

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 22 OF 2021

DISTRICT:- NANDED

Muktyarsing S/o Ramrao Theng,

Age-69 years, Occu. Nil,

R/o. Sadguru Niwas,

Shri Krishna Nagar, Sundarkhed,

Chikhli Road, Buldhana

..

APPLICANT

V E R S U S

1) The State of Maharashtra,

Through its Addl. Chief Secretary,

Revenue & Forest Department,

M.S., Mantralaya, Mumbai 400 032.

02. The Divisional Commissioner,

Aurangabad.

.. **RESPONDENTS**

APPEARANCE : Shri Avinash S. Deshmukh, learned
counsel for the applicant.

: Shri M.P. Gude, learned Presenting
Officer for the respondent authorities.

CORAM : JUSTICE SHRI P.R. BORA, VICE CHAIRMAN

AND

: SHRI VINAY KARGAONKAR, MEMBER (A)

RESERVED ON : 12.01.2024

PRONOUNCED ON : 31.01.2024

O R D E R

(Per : Justice Shri P.R. Bora, Vice Chairman)

Heard Shri Avinash S. Deshmukh, learned counsel
for the applicant and Shri M.P. Gude, learned Presenting Officer
for the respondent authorities.

2. The applicant retired on 30.6.2010 while working on the post of Tahsildar at Himayat Nagar in Nanded District upon attaining the age of superannuation. A week before his retirement i.e. on 23.6.2010 a memorandum of charge dated 11.6.2010 was served upon him by respondent No. 2 initiating departmental enquiry against him under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. On 19.7.2010 the applicant submitted his reply to the memorandum of charge so issued against him. On 15.9.2010, respondent No. 2 forwarded the reply of the applicant to respondent No. 1 for further necessary action. However, since no further action has been initiated by the respondents thereafter for the period of more than 10 years, the applicant has approached this Tribunal by filing the present Original Application seeking quashment of the departmental enquiry initiated against him vide memorandum of charge dated 11.6.2010.

3. During pendency of the present Original Application the applicant received a communication dated 29.4.2021 from one Shri Khalid B. Arab, thereby informing him that he has been appointed as Enquiry Officer to conduct the enquiry into the misconduct alleged against the applicant. The said officer

also informed the applicant the date as 8.6.2021 for conducting the preliminary enquiry in the matter. After receipt of the said letter the applicant prayed for interim relief, thereby restraining the respondents from conducting the departmental enquiry against him. This Tribunal vide order passed on 4.6.2021 accepted the request of the applicant and directed the respondents to defer hearing of the departmental enquiry till filing of the affidavit in reply by them. The said interim order has been continued time to time. Now the arguments are heard in the matter.

4. **Facts in brief :**

(i) The applicant entered into the Government services on 7.3.1973 as a Clerk in the Revenue Department. On 29.12.1983 he was promoted as Awwal Karkun and on 29.12.1995 he got promotion of Naib Tahsildar. On 30.11.1999 the applicant was promoted as Tahsildar and he worked as such till the date of his retirement from Government services i.e. 30.6.2010.

(ii) On 23.6.2010 a memorandum of charge dated 11.6.2010 was served upon the applicant initiating departmental enquiry against him under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979.

(iii) It is the grievance of the applicant that the respondents did not proceed with the said departmental

enquiry for the period of more than 10 years. It is the further grievance of the applicant that after issuance of the statement of charge upon the applicant, the enquiry initiated against him did not proceed an inch further. In the circumstances, the applicant has approached this Tribunal.

5. Joint affidavit in reply has been filed by respondent Nos. 1 & 2. It is the contention of the respondents that the applicant while working as Tahsildar at Himayat Nagar in Nanded District violated his duty and caused loss of lakhs of rupees to the Government in distribution of grants under National Social Assistance Scheme. It is further contended that while allocating grants to the beneficiaries, the applicant did not inspect or inquire into the required documents and did not ascertain whether the beneficiaries are eligible for the scheme or not and thus caused the loss of huge amount to the Government. It is also alleged that the applicant failed in disbursing the grant to 75 sanctioned cases under Social Security Assistance Scheme in spite of availability of grants. It is also alleged that in 49 cases he did not take any action in the applications received for financial assistance under the Social Security Scheme. It is also alleged that the applicant wrongly granted assistance to one Smt. Dhondabai Ganpat Dopke resident of Pimpri Ling to the tune of Rs. 60,000/-. It is further

contended that the misconduct committed by the applicant was discovered because of the complaint made by one Mr. Sattarkhan Pathan to the District Collector, Hingoli. It is further contended that thereafter the preliminary enquiry was conducted through Sub-Divisional Officer, Hingoli and the Sub-Divisional Officer after having conducted the said enquiry recommended a regular departmental enquiry against the applicant and, as such, the memorandum of charge dated 11.6.2010 has been issued against the applicant. It is the further contention of the respondents that in the incident of fire at Mantralaya, the relevant files pertaining to the departmental enquiry initiated against the applicant have been destroyed and, as such, the respondents were prevented for conducting the departmental enquiry. It is further contended that having regard to the serious charges against the applicant, the request of the applicant to quash and set aside the departmental enquiry initiated against him is liable to be rejected.

6. Shri Avinash S. Deshmukh, learned counsel appearing for the applicant vehemently argued that the delay of more than 10 years in starting the departmental enquiry against the applicant is sufficient to quash and set aside the memorandum of charge dated 11.6.2010 issued against the

applicant by respondent No. 2. Relying on the judgment in the case of **Prem Nath Bali Vs. Registrar, High Court of Delhi and another, AIR 2016 SC 101**, learned counsel prayed for setting aside the order dated 11.6.2010, whereby memorandum of charge is served upon the applicant and consequently to set aside the departmental enquiry initiated against the applicant. Learned counsel also relied upon the judgments in the case of **Mukul Shaligram Gajbhiye Vs. State of Maharashtra & Ors., W.P. No. 3656/2021** delivered on 12.01.2023 by the Division Bench of the Hon'ble Bombay High Court Bench at Nagapur, as well as, in the case of the **State of Maharashtra Vs. H.N. Laxmikant – Laxmikant Nanjvudachari Chintamani, W.P. No. 15176/2017** delivered on 26.04.2018 by the Hon'ble Bombay High Court Bench at Aurangabad, and prayed for allowing the present Original Application.

7. Learned Presenting Officer submitted that having regard to the serious nature of the charges leveled against the applicant merely on the ground of delay, the respondents cannot be restrained from conducting the departmental enquiry against the applicant. Learned P.O. submitted that the lapses on the part of the applicant while discharging the duties of his post are writ large. Referring to the instances quoted by the respondents in their affidavit in reply, as well as, in the

documents produced by the respondents on record, learned P.O. submitted that the reasons for which the D.E. could not be commenced against the applicant were beyond the control of respondents. Learned P.O., in the circumstances, prayed for rejecting the O.A.

8. We have duly considered the submissions made on behalf of the applicant, as well as, the respondents. We have also perused the documents produced on record. It is undisputed that the statement of charge dated 11.6.2010 was served upon the applicant on 23.6.2010. There is further no dispute that on 30.6.2010 the applicant got retired on attaining the age of superannuation. Thus, only one week prior to his retirement the statement of charge was served upon the applicant. There is further no dispute that till filing the present O.A. by the applicant on 11.1.2021, the D.E. initiated against the applicant had not proceeded further. Admittedly, the letter dated 29.4.2021 under the signature of the Regional Departmental Enquiry Officer was served upon the applicant during pendency of the present O.A. It is the matter of record that this Tribunal has passed an interim order and thereby has stopped the further enquiry proceedings.

9. The D.E. is sought to be quashed by the applicant mainly on the ground of inordinate delay, which has occurred in conducting the D.E. In the case of **State of Andhra Pradesh vs. N. Radhakishan, 1998 (4) SCC 154**, the question before the Court was, “whether the delay did vitiate the disciplinary proceedings?” The legal principles stated by the Hon’ble Supreme Court in para 19 of the said judgment are quite relevant in the context of the present matter, which are reproduced hereinbelow:-

“(i) 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.

(ii) 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 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.

(iii) 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 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.

(iv) 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.

11. In the case of **Prem Nath Bali Vs. Registrar, High Court of Delhi and another** (cited supra) the Hon'ble Supreme Court has observed thus:-

“33. Keeping these factors in mind, we are of the considered opinion that every employer (whether State or private) must make sincere endeavor to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of inquiry but not more than a year.”

12. In light of the law laid down in the aforesaid judgments we have to examine the facts involved in the present case. The only reason which has been assigned by the respondents in justification of the inordinate delay occasioned in proceeding in the enquiry against the applicant is that the relevant record pertaining to the misconduct alleged against the applicant has been destroyed in the fire to the Mantralaya building. It is the further contention of the respondents that

having regard to the serious nature of the charges against the applicant, the request of the applicant shall not be considered.

13. We are however, not convinced with the submission so made and reason so assigned by the respondents. As is revealing from the documents filed on record by the respondents themselves, the incident of fire at Mantralaya building occurred in June, 2012. The respondents are first liable to explain why they did not commence the D.E. against the applicant till June, 2012, when the statement of charge was served upon the applicant on 23.6.2010.

14. The Circular dated 8.4.1974 issued by the Government of Maharashtra prescribes maximum period of 6 months for completing the enquiry. The GRs and the Circulars time to time issued for conduct of the departmental enquiry provide time limit to be followed at every stage of the enquiry. The time prescribed for completing the D.E. is of 6 months in the matters of suspended employees. In the Circular dated 15.5.1990 issued by the General Administration Department, Mantralaya, Mumbai, it is provided that in cases other than the cases of suspended employees, the departmental enquiry should be ordinarily completed within 1 year, failing which the Enquiry Officer should approach the G.A.D. for extension of

time limit for completion of the departmental enquiry by forwarding the proposal in the prescribed pro-forma. If we consider the time limit of 1 year prescribed as above, the enquiry against the applicant could have been and should have been completed by the respondents by 30.6.2011. Had respondents followed their own guidelines the enquiry against the applicant could have been completed within the period stipulated as such. The maximum period prescribed for completing the enquiry had, thus, expired, 1 year before the incident of fire took place at the Mantralaya, building. It is thus, evident that the reason as has been assigned by the respondents is difficult to be accepted.

15. Now about the delay during the period between 2012 to 2020. It is the contention of the respondents in the affidavit in reply filed on their behalf that the concerned file relating to the departmental enquiry against the applicant was destroyed in the incident of fire occurred in the month of June, 2012 at the Mantralaya building at Mumbai. Thus, it appears to be the contention of the respondents that the delay has occurred on account of reconstruction of the file. The said contention also cannot be accepted. The respondents themselves have placed on record the copy of the letter dated 25.11.2020 addressed to

the Divisional Commissioner, Aurangabad from the Desk Officer of the State. We deem it appropriate to reproduce the entire said letter as it is, which reads thus,

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विषयांकित प्र क्र. १. . . . च जापनान्वये
श्री. . . . , त . १ , . हिंगोलो यांच्याविरुद्ध १
रु ण ो . प्र क्र. १. . . .
च त्रन् १ निणयाथ ण . १,
ध त्र ल १
१ ष ल क्र. १. . . . च पत्रान्वये श्री.

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 . ध त्र ल फि
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 क्ष फि ि”

16. The contents of the aforesaid letter demonstrate that till November, 2020 no proposal was moved by the office of Divisional Commissioner, Aurangabad for reconstruction of file pertaining to the D.E. of the applicant and the said matter thus remained pending for a quite long period of 10 years only because of inaction on part of the office of Divisional Commissioner, Aurangabad. The question arises for the inaction on the part of the department in moving the proposal for reconstruction of file pertaining to the D.E. against the applicant, whether the applicant can be made to suffer? Now there has remained no doubt that in protracting the D.E. there is no role of the applicant, but the delay has occurred because of sheer negligence and inaction on part of the respondents.

17. In the case of **P.V. Mahadevan Vs. M.D. Tamil Nadu Housing Board, 2005 (6) SCC 636**, certain disciplinary actions were initiated against the appellant therein, who was working as Superintending Engineer in Tamil Nadu Housing Board. A charge memo was issued against him in the year 2000 for irregularity in issuing the sale deed in 1990 to one B. No explanation whatsoever was offered by the respondents for inordinate delay of 10 years in initiating the disciplinary action. The appellant, therefore, preferred W.P. before the Hon'ble Madras High Court for quashment of the said proceedings, however, could not secure any relief from the Hon'ble High Court and was, therefore, required to approach the Hon'ble Supreme Court. While allowing the appeal filed by the appellant, the Hon'ble Supreme Court has observed thus,

“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.”

18. As has been observed by the Hon'ble Supreme Court the applicant in the present matter cannot be made to suffer for inaction, laches and negligence on part of the respondents in committing inordinate delay of 10 years in initiating the departmental proceedings against him. We have reproduced hereinabove the observations made by the Hon'ble Supreme Court in paragraph 19 of the judgment in the case of **State of Andhra Pradesh Vs. N. Radhakishan** (cited supra). As observed by the Hon'ble Supreme Court in the said judgment, for want of proper explanation for inordinate delay of 10 years in conducting the disciplinary proceedings against the applicant the departmental enquiry initiated against the applicant must be held to have been vitiated on the ground of delay alone. The observation made and the conclusion recorded by the Hon'ble Supreme Court in the case of **P.V. Mahadevan Vs. M.D. Tamil Nadu Housing Board** (cited supra) would squarely apply to the present matter. The applicant has already suffered a lot. The mental agony and sufferings of the applicant due to protracted disciplinary proceedings would be much more than the punishment. After such a long period of more than 10 years that too after his retirement, the respondents cannot be

permitted to proceed further with the departmental proceedings against the applicant.

19. For the reasons elaborated above, the prayer made by the applicant in the Original Application deserves to be accepted. Hence, the following order: -

ORDER

(i) The departmental enquiry initiated against the applicant vide memorandum of charge dated 11.6.2010 is quashed and set aside.

(ii) The Original Application stands disposed of in the above term, however, without any order as to costs.

MEMBER (A)

VICE CHAIRMAN