STATE OF ANDHRA PRADESH

v.

N. RADHAKISHAN

APRIL 7, 1998

[SUJATA V. MANOHAR AND D.P. WADHWA, JJ.]

Service Law :

Andhra Pradesh Civil Services (CCA) Rules, 1963: Rule 19.

Departmental Enquiry—Delay in conclusion of—Not explained—Proceedings—Vitiating of—Promotion—Effect of—Employee recommended for promotion by DPC during pendency of charge memo—Subsequently, two charge memos served on employee—Held: No pre-determined principles applicable to all cases and all situations can be laid down—Each case has to be examined taking into consideration all relevant factors—Court has to balance between clean and honest administration and the prejudice that delay causes to the employee—Further unexplained delay in concluding the proceeding itself causes prejudice to the employee—In the circumstances of the case, employee directed to be promoted on the basis of recommendations of DPC—Two subsequent charge memos also directed to be ignored for the purpose of promotion—Andhra Pradesh Civil Services (CCA) Rules, 1991, Rr. 20, 21 and 45.

Departmental Enquiry—Charges—General in nature—Framing of—Against several employee of Municipal Corporation for unauthorised construction with their collusion—On basis of report of Anti Corruption Bureau—All charges in verbatim without particularising role of each employee—Held: Such generalisation of charges, deprecated.

Department Enquiry - Charge memo—Issue of fresh charge memos—Charge memo issued in 1987 under old rules—Enquiry Officer appointed one after the other but no progress made—Subsequently, two charge memos issued in 1995 under new Rules without cancelling the earlier one—New Rules provided for continuance of proceedings initiated under old Rules—Held: Issue of new charge memos did not causes any prejudice to the delinquent employee because previous enquiry did not make any progress—Hence, initiation of fresh proceedings without cancelling the previous one, only an

A *irregularity and not an illegality.*

The respondent was working as Assistant Town Planner in a Municipal Corporation. The Director General, Anti Corruption Bureau sent a report dated 7-11-1987 to the State Government about the irregularities and unauthorised constructions in multi-storied complexes in collusion with
B Municipal authorities.

On the basis of the aforesaid report a charge memo dated 12-12-1987 was served on the respondent and ten others, all in verbatim without particularising the role of each employee, under Rule 19 of the Andhra Pradesh Civil Services (CCA) Rules, 1963. Although several enquiry officers
C were appointed one after the other no progress was made in the enquiry. There was no valid explanation for the delay. However, without cancelling the earlier charge memo a fresh charge memo dated 31-7-1995 was served on the respondent on the ground that in the meantime the Andhra Pradesh Civil Services (CCA) Rules, 1991 had come into force. Out of four charges in this
D new charge memo the respondent was not involved in three charges. During the pendency of the new charge memo the respondent was recommended for promotion by the Departmental Promotion Committee (DPC). Subsequently, two more charge memos dated 27-10-1995 and 1-6-1996 were served on the respondent and in spite of the recommendations of the DPC the respondent
E was not promoted.

Being aggrieved, the respondent filed an application before the State Administrative Tribunal which quashed the memo dated 31-7-1995 and directed that the respondent be promoted on the basis of the recommendations of the DPC without taking into consideration the subsequent two charge
F memos. Hence this appeal.

Dismissing the appeal, this Court.

HELD : 1.1. It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding
G the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated, each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all relevant factors and to balance and 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
H particularly when delay is abnormal and there is no explanation for the delay.

The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained, prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations. [707-B-F]

1.2. In the present case it is found that without any reference to records merely on the report of the Director General, Anti Corruption Bureau, charges, which are general in nature, were framed against the respondent and ten others all in verbatim and without particularising the role played by each of the officers charged. There were four charges against the respondent. With three of them the respondent was not concerned. The respondent offered explanation regarding the fourth charge but the disciplinary authority did not examine the same nor did it choose to appoint any inquiry officer even assuming that action was validly being initiated under the Andhra Pradesh Civil Services (CCA) Rules, 1991. There is no explanation whatsoever for delay in concluding the inquiry proceedings all these years. The case depended on records of the Department only and Director General, Anti Corruption Bureau had pointed out that no witnesses had been examined before he gave his report. The Inquiry Officers, who had been appointed one after the other, had just to examine the records to see if the alleged deviations and constructions were illegal and unauthorised and then as to who was responsible for condoning or approving the same against the bye-laws. It is nobody's case that respondent at any stage tried to obstruct or delay the inquiry proceedings. The Tribunal rightly did not accept the explanations of the State as to why delay occurred. In fact there was hardly any explanations worth consideration. In the circumstances the Tribunal was justified in quashing the charge memo dated 31-7-1995 and directing the State to promote

the respondent as per recommendations of the DPC ignoring the charge memos dated 27-10-1995 and 1-6-1996. [707-G-H; 708-A-C]

State of Punjab **v.** *Chaman Lal Goyal,* **[1995] 2 SCC 570 and** *A.R. Antulay* **v.** *R.S. Nayak,* **[1992] 1 SCC 225, referred to.**

2. It is an undisputed fact that without cancelling the charge memo dated 22-12-1987 another charge memo dated 31-7-1995 was served on the respondent under the 1991 Rules. The enquiry proceedings initiated under the Andhra Pradesh Civil Services (CCA) Rules could be continued even after coming into force of the 1991 Rules. Therefore, in the present case inuse of a fresh charge memo dated 31-7-1995 could be only an irregularity and not an illegality because there has been no progress in the previous enquiry proceedings. [705-E-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3503 of 1997.

From the Judgment and Order dated 12.12.96 of the Andhra Pradesh Administrative Tribunal in O.A. No. 2239 of 1996.

Ms. K. Amareshwari, V.R. Anumolu and T. Anil Kumar for the Appellant.

H.S. Gururaja Rao and T.V. Ratnam for the Respondent.

The Judgment of the Court was delivered by

WADHWA, J. Against the judgment dated December 12, 1996 of the Andhra Pradesh Administrative Tribunal, Hyderabad, in O.A. No. 2239/96 filed by the respondent, the State of Andhra pradesh has come up in appeal. By the impugned judgment the Tribunal allowed the petition of the respondent and directed that the respondent be promoted to the category of Director of Town and Country Planning, in the existing vacancy, ignoring the charge memos — (1) Memo No. 2732/FL/87/27/MA, dated July 31, 1995; (2) memo No. 145/B2/93-19/MA, dated October 27, 1995; and (3) Memo No. 898/B.2/94/M.A dated June 1, 1996, if the respondent is otherwise eligible. The Tribunal found that the Departmental Promotion Committee met on August 16, 1995 and prepared the panel for the panel year 1994-95, which was approved by the State Government in October, 1995. One of the persons included in the panel was promoted to the category of Director of Town and Country Planning by G.O.M. dated November 14, 1995. The Tribunal observed that the panel itself having been prepared on August 16, 1995 should lapse only on December 31,

1996 and not on December 31, 1995 as was contended by the State. The name of the respondent was included in the panel. The Tribunal, therefore, held that since the panel would lapse only on December 31, 1996 the respondent was entitled for promotion before that date. The Tribunal also noticed that the objection of the State that the panel lapsed on December 31, 1995 was never raised either before it or in the Supreme Court in a Special Leave Petition filed by the State against an interim order earlier made by the Tribunal.

Tribunal was concerned with the question if promotion of the respondent could be denied to him after his name had been included in the panel prepared by the DPC on the ground that the disciplinary inquiry initiated against him had not yet been terminated. The respondent had submitted before the Tribunal that the charge memo dated July 31, 1995 was served upon him just before the meeting of the DPC only to deprive him his claim of promotion and further that the charge memos dated October 27, 1995 and June 1, 1996 being subsequent to the date of meeting of DPC could not be taken into consideration for promoting him to the post of Director, Town and Country Planning. Tribunal noticed that the memo dated July 31, 1995 related to the incidents that happened in the years 1978, 1979 and 1984, which were also the subject-matter of the memo No. 1412 dated December 22, 1987. While the memo No. 1412 had been issued under Rule 19 of the Andhra Pradesh Civil Services (CCA) Rules, 1963 (for short "1963 Rules") that dated July 31, 1995 was issued under Rule 20 of the Andhra Pradesh Civil Services (CCA) Rules, 1991 (for short "1991 Rules"). Earlier memo No. 1412 was neither cancelled nor annulled before issuance of memo dated July 31, 1995 and the Tribunal was of the view that because of this circumstance memo dated July 31, 1995 could not have been issued and inquiry should have proceeded under the old Rules after the Inquiry Officer had been appointed.

State has contended before us that the Tribunal wrongly assumed that the charges communicated to the respondent on July 31, 1995 were belated and not only that it quashed that charge memo but also other charge memos when there was no challenge to that. Merely on the ground of delay the Tribunal should not have conferred unwanted benefits on the respondent. It was submitted that the whole approach of the Tribunal in giving relief to the respondent has been the delay in not concluding the inquiry in furtherance to the charge memo. It may, however, be noticed that the respondent did seek setting aside of the memo dated July 31, 1995 and that dated October 27, 1995. The Tribunal only quashed memo dated July 31, 1995 and as regards memos

A dated October 27, 1995 and June 1, 1996, it said that the State might proceed against the respondent for taking action as per law but the only rider which the Tribunal put was that these two memos could not be taken into consideration in implementing the recommendation of the DPC.

B Whether the delay did vitiate the disciplinary proceedings and if the Tribunal was justified in giving the directions aforesaid we may refer to the sequence of the events.

The respondent was appointed as Asstt. Director of Town Planning in the year 1976. He worked in the Municipal Corporation of Hyderabad C (hereinafter referred to as 'Corporation') in 1979. He was posted as City Planner, Municipal Corporation of Visakhapatnam in 1981. A report dated November 7, 1987 was sent by the Director General, Anti-Corruption Bureau, Andhra Pradesh, Hyderabad, to the Secretary to the Government, Housing, Municipal Administration & Urban Development Department, Andhra Pradesh, D Hyderabad, about the irregularities in deviations and unauthorised constructions in multi-storied complexes in twin cities of Hyderabad and Secunderabad in collusion with Municipal authorities.

In this report four multi-storied buildings were mentioned, viz., Chandralok Complex, Chenoy Market Commercial Complex, Shajahan E Apartments and Progressive Towers. It was stated that in September, 1987 these premises were inspected and irregularities in deviations and unauthorised construction were noticed and the relevant files of the Corporation were also perused. Town Planning Staff of the Corporation in collusion with the builders permitted them to flout building bye-laws and the staff abused their official F position for obtaining pecuniary advantage for themselves and the builders causing loss of revenue to the Corporation in the shape of house-taxes. Eleven officers were named including the respondent, who were said to be responsible for the abnormal deviations and unauthorised constructions.

On the basis of the report the State issued two memos both dated G December 12, 1987 (1) in respect of three officials, *viz.*, Radha Krishna, the then Asstt. City Planner, the respondent, (2) P.V. Janaki Raman, the then City Planner and (3) A. Ram Reddy, the then Asstt. City Planner. In the second memo seven other officers of the rank of Section Officers and one Assistant City Planner were named. The memo respecting the respondent and two H others said that under Rule 19(2) of 1963 Rules one Sri N. Venugopal Reddy,

Director of Town and Country Planning, Andhra Pradesh, Hyderabad, was appointed as Inquiry Officer to conduct a detailed inquiry against them, who were allegedly involved and found responsible for the irregularities. The Inquiry Officer was directed to complete his inquiry within a period of two months and to submit his report to the Government with specific findings. As we see this memo is entirely based on the report of the Director General, Anti-Corruption Bureau. In one of the letters dated January 7,1988 of the Director General Anti-Corruption Bureau, it is mentioned that during the course of the checking of the buildings witnesses were neither examined nor their statements were recorded and as such there was no part-B file. It was suggested that action be taken on the basis of the report already sent to the Government. Rule 19(2) of the 1963 Rules requires that when it is proposed to impose on a member of a service any of the penalties specified therein the authority competent to impose the penalty shall appoint an inquiry officer or itself hold an inquiry. In every such case the ground on which it is proposed to take action shall be reduced to the form of definite charges, which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and any of other circumstances which it is proposed to take into consideration in passing orders in the case. The charged employee shall be required within a reasonable time to file a written statement of his defence and to state whether he desires an oral inquiry or to be heard in person or both. It is not necessary to refer to further steps in the inquiry proceedings as in the present case we find that till July 31, 1995 article of charges had not been served on the respondent by which time 1991 Rules had come into force in supersession of the earlier 1963 Rules. Rule 45 of 1991 Rules provided that repeal shall not affect the previous operation of 1963 Rules, or any notification or order made, or anything done, or any action taken thereunder, in any proceeding under those Rules pending at the commencement of 1991 Rules and shall be continued and disposed of as far as may be in accordance with the provisions of 1991 Rules. In 1991 Rules procedure for imposing penalties had been changed by Rules 20 and 21. Now, the Inquiry Officer is to be appointed after written statement of the defence of the charged employee has been received. When it is proposed to hold inquiry against a Government servant, the disciplinary authority is required to draw up the substance of the imputations of misconduct or misbehaviour into definite and distinct article of charge; a statement of the imputations of misconduct or misbehaviour in support of each article of charge containing (a) a statement of all relevant facts (b) list of documents and (c) list of

witnesses. These shall be served upon the Government Servant, who shall be required to submit written statement in defence and to state whether he desires to be heard in person. If on receipt of the written statement of the defence the disciplinary authority finds that it is necessary to inquire into the charges, it shall appoint an Inquiry Officer of the purpose. Of course, the disciplinary authority can itself inquire into the article of charges, if it so chooses or thinks to do so. Again, we are not concerned as to how the inquiry officer is to proceed further in the matter as per 1991 Rules as after the article of charge was served upon the respondent and his statement of defence was received there was no progress and he moved the Tribunal.

Coming back to the stage when Shri N. Venugopal Reddy was appointed as Inquiry Officer we find from the official file produced before us that he sent various communications to the Secretary to the Government, Housing, Municipal Administration & Urban Development Department, to send him the relevant files. This he went on writing but without any response from the State Government till Shri N. Venugopal Reddy retired on attaining the age of superannuation on September 30, 1991. As to why there was no response to various letters of the Inquiry Officer from the State Government the file does not reveal anything. Meanwhile respondent was promoted as Joint Director of Town and Country Planning on September 10, 1991. Thereafter, the State Government appointed Sri P.B. Chowdhary, O.S.D. (legal cases), Municipal Corporation of Hyderabad, as Inquiry Officer by order dated September 7, 1992. Shri Chowdhary did not submit the inquiry report and his term of office as O.S.D. (legal cases) expired on November 20, 1992. Again, orders were issued on March 6, 1993 appointing Shri A. Vidyasagar, I.A.S., Additional Commissioner of the Corporation as Inquiry Officer. He was transferred from his post on May 25, 1993. Yet again orders mere issued on June 17, 1993 appointing Shri Adityanath Dass, IAS, Additional Commissioner (Genl.) of the Corporation, as Inquiry Officer. On August 16, 1994 Shri Dass informed the authorities concerned that connected files and records have been received from the appropriate authority "recently" and promised that he would submit his report as early as possible. No report was submitted and Shri Dass was transferred from the post. Thereafter, orders were issued on March 20, 1995 appointing Shri M.Veerahhadraiah, IAS, O.S.D. of the Corporation, as Inquiry Officer. At this stage it was observed that procedure as contained in 1991 Rules had not been followed. Therefore, the order dated March 20, 1995 appointing Shri M. Veerahhadraiah as Inquiry Officer was cancelled by order dated June 16, 1995. It was at this stage that articles of charges dated July 31, 1995 were issued to the respondent.

The Tribunal did not go into the culpability of the respondent with respect to the charges as contained in memo dated July 31, 1995 and did not record any finding of guilt or otherwise on those charges. The Tribunal, however, said that the memo dated July 31, 1995 related to the incidents that happened ten years or more prior to the date of the memo and that there was absolutely no explanation by the Government for this inordinate delay in framing the charges and conducting the inquiry against the respondent. The explanation given by the State that for some reason or the other the Inquiry Officer was being changed from time to time and on that account inquiry could not be conducted, did not find favour by the Tribunal. It said that there was no justification on the part of the State now conducting the inquiry against the respondent in respect of the incidents at this late stage. The Tribunal noticed that in the meanwhile respondent had been promoted as Senior Joint Director of Town and Country Planning notwithstanding the appointment of Inquiry Officer one after the other after memo No. 1412 dated December 22, 1987 and plea of the State that when respondent was promoted as Senior Joint Director of Town and Country Planning his file relating to inquiry against him was not brought to the notice of the administrative section in the year 1991 at the time of convening the DPC and which resulted in promoting the respondent, also did not find favour with the Tribunal. The Tribunal said that both the sections were within the Municipal Administration and this explanation, now offered, was without any any merit. The Tribunal while quashing memo dated July 31, 1995 did not quash the memos dated October 27, 1995 and June 1, 1996 and said that the State, if so advised, might proceed against the respondent according to law for taking action against him. What the Tribunal said about the later two memos was that they should not be taken into consideration while promoting the respondent in pursuance to the recommendations of DPC which was held on August 16, 1995.

A letter dated March 27, 1995 from the Vigilance Commissioner to the Principal Secretary to Government, Municipal Administration and Urban Development Department has been brought to our notice. In this letter the Vigilance Commissioner writes that after consideration of the facts it is observed that there was abnormal and avoidable delay in taking disciplinary action against various categories of officers, who are alleged to have committed several irregularities in the matter of permission given for construction of multi-storied complexes in the Twin Cities of Hyderabad and Secunderabad. The letter says that the Inquiry Officer has now been appointed without following the procedure under Rule 20 of 1991 Rules. The Department was asked to verify if the earlier Inquiry Officers had served charge memos on the

A charged officers and if not to take immediate action to frame the charges, first as provided under Rule 20 of 1991 Rules. The Vigilance Commissioner advised that the draft charges may be shown to him before issuance. A reminder was sent by the Vigilance Commissioner on April 26, 1995. It was thereafter that charges dated July 31, 1995 were framed and served upon the respondent and others.

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Four articles of charges have been set out against the respondent, now working as Joint Director, Office of the Director of Town and Country Planning, which are as under:-

C *"ARTICLES OF CHARGES*

(1) That Sri N. Radha Krishna, formerly Assistant Town Planner, Municipal Corporation of Hyderabad, Secunderabad, and presently working as Joint Director, Directorate of Town Planning, Hyderabad,. while working as Assistant Town Planner during the year 1978 committed misconduct in as much as he has put up misleading note with certain omissions and commissions to the City Planner recommending permission for construction of 4th floor, 5th floors and part of 6th floor subject to certain conditions at Chandralok Complex, Secunderabad in favour of M/s. Swastik Builders in File No. 234/241/7/1/B4/78 in violation of Building Bye-laws and Zoning Regulations. He thereby exhibited his conduct which is unbecoming on the part of a Government servant and failed to maintain absolute integrity and devotion to duty. Thereby the said Sri N. Radha Krishna, contravened rule 3 of the Andhra Pradesh Civil Services (Conduct) Rules, 1964.

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(2) Sri N. Radha Krishna while working as such has also committed misconduct in allowing the Cellar of Chenoy Market Commercial complex, Secunderabad for using as godowns by various concerns such as ELCOM ENGINEERING COMPANY, HYDERABAD PUMPS LIMITED, E.T. & T. LIMITED by converting the Cellar portion as Garages when the Cellar was actually meant for parking and he has also allowed the North-East Corner of Cellar to convert as Strong Room for Lockers occupied by Suman Safe Deposit Lockers Private Limited. He has further committed misconduct in allowing to raise the height of the building to 130' - 8" instead of the permitted average height of the building 92' wide whereas permit No. 92/84 dated 11.7.1985 and the sanctioned plan permitted the average height of the building is only 92' i.e., Ground + 7 floors. He thereby exhibited his

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conduct which is unbecoming on the part of a Government servant and failed to maintain absolute integrity and devotion to duty. Thereby the said Sri N. Radha Krishna contravened rule 3 of the Andhra Pradesh Civil Services (Conduct) Rules, 1964.

(3) Sri N Radha Krishna has also committed mis-conduct in allowing the Cellar of Shahjahan Apartments bearing premises No. 6-2-974, Khairatabad for being used as shops and office godowns when it was supposed to be used as Car Parking as per Permit No. 24/15 of 1979 dt. 30.3.1979. He thereby exhibited his conduct which is unbecoming on the part of a Government Servant and failed to maintain absolute integrity and devotion to duty. Thereby the said Sri N. Radha Krishna, contravened rule 3 of the Andhra Pradesh Civil Services (Conduct) Rules, 1964.

(4) Sri N. Radha Krishna has also committed misconduct in not insisting to erect railings on the eastern side of Progressive Towers abutting the Rajbhavan Road even though the condition was stipulated that no opening should be provided towards Rajbhavan Road as per permit No. 145/42, dt. 19.3.1981 read with G.O. MS. No. 1065, M.A. dated 16.9.1981, thus he failed to maintain absolute integrity and devotion to duty and thereby contravened Rule 3(1) of Andhra Pradesh Civil Services (Conduct) Rules, 1964."

It is interesting to note that same Articles of Charges in verbatim have been served upon Sri A. Sree Rami Reddy also, now working as Joint Director, Office of Director Town and Country Planning and also 8 other named in the report dated November 7, 1987 of the Director General, Anti Corruption Bureau.

By letter dated August 3, 1995 respondent informed the disciplinary authority, who issued the Articles of charges, that he worked as Assistant City Planner in she Corporation from December 6, 1977 to February 16, 1979 in different circles and that from that it could be seen that only charge No. 1 related to his period when he was working as Assistant City Planner in that circle. The respondent wanted copies of the relevant records in respect of charges contained in the memo to facilitate him to submit detailed written statement.

In his written statement dated September 25, 1995 the respondent explained as to how charges 2, 3 and 4 could not relate to him and subsequently also in his letter to the Chief Secretary to the government of Andhra Pradesh

A he said that charges 2 and 4 related to the period when he was working in Andhra Pradesh State Scheduled Castes and Tribes Co-operative Housing Society Federation from February 9, 1979 to September 30, 1981. During the period charge No. 3 related to, the respondent said that he was on deputation at Oxford Polytechnic in United Kingdom from October 11, 1984 to September 26, 1985 for his post-graduation course. On the first charge his statement of B defence was as under :-

> "1. With reference to the Charge No. 1, I submit that I have perused the file bearing No 234/241/7/1/B4/78 belonging to M/s. Swastik Constructions in the Chambers of Deputy Secretary to Government, C M.A. & U.D. Department on 20.9.1995. As seen from the file that M/s. Swastik Constructions have applied for the construction of 4th 5th and 6th floors over the existing ground, 1st, 2nd, and 3rd floors vide their application dt. 18.9.1978. The proposals have been examined in detail in pages 6 and 7 of note file at paras 1 to 27 giving clear statement of the F.S.I permissible and also other Rules and Regulations D for the proposed construction in the light of the material available in the file. At para 23rd the proposals were submitted for consideration to the Higher Authorities as per corrected plan subject to certain conditions. As it can be seen from the endorsement of the then City Planner Sri P.V. Janakiraman on the right hand side margin "This may E be restricted to 4th and 5th floors only, let us delete part of 6th floor. The then City Planner has approved the proposed construction of 4th and 5th floors and part of 6th floor regularising the deviation imposing the compound fee of Rs. 1000 on 1.1.79 and marked the file to the Deputy Commissioner. The Deputy Commissioner in turn approved the proposal on 10.1.1979. It is clear from the above note that I did F not put up any misleading note and did not recommend the proposals irregularly against any rule and regulation as alleged in the charge. The Higher Officers have also not pointed out any lapses in the submitted note before approval of the said proposals and also regularised the offence by levy of compounding fee.
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> G Hence, I submit that since I have not recommended the proposals irregularly, the charge may kindly be dropped."

As a matter of fact the disciplinary authority got verified the facts that what the respondent had said about the article of charges 2, 3 and 4 was correct and that he could not be concerned with any deviations or unauthorised H constructions in respect of the buildings mentioned in those charges. This

is by letter dated October 10, 1995 from the Director of Town and Country Planning to the Principal Secretary to the Government, Municipal Administration and Urban Development Department, and was in answer to a query raised by the disciplinary authority from the Director of Town and Country Planning. On March 15, 1996 Vigilance Commissioner advised the disciplinary authority "to process the explanations of the Accused Officers with reference to the connected files returned by the A.C.B. vide its report dated 7.11.1987 and then refer the file to Vigilance Commissioner for further advice". Nothing happened Everything was at standstill.

It is in April, 1996 that respondent moved the Andhra Pradesh Administrative Tribunal for relief.

It would, therefore, appear that charges have been farmed against the respondent merely on the basis of the report dated November 7, 1987 from the Director General, Anti-Corruption Bureau, which is of general in nature raising accusing fingers on the various officers of the corporation, but without any reference to the relevant files and pin pointing if respondent or any other official charged was at all concerned with the alleged deviations and unauthorised construction in multi-storied complexes.

It would not be necessary for us to refer to the charges issued by the memos dated October 27, 1995 and June 1, 1996 as that was not the subject-matter for quashing either in the Tribunal or before us.

One of the grounds on which the Tribunal quashed memo dated July 31, 1995, issued under 1991 Rules, was that without cancelling the earlier memo No. 1412 dated December 22, 1987, issued under 1963 Rules, the latter memo could not be issued. We have seen that under Rule 45 of 1991 Rules the inquiry proceedings initiated under 1963 Rules could be continued even after coming into force of 1991 Rules. It is correct that inquiry proceedings did progress after issuance of memo No. 1412 dated December 22, 1987 to the extent that an inquiry officer was appointed and should have been concluded under 1963 Rules. If memo of charge had been served for the first time before 1991 there would have been no difficulty. However, in the present case it could be only an irregularity and not an illegality vitiating the inquiry proceedings inasmuch as after the Inquiry Officer was appointed under memo No. 1412 dated December 22, 1987, there had not been any progress. If a fresh memo is issued on the same charges against the delinquent officer it cannot be said that any prejudice has been caused to him. He can always challenge the second memo and rather even the first one on the ground of delay which

A he did.

In *State of Punjab and others* v. *Chaman Lal Goyal*, [1995] 2 SCC 570, State of Punjab was aggrieved by the order of the High Court of Punjab and Haryana quashing memo of charges against Goyal and also the order appointing Inquiry Officer to inquire into those charges. In this case the incident, which B was the subject-matter of charge, happened in December, 1986 and in early January, 1987, when Goyal was working as Supdt. of Nabha High Security Jail. It was only on July 9, 1992 that memo of charges was issued to Goyal. He submitted his explanation of January 4, 1993 denying the charges. Inquiry Officer was appointed on July 20, 1993 and soon thereafter Goyal filed writ C petition in the High Court on August 24, 1993. The High Court quashed the memo of charges on the principal ground of delay of five and a half years in serving the memo of charges, for which there was no acceptable explanation. This Court examined the factual position as to how the delay occurred and if Goyal had been prejudiced in any way on account of delay. This Court relied on the Principles laid down in *A.R. Antulay* v. *R.S. Nayak* [1992] 1 SCC D 225, and said, that though that case pertained to criminal prosecution the principles enunciated therein were broadly applicable to the pleas of delay in taking the disciplinary proceedings as well. Referring to decision in *A.R. Antulay* case this Court said:-"

> "In paragraph 86 of the judgment, this Court mentioned the E 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 has also been held that, ordinarily speaking, F 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 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 the proceedings may not be in the interest of justice. In G such a case, it has 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."

In that case this Court said that it was more appropriate and in interest of justice as well as in the interest of administration that inquiry which had H proceeded to a large extent be allowed to be completed. At the same time the

Court directed that Goyal should be considered forthwith for promotion without reference to and without taking into consideration the charges or the pendency of the inquiry, if he is found fit for promotion. A

It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all relevant factors and to balance and weight them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer enterusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to 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. B C D E F

In the present case we find that without any reference to records merely on the report of the Director General, Anti-Corruption Bureau, charges were framed against the respondent and ten others, all in verbatim and without particularizing the role played by each of the officers charged. There were four charges against the respondent. With three of them he was not concerned. He offered explanation regarding the fourth charge but the disciplinary authority did not examine the same nor did it choose to appoint any inquiry officer even assuming that action was validly being initiated under 1991 Rules. There is no explanation whatsoever for delay in concluding G H

A the inquiry proceedings all these years. The case depended on records of the Department only and Director General, Anti Corruption Bureau had pointed out that no witnesses had been examined before he gave his report. The Inquiry Officers, who had been appointed one after the other, had just to examine the records to see if the alleged deviations and constructions were illegal and unauthorised and then as to who was responsible for condoning or approving the same against the bye-laws. It is nobody's case that respondent at any stage tried to obstruct or delay the inquiry proceedings. The Tribunal rightly did not accept the explanations of the State as to why delay occurred. In fact there was hardly any explanation worth consideration. In the circumstances the Tribunal was justified in quashing the charge memo dated July 31, 1995 and directing the State to promote the respondent as per recommendation of the DPC ignoring memos dated October 27, 1995 and June 1, 1996. The Tribunal rightly did not quash these two later memos.

Accordingly we do not find any merit in the appeal. It is dismissed with costs.

V.S.S. Appeal dismissed.