

**(2008) 11 CAL CK 0052**

**Calcutta High Court**

**Case No:** W.P.C.T. No. 739 of 2007

Union of India and others

APPELLANT

Vs

Ajay Rajvanshi

RESPONDENT

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**Date of Decision:** Nov. 5, 2008

**Citation:** (2009) 120 FLR 641

**Hon'ble Judges:** Prasenjit Mandal, J; K.J. Sengupta, J

**Bench:** Division Bench

**Advocate:** Pradip Kumar Roy, for the Appellant; Surajit Samanta, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

K.J. Sengupta and Sengupta, JJ.

By this application, Union of India has impugned the judgment and order of the learned Central Administrative Tribunal dated 22nd November, 2006, by which the charge-sheet as well as the order of punishment, which is of minor in nature, have been quashed.

2. Records are produced today in terms of our earlier order. We have gone through the records and we shall make our comments in this regard a little later.

3. Learned Tribunal has given reasons for quashing the charge-sheet and the order of punishment. There are three basic reasons; one is delay in issuing the charge-sheet, the second one is breach of principles of natural justice and the last one is non-supply of relevant documents. Those fact findings of the learned Tribunal have not been challenged in the instant application. It is difficult for us, in absence of challenge, to examine the fact findings as to its validity and legality.

4. Mr. Pradip Kumar Roy, learned counsel appearing for the Union of India, producing records submits that the learned Tribunal is wrong in its fact finding that no document has been supplied. He further urges that there has been no delay in issuing the charge-sheet.

5. We are unable to accept such submission as we find that once a show cause notice was issued in 1998 in connection with the same incident, followed by charge-sheet issued in December, 2004. It is pertinent to mention that on the earlier occasion, a reply to the show-cause was given and certain material documents were asked for and those were not supplied. Mr. Roy submits that in spite of receipt of the charge-sheet, no objection was raised by the respondent on the question of delay; rather he has given reply to the charge-sheet. Therefore, delay is not fatal in this case.

6. This submission also does not deserve merit. We find that the earlier show cause notice was replied and no action was taken and there has been no explanation as to why the charge-sheet was issued belatedly after six years. There are cases, where delay may occur for various reasons and those reasons are examined and sometimes accepted by the law Court. Here there is none. According to us, mere participation of delinquent in the disciplinary proceedings does not disentitle the respondent to raise the question of delay. The learned Tribunal has followed the principle laid down by the Apex Court in various judgments and has come to the conclusion that delay in this case is a factor to be reckoned.

7. The records produced before us also do not show that the documents, as asked for by the respondent, were supplied; Mr. Roy though contends that in his reply, the respondent has admitted that he has received various documents. Whether this point was agitated before the learned Tribunal or not, is not understood by this Court, but the fact remains that such contention is missing before the learned Tribunal. When the learned Tribunal has concluded that there has been violation of principles of natural justice on account of non-supply of documents and, no challenge is made against the aforesaid fact finding, as we have already observed, we cannot grant any relief on this application.

8. Hence, this application is dismissed without any order as to costs.

Records produced today before us are returned to Mr. Roy.

Xerox certified copy of this order, if applied for, be supplied to the parties.