

WP-5764-2021 & 2888-2019

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5764 OF 2021

Bhupendra Pal Singh .. Petitioner

Versus

Union of India & Ors. .. Respondents

Mr. Ramesh Ramamurthy with Mr. Saikumar Ramamurthy for
petitioner.

Mr. R. R. Shetty for respondents.

RESERVED ON: OCTOBER 20, 2021

AND

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2888 OF 2019

Vishnu Babu Mule .. Petitioner

Versus

Union of India & Anr. .. Respondents

Ms. Tanaya Patankar i/b Mr. Sanjay Gawde for petitioner.

Mr. Neel Helekar along with Mr. A. A. Garg for Union of India -
respondents.

RESERVED ON: OCTOBER 27, 2021

**CORAM: DIPANKAR DATTA, CJ.
and M. S. KARNIK, J.**

PRONOUNCED ON: DECEMBER 22, 2021

COMMON JUDGMENT (Per Dipankar Datta, CJ.):

WRIT PETITION NO. 5764 OF 2021

THE QUESTION REQUIRING AN ANSWER

1. Should the disciplinary proceedings initiated against the petitioner under rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules by issuance of Memorandum of Charges dated October 23, 2013 (hereafter "the charge-sheet", for short), served on him on October 29, 2013, i.e., immediately preceding his retirement on superannuation on October 31, 2013 as Commissioner of Customs and Central Excise, be interdicted and nullified on the ground of delay as well as subsequent acquittal in judicial proceedings, is the question that we are tasked to decide on this writ petition.

THE FACTS GIVING RISE TO THE WRIT PETITION

2. Reference to the facts and circumstances leading to institution of the writ petition, as a prelude to our decision, may not be inapt.

3. The petitioner was a member of the Indian Revenue Service (Customs and Central Excise) having been recruited in 1979. The incidents giving rise to the charge-sheet dated October 23, 2013 relate to an incident of July 10, 2000, when the petitioner was

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working as Additional Commissioner of Customs (Export Promotion) in the Export Promotion Commissionerate, New Customs House, Mumbai. The said incident of July 10, 2000 related to a party, M/s. Pacific International Exporters, which was allegedly allowed to successfully claim excess drawback contrary to law. In 2002, the petitioner was granted promotion on the post of Commissioner of Central Excise and Customs. Acting on an audit report, the Anti-Corruption Bureau of the Central Bureau of Investigation, Mumbai, (hereafter 'the ACB/CBI', for short) registered a First Information Report (hereafter "FIR", for short) dated December 31, 2004. One Hemant Kothikar, Deputy Commissioner, Customs Frere Basin, Dock, Mumbai, was named as the prime accused in such FIR. Incidentally, the petitioner was not named as an accused therein. However, in course of conducting investigation, certain materials were collected and on the basis thereof, the ACB/CBI submitted an internal report in September, 2007 recommending prosecution against nine persons including the petitioner. In September 2007 itself, the CBI had forwarded all the relevant documents to the Central Board of Excise and Customs (hereafter, "the Board", for short) for issuing a departmental charge-sheet under the relevant service rules as well as charge-sheet under the penal laws. On January 23, 2008, the Board forwarded a note to the Central Vigilance Commission (hereafter "the CVC", for short) along with a report of the ACB/CBI

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recommending departmental action against the petitioner. The CVC, vide its Office Memorandum dated February 4, 2008, advised initiation of major penalty proceedings against the petitioner and other departmental officers as well as their prosecution. Upon receipt of the same from the CVC, the Board requested the Directorate General of Vigilance, Ministry of Finance, New Delhi (hereafter "the DGV", for short), by letter dated May 12, 2008, to furnish draft charge-sheet in respect of the petitioner along with certified copies of the relied upon documents. On July 16, 2008, sanction to the ACB/CBI to prosecute the petitioner was granted by the competent authority, resulting in filing of a police report (charge-sheet) under section 173(2) of the Code of Criminal Procedure against accused persons including the petitioner for the offences punishable under section 120B read with sections 420 and 471 of the Indian Penal Code (hereafter "the IPC", for short) and under section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereafter "the PC Act", for short). Charges were framed under sections 120B, 420, 465, 467, 468 and 471 of the IPC together with section 13(2) read with section 13(1)(d) of the PC Act by the Special (CBI) Court and the petitioner faced trial before it. In due course of time, the petitioner acquired eligibility to be considered for promotion to the post of Chief Commissioner, Customs and Central Excise and was also considered. However, the sealed cover

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procedure was adopted owing to pendency of judicial proceedings against him. Since the judicial proceedings were pending before the Special (CBI) Court even on the date of his retirement, consequently the petitioner never got to know the fate of the recommendation that was kept in the sealed cover. According to the petitioner, some of his colleagues were promoted while he stood deprived of promotion. Meanwhile, on May 19, 2009, the Board sent a reminder to the DGV for furnishing the draft charge-sheet. This was followed by second and third reminders dated September 10, 2009 and May 3, 2010, respectively. By a letter dated May 19, 2010, the DGV wrote to the Board that the Commissioner of Customs (General), Mumbai (hereafter, "the CoC (G)", for short) by his letter dated January 1, 2009 had forwarded the draft charge-sheet along with authenticated copies of the relied upon documents to the AD-V Section of the Board. The Board by its letter dated September 9, 2010 requested the CoC (G) to furnish another set of the draft charge-sheet and authenticated copies of the relied upon documents. In pursuance thereof, the CoC (G) on September 23, 2009 furnished a copy of the draft charge-sheet. Insofar as authenticated copies of the relied upon documents are concerned, it was advised that the same may be obtained directly from the ACB/CBI; hence, on November 2, 2010, the Board requested the Superintendent of Police, ACB/CBI, Mumbai, (hereafter, "the SP", for short) to furnish certified copies of

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the relied upon documents. Three reminders, dated February 9, 2011, March 9, 2011 and March 29, 2011, were sent. Pursuant thereto, the SP replied that all the relied upon documents together with the report of the ACB/CBI had been supplied to the Chief Vigilance Officer (hereafter, "the CVO", for short) of the Board on September 14, 2007. It is, therefore, clear that at least at this stage, the Board was required to obtain authenticated copies of the relied upon documents from its own CVO. Instead of activating itself to obtain the relied upon documents from the CVO, the Board again wrote to the ACB/CBI on November 29, 2012 and April 29, 2013 with a request to provide copies of the relied upon documents. Ultimately, the ACB/CBI handed over the relied upon documents once again on October 9, 2013. The competent authority, on October 18, 2013, approved issuance of charge-sheet to the petitioner, whereupon the charge-sheet dated October 23, 2013 was served on him two days prior to his retirement on superannuation. It contained two articles of charge. Article of Charge-I alleged that the petitioner had conspired with Mr. Hemant Kothikar, the then Deputy Commission of Customs, Frere Basin, and certain private persons for clearance of a consignment and in the process had overruled discrepancy raised by the incumbent Examiner and incumbent Superintendent regarding quality, quantity and FOB value of the goods; thereby, the petitioner had failed to maintain absolute integrity, devotion to duty and acted

in a manner unbecoming of a Government servant. In terms of Article of Charge -II, the petitioner was alleged to have sanctioned the payment of an amount of Rs.5,20,717/- as duty drawback to M/s. Pacific International towards exports overruling a query for submission of BRC raised by the Appraiser processing the drawback claim, before submission of reply to the query by the Exporter/CHA and thereafter got the manual files destroyed causing wrongful loss of Rs.5,20,717/- to the Government and corresponding gain to himself. Thus, it was alleged that the petitioner had failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government servant. On November 2, 2013, the petitioner responded to the charge-sheet. While denying all the charges levelled against him, the petitioner complained that the relied upon documents had not been forwarded to him along with the charge-sheet and a request was made to supply the said relied upon documents. Such request was accepted on December 11, 2013 and the relied upon documents were received by the petitioner. Thereupon, the petitioner submitted his final reply to the charge-sheet on December 30, 2013. There, he raised objection to delayed initiation of disciplinary proceedings. It took the respondents almost a year to appoint an Inquiry Officer as well as a Presenting Officer, who were appointed on December 18, 2014. In February 2015, the petitioner approached the Central Administrative Tribunal, Mumbai

Bench, Mumbai, (hereafter "the Tribunal", for short) by presenting an original application bearing O.A. No.99 of 2015. Therein the charge-sheet dated October 23, 2013 issued to him was challenged. By an interim order dated May 5, 2015, the Tribunal granted stay of further proceedings of inquiry till the disposal of the original application. The respondents in the original application did not prefer to challenge the order dated May 5, 2015; instead, they elected to contest the original application by filing an affidavit-in-reply and sur-rejoinder. During the pendency of the original application before the Tribunal, the Special (CBI) Court delivered its judgment on January 4, 2018 acquitting all the accused persons of the offences with which they had been charged. Although the Special (CBI) Court recorded that the guilt of the accused persons including the petitioner was not proved beyond reasonable doubt, the discussion with regard to the petitioner's involvement, who was accused no.3 before the said court, can be profitably referred to for tracing the reasons for his acquittal. For facility of convenience, it is reproduced below: -

- "19. In view of the defence taken by the accused no.3, the first question is whether the prosecution has proved that the accused no.3 had sanctioned the duty drawback. In this connection, the evidence of PW-4 Ashok Chaudhary is relevant. He has deposed that before the CBI, he had stated that the accused no.3 had passed order in file no.S-10 and S-2 allowing sanction of drawback and he i.e. PW Ashok Chaudhary had allowed the same after putting the comment in the EDI system. Thus, the accused no.3 had not put any comment in the EDI system himself. According to PW Ashok Chaudhary, accused no.3 had allowed the duty

drawback in manual file S-2 and S-10. However, those files are not coming before the Court. Further, PW Ashok Chaudhary has deposed that he does not remember whether file no.S-10 and S-2 are in respect of M/s. Pacific International. In view of this evidence, it cannot be said beyond reasonable doubt that it was accused no.3 who had sanctioned the duty drawback in this case.

20. However, even if it is assumed that accused no.3 had sanctioned the duty drawback, in view of legal provision regarding the issuance of duty drawback, he did not commit any wrong. The shipping bill Exh.94 does not state that there was any discrepancy. The drawback authority would have acted on shipping bill generated from EDI. Once the exports were permitted as per the shipping bill, the duty drawback department was bound to clear the claim within 3 days as per the circular referred above. The same thing appears to have been done in this case which does not amount to offence. Thus, whether the accused no.3 had sanctioned or not sanctioned duty drawback, he did not commit any offence."

(emphasis ours)

The petitioner, after his acquittal by the Special (CBI) Court, amended his original application and brought the judgment on record to impress upon the Tribunal that there was indeed no case of conspiracy to cheat the Government and that he had not committed any offence. However, the Tribunal by its judgment and order dated February 21, 2020 dismissed the original application on the grounds assigned therein. Aggrieved thereby, the petitioner has invoked the writ jurisdiction of this Court. The main prayers read as follows:

- “(a) that this Hon’ble Court be pleased to issue a writ of certiorari or other appropriate writ, order or direction calling for record and proceedings leading to the passing of the judgment dated

- 21st February, 2020 passed by the CAT, Mumbai Bench in Original Application No.99 of 2015 (Exhibit A) and after examining the legality and propriety of the same this Hon'ble Court be pleased to quash and set aside the said judgment;
- (b) that this Hon'ble Court be pleased to issue a writ of certiorari or other appropriate writ, order or direction calling for record and proceedings leading to the issue of the Departmental chargesheet dated 23rd October, 2013 (Exhibit B) issued by the Respondents and after examining the legality and propriety of the same this Hon'ble Court be pleased to quash and set aside the said departmental chargesheet;
- (c) in pursuance of prayer clauses (a) and (b) above this Hon'ble Court be pleased to direct the Respondents to grant the Petitioner all consequential service benefits including the due promotion as Chief Commissioner of Customs and Central Excise and further promotions, if any, from the due dates with full difference in emoluments and also grant the Petitioner the enhanced pension benefits including regular pension, commutation value of pension and gratuity from the date of his superannuation and also pay the difference in the amount of retirement benefits along with interest at the rate of 18% per annum on the said retirement dues till actual payment."

THE IMPUGNED JUDGMENT

4. The Tribunal's judgment dated February 21, 2020 dismissing the original application is a lengthy one spread over exactly 50 pages. It rightly noted that two aspects required attention, viz. (i) whether the disciplinary proceedings ought to be quashed on the ground of delayed initiation; and (ii) whether the respondents ought to be allowed to continue with the disciplinary proceedings after the verdict of the criminal court acquitting the petitioner.

5. We note that the Tribunal on the first aspect of delayed issuance of charge-sheet relied on the decisions of the Supreme Court in **State of Punjab v. Chaman Lal Goyal**, reported in (1995)

2 SCC 570, **State of Andhra Pradesh vs. N. Radhakishan**, reported in (1998) 4 SCC 154, and **Government of Andhra Pradesh & Ors. vs. Appala Swamy**, reported in (2007) 14 SCC 49, and ruled against him. In fact, it took exception to the petitioner approaching the Tribunal and obtaining an interim order against continuance of disciplinary proceedings instead of appearing before the Inquiry Officer. The entire reasoning of the Tribunal on the aspect of delayed issuance of charge-sheet is recorded in paragraph 29, which we quote hereinbelow:

"29. In the present case, the respondents have given a detailed explanation of the manner in which they have handled both the criminal proceedings which ensued from the detection done in 2004, four years later to the incident in 2000 to investigation (sic), filing of FIR in 2004, approval of charge sheet even while criminal case was going on and then, after the Inquiry Officer and Presenting Officers were appointed in December 2014, when the applicant filed this OA in February 2015 and thereafter obtained interim orders on 05.05.2015 which continue till today. They submit they have been taking prompt action in the matter. Further, they point out that the applicant himself had argued in the present case while obtaining interim orders and as contained in his pleadings, that when the criminal proceedings were on identical facts, documents and witnesses, the disciplinary proceedings should be postponed. Therefore, it is quite plain that the applicant cannot be permitted to stand on both stools by arguing on the one hand, that the disciplinary proceedings should be stayed and then claiming the benefits of quashing the disciplinary proceedings on the ground of delay. The Applicant has not, at any stage of the proceedings, explained how he has been prejudiced in the matter. An argument could be made that he had undergone mental agony but all the matters, as he himself submits, the facts, documents and witnesses were all materials before the Criminal Court which disposed of the matter as late as in 2018. As also argued by the respondents, it is only the applicant who has benefited by the long delay of 20 years from the date of incident to this

date by way of a promotion in 2002 prior to detection of the offence and unhindered retirement in 2013. Therefore, in light of the Hon'ble Apex Court ruling in **N. Radhakishan (supra)** that the norm is to allow continuation of the disciplinary proceeding, the only recourse is the burden which falls on the applicant to prove convincingly that such continuance and the delay had caused him grave prejudice but there is no such evidence placed before us in the present matter and the applicant has not fulfilled the onerous burden that he assumed."

6. On the second aspect, the Tribunal recorded that the charge-sheet filed upon completion of investigation (Annex. A-10) and the departmental charge-sheet (Annexs. 3 and 4) were undoubtedly the same. However, the Tribunal thereafter examined the judgment of the Special (CBI) Court and returned a finding that "*this cannot be considered an honourable acquittal*". Also, having regard to the standard of proof applicable to judicial proceedings and disciplinary proceedings and the nature of misconduct alleged against the petitioner, i.e., lack of integrity and devotion to duty unbecoming of a Government servant, it declined to accept the argument of the petitioner that the disciplinary proceedings should not be carried further.

7. Resting on such discussion, the original application came to be dismissed.

ARGUMENTS ON BEHALF OF THE PETITIONER

8. Mr. Ramamurthy, learned advocate appearing for the petitioner contended that the Tribunal erred in the exercise of its jurisdiction in

failing to appreciate that the explanation for the delayed issuance of charge-sheet, given by the respondents, by no stretch of imagination could be regarded as satisfactory explanation for upholding the delayed issuance of charge-sheet and was merely an excuse. He urged that the concept of delayed conclusion of disciplinary proceedings being quite distinct from delayed initiation, the fine distinction was missed by the Tribunal. It was his contention that reliance placed by the Tribunal on paragraph 19 of the decision in **N. Radhakishan** (supra) and paragraph 12 of the decision in **Appala Swamy** (supra) were clearly misplaced. That apart, the Tribunal was unjustified in commenting that the petitioner had sought for quashing of the disciplinary proceedings only on the ground of delay. According to him, a cursory glance at the events since involvement of the petitioner transpired, would leave none in doubt that the respondents took all of 5 (five) years to issue a charge-sheet wherefor the delay was attributed to correspondence between authorities and movement of the relevant file from one desk to another desk of the officers who had the occasion to deal with the same. Movement of file from one desk to another and/or exchange of correspondence, it was argued, cannot be cited as an explanation for the delay in issuing the charge-sheet. Office Memorandum dated May 23, 2000 issued by the CVC was referred to which provides that memorandum of charges is required to be issued within a month

from the date of receipt of advice from the CVC; and in the instant case the advice having been received on February 4, 2008, by no stretch of imagination could the delay in issuing the charge-sheet on October 23, 2013 be held to be reasonable and fair. The very fact that the charge-sheet was served on the petitioner immediately prior to his retirement on superannuation, coupled with the fact that more than a year since then was spent in appointing the Inquiry Officer, clearly betrays the attempt of the disciplinary authority to wriggle out of the restrictions to initiate proceedings against a superannuated officer, which would have stood in the way once the petitioner retired from service on superannuation. In any event, since the petitioner did not seek quashing of the disciplinary proceedings only on the ground of its delayed conclusion but specifically sought for quashing on the ground of delayed initiation, which the Tribunal failed to notice, the impugned judgment is indefensible.

9. It was further contended by Mr. Ramamurthy that although the Tribunal relied on the dictum of **Chaman Lal Goyal** (supra), no effort was made to balance the factors for and against continuance of the disciplinary proceedings based on stale charges; if the factors were balanced, the factors in favour of the petitioner would have outweighed the factors against. In the absence of such balancing, the Tribunal's judgment stands entirely vitiated.

10. Mr. Ramamurthy also contended that having regard to the verdict of the criminal court in CBI Spl. Case No.1 of 2008, the disciplinary proceedings ought to have been quashed. He conceded that the criminal court acquitted the petitioner recording that the charges were not proved beyond reasonable doubt, yet, contended that law is well settled that once criminal proceedings arising out of the same set of facts, on which the disciplinary proceedings too are grounded, have been concluded by recording that the charges could not be proved for want of evidence, the ratio of the decisions in **Captain M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr.**, reported in (1999) 3 SCC 678, and **G.M. Tank vs State of Gujarat**, reported in (2006) 5 SCC 446, ought to have been applied by the Tribunal and the disciplinary proceedings quashed. According to him, the Tribunal while exceeding its jurisdiction to examine the decision of the Special (CBI) Court as if it were sitting in appeal and recording its comments, erred in the exercise of the jurisdiction vested in it judiciously by failing to apply the ratio of the aforesaid decisions.

11. While contending that the Tribunal by dismissing the original application has caused failure of justice, Mr. Ramamurthy prayed for quashing of the judgment and order under challenge, setting aside of the disciplinary proceedings including the charge-sheet dated October 13, 2013 and all follow-up steps, as well directions on the respondents to grant the petitioner all consequential service benefits

including due promotion as Chief Commissioner of Customs and Central Excise and further promotions, if any, from the due dates as well as enhanced pension, gratuity, etc. from the date of his superannuation along with interest @ 18% per annum.

ARGUMENTS ON BEHALF OF THE RESPONDENTS

12. Mr. Shetty, learned advocate for the respondents vehemently opposed the writ petition. According to him, the judgment of the Tribunal is well reasoned and well-written and the same having dealt with each and every point that was raised on behalf of the petitioner, it does not warrant any interference.

13. Referring to the affidavit-in-reply filed by the respondents before the Tribunal, Mr. Shetty sought to contend that satisfactory explanation had been proffered as to why the charge-sheet could not be issued and served on the petitioner earlier. The explanation having been found satisfactory by the Tribunal on facts and the view taken being a plausible view, he contended that it was not for the writ court to interfere with such findings of fact. According to him, the decisions referred to by the Tribunal were squarely applicable to the facts of the present case and, therefore, this Court ought to uphold the judgment.

14. Referring to the verdict of the criminal court, Mr. Shetty contended that law is well settled that exoneration of the accused on the ground of benefit of doubt does not preclude the disciplinary

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authority from proceeding with a departmental charge-sheet. It was the petitioner who approached the Tribunal without participating in the inquiry and obtained an order of stay which resulted in indefinite postponement of such proceedings. According to him, the Tribunal was right in returning a finding that the petitioner himself having invited a stay, could not have at a later stage cited delay caused by such postponement as the reason for quashing of the proceedings.

15. The decisions of the Supreme Court in **Nelson Motis vs. Union of India & Anr.**, reported in (1992) 4 SCC 711, **R.P. Kapur vs. State of Punjab**, reported in AIR 1964 SC 787, **Deputy Registrar, Co-operative Societies, Faizabad v. Sachindra Nath Pandey & Ors.**, reported in (1995) 3 SCC 134, **Divisional Controller, Karnataka State Road Transport Corporation v. M.G. Vittal Rao**, reported in (2012) SCC (L&S) 171, **Noida Entrepreneurs Association v. Noida & Ors.**, reported in (2008) 1 SCC (L&S) 672, **Corporation of the City of Nagpur, Civil Lines, Nagpur and Anr. v. Ramchandra & Ors.**, reported in (1981) 2 SCC 714 and **Secretary, Ministry of Home Affairs & Anr. v. Tahir Ali Khan Tyagi**, reported in 2002(2) SCSLJ, 230, were relied on in support of the contention that there is no bar for the disciplinary authority to conduct disciplinary proceedings, even after acquittal recorded by the criminal court, since the law of evidence is not applicable to departmental inquiries and that the standard of proof

is also different from criminal proceedings.

16. Mr. Shetty, accordingly, prayed for dismissal of the writ petition.

DECISION WITH REASONS

17. From the factual narrative giving rise to this writ petition, noted above, it is clear that the alleged incident of sanction of drawback contrary to law and thereby leading to loss of revenue by the Government forming the genesis of the departmental charge-sheet dates back to July, 2000. An audit having revealed the said incident, the FIR was registered on December 31, 2004. Although the petitioner's involvement in any offence did not transpire as on date the FIR was registered, at least in September, 2007, the internal report of the ACB/CBI hinted at the petitioner's involvement. It is not the definite case of the respondents that despite exercise of due diligence, the petitioner's involvement did not transpire till September, 2007. Be that as it may, as far back as on January 23, 2008, the Board had recommended departmental action, *inter alia*, against the petitioner. Even if we discount the period between July, 2000 and January 23, 2008 (since the petitioner's involvement allegedly came to light only in September, 2007 and the Board recommended departmental action in January, 2008), the period between January 23, 2008 and October 23, 2013, i.e., exactly a period of 5 (five) years and 9 (nine) months, has to be identified as

the relevant period; and it would require examination as to whether the delay in not issuing the charge-sheet within a reasonable period from January 23, 2008 has been satisfactorily explained. Or, in other words, did the respondents place materials to satisfy the Tribunal/this Court that during the relevant period, they acted with diligence as well as promptitude or were indulging in sheer wastage of time by engaging in unnecessary correspondence and/or pushing the file from one desk to the other. This is essential because if no cogent explanation were furnished, the said exercise of engaging in correspondence and/or pushing the file would be nothing but just an 'excuse' and it could lead to an order not permitting the respondents to proceed with the inquiry.

18. However, before we proceed to so examine, we consider it appropriate to first explore decisions of the Supreme Court in the sequence of its origin on the point of delayed initiation of disciplinary proceedings and draw guidance therefrom as regards the course of action that ought to be adopted by us. In the process, we propose to consider all the decisions discussed by the Tribunal (though a few of them did not decide an issue similar to the one at hand) as well as the decisions which were not discussed by it.

19. The first decision is **State of Madhya Pradesh vs. Bani Singh**, reported in AIR 1990 SC 1308. The State was in appeal against an order of the Central Administrative Tribunal, Jabalpur

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Bench raising the point that the proceedings should not have been quashed merely on the ground of delay and laches; and it ought to have allowed the enquiry to progress. The Court, unable to agree with this contention, opined that the irregularities, which were the subject matter of the enquiry, had taken place between the years 1975-77 and it was not the case of the department that they were not aware of the said irregularities, if any, and came to know of it only in 1987. Since, according to the department, 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, it was unreasonable to think that they would have taken more than 12 (twelve) years to initiate the disciplinary proceedings. There being no satisfactory explanation for the inordinate delay in issuing the charge memo, the Court held that it would be unfair to permit the departmental enquiry to be proceeded with.

20. What follows from the decision in **Bani Singh** (supra) is that if a charge-sheet is subjected to challenge on the ground that there has been inordinate delay in issuing it, thereby resulting in the charge(s) becoming stale, it is the obligation of the disciplinary authority to satisfactorily explain the reasons for the delay.

21. **Chaman Lal Goyal** (supra) is the next decision of the Supreme Court where the question of delay in serving the charges

was considered. Mr. Shetty has relied on paragraph 9, where it has been held as follows:

“9. Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides 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.

(emphasis ours)

22. Thus, after having held that disciplinary proceedings cannot be initiated after lapse of considerable time, the Supreme Court in **Chaman Lal Goyal** (supra) sounded caution that interference with a charge-sheet containing stale charges must depend on the facts of a given case; and whenever such a plea is raised, a process of balancing is to be adopted whereby one has to weigh the competing interests of maintaining a clean and honest administration on the one hand and on the other, the vitiating effect of inordinate unexplained delay on the disciplinary proceedings *qua* the prejudice that non-interference with a belated charge-sheet containing stale

charges would result to the delinquent. In laying down the law, the Court had in mind the principles set out by the Constitution Bench in **A.R. Antulay vs. R.S. Nayak**, reported in (1992) 1 SCC 225. There it was laid down that ordinarily speaking, where the court concludes 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, the decision also observes that quashing is not the only course open to the court and in a given case, the nature of the offence and the other circumstances may be such that quashing of the proceedings may not be in the interest of justice. In such a case, it has been observed that it is open to the Court to make such other appropriate order as it finds just and equitable in the circumstances of the case.

23. **Chaman Lal Goyal** (supra) came to be considered by the Supreme Court in the context of unexplained delay in conclusion of disciplinary proceedings in **N. Radhakishan** (supra). Although the context was different, the following passage throws light on whether and to what extent delay in concluding the proceedings is a vitiating factor. The Court while reiterating that there has to be a balancing of the two considerations, i.e., disciplinary proceedings according to the relevant rules should be allowed to take their own course, and the prejudice suffered by the delinquent due to delay which would defeat justice, held:

"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."

(emphasis ours)

24. The next decision deserving notice on the point of delayed issuance of charge-sheet is **P.V. Mahadevan vs. Managing Director, T.N. Housing Board**, reported in (2005) 6 SCC 636. This decision does not appear to have been placed before the Tribunal by the parties. There, the respondent pleaded in its affidavit that for the

first time, the irregularity committed by the appellant during the year 1990 came to light in the audit report for the second half of 1994-95 and following such report disciplinary action had been initiated against him in the year 2000. The Court found that statutory rules governing the respondent required audit of the accounts once every year, and in view of the same the explanation offered for the delay in finalizing the audit account did not stand scrutiny. It was further held that the appellant having retired from service, no acceptable explanation on the side of the respondent explaining the inordinate delay in initiating disciplinary proceedings was furnished. Submission of senior counsel for the respondent, that the period from the date of commission of the irregularities by the appellant to the date on which it came to the knowledge of the respondent cannot be reckoned for the purpose of ascertaining whether there was any delay on its part in initiating disciplinary proceedings against the appellant, was held not to have merit and force. Ultimately, holding that the stand taken by the respondent was not convincing and only an afterthought to give some explanation for the delay, the Court quashed the charge-sheet. It would be of relevance to note what the Court ruled in paragraph 11, which is quoted below:

“11. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity

would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer."

(emphasis ours)

25. The decision in **M.V. Bijlani vs. Union of India**, reported in (2006) 5 SCC 88, is also one which dealt with delay in initiation and conclusion of disciplinary proceedings. One of the grounds for the Court to interfere was that the Tribunal as also the high court failed to take into consideration that disciplinary proceedings were initiated after 6 (six) years and they continued for a period of 7 (seven) years and, thus, initiation of the disciplinary proceedings as also continuance thereof after such a long time evidently prejudiced the delinquent officer.

26. The decision of the Supreme Court in **V. Appala Swamy** (supra), though was relied upon by the Tribunal, the same did not deal with the issue of delayed initiation of disciplinary proceedings; rather, it dealt with the issue of delayed conclusion of disciplinary proceedings. That would be evident from paragraph 11 of the

decision. What the Court laid down as law, on the issue under consideration before it, reads as follows:

“12. So far as the question of delay in concluding the departmental proceedings as against a delinquent officer is concerned, in our opinion, no hard-and-fast rule can be laid down therefor. Each case must be determined on its own facts. The principles upon which a proceeding can be directed to be quashed on the ground of delay are:

(1) where by reason of the delay, the employer condoned the lapses on the part of the employee;

(2) where the delay caused prejudice to the employee.

Such a case of prejudice, however, is to be made out by the employee before the inquiry officer.”

27. **Ministry of Defence vs. Prabhash Chandra Mirdha**, reported in (2012) 11 SCC 565, is the next decision in line. Referring to several of its earlier decisions, the Supreme Court reiterated that 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. It was also held that 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. It was stressed that gravity of alleged

misconduct is a relevant factor to be taken into consideration while quashing the proceedings.

28. The learned Judge presiding over the Division Bench in **Prabhash Chandra Mirdha** (supra) had the occasion to author the decisions in **Chairman, Life Insurance Corporation of India vs. A. Masilamani**, reported in 2013 6 530, and **Anant R. Kulkarni vs. Y.P. Education Society**, reported in (2013) 6 SCC 515. In the latter decision, the Court observed as follows:

“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 de hors 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.”

29. The last decision on the point seems to be **UCO Bank and Ors. v. Rajendra Shankar Shukla**, reported in (2018) 14 SCC 92.

We quote the relevant portion of paragraph 12 from such decision hereunder:

“12. *** The first issue of concern is the enormous delay of about 7 years in issuing a charge-sheet against Shukla. There is no explanation for this unexplained delay. It appears that some internal discussions were going on within the Bank but that it took the Bank 7 years to make up its mind is totally unreasonable and unacceptable. On this ground itself, the charge-sheet against Shukla is liable to be set aside due to the inordinate and unexplained delay in its issuance.”

(emphasis ours)

30. We may, in this connection, observe that various high courts across the country have also consistently interdicted disciplinary proceedings containing stale charges on the ground that it would be unfair to allow such proceedings to continue and would result in breach of principles of natural justice. In other cases, several high courts have also refrained from quashing charges only on the ground of delay. It would be unnecessary to burden this judgment by referring to all such decisions. However, we consider it appropriate to refer to only one decision since the explanation for the delay put forward there, more or less, resembles the explanation that the respondents proffered. That is a Division Bench decision of the Patna High Court in **Binay Kumar Singh vs. State of Bihar & Ors.**, reported in 1993 (3) SLR 327. The Court held that taking steps to collect necessary papers/particulars in relation to the proposed charges for 4 (four) years could hardly be said to be cogent explanation and since the allegations had become stale by lapse of

time, the disciplinary proceeding was not allowed to continue.

31. The principles that can be culled out from the aforesaid decisions may be summarized as below:

- a. It would always be desirable to initiate disciplinary proceedings immediately after the alleged misconduct is detected but if charge-sheet is issued after a considerable length of time has passed since such detection, it would be unfair to the charged officer to proceed against him on the basis of stale charges.
- b. Disciplinary proceedings may not be interdicted at the stage of charge-sheet and should be allowed to proceed according to the relevant rules since a charge-sheet does not affect any legal right of the delinquent unless, of course, it suffers from an invalidity that strikes at the root of the proceedings.
- c. If there is delay in initiation of disciplinary proceedings by drawing up charges against the delinquent and such proceedings are challenged, the disciplinary authority is under an obligation to explain the reasons for the delay; and, depending upon the worth of such reasons, the Court may proceed to decide one way or the other.
- d. There cannot be any exact measurement of the length of delay by reference to years to fall into the category of 'too long a delay', and what would amount to the same has to

be decided depending upon the facts of a given case.

- e. Should the delay be found to be too long and unexplained, that would definitely have a bearing on the seriousness of the disciplinary authority to pursue the charges against the charged officer and the Court may, in a fit and proper case, quash the proceedings because prejudice to the officer in such case would be writ large on the face of it.
- f. Even if, in a given case, the delay is satisfactorily explained, the charge-sheet could still be quashed if the charged officer proves to the satisfaction of the Court that he would be severely prejudiced if the proceedings were allowed to continue, a *fortiori*, lending credence to the claim of unfair treatment.
- g. For the mistakes committed by the department in the procedure for initiating disciplinary proceedings, the charged officer should not be made to suffer.
- h. Delay in initiation of disciplinary proceedings *per se* may not be a vitiating factor, if the charges are grave and in such case the gravity of the charges together with the factors, for and against the continuation of the proceedings, need to be balanced before arriving at a just conclusion.

32. While we need to draw guidance from the above decisions and embark on our journey to decide the question noted at the beginning

of this judgment, we feel it appropriate to touch upon one aspect of a service condition of a public servant which has a close relation with point (f) supra. It relates to retirement on superannuation and the effect of service of a charge-sheet containing stale charges practically on the verge/eve of such retirement. After in-depth consideration of the decisions noted above, we have not come across any enlightening discussion therein on this aspect (although a couple of decisions had noted that the officer/employee before it had retired) and, therefore, an attempt to ascertain whether retirement on superannuation could form one of the factors that the Courts ought to bear in mind while considering a challenge of the present nature, may be made. More so, because incidents are not rare where an alleged act of omission/commission amounting to misconduct remains under wraps for several years and days prior to retirement of the concerned employee, proceedings are initiated by drawal of charge-sheet by the disciplinary authority for reasons well-known.

33. Superannuation, as is well known, means discharge from a post on account of the age fixed therefor uniformly for all or a particular category of service holders and is a kind of retirement. Service rules relating to public servants invariably provide that on attaining a specified age, a public servant has to demit office and retire from service. It is generally felt that after reaching a particular age, a public servant becomes incapable to discharge the job

entrusted to him for health reasons and, therefore, needs to be replaced by younger blood. Even though a public servant is mentally alert and physically fit to discharge his duty and age is merely a number for him, yet, he has to retire and make way for others to fill the breach.

34. Given this background, let us consider a situation where a public servant who has reached the December years of his service career and waiting in the departure lounge to exit service is served with a charge-sheet concerning incidents which are more than a decade old. Although we do not rule out that there could be just reasons for the delayed initiation of disciplinary proceedings, by reason of his advanced age the charged officer may not be in a position to recollect or recall each single detail when called upon to raise his defence to the charge-sheet. The more complex the charge, the more difficult it could become to recapitulate events that might have led to a particular action which, later on, forms the plinth of a charge of misconduct. That the charged officer did not suffer any discomfort or inconvenience before, because of the delay in initiation of proceedings is, perhaps, no answer to brush aside the challenge. If such officer has to proceed for retirement on superannuation because of the age factor, it would be unreasonable and in certain cases, could defy logic, to expect him meet and answer the charge(s) relating to incidents of yesteryears although he is not considered

capable to serve beyond the age of superannuation and be retained in service. The odds would be against the charged officer and prejudice to him inevitable in the scheme of things. Thus, the tests laid down in respect of sustainability of delayed disciplinary proceedings and/or stale charges forming part of the charge-sheet ought to also, in our considered view, include the stage of the charged officer's service career when he is called upon to disclose his defence in respect of actions complained of as constituting misconduct. Having said so, we now turn to the challenge at hand.

35. Learned advocates for the parties have been heard, the materials on record have been perused and the impugned judgment and order of the Tribunal has been read. The question as to whether satisfactory explanation for the delayed issuance of a charge-sheet has been proffered or not needs to be answered by looking at the reply affidavit of the respondents filed before the Tribunal. Having looked at the affidavit, we would be required to answer two questions: first, whether such explanation satisfies the tests laid down for the same to be regarded as satisfactory for delayed initiation of disciplinary proceedings; if not, what consequence should follow. Should the delay be held to have been satisfactorily explained, it would require scrutiny as to what extent is prejudice required to be shown or proved if the impugned action of the disciplinary authority is alleged to violate principles of natural justice

which now includes within its ambit the right of receiving a fair hearing. In other words, has the petitioner suffered any prejudice thereby warranting interdiction.

36. Beginning with the first aspect, there can be no quarrel with the proposition that whether or not disciplinary proceedings initiated after long delay should be interdicted, must depend on the facts of each case. Neither can there be predetermined principles applicable to all cases and in all situations where there is delay in initiating/concluding the disciplinary proceedings nor can there be any hard and fast rule in that regard. These principles flow from the decisions in **Chaman Lal Goyal** (supra), **N. Radhakishan** (supra) and **V. Appala Swamy** (supra) relied on by the Tribunal in the impugned judgment. However, with all the respect and humility at our command, we observe that the said decisions do not throw any light as to when an explanation could amount to a satisfactory explanation.

37. On perusal of all the decisions that we have noted above, we do not consider it to be the requirement of law that the delay of each month or each year has to be explained; however, whatever be the length of delay, the explanation has to be acceptable to the Court. As the Supreme Court has laid down in matters where appeals are carried or applications are filed beyond the period of limitation and condonation of delay is prayed, the length of delay is immaterial.

Acceptability of the explanation is the only criterion; sometimes delay of the shortest range may be untenable due to want of an acceptable explanation, whereas in certain other cases, delay of long periods can be condoned if the explanation is satisfactory. There is no reason not to extend this principle to this class of cases too.

38. Since there cannot be any doubt that a satisfactory explanation of the delay could sustain a delayed charge-sheet containing stale charges, it needs to be understood what is meant by an 'explanation'. An 'explanation' is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. For the purposes of the present case, it was necessary for the respondents to explain on what account the delay occurred. Briefly put, delay was caused because the draft charge-sheet went through several stages before taking a final shape, thereby consuming a lot of time. None appears to have taken responsibility. In such circumstances, the question that obviously arises is, is the explanation for the delay really an explanation or is it an 'excuse'? Although people tend to see 'explanation' and 'excuse' as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real. An 'excuse' is often offered by a person to deny responsibility and consequences when under attack. It is sort of a

defensive action. Calling something as just an 'excuse' would imply that the explanation proffered is believed not to be true.

39. The events that followed detection of alleged involvement of the petitioner have been noted above in paragraph 3 and 17 (supra).

40. A recapitulation of the said events touching upon initiation of disciplinary proceedings against the petitioner would reveal that during the relevant period, i.e., after involvement of the petitioner transpired in September, 2007 till issuance of the charge-sheet on October 23, 2013, there were periods in between when the respondents are found to be in deep slumber. On February 4, 2008, initiation of major penalty proceedings against the petitioner was advised by the CVC. The Board then made a request on May 12, 2008 to the DGV to furnish draft charge-sheet to be issued to the petitioner. After a year, on May 19, 2009 to be precise, the Board sent a reminder to the DGV for furnishing the draft charge-sheet. Second and third reminders dated September 10, 2009 and May 3, 2010, respectively, followed. Why was the first reminder sent after a year, and why the second and third reminders were separated by 6 (six) months have not been explained. On May 19, 2010, the Board was informed by the DGV that the CoC (G) by his letter dated January 1, 2009 had forwarded the draft charge-sheet along with authenticated copies of the relied upon documents to the AD-V Section of the Board. The conclusion is, therefore, inevitable that

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despite having the draft charge-sheet as far back as in January, 2009, request was made on May 19, 2009 for furnishing the draft charge-sheet. Request for furnishing another set of the draft charge-sheet and authenticated copies of the relied upon documents was made by the Board to the CoC (G) on September 9, 2009. Pursuant thereto, on September 23, 2010, the CoC (G) furnished a copy of the draft charge-sheet. Since it was advised that the authenticated copies of the relied upon documents may be obtained directly from the ACB/CBI, the Board on November 2, 2010 requested the SP to furnish certified copies of the relied upon documents. Reminders dated February 9, 2011, March 9, 2011 and March 29, 2011 were sent whereupon the SP sent a reply that all the relied upon documents together with the report of the ACB/CBI had been supplied to the CVO of the Board on September 14, 2007. Instead of obtaining authenticated copies of the relied upon documents from its own CVO, the ACB/CBI was again approached by the Board on November 29, 2012 and April 29, 2013 with a request to provide copies of the relied upon documents. This is surely not the way to handle a sensitive and serious case, as the respondents would like to impress upon us. The situation demanded a high level of diligence and sincerity, which was sadly lacking. The ACB/CBI finally handed over the relied upon documents once again on October 9, 2013 and, thereafter, on October 18, 2013 approval of the competent authority

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for issuance of charge-sheet to the petitioner was obtained leading to the charge-sheet dated October 23, 2013 which was served on him on October 28, 2021.

41. The entire sequence of events as noticed above leaves the respondents in very poor light. Mr. Ramamurthy is right in contending that the movement of the file from one desk/office to another and/or exchange of correspondence for 5 (five) years without tangible result, does not evince any intention on the part of the disciplinary authority to act with promptitude and cannot be regarded as an explanation, far less a satisfactory explanation; on the contrary, it is a defensive action to ward off an attack. To amount to an explanation, the events must have referred to the valid circumstances resulting in delayed issuance of the charge-sheet prior to October 23, 2013 and which, by exercise of due diligence, could not be avoided. There does not seem to be any insurmountable impediment that could not be taken care of by the disciplinary authority, if he was really diligent. Neither was there any order of stay passed by any competent court of law nor was there any administrative order that restrained the disciplinary authority from placing the file on the fast track and drawing up the disciplinary proceedings by issuance of charge-sheet within a reasonable time on detection of involvement of the petitioner. Office Memorandum dated May 23, 2000 issued by the CVC required issuance of charge-

sheet within a month of receipt of advice of the CVC which, in the instant case, was received on February 4, 2008. Even if the said requirement is treated to be directory and failure to draw up the charge-sheet within a month of receipt of the advice of the CVC may not be interdicted only on such ground, we would consider a period of 6 (six) months from receipt of such advice to be a reasonable period within which the charge-sheet should have been drawn up, extendable to a year in exceptional cases. The analogy is drawn looking at the decision of the Supreme Court in **Prem Nath Bali vs. High Court of Delhi**, reported in (2015) 16 SCC 415, where the Supreme Court has held that it is the duty of an employer to ensure that departmental enquiry initiated against a delinquent employee is concluded within the shortest possible time by taking priority measures, as far as possible within six months which may further be extended to six months in certain circumstances. Considering any volume of papers that the disciplinary authority would be required to look into, any period beyond one year is bound to be viewed as unreasonable. Having noticed the turn of events right from the time the police report was filed in 2007, we are inclined to hold that the 'explanation' proffered is really an 'excuse', unworthy of acceptance.

42. Since the decision in **Chaman Lal Goyal** (supra) introduced the concept of prejudice by referring to **A.R. Antulay** (supra), we are at this stage reminded of certain other Constitution Bench

decisions of the Supreme Court. Our following discussion is intended to provoke a thought for the reason mentioned in the first sentence of the paragraph that follows, and is not to be understood as an attempt on our part to doubt the decision in **Chaman Lal Goyal** (supra) in any manner, for, conscious of the ratio therein by which we are bound, we would distinguish the same. In the first of such Constitution Bench decisions, viz. **E.P. Royappa vs. State of Tamil Nadu**, reported in (1974) 4 SCC 3, Hon'ble P.N. Bhagwati, J. speaking for himself, as well as Hon'ble Y.V. Chandrachud and Hon'ble V.R. Krishna Iyer, JJ., laid down the law that the basic principle which informs Articles 14 and 16 is equality and inhibition against discrimination. These articles strike at arbitrariness in State action and ensure fairness and equality of treatment. It can, thus, safely be concluded that arbitrariness is anathema to State action in every sphere and wherever the vice percolates, technicalities ought not to impede tracing and striking it down. Hon'ble Y.V. Chandrachud, CJ. speaking for the Constitution Bench in **Olga Teliis vs. Bombay Municipal Corporation**, reported in AIR 1986 SC 180, ruled that there can be no estoppel against the Constitution and that there can also be no waiver of Fundamental Rights. That the rule of *audi alteram partem* is comprehended within the guarantee of Article 14 of the Constitution is the law laid down by Hon'ble D.P. Madon, J. speaking for the majority in **Union of India vs. Tulsiram Patel**,

reported in (1985) 3 SCC 398. In **A.R. Antulay vs. R.S. Nayak**, reported in (1988) 2 SCC 602, Hon'ble Sabyasachi Mukharji, J. speaking for the majority observed that "*(N)o prejudice need be proved for enforcing the fundamental rights. Violation of a fundamental right itself renders the impugned action void. So also the violation of the principles of natural justice renders the act a nullity*".

43. The petitioner has not specifically argued that issuance of a charge-sheet containing stale charges is arbitrary. However, on facts and in the circumstances, it may not require much application of mind for a sensible person to be inclined to the view that the action complained of is indeed arbitrary. An arbitrary action offends Article 14 and is, thus, void. Since no prejudice is required to be proved for violation of a Fundamental Right, the question of proving prejudice may not arise. However, since issuance of the charge-sheet is not challenged on the ground of arbitrariness, we leave it for a decision in an appropriate case in future as to whether delayed issuance of charge-sheet amounts to arbitrariness in State action and could be nullified on the touchstone of Article 14 without prejudice being proved.

44. Having held that the charge-sheet has been belatedly issued without satisfactory explanation but leaving it aside only for the moment, we now propose to attempt a balancing exercise of the

factors for and against the plea that the delay in initiating the disciplinary proceedings should be the ground for quashing thereof bearing in mind the principle of law laid down in **Chaman Lal Goyal** (supra).

45. The alleged incident of M/s. Pacific International Exporters being allowed to successfully claim excess drawback, contrary to law, occurred in the year 2000. Keeping this in mind, the factors in favour of the petitioner are:

- (i) The petitioner was made to face disciplinary proceedings initiated more than thirteen years later and almost on the eve of his retirement on superannuation.
- (ii) There is no explanation why the petitioner's involvement in such alleged unlawful action did not get noticed in the audit report leading to the FIR. On the contrary, in the meanwhile, he was promoted in 2002. Promoting the petitioner after the alleged incident, though does not amount to condonation of past misconduct or misdeameanour, this shows that the respondents considered him to be competent to hold the higher post.
- (iii) During the next three years that the investigation into the FIR was carried on from 2004 and the petitioner's involvement ultimately transpired at the time of filing of police report in 2007, there was no independent

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departmental probe by the respondents to find out whether apart from the said Hemant Kothikar, anyone else was involved. This is a serious omission/failure/lapse for which the petitioner should not suffer the ill-effects of delayed proceedings.

- (iv) What transpired between 2008 and October, 2013 have been noted above. The explanation for not issuing the charge-sheet dated October 23, 2013 is not an explanation but a lame excuse, which is clearly unacceptable.
- (v) The sealed cover procedure was adopted owing to judicial proceedings, which ultimately culminated in the petitioner's exoneration from the charges and, thereby, he lost the chance of being considered for promotion to the post of Chief Commissioner of Customs and Excise. Since both proceedings, judicial and disciplinary, arise out of the same set of facts, not being able to know the fate of consideration is itself a prejudice writ large and the petitioner may not separately be required to prove prejudice.
- (vi) Had the respondents delayed issuance of the charge-sheet beyond October 31, 2013, rule 9(2)(b)(ii) of the Central Civil Services (Pension) Rules, 1972 would have

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barred initiation of disciplinary proceedings. This gives reason to believe that the disciplinary authority activated himself only on the verge of the petitioner's retirement on superannuation and to overcome the statutory bar, the charge-sheet was issued a week prior thereto. If indeed the disciplinary authority was serious enough to have an early conclusion of the proceedings, appointment of the Inquiry Officer also ought not to have taken almost a year after the charge-sheet.

- (vii) The petitioner did plead in the original application why and how he is likely to be prejudiced if the enquiry were conducted into the stale charges.

46. Now let us trace the factors against the petitioner:

- (i) Technicalities should not be allowed to stand in the way of disciplinary proceedings and the same should be allowed to take its own course.
- (ii) Despite involvement in acts of misconduct in 2000 which went unnoticed, the petitioner was not denied promotion in 2002.
- (iii) The charge against the petitioner is serious. Deliberate acts or negligence of public servants leading to loss of public revenue has to be dealt with iron hands.
- (iv) The Tribunal had been approached and interim relief

obtained staying disciplinary proceedings on the ground that it was to run parallelly with judicial proceedings and submission of written reply to the charge-sheet would amount to a disclosure of defence, thereby prejudicing his defence at the trial. However, having obtained a stay of the disciplinary proceedings on such ground, the disciplinary proceedings were attacked on different grounds at the time of final hearing of the original application.

47. Upon such balancing, we are of the considered view that the factors for quashing the delayed charge-sheet far out-weigh the factors against. There are certain features in this case that would distinguish **Chaman Lal Goyal** (supra). The enquiry here has not commenced, whereas there, by the time the court was approached, the enquiry was more than halfway through. That apart, here the petitioner pleaded why he would be prejudiced whereas that was not the case there. We, therefore, consider it more appropriate, in the interest of justice as well as the interest of the administration, that the proceedings initiated against the petitioner ought to be laid to rest, meaning thereby that the charge-sheet as well as appointment of the Inquiry Officer may not be carried forward. This course of action would be just and proper, more so in the circumstances that nearly a year's time was taken by the disciplinary authority to

appoint the Inquiry Officer and also that in the judicial proceedings the petitioner came out unscathed.

48. Although we are conscious that mere exoneration in the criminal proceedings does not warrant an order interdicting disciplinary proceedings, both having origin to common set of facts and common witnesses/evidence, yet, the time taken since the alleged act of omission/commission giving rise to the departmental charge-sheet and all other attending circumstances do call for being noticed. Mr. Shetty is right in his contention that the criminal court acquitted the petitioner holding that the charges were not proved beyond reasonable doubt and that it was not recorded to be a case of honourable acquittal. We have set out the findings of the Special Court supra. Perusal of paragraphs 19 and 20 of its judgment, emphasized by us, would leave none in doubt of findings being returned on appreciation of the evidence on record that evidence led by the prosecution did not point to the guilt of the petitioner and also that he had not committed any wrong or offence. PW-4, Ashok Chaudhary, did depose that the petitioner, accused no.3, had allowed the duty drawback in manual file S-2 and S-10; however, those files were not part of the evidence led by the prosecution. That apart, Ashok Chaudhary could not remember whether file S-2 and S-10 were in respect of M/s. Pacific International. Regard being had to such evidence, the Court was of the view that it cannot be said

beyond reasonable doubt that it was the petitioner, accused no.3, who had sanctioned the duty drawback in this case. The Court did not stop at that; it went on to record in the next paragraph that even if it is assumed that the petitioner, accused no.3, had sanctioned the duty drawback, he did not commit any wrong in view of legal provision regarding the issuance of duty drawback. There is no indication in the judgment of the witness being won over; rather, to our surprise, Mr. Shetty was heard to submit that disappearance of file S-2 and S-10 is attributable to the petitioner. If indeed that be so, why the petitioner was not proceeded against on such allegation has not been explained. The submission of Mr. Shetty has been raised to be rejected, which we hereby do. Although the Special Court while concluding its judgment may not have expressly said that it is a case of honourable acquittal and, on the contrary, had recorded in the operative part that the charges against the accused including the petitioner had not been proved beyond reasonable doubt, we are left to wonder whether the findings (in paragraphs 19 and 20 noted supra) would not bring the case of the petitioner within the ambit of an honourable acquittal in every sense and purpose? We may refer to the decision in **Inspector General of Police v. S. Samuthiram**, reported in (2013) 1 SCC 598, for tracing the meaning of honourable acquittal. There, the Supreme Court explained that *“(W)hen the accused is acquitted after full*

consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted”.

The judgment of the Special Court not having been carried in appeal, has attained finality; and, in our view, the findings therein referred to above do bring the case of the petitioner within the ambit of an honourable acquittal. However, since this discussion is not intended to be one other ground for the ultimate view we propose to take but it has been necessitated only for being a factor favouring quashing of proceedings, we say no more.

49. The upshot of the discussion on delayed issuance of the charge-sheet dated October 23, 2013 is that there being no satisfactory explanation therefor, the respondents cannot be allowed to proceed with such charge-sheet; thus, the petitioner is entitled to succeed in his claim that the disciplinary proceedings including the charge-sheet dated October 23, 2013 and all further orders in connection therewith ought to be set aside. It is ordered accordingly.

50. While also setting aside the judgment and order of the Tribunal under challenge, we further direct that the sealed cover be opened and the recommendation of the Departmental Promotion Committee be considered. If the petitioner had been recommended, an order of promotion be issued as Chief Commissioner of Customs and Excise. Such order will take effect from the date the peers of the petitioner

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were promoted. The petitioner shall not be entitled to any arrears of monetary benefit for such promotion, except that his pension shall be calculated based on the pay that he would have last drawn as such Chief Commissioner. Let the order of promotion be issued within a month. If the Departmental Promotion Committee has not recommended the petitioner for promotion, he shall be so intimated. In such case, his pension shall be calculated based on the last pay drawn by him. The terminal benefits including pension, gratuity and other benefits to which the petitioner is entitled, based on promotion or otherwise, as the case may be, shall be released as early as possible but positively within 3 (three) months of issuance of the order of promotion as above. The petitioner shall be entitled to interest on such unpaid amount at the highest rate that nationalized banks offer for fixed deposits.

51. Writ Petition No. 5764 of 2021 is, accordingly, allowed. No costs.

WRIT PETITION NO. 2888 OF 2019

52. Hearing of this writ petition was concluded on October 27, 2021. The order passed while reserving judgment records the submission advanced on behalf of the respondents by Mr. Helekar, learned advocate, that no additional affidavit was filed before the Central Administrative Tribunal, Mumbai Bench, Mumbai (hereafter

“the Tribunal”, for short) after O.A.No.184 of 2010 was remanded and that his prayer for extending opportunity to the respondents to file such an affidavit before us stands rejected. Such additional affidavit was the implied requirement of an order of a coordinate Bench of this Court [cor. the Hon’ble Acting Chief Justice and Hon’ble M.S. Karnik, J.] dated January 24, 2018 while disposing of Writ Petition No.851 of 2013 (being an earlier writ petition of this petitioner, whereby the order of the Tribunal impugned therein was set aside and the original application remanded for hearing afresh) to bring on record, in a manner known to law, the reasons that delayed issuance of charge-sheet to the petitioner. We could have disposed of this writ petition on that day itself having regard to the submission that no additional affidavit was filed. However, since hearing of another writ petition [Writ Petition No. 5764 of 2021] was concluded a few days before where the issue of delay in initiation of disciplinary proceedings was under consideration, we thought it appropriate to deliver the judgment on this writ petition after disposal of such writ petition.

53. Perusal of the judgment and order dated January 24, 2018 in Writ Petition No.851 of 2013 would reveal that a consignment of Government stores worth Rs.25.61 lakh was dispatched on January 10, 2002 from Ministry of Defence, Canteen Stores Department, Mumbai to Bareilly by road through an approved transport

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contractor, M/s. Adarsh Parivahan. The consignment did not reach the destination and this incident came to light through a report of the auditor dated March 28, 2003. Preliminary inquiry was conducted in June 2004. A show-cause notice was issued on December 24, 2004 to the petitioner calling upon him to explain why disciplinary proceedings should not be initiated. After receipt of the petitioner's reply dated December 21, 2004, no departmental action was taken against him; instead, the respondents instituted a summary suit in this Court for recovery of money against the said contractor and such suit was decreed on February 27, 2006. More than 40 (forty) months after the aforesaid suit was decreed, the petitioner was served with Memorandum of Charges dated December 18, 2009 under rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Article of Charge-I alleged that the petitioner had not reconciled the monthly truck statement received from CSD Depot, Bareilly with the truck dispatch register of Base depot and thereby non-receipt of the consignment at Bareilly depot went unnoticed. Due to the petitioner's negligence, the department had suffered a loss of Rs.10,71,450/-. The allegation in Article of Charge-II was that the petitioner had failed to "check the register, initialed and put up a letter to Traffic Officer, Base Depot towards the release of Bank guarantee amounting to Rs.2,29,100/- against the transporter M/s. Adarsh Parivahan without confirming any dues from the transporter".

Vide Article of Charge-III, the petitioner was charged with failing to advise "the concerned staff working under him to monitor the receipt details of trucks with the master register of transporter to confirm receipt of consignment at the consignee depot nor the master register was put up to his superiors. Due to above lapse, non-receipt of consignment at Bareilly Depot could not be noticed. Moreover, the register of the transporter was closed and kept aside at the end of the financial year 2001-02, as the transporter was not awarded any contract for the subsequent year 2002-03, as stated by Shri V.B. Mule himself. There is no transparency in discharging of official duties thereby causing loss to the department". All these acts, according to the disciplinary authority of the petitioner, amounted to negligence in discharge of his assigned duties and exhibited misconduct unbecoming of a Government servant.

54. The charge-sheet was challenged by the petitioner before the Tribunal by presenting an original application, which was registered as O.A.No.184 of 2010. The primary ground of challenge was the delay in initiation of disciplinary proceedings. In a reply affidavit dated February 23, 2010, the respondents in paragraph 2.4 conceded that there was delay in serving the charge-sheet on the petitioner but such delay was attributed to official procedure. In an additional reply affidavit dated August 10, 2010 (filed in response to the petitioner's rejoinder affidavit), it was pleaded in paragraph 3

that late receipt of concurrence from the appropriate authority resulted in delay in issuing the charge-sheet. By an order dated August 23, 2012, the Tribunal dismissed the original application relying upon a synopsis of events that was tendered in course of hearing and which, obviously, did not form part of the pleadings. Such order was the subject matter of challenge in Writ Petition No.851 of 2013. Upon hearing the parties, the coordinate Bench proceeded to pass the following order:

"9. Heard learned Counsel. We find some substance in the contention of the learned Counsel for the petitioners that the Tribunal has relied upon the brief synopsis and the events mentioned therein while arriving at the finding that the delay is satisfactorily explained. We further find that in the reply filed by the respondents there is no mention of the details which are set out in the brief synopsis. It is also the submission of the learned Counsel for the petitioners that the brief synopsis which is at Exh.M to the petitions was tendered after completion of the pleadings and when the arguments were in progress. We find that it is on the basis of the sequence of events and the action taken by the respondents as mentioned in the synopsis but which are not part of the pleadings that the Tribunal proceeded to hold that the delay has been satisfactorily explained. In our opinion the Tribunal could not have relied upon the events mentioned in the synopsis which events were clearly beyond the pleadings of the materials on record.

10. In this view of the matter, in our opinion, the matter needs to be remitted back to the Tribunal for a fresh decision on merits and in accordance with law. Hence the following order.

ORDER

1. Impugned order dated 23/8/2012 passed by the Tribunal in O.A. No.184 of 2010 and O.A. No.243 of 2010 is quashed and set aside.
2. O.A. No.184 of 2010 and O.A. No.243 of 2010 are remitted back to the Tribunal for a fresh decision on merits and in accordance with law.

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3. The Tribunal is requested to hear and decide the O.As. as expeditiously as possible and preferably within the period of six months from today.
4. Interim order granted by this Court is continued for a period of 10 weeks from today.
5. The question of grant of interim relief may be considered by the Tribunal on its own merits, if an application is so made.
6. All contentions on merits are kept open.
7. Writ Petitions are partly allowed.
8. Rule is partly made absolute with no order as to costs.”
(emphasis ours)

55. In view of the aforesaid order of remand, what was expected of the respondents was to file an additional affidavit to place on record the explanation for the delay and not to rely on the excuse of official procedure and non-receipt of concurrence as reasons that delayed initiation of the disciplinary proceedings. As has been noted in the order dated October 27, 2021 passed by us, the respondents did not file any additional affidavit.

56. While the matter stood thus, the Tribunal rather surprisingly [speaking through the same Member (Administrative) presiding over the Division Bench, who also dismissed the original application presented by the petitioner in Writ Petition No.5764 of 2021 (Bhupendra Pal Singh v. Union of India & Ors.)], proceeded to dismiss O.A.No.184 of 2010 once again by passing the following order:

- “15. The respondents have attempted to explain the delay by showing how they have been pursuing the transporter in the Civil case and after succeeding, in the criminal case and they have failed to even secure his

presence in Court. It was only after giving up on the police for production of the accused, that they took up the charge-sheet that they had initially contemplated in 2005 and issued in December 2009. The delay of about 4-5 years between the show-cause notice and issue of charge-sheet has evidently been covered by attempts of the respondents to save the applicants from the consequences of a disciplinary enquiry but in the process, they have now attracted the charge of delay.

16. However, in the facts and circumstances of the case, it is evident that the delay is not excessive given the detailed nature of the explanations furnished by the respondents and no significant prejudice has been claimed or can be considered to have been caused to the applicant by the delayed issue of a charge-sheet. In the circumstances, the reliefs claimed in this OA for quashing the charge-sheet on the ground of delay and on other grounds such as that the articles of charge do not indicate misconduct or are without valid basis are, therefore declined. The OAs are accordingly dismissed as devoid of merits. The interim orders granted earlier in both these cases are withdrawn with immediate effect and respondents are directed to complete the enquiry expeditiously. There shall be no order as to costs."

57. Incidentally, O.A. No.184 of 2010 was considered along with another O.A. No.243 of 2010 and the same also came to be dismissed by the aforesaid order. The latter original application was by another employee who was sought to be similarly proceeded against like the petitioner.

58. Perusal of the impugned judgment would not reveal that the Tribunal was considering O.A. No.184 of 2010 on remand, pursuant to the order of this Court. The earlier order dated August 23, 2012 of the Tribunal dismissing O.A. No.184 of 2010 having been set aside by this Court by the order dated January 24, 2018 on the ground

that the reply affidavit did not disclose satisfactory reasons for delayed issuance of the charge-sheet and that the Tribunal erred in placing reliance on the synopsis of events, which did not form part of the pleadings, and also since no additional affidavit was filed by the respondents before the Tribunal, we are simply left to wonder how the Tribunal, after remand, could repeat the same mistake of not trying to ascertain whether the reason put forth by the respondents for the delay could be justified on the basis of the materials on record.

59. We have noted from the impugned judgment and order dated March 1, 2019 that the learned advocate for the petitioner had referred to, *inter alia*, the decision of the Supreme Court in **N. Radhakishan** (supra), **P.V. Mahadevan** (supra), **M.V. Bijlani** (supra) and **Rajendra Shankar Shukla** (supra).

60. Despite such decisions of the Supreme Court being brought to the notice of the Tribunal, it proceeded to hold against the petitioner on the ground that the Court or the Tribunal ought not to interfere at the stage of show-cause or charge-sheet. True, the Court does not ordinarily interfere at the show-cause or charge-sheet stage; however, interference in some very rare and exceptional cases can always be made and the show-cause/charge-sheet quashed if the same is found to be wholly without jurisdiction or for some other reason it is wholly illegal. The Tribunal proceeded as if in no case can

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the validity of a show-cause/charge-sheet be examined and that the notice/charged employee must wait for a punishment to be imposed for approaching the Tribunal. The approach of the Tribunal was clearly wrong.

61. We are of the considered opinion that the reasons assigned by us while allowing Writ Petition No.5764 of 2021, as above, would squarely apply on facts and in the circumstances of the present case and that there being no valid and acceptable explanation for the delay of almost 6 (six) years in issuance of the charge-sheet coupled with the fact that the petitioner attained the age of superannuation on November 30, 2011, it would be just and proper and in the interest of justice to set aside not only the impugned judgment and order of the Tribunal dated March 1, 2019 but also the Memorandum of Charges dated December 4, 2009. It is ordered accordingly.

62. Since, in this case too, the sealed cover procedure was adopted by the Departmental Promotion Committee *qua* the petitioner's promotion to the post of Superintendent, we direct in tune with prayer clause 8.02 of the original application that the respondents shall look into the recommendation contained in the sealed cover and promote the petitioner to the post of Superintendent, if found fit. Such order, to be issued within a month from date, will take effect from the date the petitioner's promotion was due. While the petitioner shall not be entitled to any arrears of monetary benefit for

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such promotion, his pension shall be calculated as if he had retired on superannuation as Superintendent and based on the pay that he would have last drawn as such. If the Departmental Promotion Committee did not recommend the petitioner for promotion, an intimation shall be sent to him in that behalf. In such case, the petitioner shall be entitled to pension based on the last pay drawn by him. The terminal benefits including pension, gratuity and other benefits to which the petitioner is entitled, based on promotion or otherwise, as the case may be, shall be released as early as possible but positively within 3 (three) months of issuance of the order of promotion as above. The petitioner shall be entitled to interest on such unpaid amount at the highest rate that nationalized banks offer for fixed deposits.

63. Writ Petition No.2888 of 2019 stands allowed, but without any order for costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)