

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 366 OF 2021

DISTRICT:- HINGOLI

Narayansingh S/o Bankatsingh Thakur,
Age-67 years, Occu. Nil,
R/o. Vidya Nagar,
Hingoli, Dist. Hingoli.

.. **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.

2. The Divisional Commissioner,
Aurangabad.

3) The Collector,
Hingoli City Government Office,
Hingoli-Kalamnuri-Nanded Rd.,
Hingoli.

.. **RESPONDENTS**

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

: Shri Mahesh B. Bharaswadkar, learned
Presenting Officer for the respondent
authorities.

**CORAM : JUSTICE SHRI P.R. BORA, VICE CHAIRMAN
AND
: SHRI VINAY KARGAONKAR, MEMBER (A)**

DATE : 01.03.2024

ORAL ORDER

(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 31.12.2012 on attaining the age of superannuation. On the date of his retirement, however, before he gave the charge, memorandum of charge was issued against him and on the same day the departmental enquiry proceedings were initiated against him under Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. On 7th January, 2013 the applicant submitted his explanation to the statement of charge served upon him. Thereafter, for the period of more than 08 years there was no progress in the enquiry proceeding and after about 09 years more particularly on 17th March, 2021 enquiry officer was appointed in the matter and on 20th April, 2021 the Presenting Officer was appointed and enquiry was to proceed further. The applicant, therefore, approached this Tribunal by filing the present O.A. seeking the following reliefs: -

“A) This Original Application may kindly be allowed thereby holding and declaring that the Respondents have ceased to have any power & authority in law to

now conduct the Departmental Enquiry initiated against applicant vide Memorandum of Charge dated 31/12/2012 (Annex. A-1 Colly.) and/or to punish him as a result thereof.

B) This Original Application may kindly be allowed thereby quashing and setting aside the Departmental Enquiry initiated against applicant by the Resp. No. 1 vide Memorandum of Charge dated 31/12/2012 (Annex. A-1 Colly.)

C) Costs of this Original Application may kindly be awarded to the applicant.

D) Any other appropriate relief as may be deemed fit by this Hon'ble Tribunal may kindly be granted.

Interim relief

E) Pending and admission, hearing and final disposal of this Original Application the Respondents may kindly be directed not to proceed ahead in any manner whatsoever in the Departmental Enquiry initiated against applicant vide Memorandum of Charge dated 31/12/2012 (Annex. A-1 Colly.).

AND/OR

F) Pending the admission, hearing and final disposal of this Original Application further proceedings in the Departmental Enquiry against applicant initiated vide Memorandum of Charge dated 31/12/2012 (Annex. A-1 Colly.) may kindly be stayed."

3. The applicant had also sought interim relief, thereby restraining the respondents from continuing departmental proceedings any more. An order dated 4th August, 2021 passed by this Tribunal however, reveals that the then learned Division Bench thought it appropriate to allow the respondents to put their say on record and in the circumstances refrained from

granting any interim relief at that juncture as was prayed by the applicant. Thereafter, the respondents filed their affidavit in reply thereby opposing the contentions of the applicant raised in the O.A. as well as prayers made therein. Respondent Nos. 1 & 2 filed their joint affidavit in reply, whereas respondent No. 3 has filed separate affidavit in reply. The contentions as are raised in both the affidavits in reply are on similar line. It is the contention of these respondents that since it was revealed that while working at Hingoli the applicant had committed serious irregularities in the financial matters and in the administration functioning. The departmental enquiry has been initiated against him.

4. It is the grievance of the applicant that though the enquiry proceedings continued even after filing of the present O.A. and applicant also did participate in the said proceedings, inordinate delay has been committed by the respondents and though the period of more than 2 and $\frac{1}{2}$ years has lapsed the enquiry proceedings have not been completed. The applicant has further stated that because of pendency of this departmental proceeding he has been deprived of his regular pension and the retiral benefits which he could have got 13 years back i.e. in the year 2013 or around that.

5. Today, when the present matter was taken up for consideration, learned counsel appearing for the applicant pointed out that the enquiry officer had submitted the enquiry report on 29th of October, 2021 and the applicant also had submitted the say to the said report on 12th December, 2021 to the Government. Learned counsel submitted that till today the Government has not taken any decision on the said enquiry report. In the circumstances, according to the learned counsel, the enquiry proceedings must be held to have been vitiated only on the ground of inordinate delay, which has occurred in conducting the enquiry proceedings. Learned counsel has placed reliance on the following judgment of the Hon'ble Apex Court : -

1. **Prem Nath Bali Vs. Registrar, High Court of Delhi and another, AIR 2016 SC 101;**
2. **State of Andhra Pradesh vs. N. Radhakishan, 1998 (4) SCC 154; and**
3. **P.V. Mahadevan Vs. M.D. Tamil Nadu Housing Board, 2005 (6) SCC 636.**

6. Learned counsel pointed out that this Tribunal in O.A. No. 22/2021 decided on 31st January, 2024 had referred to all the aforesaid judgments in context with the said matter. Learned counsel submitted that the facts in the present matter are identical with the facts, which existed in the said matter

and, as such, all the aforesaid judgments would squarely apply to the facts of the present case. Learned counsel in the circumstances, has prayed for setting aside the departmental enquiry being vitiated on the ground of inordinate delay. Learned counsel pointed out that the applicant has already undergone punishment of being deprived of his retiral benefits and the regular pension amount for long 11 years. Learned counsel therefore prayed for setting aside the departmental enquiry pending against the applicant and to direct the Government to process pension papers of the present applicant.

7. Shri Mahesh B. Bharaswadkar, learned Chief Presenting Officer submitted that according to the instructions received to him from the office of Divisional Commissioner, Aurangabad the proposal is forwarded to the Maharashtra Public Service Commission (for short "the Commission") in February, 2023 for the reason that without concurrence of the Commission, the final order of punishment cannot be passed, the applicant being a gazetted officer. Learned C.P.O. in the circumstances has prayed for some more time to place on record all those circumstances and the information. We are however, not inclined to accept the request so made for the reason that inordinate delay has already occurred.

8. It is undisputed that the statement of charge was served upon the applicant on the date of his retirement i.e. on 31st December, 2012. Undisputedly the enquiry did not proceed a inch further till March, 2021 i.e. about 09 years. Having regard to the decisions which, learned counsel has relied upon, the enquiry against the applicant is liable to be vitiated on the count of delay alone on the date of filing of the application itself, however, when it was submitted before this Tribunal that the enquiry officer has been appointed and Presenting Officer has also been appointed, believing that the departmental enquiry would be completed within reasonable period, no orders were passed at the initial stage. The applicant also participated in the enquiry proceedings and cooperated to complete the enquiry proceedings.

9. As is revealing from the record the enquiry officer has submitted the enquiry report to the disciplinary authority on 29.10.2021 and since then the enquiry proceeding is at the same stage and has not been proceeded further. It was stated by the learned C.P.O. during the course of his arguments that in February, 2023 the matter is referred to the Commission and till date no response is received from the Commission. The question arises when the enquiry report was submitted to the

disciplinary authority on 29.10.2021, why for the disciplinary authority took the time till February, 2023 i.e. the period of more than 20 months to refer the matter to the Commission. There is absolutely no explanation for the inaction on part of the respondents in that regard. Nothing is brought on record by the respondents to demonstrate as to what was follow-up action taken by the authorities after the matter was referred to the Commission to seek response from it. If it is the contention that the matter is referred to the Commission in February, 2023 the blame would go on part of the Commission also in keeping the matter pending with it for the period of more than one year.

10. Ideally, the departmental enquiries are to be completed within the period of 06 months and the maximum period provided for completing the departmental enquiry is 01 year. State Government itself has issued several G.Rs. and Circulars stipulating the aforesaid time limit. It has to be stated that in some of the G.Rs. the entire methodology is provided and time limit is also stipulated for completion of every stage in enquiry. It may not be disputed that in all such G.Rs. and Circulars the maximum period provided for completing the enquiry is 01 year. We are aware that there may be some extraordinary circumstances, wherein it may not be possible to

complete the departmental enquiry within the stipulated period. There may be certain circumstances, wherein it may not be possible even to set time limit for completing the enquiry proceedings in such matters. However, no such circumstance is existing in the present matter. At least the respondents have not come out with any such case.

11. Considering the facts as aforesaid, it appears to us that the applicant has certainly made out a case for granting declaration sought by him. We reiterate that the Tribunal has also shown sufficient latitude and did not restrain respondents from proceeding with the pending departmental enquiry. However, in spite of that when circumstances, which now have come on record only highlight the inaction, omission and lethargy on part of the respondents, no further leverage can be given to the respondents.

12. Learned counsel for the applicant has relied upon the judgment of the Hon'ble Supreme Court in the case of **P.V. Mahadevan vs. M.D. Tamil Nadu Housing Board** (cited supra). In the aforesaid judgment 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.”

It appears to us that the facts involved in the present matter are identical to the facts, which existed in the aforesaid case before the Hon'ble Supreme Court. Admittedly, the enquiry is pending against the applicant for more than a decade. It also cannot be lost sight of that on the date of his retirement, the applicant was issued with the charge-sheet and for long 09 years' even the Enquiry Officer and Presenting Officer were not appointed in the matter. Mental agony and sufferings of the applicant due to the protracted disciplinary proceedings would be much more than punishment as observed by us hereinabove.

13. Moreover, we have gone through the report of the enquiry and before that we had perused the charges leveled against the applicant. The enquiry officer in his report has

recorded a finding that the grants were released belatedly and that was the reason that bills pertaining to the Election expenses could not be made within time. The enquiry officer has further candidly observed that there does not appear any element of misappropriation of any amount or nothing is revealed that any loss has been caused to the Government because of the misconduct alleged against the applicant. The only adverse observation made by the enquiry officer is that the administrative diligence does not seem to have been shown by the applicant at the relevant time. It appears to us that even if it is assumed that the findings recorded are to be accepted as it is, the applicant has already been punished by keeping the hanging sword of departmental enquiry upon him for about 12 years and by depriving him from regular pension and retiral benefits for one decade. It would be unjust to subject him to suffer any more punishment after 12 years of his retirement, for the only charge proved against him that of not showing administrative diligence. The applicant cannot be made to suffer any more.

14. For the reasons elaborated above, we are inclined to allow the present Original Application. In the result, the following order is passed:-

ORDER

- (i) Departmental enquiry initiated against the applicant is quashed and set aside.
- (ii) The original application stands allowed in the aforesaid term.
- (iii) There shall be no order as to costs.

MEMBER (A)**VICE CHAIRMAN**

O.A.NO.366-2021(DB)-2024-HDD-D.E.