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

% Date of Decision: 2.07.2012

\+ **W.P.(C) No.8155/2010, CM 21019/2010 & 947/2011**

Union of India & Anr. ... Petitioners

Versus

B.A. Dhayalan ... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr. M.N Krishnamani, Sr. Advocate with Mr. D.K. Singh, Ms. Kirti Yadav & Mr. Amit Kumar

For respondent : Mr. Vikas Sigh, Sr.Advocate with Mr. Anuj Aggarwal & Ms. Amrita Narayan

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

ANIL KUMAR, J.

1. The petitioners have challenged the judgment dated 13th July, 2010 passed by the Central Administrative Tribunal, Principal Bench, quashing the charge-sheets dated 12th November, 1999 and 11th October, 2004, as well as the subsequent proceedings initiated against the respondent and directing the petitioners to open the sealed cover adopted in the case of the respondent, and in case he is found to be fit,

then as per recommendations of the DPC, to promoted him with all consequential benefits.

2. Brief facts as contended by the petitioners are that the respondent is a 1980 batch officer of the Indian Defense Estate Service and is working in the Directorate of Defense Estate. He had joined the service on 28th January, 1981 and in June 1983, he was promoted to the post of Senior Time Scale. Thereafter, he was also promoted to the post of JAG Selection Grade in 1998, which is when he was working as Defense Estates Officer (DEO), Secunderabad, after completing his tenure of DEO, Chandigarh. The next promotion was to the post of Senior Administrative Grade (SAG), for which the respondent's name was also processed in the DPC held in December, 2005. However, his selection was kept in a sealed cover since disciplinary proceedings were pending against him.

3. The disciplinary proceedings are pertaining to the allegations imputed against the respondent for the period of 1st October, 1996 to 25th May, 1998, which is when the respondent worked as a Defense Estates Officer (DEO), Chandigarh Circle. During the said tenure, the respondent allegedly released Rs. 38.25/- lacs as service charges to four Gram Panchayats of different villages in the districts of Bhatinda and Patiala allegedly in violation of the instructions issued by the Govt. of India Ministry of Defense, letter No. 9/5/SC/C/DE dated 14th July,

1994. The allegation against the respondent is thus he caused a loss of Rs.38.25 lacs to the State. The Charge sheet dated 12th November, 1999 containing the said allegation is as follows:

> "Sh BA Thayalan while functioning as Defence Estates Officer, Chandigarh Circle, Chandigarh during the period 01.10.96 to 29.5.98 released Rs. 38.25 lacs as service charges to four non-entitled Gram Panchayats of different villages in the districts of Bhatinda and Patiala in gross violation of the instructions issued by the Govt. of India, Ministry of Defense (Directorate General Defence Estates) letter No. 9/5/SC/C/DE dated 14.7.94 regarding payment of service charges to the Cantonment Boards and other local bodies and thus caused a loss of Rs. 38.25 lacs to the State by the above acts of omission and commission. Sh BA Thayalan exhibited lack of absolute integrity & devotion to duty and thereby violated Rule 3(1)(i) & (ii) of the CCS (Conduct) Rules 1964"

4. Thereafter, a second charge sheet dated 11th October, 2004 was issued against the respondent stipulating the following allegations, pertaining to the said period of May, 1997 to May, 1998:

> "Article I : That the said Sh BA Thayalan while functioning as DEO Chandigarh Circle, Chandigarh during the period May 1997 to May 1998 conducted a series of auctions of different categories of trees at Ammunition Deport, Dappar. The number of trees involved was about 4500. Sh Thayalan disposed off these trees by public auction in small lots to deliberately bring the same within DEO's financial limit of Rs. 10,000/-. This was in contravention of the instructions contained in DGDE letter No. 36/1/L/L&C/61 dated 12.2.82 and Govt. of India, Ministry of Defense letter No. 36/1/L/L&C/61/19/

SD(Lands) dated 7.2.1986. By doing so, Sh Thayalan violated Rule 3(1)(i), 3.

Article II : That during the aforesaid period and while functioning in the aforesaid office, the said Sh BA Thayalan disposed off different categories of trees at Ammunition *Depot, Dappar and committed following irregularities in conducting the auctions and thereby caused considerable financial loss to the Govt. of India, Ministry of Defence: -*

(a) Wide publicity was not given to the auctions

(b) Measurement and marking of trees was not done in most of the cases.

(c) Minimum reserve price was not properly worked out keeping in view the latest Forest Schedule of rates and the market price.

(d) By doing so, Sh Thayalan violated Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS(Conduct) Rules 1964.

Article III : That during the aforesaid period and while functioning in the aforesaid office, the said Sh BA Thayalan did not deposit sale proceeds of 08 auctions at Ammunition Depot, Dappar and thereby he caused financial loss to the Govt. By doing so, Sh Thayalan violated Rule 3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS (Conduct) Rules, 1964.

Article IV : That during the aforesaid period and while functioning in the aforesaid office, the said Sh BA Thayalan while disposing of trees by public auctions at Ammunition Depot, Dappar in respect of 1st lot of auction involving about 500 trees accepted bid exceeding Rs. 10,000/- which was beyond his financial competence and required approval of the Dte DE, WC, Chandigarh before disposal of the trees. By doing so, Sh Thayalan violated Rule 3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS Conduct Rules 1964.

Article V: That during the above said period and while functioning in the aforesaid office, the said Sh BA Thayalan while disposing of trees at Ammunition Depot, Dappar did not personally supervise these auctions despite the fact that a very large number of trees were involved in these auctions and that complaints had also been received by him regarding these auctions. By doing

so, Sh Thayalan violated Rule 3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS (Conduct) Rules 1964 and failed to maintain absolute integrity and devotion to duty and thus committed conduct unbecoming of an officer.

Article VI: That during the above said period and while functioning in the aforesaid office, the said Sh BA Thayalan failed to maintain the file bearing No. DE0/28/Trees/Dappar, relating to disposal of a number of trees at Ammunition Depot Dappar properly. Several letters are missing from the aforesaid file. By acting in the aforesaid manner, Sh Thayalan violated Rule 3(1)(i), 3(1)(ii) & 3(1)(iii) of CCS (Conduct) Rules, 1964."

5. According to the petitioners, the inquiry proceedings with regard to both the charge sheets were completed on 29th September, 2008 and 26th December, 2008 respectively. In the inquiry report pertaining to the first charge sheet, the Enquiry Officer concluded that the charge had been proved to the extent that the procedure as laid down by the Government of India, had been violated, however, it could not be established that the Gram Panchayats to whom the payments were made, were not entitled to receive the same. In the inquiry report taking cognizance of the second charge sheet, the Enquiry Officer had concluded that all the charges were not proved against the respondent except for Article IV which was "strictly technically speaking proved".

6. After completion of the Inquiry Proceedings the inquiry reports were sent to the competent Disciplinary Authority, who after considering the inquiry reports, had sought the second stage advice of

the CVCs. Thereafter, the second stage advice of the CVC was received on 21st May, 2010 proposing minor penalty for the charge imputed in the first charge sheet and on 25th May, 2010 proposing major penalty for the charges imputed in the second charge sheet.

7. On receiving the second stage advice of the CVC in both the cases, the petitioners have contended that the same along with the IO's reports were sent to the respondent for enabling him to make a representation against the same. However, the respondent requested for additional time, for which the Disciplinary Authority granted 30 days additional time to the respondent for submitting his representation. On expiry of the stipulated 30 days' additional time, the respondent again sought additional time for submitting his representation.

8. Meanwhile, the respondent, instead of filing a representation, filed an original application bearing O.A. No. 471/2010 before the Tribunal in February, 2010.

9. In the O.A. No. 471/2010 the respondent had contended that all the batch mates of the respondent had been promoted to the posts of SAG in June 2006 itself, and that even his immediate junior batch officers had also been promoted to SAG in the year 2007-08. Even though his name was also processed for promotion to the post of SAG in

the DPC held in December, 2005, however, his selection was kept in a sealed cover since disciplinary proceedings were pending against him.

10. The respondent further contended that the disciplinary proceedings have been vitiated due to petitioners not completing the enquiry proceedings for more than a decade. The respondent contended that till date no decision has been given for the alleged misconduct pertaining to the year 1998-99. According to the respondent, he has immensely suffered at the hands of the petitioners since his promotion has been withheld for indefinite period due to the inordinate delay in the completion of the disciplinary proceedings. The respondent also contended that one third of his total service period has been spent awaiting final orders to the charge sheets and now the possibility of retiring has also neared without his promotion in the year of 2005, being effected, since it has been kept under a sealed cover.

11. The respondent recounted the facts and submitted that when the respondent was working as a DEO, Secunderabad, he was placed under suspension on 24th March, 1999 due to allegations of payment of the service charges to the Panchayats in Bhatinda District and Patiala District of Punjab, during the respondent's tenure as DEO, Chandigarh between 1996 o 1998. An FIR was also filed against the respondent for the said misconduct.

12. The respondent thereafter, filed a representation dated 9th April, 1999 to the Defense Secretary/ Director General, Defense Estate for the revocation of his suspension. However, the petitioners did not take any action on the representation of the respondent and, therefore, the respondent filed an original application No. 628 of 1999 before the Central Administrative Tribunal, Hyderabad Bench. The Tribunal by order dated 26th April, 1999 directed the Defense Secretary to dispose of the representation of the respondent dated 9th April, 1999 within 4 weeks and also directed the Secretary to grant personal hearing to the respondent, if it was so required.

13. It was also contended that despite of the suspension of the respondent for the alleged misconducts, however, no charge sheet was issued for a long time. During the period of suspension, the respondent contended that attempts were made to illegally and arbitrarily evict the respondent from his residential quarter. The respondent, therefore, was forced to file an original application, being O.A. No. 1141/1999 before the Central Administrative Tribunal, Hyderabad Bench. The Tribunal by order dated 20th September, 1999, directed the petitioners not to dispossess the respondent from his residential quarter which he was occupying. The Tribunal further directed that the charge sheet should also be issued within 2 months. The petitioners were also directed to consider the revocation of the suspension of the respondent and dispose of his representation expeditiously with a speaking order. As per the

respondent such a suspension was not warranted in the first place, since he had already been transferred from Chandigarh, the place where the misconduct was allegedly committed.

14. Finally the charge sheet was issued to the respondent on 12th November, 1999 after a lapse of nearly one year from the date of the alleged incident. However, despite repeated requests made to the Enquiry Officer, the enquiry was delayed inordinately by the petitioners till 2007. It was further alleged that thereafter, also the Enquiry Officer took considerable years to complete the inquiry, and he went on adjourning the hearing repeatedly without any valid reason.

15. Meanwhile, the respondent had been reinstated in September, 2000 and was posted at DEO Kolkata. The detailed enquiry for three years conducted on the basis of the FIR registered against the respondent at the instance of the petitioners also culminated into the finding that no offence was made out against the respondent and the allegations of misappropriation, embezzlement and fraud as alleged in the FIR were not sustainable. The Economic Offences Wing of Chandigarh Police also submitted a final report before the Sessions Court of Chandigarh with reference to the said FIR containing its finding that the offence was not made out against the respondent. The Director, DE Chandigarh, however, filed a petition against the closure report and sought reinvestigation in the matter. The Court on the

petition of the Director, DE directed the police to reinvestigate the matter.

16. Even after re-investigation of nearly 2 years, the Chandigarh Police submitted another final report that no case was made out against the respondent. Thereafter, the Magistrate accepted the final report of the Police and accordingly, closed the case against the respondent. The respondent, therefore, contended that there was no mala fides, fraud, embezzlement or any other irregularity on his part and that he had acted only in a bona-fide manner as per the orders of the Government.

17. Thought the criminal case for embezzlement, fraud etc. was closed after re-investigation, however, another enquiry was ordered against the respondent on the allegations that there was violation of the procedure of conducting auction of the trees in the Ammunition Depot, Dappar, in Punjab during his tenure as DEO, Chandigarh. According to the respondent, he was posted out of Chandigarh, merely on the basis of an anonymous complaint, and that without even conducting a preliminary enquiry, another charge sheet was issued on 11th October, 2004, on the allegations pertaining to the period of 1997-98. Ultimately the departmental enquiry was ordered in the year 2007, which was concluded in June 2008.

18. It was also contended that the first enquiry had been deferred and delayed again and again by the Inquiry Officer and it had concluded in the year 2007. Thereafter, the second enquiry for the period 1997-98 was started in the year 2007, which was concluded in the year 2008. However, the status of both the enquiry reports and the action taken on the same was not even disclosed to the respondent. The respondent further contended that due to the inordinate delay in concluding the disciplinary proceedings initiated against him, the respondent has suffered immensely, as he hasn't been allowed a single promotions ever since the proceedings have been pending against him. The respondent further contended that he detailed his plight in the representation dated 7th October, 2009 to the petitioners, however, no action was taken on his representation by the petitioners. The respondent, therefore, again approached the Administrative Tribunal. The respondent filed the original application, being O.A. No. 471/2010, and prayed that disciplinary proceedings initiated on the charge sheet dated 12th November, 1999 and Charge sheet dated 11th October, 2004 be quashed and set aside and that the petitioners may be directed to open the sealed cover, with regard to the promotion of the respondent, which was adopted in the DPC held in the year 2005. It was further sought that the respondent be granted notional promotion from the date his batch mates were promoted, with all consequential benefits.

19. The petitioners refuted the pleas and contentions of the respondent as misconceived and baseless on the ground that the enquiry proceedings pertaining to both the charge sheets had concluded and that even the second stage advice of the CVC had already been received, tentatively proposing the imposition of a suitable minor and major penalty, respectively and that the respondent was also given the opportunity to represent against the findings of the Inquiry Officer. As per the petitioners, the disciplinary proceedings had reached an advanced stage of finalization, therefore, interference by the Tribunal at that stage was not warranted. It was also urged that other inquiries were also conducted in these two cases, against two other officials. Thus a total of five enquiries, 2 against the respondent, two against Sh. S. N. Banerjee and one against Sh. GB Singh had been taking place simultaneously, which had all been completed and are at present under the consideration of the competent Disciplinary Authority. It was also submitted that the case of the respondent for promotion was kept in a sealed cover, because as per the rules, at the time of consideration of the cases of the Government servants for promotion, the DPC shall assess the suitability of the Government Servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending, but the assessment by the DPC and the grading is to be kept in a 'Sealed-Cover'. Therefore, the recommendations of the DPC in case of the respondent was kept in a sealed cover, since not one but two charge sheets under Rule 14 of the CCS(CCA) Rules, 1965 were issued

against the respondent. It was also contended that the charges framed against the respondent constitutes grave misconduct and that it was for this reason that the Ministry of Defense, had decided to initiate inquiry under Rule 14 of the CCS (CCA) Rules, 1965, against the respondent. It was also contended that the delay in concluding the proceedings is not attributable to the petitioners, since the original files/documents pertaining to the case of release of payment to the Gram panchayats were either with the police authorities at Chandigarh for investigation/reinvestigation or with the Court at Chandigarh for almost six years. The petitioners also alleged that they corresponded with the concerned departments and authorities and had sent various communications to them. The petitioners contended that they demanded that the original documents etc. be made available to them which were made available in December, 2006. The copies of original documents were thereafter, handed over to the Inquiry Officer in January, 2007, after which the enquiry was completed in September, 2008.

20. The pleas and contentions of both parties where carefully considered by the Tribunal. The Tribunal noticed the detailed allegations and enquiries made against the respondent and the allegations of undue and unreasonable delay which were also crystallized by the respondent in his rejoinder dated 26th June, 2010. The relevant portion of the rejoinder of the respondent is as follows:

"**(a) Allegations/enquiry related to service charges payment:**

Details	Dates
FIR was lodged with Chandigarh Police	23.3.1999
Placed under suspension	25.3.1999
Chargesheet was issued	2.11.1999
Charge officer accepted to proceed with the enquiry even without production of original documents	09.2.2003
Regular hearing starts only on	5.4.2007
Submission of brief of charged officer and the conclusion	27.9.2007
Submission of IO's report	26.12.2008
OA No.471 of 2010 filed on	01.2.2010

(b) Allegations/enquiry related to tree auctions at ammunition Depot, Dappar, Punjab:

Details	Dates
Issue of letter asking for explanation	20.8.1998
Petitioner's reply after a visit to Chandigarh	

(not allowed to see the files)

14.5.1999

Issue of chargesheet

11.10.2004

Submission of reply

19.1.2005

Order appointing IO and PO and for enquiry

June, 2007

First hearing

July, 2007

Charged Officer's reply at the conclusion of enquiry

29.8.2008

IO's report

26.12.2008

Filing of OA 471 of 2010

01.2.2010

21. On the basis of the pleas and contentions of the parties, the Tribunal concluded that the respondent has been given a raw deal by prolonging the departmental enquiries without any cogent and rationally acceptable explanations, which has caused great prejudice to the respondent in not only projecting his defense but also stalling his future progress in his service for a number of years. The Tribunal also observed that the petitioners hurriedly tried to conclude the proceedings by violating the procedural requirements, which the petitioners were to follow as the respondent was not even given a chance to represent his case properly against the findings of the Enquiry Officer. It has been observed that the departmental proceedings after undue and unreasonable delay had been concluded as the respondent had invoked the jurisdiction of the Administrative Tribunal.

22. The Tribunal also quashed the charge sheets dated 12th November, 1999 and 11th October, 2004 and the petitioners were also directed to open the sealed cover adopted in the case of the respondent for promotion to the post of SAG, and if found fit as per recommendations of the DPC, then to immediately promote him with all consequential benefits. A cost of Rs. 10,000/- was also imposed on the petitioners for all the hardships and miseries suffered by the respondent at the hands of the petitioners.

23. The petitioners have impugned the order of the Tribunal in the present writ petitioner reiterating the pleas and contentions raised before the Tribunal. The petitioners have challenged the quashing of the charge sheets dated 12th November, 1999 and 11th October, 2004, *inter alia,* on the grounds that after the conclusion of the Inquiry proceedings and the disciplinary proceedings reaching the final stages of consideration, by the competent Disciplinary Authority, the quashing of the said charge sheet solely on the ground of delay when the delay has been allegedly explained, is not justified. The petitioners have also crystallized their explanation for the delay in a tabular form which is as under:

Chronology of events in the 1st case (case pertaining to payment of service charges)	
29.09.2008	IO submits Report.
03.10.2008	The Inquiry Report forwarded by the Department to the competent Disciplinary Authority.
16.11.2009	Disciplinary authority calls for report in linked cases of Sh SN Banerjee, Shri Jagdish Bishnoi as well as action against Senior Auditors.
18.12.2009	Report sent to the Disciplinary Authority in the matter.
12.02.2010	Disciplinary Authority asks for further clarification.
17.03.2010	Further clarifications sent.

19.5.2010	CVC Second Stage Advice given in the matter for imposition of Minor Penalty on
21.05.2010	As per CVC guidelines, the Respondent requested for Representation on IO's report & CVC recommendation.
18.06.2010	Reminder issued to the Respondent to submit his representation.
18.06.2010	Respondent stated that vide his letter dated 11/6/10 he had requested for additional time of 30 days to give his Representation.
18.06.2010	Respondent's request for additional time was referred to Disciplinary Authority (Ministry of Defence).
01.07.2010	Disciplinary authority grants additional time of 30 days w.e.f. 21.05.10.
02.07.2010	Grant of additional time by Disciplinary Authority conveyed to the Respondent.
02.07.2010	However, Respondent again requests for 30 days time w.e.f. 11-6-10.

Chronology of events in the 2nd case (case pertaining to auction	
26.12.2008	IO submits Report.
14.01.2009	The Inquiry Report forwarded to the Disciplinary Authority by the Department.
20.05.2010	Second stage advice of CVC given for imposition of Major Penalty on the Respondent.

25.05.2010	As per CVC guidelines, the Respondent requested for representation against the 10's report and CVC Second stage advice.
18.06.2010	Respondent issued reminder regarding submitting his representation, if any.
18.06.2010	Respondent replied that he had already requested for additional time for submitting representation vide letter dated 11.06.10.
18.06.2010	Respondent's request for additional time was referred to the Disciplinary Authority (Ministry of Defence).
01.07.2010	Disciplinary Authority grants additional time to the Respondent for submitting representation w.e.f. 27.5.2010.
02.07.2010	Grant of additional time conveyed to the Respondent.
02.07.2010	Respondent again requests for 30 days time w.e.f. 11/6/2010.

24. The petitioners also asserted that because tentative penalty had been proposed by seeking the second stage advice of the CVC which in accordance with the procedure prescribed under the CCS(CCA) Rules, it could not construed a ground for quashing the charge sheets. It is also urged that there was no premeditated decision to inflict punishment on the respondent. According to the learned counsel for the petitioners, the

Tribunal also failed to appreciate that the respondent too was responsible for the delay caused in the present matter, and thus the benefit of the delay could not be availed by the respondent.

25. The petitioners also contended that the Tribunal failed to consider that two other Unit Accountants of the Defense Accounts Department had been penalized in relation to the subject matter of the first charge sheet, by imposing cuts in their pension, for not following the prescribed procedure and for the failure to safeguard public interest.

26. The learned counsel for the petitioners also relied on the Govt. of India, Ministry of Defense (DGDE) letter no, 9/5/SC/C/DE dated 14th July, 1994, which lays down the procedure to release the service charges to local bodies other than Cantonment Boards. As per the said procedure, the respondent did not follow any of the requirement which the respondent was required to follow which are as follows:

(i) Submission of bills by the local body to the MES authorities
(ii) Scrutiny of the bills by the Garrison Engineer, MES
(iii)Demand of funds to be projected by the Chief Engineer, MES

27. According to the learned counsel for the petitioners, the Tribunal overlooked the said requirements, and thus the Tribunal has erred in concluding that the charge stipulated in the first charge sheet had not been made out against the respondent.

28. The learned counsel for the petitioners further urged that even though the respondent claimed that he has been a victim in the hands of the petitioners and that he has suffered humiliation, vindictiveness, harassment, etc. however, he hasn't mentioned the name of even a single officer who could be held responsible for the same, nor has he impleaded any officer as a party in the original application filed by him, nor has he detailed the mala fides alleged by him against the officials of the petitioners.

29. The respondent has refuted the pleas and contentions raised by the petitioners. In his counter affidavit dated 17th February, 2011, the respondent has reiterated the pleas and contentions which had been raised by the respondent in his original application which had been accepted by the Tribunal. The learned counsel for the respondent has urged vehemently that the plea of the petitioners that the second stage advice of the CVC, along with the IO's report, were sent to the respondent for enabling him to make a representation against the same and that he had sought additional time to give his representation, which was allowed and which is when he filed the Original Application before the Tribunal, is factually incorrect and is an attempt to mislead this Court. It has been disclosed that the original application had been filed on 1st February, 2010, whereas, the office memorandum

containing the CVC advice was received only on 21st May, 2010 and 25th May, 2010 respectively.

30. The learned counsel for the respondent has further contended that from the year 2008 to the year 2010, the respondent had requested to proceed further with the disciplinary proceedings with the enquiry concluded in the year 2008. However, the petitioners had not taken any steps, until the respondent had filed the original application before the Tribunal, which is when the petitioners hurriedly manipulated the process and obtained the second stage advice of the CVC. No cogent and rational explanation has been given by the petitioners for not proceedings with the disciplinary proceedings for considerable period after the enquiry proceedings had been concluded. It is also contended on behalf of the respondent that there is no justifiable ground for not opening the sealed cover and to give promotion to the respondent according to the recommendations of the DPC which was held in 2005. It is contented that the disciplinary proceedings had been kept pending with a view to deny implementation of the recommendation of the DPC.

31. With regard to the first charge sheet, the learned counsel for the respondent has contended that it is evident from the record, and as noted by the Tribunal, that the charges against the respondent had not been established. The procedure adopted by the office of the DEO is the same, as in the case of payment of service charges to (a) Patiala

Municipal Corporation & (b) Panchayats in the Patiala & Bhatinda Districts. As per the learned counsel, the said charge sheet was issued on the wrong notion that a Panchayat is not a local body, and that two districts in question were not within the jurisdiction of the DEO Chandigarh Officer. It is evident from the record that the payments were made only to Government of Local bodies and only by A/c payee crossed cheques. The FIR registered against the respondent had been closed even after re-investigation and no case of fraud, misappropriation or embezzlement against the respondent had been made out even prima facie.

32. With regard to the second charge-sheet the learned counsel has contended that the respondent had replied to the show cause notice in 1999 for the allegations for the period 1.10.1996 up to 25.5.1998. No reason has been given for issuing the charge sheet thereafter, in 2004. Even after the charge sheet was issued in 2004 which was also replied in detail by the respondent, no reasons have been given or even asserted for starting the enquiry proceedings thereafter in 2007. In the circumstances, it is contended that the Tribunal is justified in quashing the charge sheets and directing the petitioners to open his sealed cover and to promote the respondent according to the recommendations of the DPC.

33. This Court has heard the learned counsel for the parties in detail and has also perused the two charge sheets issued against the respondent, the record containing the enquiry reports and the CVC advice and all other relevant documents relied on by the parties. This cannot be disputed that the enquiry proceedings against the respondent has been pending since the year 1999 and the respondent had approached the Tribunal in the year 2010. Thus for a period of almost 11 years the disciplinary proceedings had been pending against the respondent and his promotions and advancements in the service had come to an indefinite standstill. The learned counsel for the respondent had disclosed that the respondent has superannuated without getting his promotions on account of disciplinary proceedings pending against him since 1999.

34. The learned counsel for the petitioners has attributed this delay to the fact that original documents were not available with them as they were in the possession of either the Criminal Court, where the criminal case against the respondent was pending, or the police authorities who were investigating the matter. In order to substantiate their explanation of delay the petitioners have relied on various correspondence addressed to the concerned authorities. According to the petitioners, the original documents became available to the petitioners only by Dec, 2006. The petitioners have also attributed the delay in the present matter to the respondent also on disciplinary proceedings against two

other Unit Accountants of the Defense Accounts Department which had culminated into penalty on other officials also which allegations were also the subject matter of first charge sheet against the respondent. The petitioners contended that the pension of other officials had been cut on account of penalty imposed upon them for the failure to safeguard public interest.

35. An examination of the order of the Tribunal impugned by the petitioners reveals that the aspect of delay has been carefully considered and recorded by the Tribunal. The Tribunal did not accept the plea of the petitioners that the delay in the present matter was on account of the fact that the original documents were in the custody of the Court and the police authorities, on account of the criminal investigation pending before the Court against the respondent, on the FIR filed by the petitioners. In this regard, the Tribunal has observed and noted that the respondent had insisted that the authorities would proceed against him without producing the original documents, in 2003, which has not denied by the petitioners. The Tribunal, thus, held that there was no impediment for the authorities to have proceeded against the respondent with the copies of the documents as the respondent who could be prejudiced in absence of original documents had waived the presence of original documents. The Tribunals also relied on Rule 14 of the CCS(CCA) Rules, 1965 and observed that the rules does not mandates that the disciplinary authority has to show

original documents to the delinquent even if the delinquent does not demand the original documents. The only requirement is to provide a list of documents to be supplied to the delinquent. As per the GI letter dated 19th June, 1987, in order to cut down delays in the disposal of the disciplinary cases, it has been recommended that among other measures to be adopted, the copies of all the documents relied upon and the statements of the witnesses cited on behalf of the disciplinary authority, ought to be supplied to the delinquent officer along with the charge sheet, wherever possible. Thus, the Tribunal held that there was no impediment in supplying the copies of the relevant documents to the respondent as the allegation of the petitioners was not that they did not have the copies of documents. In any case, the copies of documents could be easily obtained by making simple applications before the court, where the criminal prosecution initiated against the respondent was pending or from the investigation authorities. It was also noted that, in any case, the original documents could also have been inspected by the petitioners by requesting the same from the concerned Court.

36. The Tribunal further observed that since the FIR was lodged in 1999, the investigation was carried out for 3 years and the cancellation report was submitted before the concerned court in 2002, after which the re-investigation lasted for two years, which would take it up to the year 2004. Thus, there was no reason for the petitioners to have had any difficulty in obtaining the original documents after the Court case

was over. Regardless, since the respondent himself had requested to be proceeded against on the basis of the copies of the relevant documents, there was no occasion for the petitioners to have delayed the initiation of the inquiry.

37. The Tribunal further observed that even after the enquiry had concluded in 2008 which in itself had spanned over a period of 1 year and 8 months, there was a complete lull, as the petitioners had not done anything for about a year and a half, up until the respondent had filed the original application. With regard to the second charge sheet it was observed by the Tribunal that even though the respondent was asked to give his explanation for the charges contained therein on 20th August, 1998 and he had submitted his reply to the same on 14th May, 1999, however, the petitioners had taken more than four years and six months to issue the charge sheet for which period, no explanation even has been given by the petitioners. Even after the respondent had replied to the charge sheet on 19th January, 2005, the petitioners had taken more than a year and a half to conclude the enquiry, after which the report was submitted on 26th December, 2008 and again there was a lull till the original application was filed by the respondent before the Tribunal. Thus, the Tribunal held that since there was no explanation for the 4 years taken to charge sheet the respondent, and the two years taken to appoint the enquiry officer, once the charge sheet was issued, the petitioners had delayed the disciplinary proceedings beyond

reasonable measures and without any justifiable explanation. The Tribunal, therefore, held that since there had been unexplained delay, the proceedings would be vitiated. The Tribunal has relied on the judgment of the Supreme Court in State of A.P. v. N. Radhakrishnan, (1998) 4 SCC 154.

38. The Supreme Court in *State of A.P. v. N. Radhakishan (supra)* at page 165 had held that 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. The Supreme Court had held in para 19 as under:

> "**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."

39. Similarly in State of M.P Vs *Bani Singh, 1990 (Supp) SCC 738*, at page 740 the subject matter of irregularities were allegedly taken place in 1975-77 and the Department was aware of said irregularities. The investigations were allegedly going on since then. The Apex Court had

held that it is unreasonable to think that the Department would have taken more than 12 years to initiate the disciplinary proceedings. In para 4 of the said judgment the Supreme Court had observed as under:

> "**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."

40. The principles regarding the consideration of memorandum of charge which have been issued after in ordinate delay can be summarized as under:

1. The competent authority should be able to give an explanation for the in ordinate delay in issuing the memorandum of charge;

2. The charge should be of such serious nature, the investigation which would take a long time and would have to be pursued secretly;

3. The nature of charges would be such as to a long time to detect such as embezzlement and fabrication of false records;

4. If the alleged misconduct is grave and a large number of documents and the statement of witnesses had to be looked into, delay can be considered to be valid;

5. The court has to consider the nature of charge, its complexity and on what account the delay has occurred;

6. How long a delay is too long always depends on the facts of the given case;

7. If the delay is likely to cause prejudice to the charged officer in defending himself, the enquiry has to be interdicted; and

8. The court should weigh the factors appearing for and against the disciplinary proceedings and a decision on the totality of circumstances. In other words, the court has to indulge in process of balancing.

41. The Tribunal has applied these principles in order to assess whether the disciplinary proceedings which were initiated with undue delay including issuance of charge sheet should be quashed or not. On consideration of the reasoning given by the Tribunal on the basis of principles enunciated by the Supreme Court, this Court does not find any illegality or perversity in the reasoning of the Tribunal. Even before this Court the learned counsel for the petitioners has not satisfactorily explained the delay of 11 years in concluding the disciplinary proceedings initiated against the respondent, except for contending that

the respondent too was responsible for the delay. The learned counsel has failed to point out a single instance on the basis of it could be established or inferred that the respondent is also to be blamed for the inordinate delay. In fact, a perusal of the record reveals that the respondent has taken every measure possible to request the early conclusion of the proceedings which is evident from the representation of the respondent dated 7th October, 2009 which details the inordinate delay and the consequent hardships faced by the respondent. The daily order sheet dated 9th December, 2003 clearly reveals that the respondent had agreed to continue the disciplinary proceedings on the basis of the certified copies of the relevant documents instead of the originals, which is clearly indicative of the fact that the respondent was ready to compromise and take any steps to facilitate the culmination of the disciplinary proceedings initiated against him. The petitioners too have been unsuccessful in pointing out any specific instance by which it could be established and inferred that the respondent had indeed delayed the disciplinary proceedings.

42. The plea on behalf of the petitioners that since two other Unit Accountants were being tried simultaneously with the respondent which had occasioned delay, in fact goes against them. The petitioners themselves alleged that these two Unit Accountants have been punished. Thus, if the said Unit Accountants could have been punished, then why the delay had occasioned only in case of the

respondent has not been explained and substantiated, nor the procedural differences in their cases have been established. Even the table submitted by the learned counsel for the petitioners which chronologically gives the details of the events that took place with regard to the first charge sheet and the second charge sheet, in an attempt to justify the delay caused therein, which has been reproduced hereinabove, fails to justify their own plea. The facts in the case of the respondent do not explain satisfactorily the delay, from the alleged misconduct in the year 1997-98 to the submission of the enquiry report in the year 2008. It is this period of delay which has been considered by the Tribunal and which has not been explained even before this Court by the petitioners. No cogent reason has been given for delay even after submission of enquiry report. As per the admission of the petitioners themselves, the Enquiry Report pertaining to the first charge sheet had been submitted on 29th September, 2008 and thereafter, it was forwarded to the Disciplinary Authority on 3rd October, 2008. Thereafter, for no apparent or disclosed reason no action was taken for more than a year. On 16th November, 2009, the Disciplinary Authority had called for the reports of the linked cases in the matter of Sh. SN Banerjee and Sh. Jagdish Bishnoi, i.e. after a lapse of more than one year. The petitioners have failed to explain the reason for the delay despite ample opportunity given to explain the same. Even with respect to the second charge sheet it is clear that the Enquiry Report was forwarded to the Disciplinary Authority on 14th January, 2009,

however, the second stage advice of the CVC was received only on 20th May, 2010, i.e. again after a lapse of over a year, the reason for which has not been divulged by the petitioners.

43. It is also evident from the record that it is only after the original application had been filed by the respondent in February, 2010 that action was taken to get the second stage CVC advice in both the enquiries. Thus, the Tribunal has not committed any illegality or irregularity in inferring that since the delay has not been substantially explained by the petitioners, no perversity has been made out by the petitioners in the findings and reasoning of the Tribunal.

44. The learned counsel for the petitioners also contended that since the disciplinary proceedings had reached the final stages of consideration, by the competent Disciplinary Authority, the quashing of the said charge sheet by the Tribunal solely on the ground of alleged delay, especially when the delay has been explained by the petitioners, was not justified. The learned counsel for the respondent has vehemently refuted this plea by contending that the disciplinary proceedings were not advancing until the respondent had filed his original application before the Tribunal. This fact has been corroborated, by the submission that the original application had been filed on 1st February, 2010, however the office memorandum containing the CVC advice and the inquiry reports pertaining to both the charge

sheets was received on 19th May, 2010 and 25th May, 2010 respectively. Nothing has been produced by the petitioners to show that they were pursuing the matter with CVC to obtain the second stage advice before the Original Application was filed by the respondent before the Tribunal. Another glaring factor is that prior to filing the original application before the Tribunal, even the copy of the inquiry report had not been given to the respondent, nor was his representation against the findings of the Inquiry Officer sought.

45. In this regard, the Tribunal also made specific note of the fact that the petitioners in a view to defeat the judicial process, instead of filing a reply to the allegations made by the respondent in his original application, tried to delay the process of the hearing by seeking repeated adjournments, and meanwhile hurriedly manipulated the process to obtain second stage advice of the CVC on 19th May, 2010 regarding the first charge sheet and on 24th May, 2010 regarding the second charge sheet. The observation of the Tribunal is as follows:

> "He had approached this Tribunal on 1.2.2010 after making several representations to DGDE/ Ministry of Defence/CVC. The OA was listed on 10.2.2010 when notice was issued returnable on 3.3.2010. The respondents sought adjournment on the said date and the case was adjourned to 15.4.2010. The respondents once again sought time to tile- their response and the matter was again adjourned to 28.5.20.10. On 28.5.2010 learned counsel for the respondents made a statement that the respondents would be filing their response in the course of the day. The matter was ordered to be listed for hearing on 5.7.2010. In the meantime, with a view to defeat the judicial

process, it is pleaded, instead of filing reply explaining the delay and justification, therefore, the respondents had hurriedly manipulated the process and obtained the second stage advice of CVC on 19.5.2010 in the case of one enquiry and on 24.5.2010 in the case of the second enquiry recommending major penalty in one case and minor penalty in the other. Along with the rejoinder the applicant has placed on records memorandum dated 21.5.2010 vide which he has been sent copies of Ministry of Defence memorandum of even date along with enquiry report dated 29.9.2008 and 2nd stage advice of CVC dated 19.5.2010 for submission of representation there against."

46. In the facts and circumstances, this Court cannot accept the plea of the petitioners that the Tribunal had interfered with the disciplinary proceedings, when it had reached the final stage of determination, since as is evident from the record, the petitioners only tried to conclude the disciplinary proceedings, after the respondent had filed the original application against the petitioners without explaining the reasons for delay and delaying the proceedings even before the Tribunal which fact has also cannot be denied by the petitioners.

47. In A.R. Antulay v. R.S. Nayak and Anr. AIR 1992 SC 1701 the plea of delay in Criminal cases was considered by the Supreme Court. The Constitution Bench of the Supreme Court in paragraph 86 of the judgment, had considered the propositions emerging from the several decisions considered therein and observed that "ultimately the court has to balance and weigh the several relevant factors - balancing test or balancing process - and determine in each case whether the right to

speedy trial has been denied in a given case". It was also been held that, ordinarily speaking, where the court comes to the conclusion that right to speedy trial of the accused has been infringed, the charges, or the conviction, as the case may be, will be quashed. At the same time, it has been observed that that is not the only course open to the Court and that in a given case, the nature of the offence and other circumstances may be such that quashing of the proceedings may not be in the interest of justice. In such a case, it had been observed, it is open to the Court to make such other appropriate order as it finds just and equitable in the circumstance of the case.

48. Similarly in the case of State of Punjab and Ors. Vs. Chaman Lal Goyal (1995) 2 SCC 570, the plea of delay was taken into consideration and the principle enunciated in the case of A.R. Antulay (supra) was reiterated and it was held:

> "it is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are-committed or soon after discovering the irregularities. However, 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."

49. In the matter of Shri M.L. Tahiliani Vs. D.D.A. a single Bench of this Court had considered the aspect of delay in disciplinary proceedings and had made pertinent observations which are as under:

"15. A distillation of the plethora of precedents would yield the results that the Court must balance public interest against the rights of the individual. Neither should be scarified at the alter of the other. While public servants ought to be enduringly answerable for the manner in which they discharge their duties, they are not disentitled from claiming the protection of the tenets of natural justice. However this longer period of accountability attached to public office should not become a test of their endurance. The normal rule is that the initiation and the culmination of an enquiry should be diligently expeditious, since unexplained and/or unjustified delay would invalidate the exercise at its every stage. While 'zero tolerance' would apply to trivial/minor misconduct, latitude would increase with the gravity of the offence. Protraction of proceedings, deliberate or derelictional, must be abjured. It is needless to explain that where the delay is caused by the delinquent, the Enquiry must be allowed to continue to its end. Once the alleged misconduct is detected the process must proceed with all reasonable dispatch. A late detection should not render the Enquiry irregular. Public interests would be served by a quick and speedy end to the Enquiry; it is not cynical to profess the view that Enquiries are deliberately stretched in order to protect the accused or to ensure that a pandora's box is not opened, revealing a larger conspiracy and accountability. Permitting inordinate delay runs counter to the common weal. Most often it is deliberately planned so that the truth does not surface. Enquiries usually commence with a defalcation becoming a public scandal, and delay directly results in its hushing up, since public memory is infamously short. If Courts stringently quash delayed enquiries the result would be their expeditious conclusion since otherwise the Department, which is already embarrassed by the scandal, would be rocked by failure to prove or disprove the charges. That the protraction of proceedings may be a concerted effort of all concerned can be gathered from the needless reference of moot

of the cases to the Central Vigilance Commission (CVC) even though the DDA has its own vigilance machinery. In condoning delay, the Court tends to allow uncomfortable truths to be swept under the carpet into obscurity. Where enquiries coincide with the promotional rights/chances of the officer charged with misconduct, the Judge must be alive to the likelihood of it being intentional and motivated, rather than coincidental and truthful. While deciding a writ petition challenging the legal propriety of continuance of Inquiry proceedings on the grounds of inordinate delay, the Court is not expected to assess the relative strengths of the prosecution's case and/or of the defense. That is essentially the function of the Inquiry. However, once substantial delay has transpired, what the Court must carefully examine is whether, even on a cursory perusal of the Charges, the case is worthy of continuance. This is primarily for the reason that where the departmental proceedings have become inordinately protracted the requirement of conducting a speedy trial has been violated but also that it would be fair to infer from the delay that the Enquiry was initiated and continued for some oblique motive. Charge-Sheets and Enquiry can never be permitted to be misused as tools for a witch-hunt or an inquisition, or a means to steal a march in promotions. Where progress to the next higher post is impeded because of the initiation of a Charge-Sheet or Enquiry, innocence must be zealously presumed until guilt stands established. This approach is definitely conducive for proper administration, including that of justice."

50. In the matter of DDA v. D.P. Bambah and Anr. LPA No. 39/1999 a Division Bench of this Court after taking note of the aforesaid decisions had summarized the legal position as under:

"15. In our opinion the legal position, when an action is brought seeking quashing of a charge-sheet on grounds of issuance of the charge-sheet or grounds of inordinate delay in completion of the disciplinary inquiry may be crystalised as under:

(i) Unless the statutory rules prescribe a period of limitation for initiating disciplinary proceedings, there is not period of limitation for initiating the disciplinary proceedings;

(ii) Since delay in initiating disciplinary proceedings or concluding the same are likely to cause prejudice to the charged employee, courts would be entitled to intervene and grant appropriate relief where an action is brought;

(iii) If bone fide and reasonable explanation for delay is brought on record by the disciplinary authority, in the absence of any special equity, the court would not intervene in the matter;

(iv) While considering these factors the court has to consider that speedy trial is a part of the facet of a fair procedure to which every delinquent is entitled to vis-a-vis the handicaps which the department may be suffering in the initiation of the proceedings. Balancing all the factors, it has to be considered whether prejudice to the defence on account of delay is made out and the delay is fatal, in the sense, that the delinquent is unable to effectively defend himself on account of delay.

(v) In considering the factual matrix, the court would ordinarily lean against preventing trial of the delinquent who is facing grave charges on the mere ground of delay. Quashing would not be ordered solely because of lapse of time between the date of commission of the offence and the date of service of the charge-sheet unless, of course, the right of defence is found to be denied as a consequence of delay.

(vi) It is for the delinquent officer to show the prejudice caused or deprivation of fair trial because of the delay.

(vii) The sword of damocles cannot be allowed to be kept hanging over the head of an employee and every employee is entitled to claim that the disciplinary inquiry should be completed against him within a reasonable time. Speedy trial is undoubtedly a part of reasonableness in every disciplinary inquiry."

51. From the order of the Tribunal it is clear that the Tribunal had also observed that even though normally the charge sheet or show cause notice should not be quashed by any judicial forum, but there are exceptions to the said rule and delay in initiating or finalizing the

departmental proceedings is certainly one such exception. The Tribunal noted that while determining if delay in initiating or finalizing departmental proceedings would vitiate the same, there need to be a balancing act and one very important aspect to consider is the nature of the charges. It was observed that if the respondent had been charged with a serious misconduct, like accepting bribe, or causing, by his utter carelessness a substantial loss to the Government, then different parameters would follow as compared to when the charges may only relate to not strictly following the procedure, without any element of corruption or recklessness behavior resulting into the loss to the Government. The Tribunal specifically noted that since the Enquiry Officer himself had stipulated that it could not be categorically established that the Gram Panchayats to whom the payments were made were not entitled to such payments, and that the respondent has verified the Unit Accountant and the procedure for payments through hand receipts was a normal procedure, thus the said charge could not have been said to have been established. Even though the Disciplinary Authority too had agreed with the findings of the Enquiry Officer, however, it was insisted that the respondent had caused a huge loss to the Government without culling out what loss had been caused and in what manner. The allegation of causing loss to the Government was thus a bald allegation without any justification. The Tribunal held that since the Gram Panchayats to whom the payments were made were not in excess and there was only a procedural flaw in making payments,

since the said payments were made in the manner that was the normal practice at the time, the respondent cannot be punished for the same.

52. This Court too has evaluated the charges said to be proved against the respondent in the backdrop of the observations of the Tribunal. With regard to the first charge the Tribunal examined the enquiry report dated 29th September, 2008 wherein the allegation of releasing Rs. 38.25 lakhs as service charges to four non-entitled Gram Panchayats of different villages in the districts of Bhatinda and Patiala in violation of the instructions issued by the Government of India (DGDE) dated 14th July, 1994 was considered. The Tribunal noted that the Enquiry Officer had held that the respondent was guilty of violating the procedure, however, he had also observed that it could not be categorically established that the Gram Panchayats to whom the payment of service charges were made were not entitled to such payment. It was also noted by the Tribunal that it is not the case of the department that the respondent had misappropriated the amount. Even the police had thoroughly investigated and reinvestigated the matter from every angle and found that the respondent is absolutely innocent.

53. On carefully perusing the enquiry report dated 29th September, 2008 pertaining to the first charge sheet it is clear that the Enquiry Officer while assessing the evidence in relation to the first charge sheet had observed that as per the charge framed, two allegations were

imputed against the respondent. Firstly, that the amount of Rs. 38.25/- lacs was released by the CO to 4 non entitled Gram Panchayats in the district of Bhatinda and Patiala. Secondly, this payment was made in violation of the instructions issued by the Govt. of India, Ministry of Defense by their letter dated 14th July, 1994.

54. Regarding the first allegation the Enquiry officer was categorical in observing that there is no conclusive evidence to establish that the Gram Panchayats were not entitled to receive the payment of the service charges, as was due to them from the Central Government. The Enquiry Officer had concluded that the Gram Panchayats have to be treated as local bodies and, therefore, the procedure for payment of service charges, as laid down in the Government of India, Ministry of Defence letter 14th July, 1994 is also applicable on them. After taking into consideration the detailed procedure of payment stipulated in the letter dated 14th July, 1994, the Enquiry Officer had concluded that the said procedure had not been complied with. However, the Enquiry Officer had also categorically observed that the payments were verified by the Unit Accountant attached to his office and that the procedure for payment through hand receipts was a normal practice at the time. Therefore, even though it was concluded that the detailed procedure had not been complied with, however, the petitioners had failed to establish that the Gram Panchayats in question were not entitled for the payment of the service charge, nor is it the case of the petitioners

that the respondent had misappropriated or embezzled the said amount. No steps were also taken even to claim back the amount paid to Gram Panchayats, in case they were not entitled for same. Even any correspondence had not been addressed to Gram Panchayats that they are not entitled to money paid to them and that they should return the amounts. Therefore, if indeed the amount was not due to the Panchayat then every effort ought to have been made to recover the said costs. Thus, for an offence of alleged procedural irregularity, which might have been on account of following a normal practice prevalent at the time, it cannot be inferred that the action of the respondent amounts to gross misconduct.

55. With regard to the second charge sheet the Tribunal considered the enquiry report dated 26th December, 2008 from which it is evident that Article IV is the only charge that was proved technically but not substantially, while the remaining charges were held to be not proved. The findings of the Enquiry Officer with regard to Article IV, stipulated in the second charge sheet are as follows:

> "Article IV: The allegation here is that the CO had accepted a bid exceeding Rs.10,000/- in respect of the first lot of auctions of 500 trees. To substantiate this allegation, the PO has referred to exhibit S-3 which contains the letter dated 1.2.1982 issued by the office of DGDE, exhibit S-12 which is. a letter dated 10.06.1997 written by the CO to the Director, Defence Estates, Western Command for seeking the approval. The PO's contention is that without waiting for this approval a letter was issued to

the contractor by the CO by which he conveyed his approval to the auctions (Exhibit S-13). The PO further points out that this letter of the CO had been received in the Ammunition Depot, Dappar a copy of which was obtained in the I0 (SW-2).

9.1 The CO's argument is that the letter supposed to be written by him and as referred to by the PO is a forged one. The CO points out that this letter is dated 28th May, 1997 whereas auction was conducted on 05.06.1997.

9.2 I have carefully seen the letter dated 23.06.1997 (Exhibit S-23) and the letter dated 10.06.1997 (S012). I am not inclined to agree with the CO that the letter dated 28th May, 1997 in exhibit S-13 is forged letter. There is no cogent proof to establish this. Therefore it cannot be held that the CO did not convey approval to the contractor on his own without waiting for the approval of the competent authority i.e. director, Defence Estates, Western Command, Chandigarh. However, it is also worth mentioning that when the CO sought approval of the Director vide his letter dated 10th June, 1997 as in exhibit S-12, the matter was processed in the office of the Director, DE, Chandigarh bringing out all facts including the fact that there were complaints and the Director approved of this highest bid of Rs.16,000/- vide his note dated 03.12.1997 which can be seen at page 4 of the note sheets of Exhibit D-3. The approval seems to have been given primarily because the highest bid exceeded the MRP. This approval was however not communicated to the office of the DEO, Chandigarh. The reasons for this are not forthcoming from the record, nor is it apparent why the Investigation Officer did not mention this fact in his report.

9.3 Considering the above, this allegation is technically but not substantially- proved."

56. The Tribunal carefully considered the findings of the Enquiry Officer on the said charge and noted that the Enquiry Officer himself had held that the said charge was proved “technically but not

substantially", however, in spite of this as per the second stage advice of the CVC dated 20th May, 210, a tentative decision was already taken to impose a major penalty on the respondent, even before he was given an opportunity to represent against the findings of the Enquiry Officer. The Tribunal held that even if it is assumed that the said charge had been proved technically, however, since there is no finding of mala fides on the part of the respondent, the proposition that a major punishment should be imposed on the respondent is disproportionate to the said misconduct.

57. Perusal of the reasoning given by the Enquiry Officer reveals that the evidence strongly relied on by the Authorities to prove the charge was the letter dated 28th May, 1997 which allegedly contains the approval given by the respondent to the contractor on his own without waiting for the approval of the competent authority i.e. the Director, Defense Estates, Western Command, Chandigarh. However, on examining the said letter, the Enquiry Officer had concluded that the letter was evidently a forged letter and that there was no cogent proof to establish the same. During the course of the arguments before this Court, it has transpired that the respondent was not even given a copy of this letter, nor was the same produced before the Tribunal, nor is it to be found on the record. According to the learned counsel for the respondent, the said letter was shown to the respondent only during the disciplinary proceedings and when the respondent had requested for

the original, the same was not produced and thereafter, when the respondent had contended that the said letter was forged, the same was not even replied to or clarified by the petitioners. The letter dated 28th May, 1997 has not been pressed by the petitioners and therefore, its veracity need not be ascertained. In any case, from the record it is also evident that the respondent had sought approval of the Director by his letter dated 10th June, 1997 and the Enquiry Officer had also observed that the Director had approved the highest bid of Rs. 16,000/- by his note dated 3rd December, 1997. However, this approval was not communicated to the office of the DEO, Chandigarh, the reasons for which, was not forthcoming from the record. In view of the fact that the Director had given his approval, regardless of whether it was communicated to the respondent or not, it is clear that auctioning carried out by the respondent was proper and does not lead to the inference that the respondent had committed any misconduct. Thus, there is nothing on the record to substantiate the plea that the respondent had accepted the bid exceeding Rs 10,000 for the auction of 500 trees, without seeking the approval of the competent authority. In any case, again in the said charge no mala fides have been imputed against the respondent and, therefore, the CVC's second stage advice to impose a major penalty for an offence that is only technically and not substantially proved, which is also not substantiated on the record, is just not justifiable on any ground. Regardless, the said charge does not on any count amount to a gross misconduct but at the most can be

termed to be a procedural irregularity, for which the respondent has suffered enough in the facts and circumstances.

58. Therefore, it is clear that the Tribunal had considered the charges in detail and also weighed the implications of the allegation imputed against the respondent and ultimately found that the charges could at best amount to procedural inadequacies and were not involving any accusations of moral turpitude or mala fides on the part of the respondent. During the course of the argument, the learned counsel for the petitioners has time and again emphasized that the proper procedure had not been followed by the respondent, however no allegations are made that the respondent had embezzled or misappropriate any amount to himself. If indeed the allegations were only pertaining to the procedural manner in which the respondent had carried out his functions, which were also in consonance with the normal practice prevalent in the department at that time, then the delay in ascertaining the same is also not justified. Since as per the learned counsel for the petitioners, the procedure has been clearly laid down in the instruction of the Government of India, its compliance could have been easily detected and in case of any dereliction, the respondent could have been punished for the same immediately. The allegations are not so complex so as to justify the inordinate delay in the matter, which in any case has not been explained by the petitioners.

59. The delay in disposing of disciplinary cases have been recognized as a serious issue by the Government of India in its letter No. 000/VGL/18 dated 23rd May, 2000, according to which such delays affect the morale of the suspected/charged employees and others in the organization. Which is why the Central Vigilance Commission had even issued instructions, by its communication dated 3rd March, 1999 that the departmental inquiries should be completed within a period of six months from the date of appointment of the Inquiry Officer. In view of the principle regarding delay enunciated in the case of N. Radhakishan (supra) and the nature of the charges alleged to be technically proved against the respondent on the basis of letter which has also been found to be forged and whose copy was also not given to the respondent, as well as the inordinate delay of almost 11 years in concluding the disciplinary proceedings initiated against the respondent, which has not been sufficiently explained by the petitioners, this Court does not find any illegality or perversity in the findings of the Tribunal.

60. In the totality of facts and circumstances, and for the foregoing reasons there are no grounds to interfere with the decision of the Tribunal as the petitioners have failed to make out any illegality, irregularity or such perversity which will require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition, in the facts and circumstances, is without any merit and it is, therefore, dismissed and all the pending

applications are also disposed of. Considering the facts and circumstances, the petitioners shall also be liable to pay a costs of Rs.30,000/- to the respondent. Cost be paid to the respondent within four weeks.

ANIL KUMAR, J.

SUDERSHAN KUMAR MISRA, J.

JULY 2 2012.
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