

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI, BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 605 OF 2014**

**DISTRICT : NANDED**

Shri. H.N Laxmikant – Laxmikanth s/o )  
Nanjvudachar Chintamani, Occ : Nil, )  
R/o: Plot no. 71-A, Ganesh Nagar, )  
Nanded, Dist-Nanded. )

**...APPLICANT**

**VERSUS**

1. The State of Maharashtra, )  
Through its Secretary, )  
Water Resources Department, )  
Maharashtra State, Mumbai 400 032)
2. The Secretary, )  
Planning Department, M.S., )  
Mantralaya, Mumbai 400 032. )
3. The Divisional Commissioner, )  
Aurangabad. )

**)..RESPONDENTS**

Shri A.S Deshmukh, learned Advocate for the Applicant.  
Shri V.R Bhumkar learned Presenting Officer for the Respondents

**CORAM** : **Shri Rajiv Agarwal, (Vice-Chairman)**  
**Shri B.P Patil (Member) (J)**

**DATE** : **08 .03. 2017**

**PER** : **Shri Rajiv Agarwal, (Vice-Chairman)**

**ORDER**

1. Heard Shri A.S Deshmukh, learned Advocate for the Applicant and Shri V.R Bhumkar, learned Presenting Officer (P.O) for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 19.7.2013 issued by the Respondent no. 2, imposing punishment upon the Applicant in a departmental enquiry against him.

3. Learned Counsel for the Applicant argued that a departmental enquiry was started against the Applicant by the Respondent no. 3 by Memorandum dated 28.1.1998. Though the D.E was started in 1998, the events had happened during 1991 to 1994. Though in his written statement of defence, the Applicant denied the charges against him in the D.E, the D.E was started and the Enquiry Officer (E.O) submitted his report on 31.5.2005. This was a report in the joint Departmental Enquiry against then S.D.O Shri R.A Tolgatti and then Sectional Engineer, the present Applicant. The copy of Enquiry Report was sent by letter

dated 8.7.2005 from the Respondent no. 3 and it was received by the Applicant on 2.9.2005. The Applicant filed his reply on 22.9.2005. As no action was taken by the Respondents on the report of the Enquiry Officer for four long years, Shri Tolgatti filed O.A no 340/2009 before this Tribunal. This Tribunal by order dated 25.3.2009 directed the Respondents to complete all the four D.Es pending against Shri Tolgatti, including the joint D.E along with the Applicant within one years from the date of order in all respects. If the final order was not passed within one year, the D.Es stood quashed. As the Respondents did not complete D.Es against Shri Tolgatti as per the aforesaid order of this Tribunal, D.Es against him, including the joint D.E against Shri Tolgatti and the Applicant stood quashed. The Respondents filed Misc Application no 180/2010 in O.A no 340/2009, seeking extension of time to comply with the orders of this Tribunal in O.A no 340/2009. By order dated 8.6.2010, the Misc Application was dismissed.

4. Learned Counsel for the Applicant argued that the joint D.E which was started against Shri Tolgatti and the Applicant was quashed by the orders of this Tribunal. Obviously, such a D.E cannot be continued only against the Applicant. This would be highly discriminatory. The Respondents have passed the impugned order dated 19.7.2013 holding the Applicant alone responsible for all the losses which are said to have been caused to the

Government. This order is bad in law and cannot be sustained.

5. Learned Counsel for the Applicant contended that the D.E against the Applicant was started in 1998, for events which happened in 1991-94. The report of Enquiry Officer was received in 2005 and the Applicant has submitted his reply. The Applicant retired from service on 31.12.2003. The final order is passed on 19.7.2013, ten years after his retirement and eight years after the report of Enquiry Officer was received by the Respondents. The Applicant is yet to receive his full pensionary dues and has to suffer untold hardships. As per Government Circular dated 8.4.1974, a D.E has to be completed within six months. As per Circular dated 24.2.1997, a D.E against a retired Government employee is required to be completed as early as possible and maximum within one year. However, all these circulars have been flouted with impunity by the Respondents. There are various judgments of Hon'ble Supreme Court that when there is undue delay in completion of a D.E, the same can be quashed.

6. Learned Counsel for the Applicant argued that the initiation of D.E by the Respondent no. 3 was illegal as under the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, he has powers to impose minor punishment upon Group 'A' & 'B' officers. Obviously, he could not have ordered initiation of a major penalty proceedings against the

Applicant, who was a Sectional Engineer, a Group 'B' post from 1981 as per G.R dated 16.4.1984. The order of initiation of D.E against the Applicant was illegal and void-ab initio and this is an incurable defect which cannot be rectified subsequently.

7. Learned Presenting Officer (P.O) argued on behalf of the Respondents that a joint D.E was started by order dated 27.1.1998 against the Applicant and one Shri R.A Tolgatti. This order is issued by the State Government. The contention of the Applicant that D.E was started against him by the Respondent no. 3 is incorrect. Learned Presenting Officer stated that order of this Tribunal dated 25.3.2009 in O.A no 340/2009 is not applicable to the Applicant and it was applicable only to Shri Tolgatti. The D.E was conducted in full compliance with the provisions of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 and the Applicant was given full opportunity to defend himself. There is no merit in this Original Application and it may be dismissed.

8. Let us first examine the issue of competence of the Respondent no.3 to start the D.E against the Applicant. It is an admitted fact that the Applicant is a Sectional Engineer and he was occupying a Group 'B' post. In para 6(iv) of the O.A, the Applicant has stated that the D.E was initiated against him by the Respondent no. 3 by issuing memorandum dated 28.1.1998. The Respondents have

enclosed Government order dated 27.1.1998 (Exhibit R-1, page 136 of the Paper Book), wherein the State Government has passed the order to hold a joint D.E (common proceedings) under Rule 12 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. The State Government is the Appointing Authority and Disciplinary Authority for the Applicant. We are not impressed by the claim of the Applicant that the D.E against him was started by the Respondent no. 3. After order of a joint D.E were issued by the Government on 27.1.1998, a memorandum was issued on 28.1.1998 by the Respondent no. 3. The punishment order is also passed by the State Government. Whether it is passed by Irrigation Department or Planning Department is not all that important, as the order is passed by the State Government.

9. The Applicant has raised two other issues, viz, undue delay in completion of Departmental Enquiry and also whether a joint D.E, which has been quashed by order of this Tribunal in respect of co-delinquent can survive against the Applicant. Also, whether the abnormal and unexplained delay in passing final orders in a D.E in case of a retired employee is justified.

10. The Respondents have themselves admitted that by Government order dated 27.1.1998, common proceedings were started against the Applicant and Shri Tolgatti under Rule 8 of the Maharashtra Civil Services (Discipline &

Appeal) Rules, 1979. In other words, a joint D.E was started against the Applicant and Shri Tolgatti. It appears that Shri Tolgatti was facing three more D.Es started on 13.12.1996, 9.7.1997 and 22.1.1991, in addition to the Common Proceedings order on 28.1.1998 along with the Applicant. In joint D.E initiated on 28.1.1998, the Enquiry Officer has submitted his report on 31.5.2005, a copy of which is appended as Annexure A-5 (ii) on page 39 of the Paper Book. This is a common report against Shri Tolgatti and the Applicant. The Enquiry Officer found charges no 1, 2 & 5 as proved both against Shri Tolgatti and the Applicant. Shri Tolgatti has filed O.A no 340/2009, four years after the receipt of report of the Enquiry Officer. This Tribunal by order dated 25.3.2009, directed the Respondents as follows:-

“2. The above application discloses that the applicant was charged in four Departmental Enquiries during the period 1996 to 1998. It appears that in all the four Departmental Enquiries, the inquiry reports have also been submitted and the say of the applicant also appears to have been submitted. The last say of the applicant was submitted on 9.3.009. However, in the meanwhile, the applicant has already retired about 11 years back. Mr Deshmukh, brought to our notice the Government Resolution issued by the Respondent dated 24.2.1997 which contemplates that if during the pendency of departmental enquiry an employee retires then the inquiry will have to be completed within a

period of one year from the date of such retirement. Under these circumstances, this is a fit case that the respondent shall complete all the above four inquiries and pass a final order within a period of six months from today and within three months thereafter, M.P.S.C's approval should be obtained with regard to the same and pass the final order within three months thereafter. It is made clear that if the final orders are not passed as mentioned hereinabove within one year from this date, there shall be a relief in terms of prayer (B) of the Application.”

It is clear that this Tribunal has taken note of the following facts:

- (i) That Shri Tolgatti has retired 11 years back,
- (ii) Government Resolution dated 24.2.1997 envisages completion of a D.E against a retired Government servant within one year;
- (iii) The Enquiry Report and say of Shri Tolgatti was with the Respondents.

All these conditions were fulfilled in the case of the present Applicant also, who had retired on 31.12.2003, i.e. 6 years before the aforesaid order was passed. G.R dated 24.2.1997 was applicable to all retired employees and the report of Enquiry Officer and say of the Applicant were received by the Respondents in the year 2005. There is no qualitative

difference in the case of the Applicant and the case of Shri Tolgatti. The Respondents have filed Misc Application no. 180/2010, for extension of time, wherein this Tribunal has observed as follows:-

“On inquiry, learned P.O informs that the order passed in O.A no 340/2009 on 25.3.2009 for compliance of which time extension is sought, was not challenged before Hon. High Court and the order still holds field. The latter half of the operative order reproduced hereinabove clearly indicates that this Tribunal was not inclined to entertain any prayers for time extension in future. That is why time limit of complete one year was granted and further relief in terms of prayer clause (B) was allowed, in case of default on the part of the respondents. Respondents not having complied the order on or before 25.3.2010, the consequences follow and therefore, all the inquiries by now are deemed to have been dropped/cancelled/abandoned.

Thus, there is no question of grant of any time extension and therefore, M.A is dismissed.”

It is clear that the Respondents have accepted the order of this Tribunal in so far as Shri Tolgatti is concerned. In such circumstances, continuing D.E against the Applicant alone in a joint D.E, is arbitrary and highly discriminatory. Facts are identical in the case of the Applicant with those in the case of

Shri Tolgatti. Enquiry Officer has also found both of them equally responsible for lapses. They were facing identical charges in a common D.E. We do not understand as to how the D.E can survive only against the Applicant, when it was ordered by this Tribunal to be dropped against Shri Tolgatti, due to undue and prolonged delay in deciding the D.E. This is just not permissible. The impugned order is passed three years after the order dated 8.6.2010 in the aforesaid Misc Application. The Respondents have not given any justification whatsoever for this prolonged delay of 15 years in deciding a D.E in 2013, which was started in 1998. The Respondents have dealt with this matter in a most callous manner, disregarding various Circular/G.R and Court orders, which have clearly provided for early completion of a D.E, especially against a retired Government employee.

11. Learned Counsel for the Applicant has relied upon the judgment of Hon'ble Supreme Court in the case of **PREM NATH BALI Vs. REGISTRAR, HIGH COURT OF DELHI & ANR 2016 AIR (SC) 101**. Hon'ble Supreme Court has observed as follows:-

“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 limiter. 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 reasonable extended period depending upon the cause and the nature of inquiry but not more than a year.”

In the present case, the Applicant retired from service on 31.12.2003. He has not been paid his full pensionary benefits till now, i.e. for a period of 13 years. He has already been punished sufficiently. The Respondents have not given a word of justification for prolonging the D.E, especially after 2005, when Enquiry Officer submitted his report and the Applicant submitted his say. Delay is not attributable to the Applicant. The most important factor is that D.E against the co-delinquent has already been quashed by this Tribunal and that order is accepted by the Respondents. There is no justification to hold the Applicant alone responsible in a Common Proceedings. The action of the Respondents is highly discriminatory and arbitrary and cannot be sustained.

12. Having regard to the aforesaid facts and circumstances of the case, order dated 19.7.2013 issued by the Respondent no. 2 is quashed and set aside. The Respondents are directed to release regular pension and all pensionary dues of the Applicant from 1.1.2004 within a period of three months from the date of this order. This

Original Application is accordingly allowed with no order as to costs.

**B.P. PATIL  
(MEMBER. J)**

**RAJIV AGARWAL  
(VICE-CHAIRMAN)**

**Date : 08.03.2017  
Place : Aurangabad  
Dictation taken by : A.K Nair**

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