eligibility qualification. Rather, for appointment to the post of Secretary, the qualification of Graduate with Secretarial course of shorthand/typing was the essential qualification. The subsequent information provided by the petitioner while applying for appointment to any other post, which is subject matter of charge-sheet dated 13.03.2020 is contradictory to the information provided by her in the application form. The inquiry into the charges mentioned in two charge-sheets dated 13.03.2020, therefore, cannot be said to be contrary to the principles of service jurisprudence or an effort of the respondent to harass the petitioner.

The charges in the charge-sheets dated 13.03.2020 cannot be said to be stale as they go to the very root of the appointment of the petitioner in the Corporation. The Court, therefore, does not find any good ground to quash the said charge-sheets.

As regards the charge-sheets dated 01.06.2020, 12.06.2020 and

13.06.2020, the disciplinary inquiry had proceeded in respect of the said charges during the pendency of the present writ petition through virtual mode. Inquiry officers have been appointed and the petitioner though participated, but submits that she is not satisfied with the procedure.

The respondents, however, have agreed to conduct a *de novo* inquiry in respect of the third, fourth and fifth charge-sheets as aforementioned. As the employer has shown its inclination to conduct the inquiry within the shortest possible time, this Court does not find any merit in the submissions to quash the said charge-sheets.

In the totality of facts and circumstances of the case, it is appropriate in the interest of justice as well as the in the interest of administration that the inquiry, which had proceeded, be allowed to be completed. At the same time, it is directed that the respondent shall ensure that the pending inquiries be completed within the shortest possible time and the petitioner be provided adequate opportunity of hearing, personally by the inquiry officers, in a physical hearing.

In view of the undertaking given by the counsel for the respondent, it is directed that the inquiry officers shall conduct the inquiries at Kanpur wherein all necessary papers are available. The petitioner shall co-operate and shall not seek any unnecessary adjournments.

The reply to the charge-sheets shall be submitted by the petitioner within a period of one month, if not already filed, and the inquiries be completed within a further period of three months, provided the petitioner co-operates.

With the above directions, the writ petition is ***disposed of***.

**Order Date :-** 27.1.2021

P Kesari

Digitally signed by Justice Sunita

Agarwal

Date: 2021.02.12 10:55:29 IST

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