

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.352 OF 2021

DISTRICT: - JALGAON.

Shri Krishna Gulab Jadhav,)
Age. : 65 years, Occu. : Retired,)
R/o Abhidatt Vij Karmachari)
Society, Vrundvan Nagar,)
Nasik – 422 003.).. **APPLICANT**

V E R S U S

1. The State of Maharashtra,)
Through : the Secretary,)
Agriculture, Animal Husbandry,)
Dairy Development & Fishery)
Department, Hutatma Rajguru)
Chowk, Madam Cama Road,)
Mantralaya, Mumbai – 32.)
2. The Commissioner of Agriculture,))
Agriculture Commissionerate,)
Maharashtra State,)
New Administrative Building,)
Near Sakhar Sankul, Shivaji Nagar)
Pune – 5.)
3. The joint Director of Agriculture,)
(Establishment),)
Agriculture Commissionrate,)
Maharashtra State,)
New Administrative Building,)
Near Sakhar Sankul, Shivaji Nagar,))
Pune – 5.)
4. The Joint Director of Agriculture,)
Nashik, Near Revenue Commissioner)
Office, Nashik Road, Nashik.)
5. Dist. Superintendent Agriculture)
Officer, Jalgaon.)

APPEARANCE : Shri K.B. Jadhav, learned counsel for
the applicant.
: Shri M.P. Gude, learned Presenting
Officer for the respondents.

CORAM : **Hon'ble Justice Shri P.R. Bora, Member (J)**
AND
Hon'ble Shri Bijay Kumar, Member (A)
DATE : **03.02.2022**

ORAL ORDER

[Per : Justice Shri P.R. Bora, Member (J)]

Heard Shri K.B. Jadhav, learned counsel for the applicant and Shri M.P. Gude, learned Presenting Officer for the respondents.

2. The applicant has filed the present Original Application for quashing the Departmental Enquiry initiated against him on the basis of charge sheet issued on 30.5.2014 on the ground that, though the period of more than 7 years has lapsed after issuance of the charge sheet, the said enquiry is still pending and for that reason some of the retiral benefits have not been paid to the applicant. The learned Counsel for the applicant submitted that the Enquiry Officer submitted the report on 31.12.2016 whereupon the applicant has also submitted his say and thereafter there is no progress in the matter. The learned Counsel further contended that the applicant has time and again approached the authorities

with a request to conclude the departmental enquiry pending against him, but could not get any positive response. Copies of said letters are placed on record and are brought to our notice. The applicant, therefore, has come out with a prayer that the departmental enquiry proceedings pending against him for unreasonable period be dropped.

3. The learned Counsel for the applicant has relied upon judgment of the Hon'ble Apex Court in the case of **Prem Nath Bali Vs. Registrar, High Court of Delhi & Anr., AIR 2016 SCC 101.** Our attention was more particularly invited to the observations made in para 33 thereof, wherein Their Lordships have observed that the enquiry proceedings shall be completed within the period as prescribed in the concerned rules and if for some or other reason it is not possible then for due reasons time may be extended for completion of such enquiry, but said period shall not be extended beyond one year thereafter. The learned Counsel for the applicant submitted that in view of the mandate given by the Hon'ble Apex Court in the aforesaid judgment, the departmental enquiry pending against the applicant deserves to be dropped and consequently the applicant deserves to be discharged from the charges leveled against him.

4. The learned Counsel for the applicant has also relied on the three judgments of the Division Bench of the Tribunal i.e. O.A. No.

861/2021, O.A. No. 487/2018 and O.A. No. 54/2019, wherein relying on the judgment of the Hon'ble Apex Court in the case of **Prem Nath Bali** (cited supra), the enquiry proceedings in respect of respective applicants are directed to be dropped on the ground of delay.

5. The learned Presenting Officer has resisted the submissions advanced on behalf of the applicant. He submitted that the directions contained in the judgment of the Hon'ble Apex Court in the case of **Prem Nath Bali** (cited supra) are advisory in nature. It is further contended that each case can be different on facts and in the circumstances the law laid down by the Hon'ble Apex Court has to be applied as per the facts of the said case. The learned Presenting Officer submitted that in conducting the enquiry proceedings against the present applicant no delay has been committed and if the record is seen, the enquiry was expeditiously completed and report of the Enquiry Officer was submitted way back in the year 2016; however, the delay occurred thereafter is for getting approval for the punishment to be imposed on the applicant. The learned Presenting Officer submitted that, if the mandate given by the Hon'ble Apex Court is to be interpreted in its true spirit, it suggests that in normal course the enquiry is to be completed within reasonable period. The learned P.O. submitted that the directions are thus for completing the enquiry by the

Enquiry Officer. The learned P.O. submitted that in the present case the Enquiry Officer has recorded the evidence and submitted his report expeditiously by the end of year 2016 and, as such, it cannot be said that inordinate delay has occurred in completing the departmental enquiry. He further submitted that, if some delay has occurred at the higher level for approving the punishment to be imposed on the delinquent, the said time need not be held as delay caused in completing the enquiry. He, therefore, prayed for rejecting the O.A.

6. We have carefully considered the submissions advanced by the parties. So far as the factual aspects are concerned, there seems no dispute that the charge sheet was issued to the applicant on 30.5.2014, the Enquiry Officer submitted the enquiry report on 31.12.2016, but thereafter no further steps are taken by the authorities. The contention of the learned P.O. that the Enquiry Officer has promptly submitted the report and if delay is caused at the level of disciplinary authority in proposing the punishment and getting it approved from the competent authority, the same cannot be part of enquiry proceeding, is wholly unconscionable. Unless the punishment is imposed upon the delinquent and same is communicated to the delinquent, the enquiry proceedings cannot be held to have been completed. Since in the present matter the enquiry proceedings are still pending with the Hon'ble Minister for

approval of the punishment, the enquiry has to be held not completed in all respect and no such finding can be recorded that the enquiry is completed. Today, when we are dictating the present order, the learned P.O. has sought to place on record the Memorandum dated 2.2.2022 and submits that in view of the said Memorandum the present O.A. has become infructuous. We are unable to accept the submissions advanced by the learned for the 2 reasons, firstly that the arguments in the present matter were concluded yesterday i.e. on 2.2.2022 and today the matter was listed only for filing the copy of the judgment of the Hon'ble Apex Court in the case of **Ajay Kumar Choudhary Vs. Union of India through its Secretary & Anr, (2015) 7 SCC 291**. This direction was given by the Tribunal believing that observations in the said judgment may prove useful in arriving at the conclusion in the present matter. Yesterday when the arguments of both the parties were heard and concluded, nothing was whispered on behalf of the respondents that some decision has been taken and the Memorandum in that regard has also been prepared. Today, the said Memorandum is placed on record when the Tribunal is about to start dictating the order in the matter. It is not the case of the respondents that copy of said Memorandum / order has been served upon the applicant. The learned

Counsel for the applicant, on instructions, has submitted that no such Memorandum / order has been served upon the applicant and the applicant is not at all aware of such order. The decision, which the respondents have allegedly taken vide Memorandum dated 2.2.2022, could have been taken earlier also. It is quite evident that after having come to know that the matter is finally heard by the Tribunal and order may be passed today that hurriedly decision is shown to have been taken. Secondly, we have gone through the contents of the said order / Memorandum dated 2.2.2022. Vide the said order a punishment to be inflicted upon the applicant has been proposed and the applicant is called upon to submit his say in regard to the proposed punishment within 10 days. Thus, even if the said document is taken on record and if we decide not to keep the said document out of consideration, even then the enquiry initiated against the applicant vide Memorandum dated 30.5.2014 i.e. prior to more than 6 ½ years, cannot be said to be concluded and completed. Now the punishment has been proposed and say of the applicant has been called, for which 10 days time has been provided to the applicant. The enquiry therefore cannot be said to have been concluded. The facts on record show that though the

enquiry report was forwarded to the concerned authority, it has consumed the period of more than 6 years in taking decision as what punishment is to be imposed. We reiterate that the Enquiry has not yet been concluded.

7. We are conscious of the fact that there are several difficulties before the employer, may be private employer or the Government, in completing the enquiry proceedings. Even in the judgment in the case of **Prem Nath Bali** (cited supra) the Hon'ble Apex Court has made a reference thereof. If the charges leveled against the employee are serious and if cogent reasons are provided explaining the requirement of more period for completing the enquiry, no Court is likely to set aside the enquiry in such cases only on the ground of delay and bound to consider the just reasons placed before the Court by the employer. However, if for unjust reasons the enquiry is prolonged, the Courts are bound to take a different view. In the instant case, there are absolutely no reasons, which can be said to be just so as to consider the delay, which has occurred in completing the enquiry.

8. The further contention of the learned P.O. that the observations made by the Hon'ble Apex Court in the case of **Prem Nath Bali** (cited supra) are advisory in nature and are not thus binding is fallacious. We deem it appropriate to reproduce herein

below some of the observations made by the Hon'ble Apex Court in para nos. 31 to 33 thereof :-

“31) Time and again, this Court has emphasized that it is the duty of the employer to ensure that the departmental inquiry initiated against the delinquent employee is concluded within the shortest possible time by taking priority measures. In cases where the delinquent is placed under suspension during the pendency of such inquiry then it becomes all the more imperative for the employer to ensure that the inquiry is concluded in the shortest possible time to avoid any inconvenience, loss and prejudice to the rights of the delinquent employee.

32) As a matter of experience, we often notice that after completion of the inquiry, the issue involved therein does not come to an end because if the findings of the inquiry proceedings have gone against the delinquent employee, he invariably pursues the issue in Court to ventilate his grievance, which again consumes time for its final conclusion.

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.”

9. The observations made as above are the mandate given by the Hon'ble Apex Court for completing the enquiry. In view of the observations made, the respondents were under obligation to place before the Tribunal what were the difficulties because of which the enquiry could not be completed within the reasonable time. In the entire affidavit in reply, no such material has been brought on record. A vague statement that the reasons were beyond the control of the respondents is not enough. In the similar circumstances, this Tribunal in O.A. No. 54/2019 decided on 1.3.2019 as well as in O.A. No. 861/2021 decided on 31.1.2022 and in O.A. No. 487/2018 decided on 3.8.2020 has quashed the enquiry proceedings against the applicants therein relying on the ratio laid down by the Hon'ble Apex Court in the case of **Prem Nath Bali** (cited supra). No material is brought on record by the respondents so as to take any contrary view.

10. For the reasons stated above, we are inclined to allow the present Original Application. Hence the following order :-

ORDER

- (i) The Original Application is allowed.

(ii) The impugned departmental enquiry initiated against the present applicant as per the charge sheet dated 30.5.2014 is quashed and set aside and consequently the applicant stands exonerated from all the charges leveled against him.

There shall be no order as to costs.

MEMBER (A)

MEMBER (J)

PLACE : AURANGABAD.

DATE : 03.02.2022

ARJ O.A. NO. 352-2021 DB (D.E.)