HIGH COURT OF MADHYA PRADESH : JABALPUR

SB : HON'BLE SHRI JUSTICE SUBODH ABHYANKAR, J

WRIT PETITION NO.13733 OF 2012

Rakesh Katare

Vs.

The Satpura Narmada Regional Rural Bank

Present :-

Shri Rajendra Mishra, Advocate for the petitioner.
Shri Abhijit C. Thakur, Advocate for the respondent.

O R D E R

(Passed on this the 06th Day of February, 2018)

The present petition has been filed by the petitioner under Article 226 of the Constitution of India seeking following reliefs:

> "(i) That this Hon'ble Court may kindly be pleased to issue a writ in the nature of mandamus quashing the entire departmental action against the petitioner including the charge-sheet dated 10.5.2012 and the institution of departmental enquiry vide order dated 24.7.2012 in their entirety.
> (ii) Any other relief/direction/order as deemed fit and proper looking to the present facts and circumstances of the case.
> (iii) Cost of the petition may also kindly be awarded in favour of the petitioner."

2. The petitioner is posted as the Branch Manager at O.P.M. Amlai Branch, Satpura Narmada Regional Rural Bank, Shahdol. The case of the petitioner is that in the year 1989 when he was appointed as Clerk-cum-Cashier in the respondent-Bank and was posted at Kanchanpur Branch of the Bank, in the intervening night of 5.6.1989 and 6.6.1989 a theft took place in the Branch wherein the safe of the Branch was broken open and a sum of Rs.4713.15 was stolen. A police report was also filed in this behalf on the next day i.e. on 06.06.1989 but nothing happened in this behalf for quite some time. It is further submitted by the petitioner that the safe which was installed was of Stealage Company and was also subjected to a theft previously in the year 1987.

3. Subsequently, the petitioner was promoted on merit-cum-seniority basis as Senior Clerk in January, 1990 and so far as the case of theft is concerned, the petitioner was not informed about any further development for considerable period of time and in the meantime the petitioner also became the member of the Employees' Union and voiced their grievance for their welfare which was taken otherwise by the Bank Management. Thus, more than 3 years after the said incident of theft, the

petitioner received a letter dated 26.8.1992 calling for his explanation regarding the incident. The reply to the aforesaid letter was submitted by the petitioner immediately but again no action was taken and the matter was forgotten.

4. However, on 24.6.2005 i.e. after around 16 years from the date of incident a notice was again issued to the petitioner calling for his explanation to which the petitioner submitted his reply. On 5.7.2005 again the petitioner was called upon to explain the theft which was again replied to by the petitioner. However, it was also communicated by the petitioner that since he is not in possession of the relevant documents, hence it is not possible for him to file a proper reply. In response to the aforesaid letter issued by the petitioner on 21.7.2005 certain documents and information was given to the petitioner vide letter dated 2.9.2005 but as certain vital information was not furnished to the petitioner he again wrote a letter asking for the said documents vide his letter dated 8.9.2005 which was replied to by the respondents and again on 12.9.2005 an application was submitted by the petitioner to the same effect. However, at this time certain documents were again provided to the petitioner but the petitioner's contention is that again certain vital information was suppressed but again nothing was heard by the petitioner in

this behalf. Thereafter the petitioner also got promotion as an officer with effect from 23.9.2010 after following due process as provided by the Bank and no adverse remarks were ever made against the petitioner.

5. It is further submitted by the petitioner that to his utter surprise, on 22.11.2011 a notice was again issued to him regarding the said theft at Kanchanpur Branch which was again replied to by the petitioner seeking certain information which was replied by the respondent on 7.12.2011. Again the petitioner submitted his explanation vide Annexure P/17 dated 14.12.2011. After the reply was submitted by the petitioner, a charge sheet dated 24.1.2012 was issued to the petitioner in respect of the theft which took place on 5.6.1989 and being aggrieved of the same the petitioner also submitted his representation on 15.3.2012 against the aforesaid charge sheet. After the petitioner's reply a memo was issued on 11.4.2012 by the Bank wherein it was stated that the charge sheet issued against the petitioner is withdrawn however with a liberty to file a fresh charge sheet against him and the reason for such withdrawal is said to be some technical reason. Immediately within one month after the aforesaid memo of withdrawal of charge sheet, again a fresh charge sheet was issued to the petitioner on 10.5.2012

raising the same allegation to which also the petitioner gave his reply. The petitioner' contention is that he was under the impression that the charge sheet so issued would be dropped after his reply but he has been communicated on 24.7.2012 regarding the initiation of departmental enquiry, which order has also been challenged by the petitioner.

6. Shri Rajendra Mishra, the learned **c**ounsel for the petitioner has submitted that the petitioner is being harassed by the respondent with mala fide intentions to curb his Union activities and since in the opinion of the management of the Bank, the only way in which the petitioner can be harassed is to drag him in a theft case which took place in the Bank around 23 years ago, hence, having left with no other options, the respondent-Bank has resorted to the said device of issuing the charge-sheet in respect of a theft in which otherwise there were no allegation against the petitioner. Counsel for the petitioner has submitted that in the charge sheet also certain irregularities have been attributed to the petitioner which led to the theft in the year 1989 and the petitioner is being unnecessarily dragged in the litigation by the respondent-Bank. Counsel for the petitioner has also relied upon various judgments passed by this Court as well as the Apex Court to submit that there is an

inordinate delay in initiating the departmental proceeding after a lapse of 23 years and to prosecute the writ petitioner in respect of an incident which took place in the year 1989 cannot be said to be justified in any manner. Counsel for the petitioner has relied upon following judgments :

(i) Judgment in W.P. No.4782/2016 (**Pooranlal Prajapati vs State of M.P. & others**) dated 23.6.2017 (para 10 & 11)

(ii) Judgment in W.P. No.11676/2012 (**Amrat Singh Dhakad vs State of M.P. & others**) dated 27.4.2017 (para 8 & 10)

(iii) Judgment in W.P. No.8851/2009 (**Pramod Kumar Gupta vs State of M.P. and others**) dated 5.5.2010 reported in 2011(1) MPLJ 666 (para 15, 16 & 17)

(iv) Judgment in W.P. No.5838/2014 (**R.S. Amb vs The State of Madhya Pradesh**) dated 30.9.2015

(v) Judgment in the case of **N.K.Soloman vs Food Corporation of India and** another, reported in 1997(2) MPLJ 94 (paras 7 & 10)

(vi) Judgment in the case of **Lavkush Prasad Gautum vs Food Corporation of India and others**, reported in (2002) IV LLJ 405 MP (paras 3, 11, 12 & 14)

(vii) Judgment of Division Bench in the case of **Sadashiv Shivram Garud and others vs Food Corporation of India and others**, reported in (2004) I LLJ 353 MP (paras 10 & 11)

7. Shri Abhjit C. Thakur, counsel for the respondent/Bank has submitted that the petition is liable to be dismissed on the

ground that the same is premature as the petitioner shall have ample opportunities to contest the matter in the departmental enquiry in which the petitioner is yet to file his reply and he would also be given the opportunity to lead the evidence. The respondents' contention is that in respect of the aforesaid theft in which Rs.4,713.15 were stolen, a memo was also issued to the petitioner on 26.8.1992 regarding his involvement in the case but the proceeding was discontinued. Again another show cause notice was issued to the petitioner on 24.6.2005 and the said proceeding was also discontinued. However, a complaint was filed by one S.P. Singh on 21.7.2002 to the Reserve Bank of India Gramin, Ayojan and Vikas Vibhaag, Bhopal regarding the aforesaid theft. The RBI Bhopal wrote a letter to the respondent no.1 enclosing copy of the said complaint filed by S.P. Singh and sought details of the matter. Reply to the aforesaid letter was given by the respondent to the RBI and subsequently the Vigilance Department of the sponsor Bank i.e. Central Bank of India sought information from the respondent No.1 vide letter dated 2.8.2010 regarding the said theft. This information was sought on the basis of another complaint lodged by one Amarnath Chaturvedi on 21.7.2010. Subsequently the Vigilance Department of the Central Bank of India who happens to be the

sponsor Bank of the respondent, vide letter dated 21.2.2012 accorded its approval to initiate departmental action against the petitioner and thus it is submitted by the counsel for the respondent that on account of the aforesaid instruction issued by respondent's own sponsor Bank i.e. Central Bank of India the departmental enquiry has been initiated against the petitioner which cannot be said to be illegal or contrary to the provisions of law and the petitioner, before contesting the aforesaid departmental enquiry on merits has directly come before this Court for quashment of the charge sheet which is premature and the petition is liable to be dismissed. He has also relied upon the following judgments of this Court, other High Courts as well as the Apex Court :

(i) Division Bench judgment of this Court in W.P. No.150/2016) dated 20.4.2016.
(ii) Judgment of Jharkhand High Court in W.P.(S) No.6699/2005 (**Falguni Mahto vs M/s Bharat Coking Coal Ltd., Dhandbad and other**s) dated on 19.7.2013.
(iii) Judgment of this Court in W.P. No.5832/2014 (**Dr Brajesh Singh vs State of M.P. and others**) dated 9.7.2015.
(iv) Judgment of this Court in W.P. No.21358/2012 (**Samir Banerji vs State Bank of India and another**) dated 19.12.2012.
(v) Judgment of this Court in W.P. No.1602/2015 dated 18.3.2015.
(vi) Judgment of Delhi High Court in W.P.(C) No.943/2015 & CM Nos.1653-1654/2015 (**Subha Kumar Dash vs The University of**

Delhi & Others) dated 30.1.2015.

(vii) Judgment of the Apex Court in the case of **The Secretary, Ministry of Defence & others vs. Prabhash Chandra Mirdha**, reported in **(2012) 11 SCC 565**.

(viii) Judgement of the Apex Court in the case of **Union of India and anothers Vs. Kunisetty Satyanarayana**, reported in **AIR 2007 SC 906**.

(ix) Judgment of this Court in W.P. No.18100/2015 (**Ranjeet Singh Kumpawat vs Central Madhya Pradesh Gramin Bank**) decided on 13.5.2016.

8. Heard learned counsel for the parties and perused the record.

9. Before this court proceeds to deal with the matter, it would be apt to see what are the charges leveled against the petitioner. The same reads as under:-

> **''आरोप कमांक 01**
> श्री राकेश कुमार कटारे दिनांक 05.06.1989 को शाखा कंचनपुर में सम्पूर्ण प्रभार में थे। इसी दिनांक की रात्रि में शाखा में चोरी की घटना हुई जिसमें शाखा की Steelage कम्पनी की तिजोरी FBR/800 क्षतिग्रस्त हुई। दिनांक 27.06.1989 को उक्त सेफ स्टीलएज कम्पनी लिमि. के इंजीनियरों द्वारा खोली गई जिसमें सेफ के अंदर से कोई नगद राशि बरामद नहीं हुई तथा सेफ का लॉक अंदर से क्षतिग्रस्त किया जाना पाया गया था। इस संबंध में स्टीलएज इंडस्ट्रीज लिमि. के पत्र कमांक BPL:81:0443 दिनांक 06.07. 1989 द्वारा दी गई रिपोर्ट अनुसार सेफ को उसकी मूल चाबी से खोले जाने का उल्लेख किया गया है। इस संबंध में उक्त रिपोर्ट का निम्न पैरा यहॉ उल्लेखित है :–
>
> ''In our opinion the safe had been opended with the original keys then the fire proof chamber was opened and the three numbers hex bolts of the lock broken to make it look like an attempt of burgalary.''
>
> उक्त दिनांक को तिजोरी में रुपये 4713.15 की राशि रखी हुई थी जो कि शाखा कंचनपुर में शाखा शहडोल में विलयन के पश्चात शाखा शहडोल के नामिनल खाते में नामें हैं।

अतः ऐसी दशा में जबकि सेफ की दोनों चाबियॉ श्री कटारे के पास थी, श्री कटारे द्वारा लापरवाही पूर्ण कार्य करते हुए सेफ में रखी उक्त राशि की बैंक को क्षति पहुंचाई गई एवं सेफ में अन्य छेड़छाड़ एवं तोड़फोड़ करके चोरी होने का संदेह पैदा करने की कोशिश की गई।

श्री कटारे द्वारा किया गया उक्त कृत्य सतपुड़ा नर्मदा क्षेत्रीय ग्रामीण बैंक (अधिकारी/कर्मचारी) सेवा विनियम 2010 की धारा 18 एवं 20 के तहत गंभीर कदाचार है।

आरोप कमांक 02 :–
श्री कटारे द्वारा उनकी पूर्ववर्ती शहडोल क्षेत्रीय ग्रामीण बैंक की शाखा कंचनपुर में लिपिक/खजाची के रूप में पदस्थी के दौरान दिनांक 05.06.1989 को शाखा के सम्पूर्ण प्रभार में रहने के दौरान शाखा में हुई चोरी की घटना के कारण उन्हें स्पष्टीकरण पत्र कमांक प्र0का0/साप्र/92/एस–994 दिनांक 26.08.1992 जारी कर स्पष्टीकरण मांगा गया था जो कि उनके द्वारा नहीं प्रस्तुत किया गया। उन्हें पूर्ववर्ती शहडोल क्षेत्रीय ग्रामीण बैंक के प्रधान कार्यालय द्वारा पत्र कमांक प्र0का0/साप्र/2005/120 दिनांक 24.06.2005 द्वारा स्मरण पत्र दिया गया परन्तु उनके द्वारा जवाब न देकर विभिन्न जानकारियॉ मांगी गई जो उन्हें पत्र कमांक प्र0का0/कार्मिक/2005–06/221 दिनांक 02.09.2005 एवं प्र0का0/कार्मिक/2005–06/221 दिनांक 30.09.2005/06.10.2005 द्वारा उपलब्ध करवाई गई वरन उनके द्वारा प्रत्युत्तर नहीं देते हुए दिनांक 13.10.2005 के पत्र द्वारा असंबंधित जानकारियॉ मांगी गई जो उनके द्वारा नहीं प्रस्तुत किया गया। इस प्रकार उच्च कार्यालय के आदेशों की अवहेलना की गई है।''

10. Admittedly, the theft took place in the intervening night of 05.06.1989 and 6.6.1989, the FIR to this effect was also lodged on 06.06.1989. It is nobody's case that the petitioner was named in the FIR or that any action was taken in this behalf by

the police even at a later stage. In such circumstances even going by the analogy of theft under Section 379 of IPC the punishment for which is imprisonment of either description for a term which may extend to three years or with fine, or with both, the limitation to initiate such criminal proceeding is provided under the Code of Criminal Procedure under Chapter XXXVI of the Code of Criminal Procedure, 1973 and Section 468 of the same provides the bar of taking cognizance after a lapse of the period of three years and under Section 469 of Cr.P.C., the commencement of the period of limitation is provided which is either on the date of the offence or the date of the knowledge. In the present case apparently the respondents came to know about the offence of theft on the next date itself i.e. 6.6.1989 and had it been a criminal trial, the petitioner could not have been tried after a period of three years i.e. after 6.6.1992 but in the present case admittedly the memo itself regarding the said theft was issued to the petitioner on 26.8.1992 thereafter again on 24.6.2005 and then on 5.7.2005, thus, the conduct of the respondent is one of total negligence and apathy towards its employees. This court is aware that a criminal proceeding and departmental enquiry operates in different spheres but the aforesaid analogy is drawn to come to

a conclusion that in the present case the petitioner was not even charged of theft hence the departmental proceedings should have been initiated within a reasonable period of time only. This court is of the opinion that in such cases where the charges are not of serious nature, the departmental enquiry should be initiated within a reasonable time otherwise, the employer can always use it as a tool to harass or dismiss an employee at any time at his own whims or caprice thereby keeping the sword of any penalty/dismissal looming large for the entire service tenure of an employee which, in the considered opinion of this court, cannot and should not be allowed.

11. The Staff Accountability Policy on which the respondent has also relied upon to submit that the question of limitation would not arise in the present case. The relevant para of the same reads as under:-

> "**1.8.1 Time limit for initiation of Disciplinary proceedings.**
>
> i. Audit/inspection deptt. scrutinizes pre-sanction appraisal, documentation, disbursement of loan and post sanction follow-up. If any irregularity is missed out by auditors/inspectors in the first audit/inspection, it is reasonable to expect that remaining undetected irregularities will be detected in second audit and necessary disciplinary proceedings initiated against the concerned officials in the follow-up action. Normally the second audit would be completed within 3-4 years.
>
> ii. Central Vigilance Commission has approved that no disciplinary action will be ordinarily lie against any officials for any lapses not detected within 2 successive

> internal regular audit/inspection of the same account or 4 years from the date of the event which ever is later.
>
> iii. In case any irregularity is detected subsequent to the second audit/inspection, the auditors/inspectors concerned will be held accountable and be liable for disciplinary proceedings.
>
> iv. In case of Review/renewal of limits subsequently where no irregularities of earlier sanction were recorded, the above provisions will apply to the authority reviewing/renewing the limits.
>
> v. This time limit will not apply to cases of (I) Frauds (II) Other Criminal Offence (III) Cases where malafide are inferable."

12. Even taking note of the aforesaid time limit, in the considered opinion of this Court clause (v) of the same is not applicable in the present case as no criminal charges have been leveled against the petitioner at any point of time and no continuous cause of action can be said to be available to the respondent-Bank in the facts and circumstances of the case when they knew about the incident from the day one.

13. In such circumstances, to initiate a departmental enquiry against the petitioner by filing of charge sheet on 10.5.2012 in respect of a incident of theft which took place on 6.6.1989 is absolutely arbitrary, unjust and is uncalled for. In the reply, although no specific pleadings have been made to explain the delay in filing the charge-sheet but it also reveals that the proceedings have been initiated at the instance of certain private

persons raising their grievance in respect of theft after a considerable period of time in the year 2010 for an incident which took place in the year 1989, which cannot be said to be reason good enough to explain the delay. The respondents are totally silent as to why timely action was not taken against the petitioner despite issuing him show cause notices on more than one occasion. It is also apparent from the record that there was no delay attributable to the petitioner which may be said to be the reason to issue charge-sheet after a period of more than 20 years.

14. On the aforesaid discussion, in the considered opinion of this Court, the petition deserves to be allowed. Reference may be had to as has been held by the Apex Court in the case of **State of M.P. Vs. Bani Singh and another** reported in **AIR 1990 SC 1308** and relied upon by this Court in W.P. No.4782/2016 (**Pooranlal Prajapati vs State of M.P. and others,** para 10 of the judgment reads as under :

> "10. The reliance placed by the petitioner on the decision rendered by the Hon'ble Apex Court in the case of *State of M.P. vs.Bani Singh and another* reported in *1990 SC1308* could not be said to be out of place. In the aforesaid decision the Hon'ble Apex Court has quashed the discriminatory proceedings initiated against the petitioner more than 12 years for which no satisfactory explanation

for inordinate delay was provided by the State. Para 4 of the same reads as under:

> "4. The appeal against the order dated 16.12.1987 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 1975-1977. 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."
>
> *(emphasis supplied)*

15. So far as the judgments relied upon by Shri Thakur are concerned, the same relate to the general proposition that writ petition against the charge-sheet should not be generally

entertained even on the ground of delay which proposition is also binding on this court but the said proposition is not a thumb rule and cannot be applied in each and every case without considering the peculiar facts of each case.

16. In the case of **Ministry of Defence v. Prabhash Chandra Mirdha, (2012) 11 SCC 565** relied upon by the respondent, the Apex court has held as under:-

> "8. The law does not permit quashing of charge-sheet in a routine manner. In case the delinquent employee has any grievance in respect of the charge-sheet he must raise the issue by filing a representation and wait for the decision of the disciplinary authority thereon. In case the charge-sheet is challenged before a court/tribunal on the ground of delay in initiation of disciplinary proceedings or delay in concluding the proceedings, the court/tribunal may quash the charge-sheet after considering the gravity of the charge and all relevant factors involved in the case weighing all the facts both for and against the delinquent employee and must reach the conclusion which is just and proper in the circumstance. (Vide *State of M.P.* v. *Bani Singh*, *State of Punjab* v. *Chaman Lal Goyal*, *Registrar, Coop. Societies* v. *Sachindra Nath Pandey*, *Union of India* v. *Ashok Kacker*, *Prohibition & Excise Deptt.* v. *L. Srinivasan*, *State of A.P.* v. *N. Radhakishan*, *Food Corporation of India* v. *V.P. Bhatia*, *Supt. of Police* v. *T. Natarajan*, *M.V. Bijlani* v. *Union of India*, *P.D. Agrawal* v. *SBI* and *Govt. of A.P.* v. *V. Appala Swamy*.)
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> 9. In *Forest Deptt.* v. *Abdur Rasul Chowdhury* (SCC p. 310, para 16) this Court dealt with the issue and observed that delay in concluding the domestic enquiry is not always fatal. It depends upon the facts and circumstances

of each case. The unexplained protracted delay on the part of the employer may be one of the circumstances in not permitting the employer to continue with the disciplinary proceedings. At the same time, if the delay is explained satisfactorily then the proceedings should not (*sic*) be permitted to continue.

10. Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the court. (Vide *State of U.P.* v. *Brahm Datt Sharma*, *Bihar State Housing Board* v. *Ramesh Kumar Singh*, *Ulagappa* v. *Commr.*, *Special Director* v. *Mohd. Ghulam Ghouse* and *Union of India* v. *Kunisetty Satyanarayana*.)

11. In *State of Orissa* v. *Sangram Keshari Misra*(SCC pp. 315-16, para 10) this Court held that normally a charge-sheet is not quashed prior to the conducting of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that to determine correctness or truth of the charge is the function of the disciplinary authority. (See also *Union of India* v. *Upendra Singh*.)

12. Thus, the law on the issue can be summarised to the effect that the charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be

quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings."

(emphasis supplied)

17. The aforesaid judgment has also been referred by a subsequent judgment of the Apex Court in the case of ***Anant R. Kulkarni v. Y.P. EducationSociety, (2013) 6 SCC 515,*** the relevant para 14 of the same reads as under:-

"Enquiry at belated stage

14. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is dehors the limits of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show-cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by the court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question must be carefully examined taking into consideration the gravity/magnitude of the charges involved therein. The court has to consider the seriousness and magnitude of the charges and while doing so the court must weigh all the facts, both for and against the delinquent officers and come to the conclusion which is just and proper considering the circumstances involved. The essence of the matter is that the court must take into consideration all relevant facts, and balance and weigh the same, so as to determine, if it is in fact in the interest of clean and honest administration that the said proceedings

> are allowed to be terminated only on the ground of delay in their conclusion. (Vide *State of U.P.* v. *Brahm Datt Sharma*, *State of M.P.* v. *Bani Singh*, *State of Punjab* v. *Chaman Lal Goyal*, *State of A.P.* v. *N. Radhakishan*, *M.V. Bijlani* v. *Union of India*, *Union of India* v. *Kunisetty Satyanarayana*, *Ministry of Defence* v. *Prabhash Chandra Mirdha* and *LIC* v. *A. Masilamani*.)
>
> (emphasis supplied)

18. In the case of **Ranjeet Singh Kumpawat** (supra) this court has observed as under:-

> **"**11. In the present case, the allegations against the petitioner are described in the supplementary charge-sheet. Considering the nature of the allegations, at this stage, I am not inclined to interfere on the charge-sheet. It will be open for the petitioner to take that all relevant objections in the inquiry. At appropriate stage, the enquiry officer and disciplinary authority shall deal with said objections of the petitioner. Apart from this, clause 1.8.1 on which reliance was placed by Shri Sharma, makes it clear that it is directory in nature. In the said executive instruction, it is mentioned that ordinarily no disciplinary action will lie within two successive internal regular audit/ inspection of the same account or 4 years from the date of event, whichever is later. In the manner this provision is constructed, it shows it is directive in nature. It is further made clear that the aspect of time limit will not apply in cases of (I) Frauds, (II) Other Criminal Offences and (III) Cases where malafide are inferable. Thus, for these reasons, I am not inclined to interfere on the supplementary charges on the ground of delay. So far the judgment of ***M.V.Bijlani (supra)*** is concerned, in the said case, interference was made by the Apex Court after completion of inquiry and after imposition of punishment. Even the appeal of

> the petitioner therein was decided by the appellate authority. In that case various defects in the inquiry were notices by the Apex Court. It includes, delay at various levels which delayed initiation of inquiry, completion of inquiry and even delay in deciding the appeal. In the peculiar factual matrix of that case, interference was made on the ground of delay also. However, the said case cannot be made applicable in the present case wherein the allegations mentioned in the impugned charge-sheet relates to allegations of serious dereliction of duties. Applying the balancing test as laid down in ***Chaman Lal Goyal (supra),*** I am not inclined to interfere on the charge-sheet at this stage on the ground of delay.
>
> 12. xxx xxx xxx
>
> 13. On the basis of aforesaid analysis, I am of the view that petitioner could not establish that he is subjected to disciplinary proceedings because of any malicious action on the part of respondent No.3. Similarly, on the ground of delay alone, at this stage, no interference can be made on the supplementary charge-sheet. It is made clear that this court has not expressed any opinion on merits of the case."
>
> (emphasis supplied)

19. Thus, it is apparent that this Court, after examining the merits of the case and the serious charges leveled against the petitioner came to the conclusion that no case of interference is made out even on the ground of delay. Whereas, as noted above, in the year 1989, a case of theft of less then Rs.5000/- which even otherwise was not a big amount, was lodged against some

unknown person and not against the petitioner, and although he was issued various notices in respect of the same after a period of three years but despite his reply no action was taken against him for a period of around 23 years and only on account of some complainants made by private individuals that the charge-sheet has been issued to the petitioner in the year 2012 and that too after withdrawing the first one on technical grounds. Thus, the facts of the present case are clearly distinguishable.

20. In the result, this court has no hesitation to hold that the petitioner is being persecuted by the respondent since last more than 20 years only with a view to pin him down at the instance of some private complainants whose motives are also not clear.

21. As a result, petition is **allowed** with cost and the impugned charge-sheet dated 10.5.2012 and the institution of departmental enquiry vide order dated 24.7.2012 are hereby quashed.

22. Under the circumstances, the respondent shall be liable to pay a cost of Rs.25000/- (Rupees twenty five thousand) to the petitioner.

(Subodh Abhyankar)
Judge
06/02/2018

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