

J U D G E M E N T

1. The instant application has been filed praying for following relief:
 - a) An order do issue directing the concerned respondent authorities to forthwith rescind, cancel, withdraw and set aside the impugned charge sheet issued against the applicant vide Memorandum No.130-E(Vig.) dated 14.05.2013, report of the Inquiring Authority dated 28.01.16, findings of the disciplinary authority and second show cause notice issued vide order No.178-E(Vig) dated 13.07.2016 and final order issued vide order No.98-E(Vig) dated 03.03.2017.
 - b) Pending disposal of the instant application, the respondents be restrained from giving effect or further effect to impugned charge sheet issued against the applicant vide Memorandum No.130-E(Vig.) dated 14.05.2013, report of the Inquiring Authority dated 28.01.16, findings of the disciplinary authority and second show cause notice issued vide order No.178-E(Vig) dated 13.07.2016 and final order issued vide order No.98-E(Vig) dated 03.03.2017.
 - c) To call for the records of the instant case so that conscionable justice may be rendered.
 - d) Any other appropriate order or orders, direction or directions as this Hon'ble Tribunal may deem fit and proper to protect the right of the applicant be passed."
2. As per the applicant, he was appointed as Assistant Engineer, PWD and was subsequently promoted as Executive Engineer on 27.11.2000 and was posted at Hooghly Division from 20.08.2004 to 10.08.2007. During the said period, one tender was invited from the office of the Superintending Engineer, Western Circle-I, PWD on or about 30.09.2005 for construction of Serampur Court Building. The said work was entrusted to the contractor as per the terms & conditions as stipulated in the tender, which was finalized from the office of the concerned Superintending Engineer.
3. However, during the periodical inspection of the construction work of the said building, when it was virtually at the finishing stage, the applicant noticed that there was a horizontal cracks in roofs along masonry joint between the lintel and the roof, apart from there being some efflorescence after the roof slab was casted and after plastering was made.

4. Immediately, thereafter the applicant reported the said matter to the higher authority as well as to the concerned contractor. Subsequently, the said contractor was directed to rectify the said defects of the said building. Ultimately, after serving of notice to the contractor as per the contract, as an executive officer, the applicant has terminated the said contract and forfeited the final bill, security deposit and earnest money, which are lying with the state respondents.
5. In the meantime, the applicant was promoted to the post of Superintending Engineer on 08.03.2013. Subsequently, the applicant was served with a Charge Sheet dated 14.05.13 (Annexure A/1) wherein he was allegedly charged with misconduct and irregular act for the period from 04.10.2005 to 09.02.2007.
6. Immediately after receipt of the purported Charge Sheet dated 14.05.2013, the applicant applied for supply of certain documents to enable him to file proper written objection and subsequently, he filed written objection on 20.06.2013 (Annexure A/2). During the enquiry process, the applicant had filed an application before the Enquiry Officer for supply of test report submitted by the expert from Jadavpur University. In response to that, Enquiry Officer instructed the Disciplinary Authority to produce the said investigation report of Dr. S. Saraswati of Jadavpur University before the Enquiry Officer. During the enquiry process, the applicant had requested to place him as defense witness. However, he was not allowed to do so and ultimately the second show cause notice was issued by the Disciplinary Authority vide Memo dated 13.07.2016 along with copy of the report of Enquiry Authority indicating proposed punishment (Annexure A/8). In response to that, the applicant filed written objection on 20.08.2016 (Annexure A/9). However, without granting another opportunity of being heard and without considering the reply, the Disciplinary Authority issued the impugned punishment order dated 03.03.17 by debarring the applicant from promotion for one year along with penalty of censure (Annexure A/10). Being aggrieved with, the applicant has filed the instant OA. As per the applicant, the entire disciplinary proceeding ought to be quashed and set aside on the following grounds:
 - a) No disciplinary proceeding can be initiated or ready to be continued on the basis of any omission or commission or facts, which relates to a period prior to granting of such promotion as the promotion was given on consideration of entire records amounts to give clean chit and after such promotion is granted, the

disciplinary authority is debarred from issuing any charge in respect of any allegation for the period prior to such promotion. In support of his contention, he has referred the following judgement:

- i) 1993(1) CLJ 371 Mrinal Kanti Chakraborty -vs- State of W.B. & Ors.**
- ii) 1998(1) CLJ 200 Gour Narayan Barat -vs- State of W.B. & Ors.**

b) The charge framed against the applicant is stale and the departmental proceeding was initiated after unexplained and inordinate delay of 6 to 7 years though three-men enquiry committee was constituted on 21.08.2007 and the said Committee submitted their report on the basis of report of Prof. Dr. S. Saraswati on 31.12.2007. According to the applicant, the charge was framed for the period of 04.10.2005 to 09.02.2007. However, the charge sheet was issued on 04.05.2013 only. In support of his contention, he has referred the following judgements;

- i) AIR 1990 (SC) 1308 State of M.P. -vs- Bani Singh & Another.**
- ii) AIR 1998 (SC) 1833 State of A.P. -vs- N. Radhakrishnan.**
- iii) AIR 2006 (SC) 207 P.V. Mahadeban -vs- M.D., Tamilnadu Housing Board.**

c) The entire departmental proceeding was conducted without following the principles of natural justice. The applicant was not allowed to adduce oral and documentary evidence as defense witnesses by the Enquiry Officer as would be evident from the paragraph 4 of page 10 of the enquiry report dated 28.1.16 (Annexure A/8). Even, neither the disciplinary authority nor the enquiry officer had considered the vital oral evidence of Dr. S. Saraswati (PW-4) and his report regarding the reasons of facts in said building which was clearly stated by Dr. Saraswati that the cracks were from due to absence of slip joints. Further, as there was no provision of using slip joints in drawing and the schedule of items of the said building, which was approved and sanctioned by the higher authority i.e. Superintending Engineer, therefore, he had no scope to rectify/add any item in the drawing and had actually acted as per the stipulated drawing approved by the higher authority.

d) As per the applicant, final order dated 03.03.17 is illegal as the punishments inflicted with double punishment i.e. penalty of censure along with a disguise penalty of debarment of promotion

for one year in the name of direction. In the meantime, the applicant had retired by attaining the age of superannuation. But, he was not promoted due to impugned charge sheet. Therefore, the applicant has prayed for quashing of the impugned charge sheet as well as final order with a direction to grant of notional benefit.

7. The respondents have filed their reply wherein they have stated that in the departmental proceeding, the applicant had granted enough opportunity to place his case and the charges being proved, he was punished with a punishment of censure. Further, as per the respondents being an Executive Engineer, he was responsible for the work in totality.
8. We have heard both the parties and perused the records as well as the judgement placed by the applicant. In our considered view though normally, disciplinary proceeding should be allowed to take its own course as per relevant rules however, delay causes prejudice to the charge officer unless it can be shown that he is to blame for the delay or when there is a proper explanation for the delay in conducting the disciplinary proceeding. Ultimately, the court has to balance these two diverse consideration.

The Hon'ble Apex Court in the case of P.V. Mahadevan has held that absence of any unexplained inordinate delay in initiating departmental proceeding by issuance of charge memo would render the entire departmental proceeding vitiated. The Hon'ble Apex Court had also expressed the same view in the case of Bani Singh and N. Radhakishen supra.

In the instant case also admittedly, the respondents had constituted three-men enquiry committee on 21.08.2007 for alleged misconduct for the period of 04.10.05 to 09.02.07, who had submitted their report in 31.12.2007 itself and the Executive Engineer, PWD, Hooghly Division confirmed the responsibility of the applicant on 05.01.2009, therefore, any omission or commission on the part of the applicant was already known to the respondents much earlier also than the date of issuance of charge sheet. Further, there was no explanation for such inordinate delay of 6 years in issuance of charge sheet. Therefore, in our considered view initiation of disciplinary proceedings after long unexplained delay vitiates the entire proceedings.

In the instant case, admittedly, the applicant was granted promotion as Superintending Engineer on 08.03.13, whereas the

charge sheet was issued on 14.05.2013 for the alleged period of 04.10.2005 to 09.02.2007.

In the case of Mrinal Kanti Chakraborty supra, the Hon'ble High Court after following Hon'ble Apex Court judgements, has held that after the promotion are given, no departmental proceedings can be initiated on the basis of omission or commission or materials which relate to periods prior to the granting of such promotion in as much as promotion are given on consideration of the entire records amounts to giving a clean chit and after promotion is granted Disciplinary Authority is stopped from issuing any charge sheet in respect of the allegation pertaining to the period prior to promotion. Therefore, in our opinion, the aforementioned judgements are squarely applicable in the instant case.

As per the applicant, the respondents while coming to the conclusion did not consider the main reasons identified by the expert namely by Dr. S. Saraswati of Jadavpur University, who had clearly indicated that due to non-availability of joint slip the 'Cracks' were found in the building. During the course of hearing, the counsel for the applicant has also referred the deposition of Dr. Saraswati during enquiry proceeding as PW-4(Annexure A/11,) wherein it has been recorded inter alia ;

"CROSS EXAMINATION BY THE C.O. :-

Crack happens due to absence of slip joints. The primary reason of the crack appeared in the building was due to absence of slip joints. Whatever I observed physically in the said building, I noted down in my Report. I collected some of bricks used in the said building and tested it."

The aforementioned issue was also referred by the applicant in his reply. However, it is observed that the said aspect was not considered by the Disciplinary Authority while passing the punishment order.

In the instant case, though as per the respondents, they have only inflicted the punishment or censure. However, in the punishment order it has been written that he would be debarred from promotion for a period of one year in terms of explanation as defined at para iii of Rule 8 of the WBS (CCA) Rules 1971. We have perused the punishment order as well as the Rules 8 The explanation iii stipulates as follows:-

"Non-promotion, whether in substantive or officiating capacity, of a Government employee, after consideration of his case to a service,

care or post for promotion to which he is eligible, shall not amount to be treated as a penalty.”

However, in the instant case, there is a specific order of debarment of promotion for a period of one year whereas explanation (iii) deals with situation of such non-promotion on usual time when officer after being considered for promotion may found eligible or fit for the same granted promotion and in consequent to that may not be promoted which is totally different in situation from the present case. Therefore, specific debarment of promotion for a period of one year amounts to punishment as per Rule 8 of the WBS (CCA) Rules 1971.

9. In view of the above observation in the aforesaid paragraphs, we are of the view that the disciplinary proceeding has been vitiated due to unexplained inordinate delay in initiating the disciplinary proceeding and that too after granting one promotion to the applicant to the post of Superintending Engineer. Accordingly, we quash and set aside the charge sheet dated 14.05.2013, enquiry report dated 28.01.2016 as well as final order dated 03.03.17. The respondents are further directed to grant all consequential benefits to the applicant within a period of twelve weeks from the date of receipt of this order. Accordingly, the OA is **disposed of** with no order as to cost.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA (SEN)
MEMBER (J)

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