

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**

**NAGPUR BENCH, NAGPUR.**

**ORIGINAL APPLICATION NO.850/2011.**

Bhimashankar Manikrao Hirmukhe,  
Aged about 51 years,  
Occ-Service,(Police Inspector, LCB,Latur),  
R/o Old Awasa Road, Sujata Niwas,  
Latur.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Home Department,  
Mantralaya, Mumbai-32.
2. The Director General of Police (M.S.),  
Near Regal Cinema,  
Shahid Bhagat Singh Road,  
Mumbai.
3. The Assistant Superintendent of Police/  
Dy. Superintendent of Police, Malkapur,  
Distt. Buldana.

**Respondents.**

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Shri S.N. Gaikwad, Ld. Advocate for the applicant.  
Mrs. M.A. Barabde, Ld. P.O. for the respondents.

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**Coram:- B. Majumdar, Vice-Chairman and  
Justice M.N. Gilani, Member (J).**

**Dated:- 10<sup>th</sup> July, 2014.**

**Order**

**Per: M.N.Gilani, M(J)**

The issue that arises in this O.A. is: whether disciplinary proceedings initiated and pending against the applicant relating to the incident occurred in the year 1999 can be allowed to be continued.

2. In 1988, the applicant joined as Police Sub-Inspector and was posted at Buldana. He served at many places in the said capacity. In 2001, he was promoted to the post of Assistant Police Inspector and thereafter in

the year 2007 was promoted to the post of Police Inspector. In 1999, while he was posted as officer in-charge of police station, Sakharkheda, District Buldana, some untoward incident occurred. The offence bearing Crime No. 27/1999 under sections 420, 421 and 409 of the Indian Penal Code was registered at the police station, Sakharkheda. In connection with the investigation of this offence, writ petition was filed and in that there were directions to conclude the investigation expeditiously. On 15.10.2011, the Additional Director General of Police (Establishment), Mumbai passed the order directing departmental enquiry against the applicant on the ground that while conducting investigation, he had left many lacunae and infirmities. The applicant refuted the charges. It is the plea of the applicant that there has been an inordinate and unexplained delay of more than 12 years in issuing of charge memo and thereafter four more years have been elapsed and still enquiry is yet to be completed. It is, therefore, stated that there is no justification for such protracted departmental enquiry and is liable to be quashed.

3. The respondent Nos. 2 and 3 submitted return. It is admitted that for the first time i.e. on 23.8.2012, the applicant was served with the chargesheet and thereafter enquiry officer has been appointed. Now, the enquiry is in progress. The respondents tried to point out that when the chargesheet was to be served on the applicant, he avoided its service and because of that there was some delay in commencement of the enquiry. As regards indicting the applicant after twelve years of the alleged act of misconduct, nothing is explained.

4. Before we delve into the contentions advanced at the bar, we deem it necessary to set out, in brief, events that had occurred between the alleged act of misconduct and the date of passing the order i.e. 15.10.2011 (Annexure A-1), directing initiation of departmental enquiry against the applicant. In 1997-98, there were unseasonal heavy rains and because of that the farmers suffered heavy losses. Through the Agriculture Department and the Panchayat Samiti, affected farmers were given financial aid. In the process of distribution of cheques, some irregularities were committed and for that one Mr. Ganpat Ingale had lodged complaint with the authorities. Ultimately, on the basis of report lodged by the Audit Officer, offence was registered. On the demand of the said complainant, investigation into this offence was handed over to the S.D.P.O., Buldana. Meanwhile, the said complainant filed writ petition in the High Court, questioning the manner of investigation. In that, directions were issued by the High Court. Ultimately, as per the advice given by the Director of Prosecution, Mumbai, chargesheet was submitted in the Court. On 16.1.2003, the Additional Director General of Police (Establishment), Mumbai sent proposal to the Government to initiate joint enquiry against Shri C.V. Joshi, the then S.D.P.O., Buldana and the applicant on the charge of conducting investigation into the said offence negligently and in a shoddy manner. This resulted in the Government passing the order on 16.8.2005 directing initiation of departmental enquiry against Mr. C.V. Joshi, the then S.D.P.O., Buldana under the provision of Rule 27 of the M.C.S. (Pension) Rules, 1982. It is pertinent to note that on the date of passing of this order, Mr. C.V. Joshi had retired. Charge memo and statements

of imputations of misconduct were also served on him. He was mainly charged on the following three counts:

दिनांक ०७.११.२००० ते २०.०७.२००१ या कालावधीत गुन्ह्याच्या तपासात काहीही कार्यवाही न झाल्याबाबत मा.उच्च न्यायालयाने त्रिं नापसंती व्यक्त केली. मा. उच्च न्यायालयात दि.०३.०८.२००१ रोजी झालेल्या सुनावणीच्या वेळी या गुन्ह्यातील आरोपींना १५ दिवसाचे आत अटक करून तपास मुदतीत पुर्ण करून न्यायालयात दोषारोपपत्र पाठविण्यात येईल असे श्री जोशी यांनी सांगितले. मात्र श्री जोशी यांनी या मुदतीत आरोपींना अटक केली नाही तसेच गुन्ह्याचा तपास मुदतीत पुर्ण केला नाही. दिनांक १७.०८.२००१ रोजी गुन्ह्याच्या तपासाच्या प्रगती अहवालावर न्यायालयात उपस्थित राहण्याच्या सूचना दिल्या असतांनाही श्री जोशी हे दिनांक १७.०८.२००१ रोजी न्यायालयात हजर राहिले नाहीत%०

Thereafter on 15.10.2011, the Additional Director General of Police (Establishment), Mumbai directed the departmental enquiry against the applicant. In that connection, he was served with the charge memo and documents relied upon by the department, on 23.8.2012. However, he is yet to be served with the statements of witnesses on the ground that they are not available in the file. This is evident from the communication dated 2.9.2012 issued by the enquiry officer. In the reply dated 19.10.2011 submitted by the applicant, it is mentioned that initially and for a period of three months, investigation into this offence was handled by one Mr. Pawar, who was his predecessor and in-charge of the Police Station, Sakharkheda and, therefore, w.e.f. 8.11.2000, it was taken over by Mr. C.V. Joshi, the then S.D.P.O., Buldana. No explanation is forthcoming as to why the respondents did not think it necessary to initiate appropriate action against the applicant in between 2001 and 2012. On the contrary, they considered him suitable for the promotional post and promoted him as Police Inspector in 2007.

There are catena of authorities deprecating practice of initiating departmental proceedings after a gap of number of years from the date

of alleged act of misconduct. If such delay is not explained or is on account of latches on the part of the concerned department. It has been held that such protracted proceedings cannot be allowed to continue.

5. In the case of **State of Madhya Pradesh V/s Bani Singh and another, AIR 1990 SC 1308**, there was a delay of more than twelve years to initiate disciplinary proceedings against the petitioner who was Selection Grade IPS Officer. No satisfactory explanation for inordinate delay in issuing the charge memo was offered. Initially the petitioner approached the Central Administrative Tribunal. The Tribunal quashed the charge memo and departmental enquiry on the ground of inordinate delay of over twelve years in the initiation of disciplinary proceedings. The Supreme Court upheld the decision of the Tribunal.

6. In **P.V. Mahadevan V/s M.D., Tamil Nadu Housing Board, 2006 SCC 207**, there was an inordinate and unexplained delay of ten years in issuing of charge memo. It was held that such delay vitiates disciplinary proceedings. For mistake committed by the department, the delinquent should not made to suffer. In that case, there was delay of ten years in initiating departmental enquiry against the appellant. No convincing explanation was forthcoming from the employer. Their Lordships of the Supreme Court observed that, *“the protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interest of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees+.*

7. The Division Bench of the Bombay High Court in case of **Deorao Tukaram Sawle V/s State of Maharashtra and others, 2011 (5) ALL MR 131**, highlighted the consequence of causing prolonged delay in initiating departmental enquiry against an employee. It is observed that, *“the delay in initiating enquiry surely causes prejudice to the employee in raising his defence. With shortlived memories, it is difficult for a government servant to state under what circumstances and on what enquiry a particular official act was performed specially when the act is one of the several acts which the government servant is required to perform in his official capacity”*.

In that case, delay was of seven years reckoned from the date of alleged act of misconduct.

8. In the case in hand, the applicant has been charged for leaving lacunae and infirmities in the case which he investigated. It is pertinent to note that, the applicant was not the only Investigating Officer entrusted with the investigation of the said case. Earlier to him, investigation was conducted by his predecessor and thereafter it was handed over to the S.D.P.O., Buldana. Not only that, after submission of the chargesheet and few years thereafter (in 2007) the applicant was promoted to the post of Police Inspector. It has not been clarified as to what had happened to the said case, that means it has ended in conviction or acquittal and whether alleged lacunae and infirmities which according to the department, the applicant had left while investigating the case have at all been proved to be fatal to the prosecution case.

9. Having considered the settled legal position and the facts and circumstances of the case, we are of the considered view that the

respondents cannot be allowed to proceed with the disciplinary proceedings against the applicant, mainly on the ground of unexplained inordinate delay.

10. Accordingly, the O.A. is allowed.

The communication dated 15.10.2011 (Annexure A-1) and the chargesheet dated 23.8.2012 (Annexure A-6) are quashed and set aside.

No order as to costs.

(Justice M.N.Gilani)  
Member (J)

(B. Majumdar)  
Vice-Chairman

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