may impose has to be a realistic sum. It should be adequate. The accused should have the means to pay it. The economic position of the criminal, his family and other relevant factors have to be kept in view. At the same time, the compensation should be calculated to really compensate and not be merely symbolic. It should have a reasonable relationship with the factual position.

(70) Keeping these factors in mind, we had questioned the counsel with regard to the award of compensation. After obtaining instructions, Mr. Ghai had stated that the appellant had a piece of land measuring 2-3/4 acres approximately. After taking into consideration the fact that the deceased was 40 years of age and that Kiranjit Kaur was about 18 years old on the day of occurrence, we had made an *ad hoc* assessment to award a compensation of Rs. 1 lac. It was directed that the appellant shall pay a fine of Rs. 1 lac and that this amount shall be given to Kiranjit Kaur and her father-Surinder Singh equally. This order was announced by us at the conclusion of the arguments. Now, we have recorded our reasons.

(71) In view of the above, the Murder Reference is answered in the negative. We reject the proposal for the award of death sentence. The appeal is partly accepted. The conviction of the appellant under Sections 302, 307 and 450 is upheld. He is sentenced to undergo life imprisonment. He shall also pay a fine of Rs. 1 lac which shall be disbursed equally to Surinder Singh and Kiranjit Kaur. In case of default in payment, the appellant shall undergo rigorous imprisonment for a period of three years. The sentence on account of default in paymment of fine shall run consecutively and not concurrently. We are, however, unable to sustain the sentence awarded to the appellant under Section 27 (2) and 27(3) of the Arms Act, 1959.

J.S.T.

Before G.S. Singhvi & Iqbal Singh, JJ

O.P. SACHDEVA & OTHERS,—*Petitioners*

versus

THE FOOD CORPORATION OF INDIA & OTHERS,—*Respondents*

C.W.P. NO. 344 OF 2000

The 13th Jan., 2000

Constitution of India, 1950—Art.226—Food Corporation of India (Staff) Regulations, 1971—Reg.60—Financial loss to the Corporation allegedly caused by the petitioners—No action taken on the explanations

submitted by them—Initiation of proceedings for holding enquiry after 7 years—Quashing of proceedings on the ground of delay—whether proceedings of enquiry should be nullified without requiring them to file statements of defence—Held, no—It cannot be presumed that mere delay in the initiation of enquiry would cause prejudice to the defence.

Held that the undue haste shown by the petitioners in approaching the Court for quashing of the charge sheets is *prima facie* indicative of the fact that the defence which they are likely to take at the regular enquiry is weak and, therefore, they want to avoid proper scrutiny of the allegations contained in the impugned memorandums. However, we do not find any valid ground or justification to entertain and accept the prayer made in the petition for quashing the proceedings of enquiry.

(Para 3)

Further held, that the petitioners are yet to file statements of defence and till they do so, we cannot hold that mere delay in the initiation of enquiry has prejudiced their defence. The delay in the initiation of enquiry may adversely affect the defence of the employee but prejudice cannot be presumed in each and every case for stultifying the proceedings of enquiry.

(Para 4)

Further held, that it is impossible for the Court to nullify the proceedings of enquiry by assuming that the defence of the petitioners will necessarily be prejudiced due to the time-gap between the date of incident and the date of initiation of enquiry.

(Para 11)

SANJIV BANSAL, ADVOCATE,—*for the petitioner*

G.S. Singhvi J.

(1) Should the High Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, stultify the proceedings of disciplinary enquiry at the threshold by quashing the charge-sheet ? This is the question which arises for determination by the Court in the present petition which has been filed for quashing of the memorandums dated 14-10-1999/11-11-1999 (Collectively marked as Annexure P-7) issued by the Senior Regional Manager, Food Corporation of India (respondent No. 2) for holding enquiry againsnt the petitioners under Regulation 60 of the Food Corporation of India (Staff) Regulations, 1971 (for short, 'the Regulations'),

(2) Shri Sanjiv Bansal took us through the averments made in the petition and submitted that delay of 7 years in the initiation of enquiry should be treated as sufficient for quashing the impugned memorandums. Learned counsel pointed out that respondent No. 2 had issued notices like annexure P.1 to all the petitioners to submit their explanation in respect of the allegation of abnormal losses suffered by the Food Corporation of India (for short, ' the corporation) but after the submission of replies no action was taken against them. According to him, this refrain on the part of the Corporation is clearly indicative of the fact that the explanations given by the petitioners were found satisfactory and, as such, the initiation of enquiry after a time-gap of 7 years should be treated as arbitrary and unjustified. He further submitted that the delayed initiation of disciplinary action will cause serious prejudice to the petitioners because the relevant evidence must have disappeared during this time-gap and they will not be able to defend themselves. In support of his submissions, learned counsel relied on the decisions of the Supreme Court in State of *Madhya Pradesh* Vs. *Bani Singh and another (1)* and *State of A.P.* V. *N. Radhakishan (2).* He also relied on the decisions of this Court in *Dr. Ishar Singh* V. *State of Punjab and another, (3) S.S. Sandhu* V. *State of Punjab, (4)* and an unreported order dated 21-5-1999 passed by a Divisioni Bench of this Court in C.W.P. No. 2775 of 1998 *Lal Chand and others* V. *Food Corporation of India and others.*

(3) We have given serious thought to the submissions of the learned counsel but have not felt persuaded to agree with him that a writ be issued under Article 226 of the Constitution of India to abort the proceedings of enquiry at this stage. A bare perusal of the memorandums served upon the petitioners for holding enquiry shows that they were called upon to submit statements of defence within 10 days and for this purpose, they were given opportunity to seek inspection of the records/documents. However, instead of making application for inspection of the records/documents and then submitting their statements of defence in which they could raise all factual as well as legal objections for initiation of enquiry, the petitioners have invoked jurisdiction of this Court under Article 226 of the Constitution of India for seeking a restraint order against the holding of enquiry. In our opinion, the undue haste shown by the petitioners in approaching the Court for quashing of the charge-sheets is *prima facie* indicative of the fact that the defence which they are likely to take at the regular enquiry

(1) AIR 1990 S.C. 1308
(2) (1998) 4 S.C.C. 154
(3) 1993 (4) SLR 655
(4) 1993 (3) SCT 629

is weak and, therefore, they want to avoid proper scrutiny of the allegations contained in the impugned memorandums. However, we do not find any valid ground or justification to entertain and accept the prayer made in the petition for quashing the proceedings of enquiry. Rather, we are convinced that the power vested in the High Court under Article 226 of the Constitutiion of India should not be allowed to be misused by persons like the petitioners who are accused of having caused financial loss to the Corporation.

(4) The plea of prejudice raised by the petitioners has not, at all, impressed us because they are yet to file statements of defence and till they do so, we cannot hold that mere delay in the initiation of enquiry has prejudiced their defence. The delay in the initiation of enquiry may, in a given case, adversely affect the defence of the employee, but prejudice cannot be presumed in each and every case for stultifying the proceedings of enquiry. In this context, it is necessary to remember that every public servant holds a post/office as a trustee of public faith and confidence and if he/she commits breach of that faith, the government/public employer who represents the public has the right to take appropriate action against the delinquent and it would be gravely injurious to public interest to quash the proceedings of enquiry only on the ground that there has been delay in the initiation of enquiry or conduct thereof.

(5) In *Dr. Ishar Singh* V. *State of Punjab (supra),* a Full Bench of this Court examined the various issues relating to departmental enquiries and laid down the following propositions :

> "(i) There is no period of limitation prescribed for initiating the disciplinary proceedings or proceedings to withhold, withdraw the pension on account of any reason. Still there must be a *bona fide* and reasonable explanation for delay, absence of which would entitle the Court to intervene and examine the case.
>
> (ii) If the delay is found to have caused prejudice to the employee, the Court would normally interfere in the matter.
>
> (iii) Courts would be loath to prevent the trial of a person charged with grave charges merely on the ground of delay and would not exonerate him solely because of lapse of time between the date of defence and the charge sheet framed or served upon him.
>
> (iv) If the right of defence is found to have been denied due to delay, final order may be quashed.

(v) It is for the delinquent officer to show how he has been prejudiced or deprived of a fair trial because of the delay. He is expected to clearly demonstrate the prejudice before an enquiry or trial can be quashed on the ground of delay. Otherwise quashing the proceedings solely on the ground of delay would be negation of justice and opposed to public policy. Delay in itself cannot result in surmising and presumptiveness and human frailties.

(vi) Various factors for delay are to be kept in mind apart from the fact that nexus between delay and prejudice has to be made out.

(vii) Though speedy trial is a part of the right to a fair trial to which delinquent is entitled, still factors like whether delay was sinister, whether prejudice to defence on account of the dalay is made out have to be kept in mind and the delay would be fatal if a finding of being guilty would have to be returned solely because the delinquent is unable to effectively defened himself, on account of delay.

(viii) Reasonable time limit for just and reasonable exercise of wide powers for just decision, after taking note of the fact that sword of damocles cannot be allowed to be kept hanging in respect with the pensioner's stale claim which is implicit in the rules itself as well as the principle that the pensioner, at some point of time has to be allowed to rest in peace, has to be kept in mind.

(ix) Reasonable time limit has to be fixed in the facts and circumstances of each case. Questions like, was there a delay ? If so how long ? was it inevitable having regard to the nature of the facts and circumstances of the case ? was the delay unreasonable ? Whether it was wilful or on account of negligence and if so on the part of which party ? Was it beyond control of the party ? and likelihood of the prejudice caused to the defence are some of the factors which are to be kept in view while quashing the proceedings on the ground of delay alone."

The full Bench further held :

"Delay by itself is no ground to quash the proceedings. Speedy trial is no doubt a part of the right to be treated reasonably, fairly and justly, but at the same time mere delay by itself does not entitle the delinquent Officer to escape his trial."

(6) In *C.W.P. No.* 5526 of 1993-*Satinder Singh Grover* V. *State of Punjab and another* decided on 6th May, 1994, one of us (G.S. Singhvi, J.) had the occasion to consider a plea similar to the one raised by the petitioners. While rejecting the submission that delay by itself is sufficient for quashing of enquiry, the Court held as under :

> "Delay simpliciter cannot be a ground for quashing of the enquiry proceedings or order passed by the employer on the basis of such enquiry and this will be particularly so in cases where public servants or other employees are charged with the allegations of embezzlement or misappropriation of public funds, fraud or forgery. While examining an argument made on behalf of a delinquent that the enquiry proceedings should be quashed or punishment should be set aside on the ground of delay, the Court has always to bear in mind that whereas the government servant may suffer individually on account of lapse of time in the initiation of enquiry, it will be gravely injurious to public interest to quash the enquiry in cases involving fraud, misappropriation, embezzlement etc. of public dunds. It has to be remembered that every public servant holds a post/office as a trustee of public faith and confidence and he is paid out of public funds. If such public servant misappropriates public funds or is found guilty of embezzlement or such like misconduct, the Courts will be singularly doing injustice to the public at large by quashing proceedings only on the ground that there is delay in the initiation of the enquiry or the conduct thereof. It will be a different case where on account of abnormal delay the primary evidence on the basis of a charge can be proved is lost or the defence of the delinquent is seriously impaired".

(7) In *State of Punjab and others* v. *Chaman Lal Goyal* (5) while reversing the order of this Court, their Lordships of the Supreme Court observed that whenever the plea of delay is put forward as a ground for quashing the charges, the Court has to weigh all the factors, both for and against the delinquent officer and come to the conclusion which is just and proper in the circumstances of the case. In that particular case, it was held that delay of 5-½ years was not sufficient for quashing the proceedings of enquiry and the High Court had erred in doing so. The judgment of *State of Madhya Pradesh* v. *Bani Singh (supra),* which

(5) 1995 (1) SLR 700

has been relied upon by Shri Bansal in support of his arguments was considered and distinguished in Chaman Lal's case (*supra*), with the following observations :—

> "That was a case where the charges were served and disciplinary enquiry sought to be initiated after a lapse of twelve years from the alleged irregularities. From the report of the judgment, the nature of the charges concerned therein also do not appear. We do not know whether the charges. There were grave as in this case. Probably, they were not. Thre is another distinguishing feature in the case before us : by the date of the judgment of High Court, the major part of the enquiry was over. This is also a circumstance going into the scales while weighing the factors for and against. As stated hereinabove, wherever delay is put forward as a ground for quashing the charges, the court has to weigh all the factors, both for and against the delinquent officer and come to a conclusion which is just and proper in the circumstances. In the circumstances, the principle of the said decision cannot help the respondent."

(8) In *State of A.P.* V. *N. Radhakishan* (supra) the Supreme Court, while dealing with a challenge to the order passed by the Central Administrative Tribunal quashing the proceedings of enquiry on the ground of delay laid down the following general proposition of law :—

> "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 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 cosideration all the 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 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 justice the charges against the 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 his 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."

(9) Reference in this context may also be made to the decisions of the Supreme Court in *Union of India* V. *Ashok Kacker,* (6) and *Union of India* V. *A.N. Saxena,* (7) The question which was considered by the Apex Court in Ashok Kacker's case *(supra)* was as to whether the Central Administrative Tribunal could quash the enquiry proceedings even before the delinquent-respondent had filed the statement of defence. While reversing the order passed by the Tribunal, their Lordships of the supreme Court observed as under :—

"Admittedly, the respondent has not yet submitted his reply to the charge-sheet and the respondent rushed to the Central Administrative Tribunal merely in the information that a charge-sheet to this effect was to be issued to him. The Tribunal entertained the respondent's applicatiion at that premature stage and quashed the charge-sheet issued during the pendency of the matter before the Tribunal on a ground which even the learned counsel for the respondent made no attempt to support. *The respondent has the full opportunity to reply to the charge-sheet and to raise all the points available to him including those which are now urged on his behalf by learned counsel for the respondent. In our opinion, this was*

(6) 1995 (7) SLR 430
(7) 1992 (4) SLR 11

not the stage at which the Tribunal ought to have entertained such an application for quashing the charge-sheet and the appropriate course for the respondent to adopt is to file his reply to the charge-sheet and invite the decision of the disciplinary authority thereon. This being the stage at which the respondent had rushed to the Tribunal. We do not consider it necessary to require the Tribunal at this stage to examine any other point which may be available to the respondent or which may have been raised by him."

(10) In A.N. Saxena's *(supra)*, their Lordships of the Supreme Court decried the practice of passing an interlocutory order which has the effect of impeding the proceedings of departmental enquiry. Some of the observations made in that decision are reproduced below :

"In the first place, we cannot, but confess our astonishment at the impugned order passed by the tribunal. *In a case like this the tribunal, we feel, should have been very careful before granting stay in a disciplinary proceedings at an interlocutory stage. The imputations made againt the respondent were extremely serious and the facts alleged, if proved would have established misconduct and misbehaviour.* It is surprising that without even a counter being filed, at an interim stage, the tribunal without giving any reasons and without apparently considering whether the memorandum of charges deserved to be enquired into or not, granted a stay of disciplinary proceedings as it has done. *If the disciplinary proceedings in such serious matters are stayed so lightly as the tribunal appears to have done, it would be extremely difficult to bring any wrong-doer to book.* We have, therefore, no hesitation in setting aside the impugned order of the tribunal and we direct that the disciplinary proceedings against the respondent in terms of the charge-sheet dated 13th March 1989 shall be proceeded with according to law. In fact, we would suggest that disciplinary proceedings should be proceeded with as early as possible and with utmost zeal."

(11) In the light of the principles laid down in various decisions referred to above, it is to be decided whether the proceedings of enquiry initiated against the petitioners should be nullified even without

requiring them to file statement of defence. In our opinion, answer to this question must be an emphatic no. At this stage, it would have been proper for us not to express any opinion on the merits of the allegations levelled against the petitioners but as they have sought quashing of the proceedings, we cannot refrain from making a prima facie obsrvation that the allegations of failure to discharge duties with due dedication, sincerity and honesty and of having caused extensive loss to the Corporation are quite serious and it is impossible for the Court to nullify the proceedings of enquiry by assuming that the defence of the petitioners will necessarily be prejudiced due to the time-gap between the date of incident and the date of initiation of enquiry. This view of ours is fully supported by the decision of the Supreme Court in Ashok Kacker's case *(supra)*. The ancillary prayer made by the petitioners for stay of the proceedings has to be rejected in view of the afore-mentioned conclusion and also in view of the decisioin of the Supreme Court in A.N. Saxena's case *(supra)*

(12) Before concluding, we may refer to the decisions relied upon by Shri Bansal, Bani Singh's case *(Supra)* has been distinguished by the Supreme Court in Chaman *Lal's case (supra)* and it is not necessary for us to add anything over and above what the Apex Court has said in the latter decisioin. N.Radhakishan's Case *(supra)* was decided by the Supreme Court on its own facts. That was a case in which the order of punishment was challenged and after examining the merits of the case, their Lordships uphold the order passed by the Tribunal vide which the order of punishment was quashed on the ground that delay in the initiation of enquiry had prejudiced the defence of the respondent. Likewise, in S.S. Sandhu's case *(supra)* which was decided by the learned Single Judge, this court, examined the merits of the chargs alongwith the explanation given by the respondents in respect of delay in the initiation of enquiry and help that there was no cogent reason to allow the respondents to proceed with the balated enquiry. Similarly, in *Lal Chand and others* V. *Food Corporation of India and others (supra)* The division Bench held that the explanation given by the respondents for delayed initiation of enquiry was wholly unsatisfactory and as the relevant evidence had disappeared, holding of enquiry against the petitioners would not be justified. The facts of none of these decisions have any similarity with the case in hand and, therefore, the same cannot be relied upon for quashing of the impugned memorandums.

(13) For the reasons mentioned above, the writ petition is dismissed.

R.N.R.