

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 686 of 2020 (DB)

Chandrakant Kesharao Borkar,
Aged about 63 years,
Occupation : Retired,
R/o F-101 Jyeshtha Apartment,
Opposite HP Petrol Pump,
Near Mahakalkar Sabhagruh, Dattatraya Nagar,
Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Additional Chief Secretary,
Revenue and Forest Department, Mantralaya, Mumbai.
- 2) Collector, Nagpur.
- 3) Shailesh Meshram,
Aged about 56 years, Occ. Service,
Regional Enquiry Officer,
having its office in the Commissioner Building,
Old Secretariat, Civil Lines, Nagpur.

Respondents.

Shri S.P. Palshikar, Advocate for the applicant.
Shri A.M. Ghogre, learned P.O. for respondents.

Coram :- Hon'ble Shri Shree Bhagwan, Vice-Chairman.
And
Hon'ble M.A. Lovekar, Member (J).

Date of Reserving for Judgment : 2nd January, 2023.

Date of Pronouncement of Judgment : 6th January, 2023.

JUDGMENT

Per : Member (J).

(Delivered on this 6th day of January, 2023)

Heard Shri S.P. Palshikar, learned counsel for the applicant and Shri A.M. Ghogre, learned P.O. for the respondents.

2. Case of the applicant is as follows –

The applicant was posted at Mauda as Sub Divisional Officer. The said Sub Division was newly created on 15/08/2013. The applicant worked there till his retirement on superannuation on 31/08/2015. The applicant received a show cause notice dated 07/02/2018 (Annex-A-2) that during his tenure as Sub Divisional Officer, Mauda irregularities were committed and excess payments were made to the persons affected by Bawanthadi Project. It was alleged –

“ लेखाअधिकारी (खर्च) जिल्हाधिकारी कार्यालय, नागपूर यांनी अंकेक्षण (Audit) केलेले असून दिनांक ०२ फेब्रुवारी २०१८ चे पत्रान्वये बावनथडी प्रकल्पांतर्गत एकूण रुपये ५,४३,२४,२४६/- इतके अनुदान वाटप करावयाचे असतांना कार्यकारी अभियंता, मध्यम प्रकल्प विभाग,गोंदिया यांचेकडून टप्पाटप्प्याने बुकलेट नुसार एकूण रुपये ६,२०,९९,९४५/- प्राप्त झाले असून बुकलेटनुसार रुपये ४,३४,१७,०१३/- इतकी रक्कम वाटप करण्यात आली आहे. (यामध्ये विवरणपत्रानुसार रुपये १,०७,७२,४६९/- अतिप्रदान झाले आहे.) तसेच बुकलेटमधील खातेदार वगळून इतर खातेदारांना पीएलए नोंदवहीनुसार रुपये १,६७,००,०००/- वितरीत करण्यात आलेले आहे. याव्यतिरिक्त पीएलए नोंदवहीनुसार रुपये २०,३६,९८७/- अदा केल्याचे दिसून येत आहे, त्यामुळे एकूण रुपये ६,२१,५४,०००/- वाटप केल्याचे दिसून येत आहे. तसेच रुपये ५४,०५५/- जादाचे प्रदान करण्यात आल्याचे दिसून येते. यावरून रु.१,०७,७२,४६९/-+रु.१,६७,००,०००/- +रु.५४,०५५/- असे एकूण रु.२,७५,२६,५२४/- इतकी रक्कम अतिप्रदान झाल्याचे निदर्शनास येते, यासाठी आपण जबाबदार आहात.”

The applicant gave a reply dated 12/02/2018 (Annex-A-3) denying all allegations levelled against him. However, he sought time of 30 days to file a detailed reply. The said reply (Annex- A-3) was received by respondent no.2 on 14/02/2018. By communication dated

26/02/2018 (Annex-A-4) respondent no.2 called upon the applicant to submit his reply to the show cause notice within three days. By his reply dated 27/02/2018 (Annex-A-5) the applicant reiterated his stand that the accounts be re-audited to find out the facts. On 20/03/2018 the applicant submitted his detailed reply (Annex-A-6) and denied irregularity or excess payment.

On 14/08/2019 respondent no.1 passed an order (Annex-A-7) to continue / proceed with departmental inquiry against the applicant though he had retired. On the same day charge sheet (Annex-A-8) was issued to the applicant laying the following charge -

“ श्री. चंद्रकांत केशवराव बोरकर, हे उपविभागीय अधिकारी, मौदा जि. नागपूर या पदावर दि. १५/०८/२०१३ ते दि. ३१/०८/२०१५ या कालावधीत कार्यरत असताना त्यांनी खालीलप्रमाणे अनियमितता केली आहे.

दोषारोप क्र.१ -

कार्यकारी अभियंता, मध्यम प्रकल्प विभाग, गोंदिया यांनी बावनथडी पॅकेज-२ च्या बुकलेटप्रमाणे बावनथडी प्रकल्पग्रस्तांना अनुदान वाटप करण्याकरीता दिनांक २५/०१/२०१२ ते ३०/०३/२०१३ या कालावधीत एकूण रक्कम रुपये ५,४२,०४,९४५/- एवढा निधी उपलब्ध करून दिला होता. श्री.चंद्रकांत केशवराव बोरकर हे उपविभागीय अधिकारी, मौदा जि. नागपूर या पदावर कार्यरत असताना त्यांनी सदर बावनथडी पॅकेज-२ अनुदान वाटप करताना खातेदारांना किंवा त्यांच्या वारसदारांना देय रक्कमेपेक्षा जादा रक्कमा प्रदान करून शासनाचे रुपये १,०७,७२,४६९/- इतके नुकसान केले आहे.

अशाप्रकारे श्री.चंद्रकांत केशवराव बोरकर, तत्का. उपविभागीय अधिकारी, मौदा जि. नागपूर यांनी शासकीय अनुदान वाटपात अनियमितता करून महाराष्ट्र नागरी सेवा (वर्तणूक) नियम, १९७९ च्या नियम ३ चा भंग केला आहे. ”

By application dated 26/08/2019 (Annex-A-9) the applicant informed respondent no.1 that he had not received the annexures attached to the charge sheet and requested that copies of the same

be supplied to him to put forth his defence. On 13/09/2019 the applicant filed his reply (Annex-A-10) to the charge sheet. Respondent no.1, by order dated 24/10/2019 (Annex-A-11) directed the Divisional Commissioner, Nagpur to appoint a Presenting Officer in the inquiry. Accordingly, by order dated 02/12/2019 (Annex-A-12) Presenting Officer was appointed. By communication dated 08/09/2020 (Annex-A-13) the applicant was asked to remain present before the Inquiry Officer on 24/09/2020. This was the first date given in the inquiry. In Roznama of the inquiry dated 24/09/2020 it was specifically mentioned –

“ सादरकर्ता अधिकारी यांना जोडपत्र ४ मधील दस्तावेज पुरविण्याबाबत सूचना देण्यात आल्या आहे. प्रकरण जोडपत्र-४ मधील दस्तावेजाच्या पूर्ततेकरीता ठेवण्यात येते.”

The applicant remained present before the Inquiry Officer on 24/09/2020. Thereafter, the inquiry was posted on 07/10/2020, 22/10/2020, 31/08/2021, 09/09/2021, 20/10/2021, 10/12/2021, 24/02/2022, 28/03/2022, 11/05/2022, 29/06/2022 and 05/07/2022.

From 24/09/2020 to 05/07/2022 the dates were primarily given for supplying copies of necessary documents to the applicant. Ultimately, the documents were supplied to the applicant on 05/07/2022. Thereafter, the inquiry was posted on 23/08/2022 (these details are culled out from the roznama of the inquiry which is at pages 137 to 149).

3. It is the contention of the applicant that the sluggish manner in which the inquiry has progressed so far cannot be allowed to go on in view of legal position crystallized by various rulings and the inquiry deserves to be quashed on account of inordinate delay in concluding the same.

4. In his reply pages 84 to 99 respondent no.2 has raised following contentions –

(i) Around September,2019 process of elections to Maharashtra State Assembly got underway.

(ii) Lockdown due to Corona adversely impacted conduct of this departmental inquiry.

(iii) Thus, delay in conducting the inquiry was neither deliberate nor intentional.

(iv) Bare perusal of the Annexure A-1 to the charge sheet will show that the amount of Rs.5,42,04,945/- was made available for disbursement from 25.01.2012 to 30.03.2013. The date of actual release of payments made by the applicant falls within the period of 4 years as stipulated in the provisions of Rule 27 (2)(b)(ii) of Maharashtra Civil Services (Pension) Rules 1982 and therefore the action taken by the respondents is proper.

The contention of the applicant that he has worked as a Sub Divisional Officer, Mouda w.e.f. 15.08.2013 to 31.08.2015 and charge sheet says that the amount for disbursement was received in between 25.01.2012 to 30.03.2013 is a matter of record. However the applicant is wrongly construing the charge sheet instead of reading it fully. If the charge no.1 is read as a whole the construction of which appears as under :-

Charge no.1 - The Executive Engineer, Medium Project Division, Gondia as per the booklet for disbursement of Bavanthadi Package to the affected villagers named as Bavanthadi Package had made available funds of Rs.5,42,04,945/- from the period 25.01.2012 to 30.03.2013. Shri Chandrakant Keshavrao Borkar who was working as Sub Divisional Officer, Mouda, had made excess payment to the tune of Rs.1,07,72,469/- in excess of due amount while releasing the said package to the affected holders of land or their heirs.

Therefore the applicant is wrongly trying to take help of the date from 25.01.2012 to 30.03.2013 when the Package amount was made available and he intentionally ignored the rest of the sentence of charge no.1. Under such circumstances the contention of the applicant that the authority concerned without verifying the factual aspects has mechanically issued charge sheet and the whole charge against the applicant is concocted and after thought and hence entire charge sheet dated 14.08.2019 deserves to be quashed and set aside cannot be accepted.

5. In his reply at pages 130 to 136 respondent no.1 has inter alia averred as follows –

Executive Engineer, Central Project Department, Gondia allotted grants to Bawanthadi Project affected people. As per booklet of Bawanthadi Package-2 total amount of Rs. 5,42,04,945/- was provided. The applicant while working as Sub-Divisional Officer, Mauda, District Nagpur at the time of distributing the grant of above amount of Rs.5,42,04,945/- has caused the loss of Rs.1,07,72,469/- to the respondents by providing more than the amount due to the account holders or their heirs. Though the applicant denied the allegations against him in a statement dated 13/09/2019, it is necessary to make inquiry against the applicant and therefore, the respondent no.3 was appointed as Inquiry Officer in the present case to investigate the same.

Inquiry Officer submitted the proposal on 03.11.2020 for extension of time to complete the departmental inquiry against the present applicant. The said extension is sought in the wake of the fact that the Covid-19 pandemic has delayed the departmental inquiry that would otherwise have progressed if the situation was normal.

On 31.08.2015 the office of Sub-Divisional Officer, Mauda submitted report to the Collector Office, Nagpur stating that the amounts' received on account of Bawanthadi Project Package-2 were disbursed in excess by the applicant to 49 occupants and as per P.L.A. register total amount of Rs.1,67,00,000/- was released at the rate of Rs.1,00,000/- each to 167 occupants of land and informed that excess amount of Rs.2,60,42,798/- was disbursed by the applicant to Bawanthadi Project Affected Persons. The Collector, Nagpur after receiving the above report, got audited the said irregularities from Account Officer (Expenditure), Collector Office, Nagpur who submitted the report on 02.02.2018 that amount of Rs.1,07,72,469/- was released in excess.

6. On behalf of the applicant our attention was drawn to the following –

(i) The period covered by the charge is 15/08/2013 to 31/08/2015. The applicant stood retired on superannuation on 31/08/2015.

(ii) Charge sheet was issued on 14/08/2019.

(iii) By letter dated 26/08/2019 (Annex-A-9) the applicant had appraised respondent no.1 that he had not received copies of annexures attached to the charge sheet and unless the same were supplied, he could not properly defend his case.

(iv) By communication dated 01/06/2022 (P-106) the applicant was informed that inquiry was kept on 29/06/2022 for compliance in respect of supply of copies of necessary documents to him.

(v) Ultimately, on 05/07/2022, as reflected in Roznama of the inquiry - on page 148 – copies of the documents were supplied to the applicant.

7. On the basis of aforementioned chronology it was submitted by Shri S.P. Palshikar, learned Advocate for the applicant that the sluggish pace at which the inquiry progressed would show that the respondent department did not view its task of completing the inquiry expeditiously seriously at all and hence, the inquiry is liable to be quashed in view of binding precedents. To support this submission reliance is placed on “**State of A.P. Vs. N. Radhakishan (1998) 4 SCC,154**”. In this case it is held –

“(19) It is not possible to lay down any predetermined 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. 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 the 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. In considering whether the 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. 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.”

8. The applicant has further relied on “**Premnath Bali Vs. Registrar, High Court of Delhi and Ano. AIR 2016 SC 101**”. In this case it is held –

“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.

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 applicant has also relied on the Judgments of this Tribunal in O.A.Nos. 755/2020, 352/2021 and 727/2021, delivered on 29/06/2022, 03/02/2022 and 23/03/2022, respectively. By these Judgments, by relying inter alia on ***Premnath Bali (supra)*** relief in the form of quashing of charge sheet and consequential exoneration from charge was granted.

10. Advocate Shri S.P. Palshikar has also fairly brought to our notice a Judgment of the Full Bench of the Hon'ble Supreme Court “***State of M.P. & Ano. Vs. Akhilesh Jha & Ano.2022 (1) Mh.L.J.,557.***” In this case it is held –

“Every delay in conducting a disciplinary inquiry does not, ipso facto, lead to the inquiry being vitiated. Whether prejudice is caused to the officer who is being enquired into is a matter which has to be decided on the basis of the circumstances of each case. Prejudice must be demonstrated to have been caused and cannot be a matter of surmise.”

11. Advocate Shri S.P. Palshikar has also brought to our notice Judgment dated 19/10/2022 delivered by the Bombay High Court in Writ Petition No.6353/2022 wherein the above referred case of ***Akhilesh Jha (supra)*** was relied upon.

12. We have considered the above referred rulings'. In the case of ***N. Radhakishan (supra)*** it is stressed that all relevant factors are required to be taken into account – on the one hand there is need for clean and honest administration and on the other there is right of the delinquent employee to get the departmental proceedings against him concluded expeditiously. We have also reproduced what is laid down in ***Premnath Bali (supra)***.

13. It was submitted by Advocate Shri S.P. Palshikar that in the subsequently delivered Judgment i.e. ***Akhilesh Jha (supra)*** there was no reference to what is held in ***Premnath Bali (Supra)*** and hence this Tribunal will have to rely on the ratio laid down in the case of ***Premanath Bali***. There is no merit in this submission. The Full Bench Judgment in ***Akhilesh Jha (supra)*** will have to be relied upon which also takes a view similar to the one taken in the case of ***N. Radhakishan (supra)***.

14. In the instant case the inquiry is pending since more than three years. Only on 05/07/2022 copies of necessary documents were supplied to the applicant. These circumstances clearly show that the respondent department has not treated the matter of conducting this inquiry with requisite degree of gravity and seriousness. However, on the other hand there is seriousness of charge laid against the applicant. When these factors are balanced and weighed, the

respondent department is required to be given a reasonable time to conclude the inquiry. In our view higher weightage is required to be given in this case to serious nature of charge. In the facts and circumstances of the case, following order shall meet ends of justice. Hence, the order-

ORDER

- (i) The O.A. is disposed of in these terms, with no order as to costs.
- (ii) The respondent department shall conclude the inquiry against the applicant within four months from the date of receipt of this order.

(M.A.Lovekar)
Member (J)

(Shree Bhagwan)
Vice Chairman

Dated :- 06/01/2023.

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of V.C. and Hon'ble Member (J).

Judgment signed on : 06/01/2023.*