

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 959/2019 (D.B.)**

Ashok S/o Pandurangji Dandge,  
Aged about 57 years, Occ. Service,  
R/o MHADA Colony, Wardha.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Principal Secretary,  
Water Resources Department,  
Mantralaya, Mumbai.
- 2) Superintending Engineer,  
Irrigation Project Circle,  
Yavatmal.

**Respondents.**

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**Shri S.P. Palshikar, Advocate for the applicant.**  
**Shri H.K. Pande, P.O. for respondent no.1**  
**Smt. J.J. Alkari, Advocate for respondent no.2**

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**WITH****ORIGINAL APPLICATION No. 11/2020 (D.B.)**

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- 1) The State of Maharashtra,  
through its Principal Secretary,  
Water Resources Department,  
Mantralaya, Mumbai.
- 2) Chief Engineer,  
Gosikhurd Project, Nagpur.

**Respondents.**

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**Shri S.P. Palshikar, Advocate for the applicant.**  
**Shri H.K. Pande, P.O. for respondent no.1**  
**Smt. J.J. Alkari, Advocate for respondent no.2**

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**Coram :- Shri Shree Bhagwan,  
Vice-Chairman and  
Shri Anand Karanjkar, Member (J).**

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**Date of Reserving for Judgment : 21<sup>st</sup> December,2020.**

**Date of Pronouncement of Judgment : 5<sup>th</sup> January, 2021.**

**COMMON JUDGMENT**

**Per : Anand Karanjkar : Member (J).**

**(Delivered on this 5<sup>th</sup> day of January, 2021)**

Heard Shri S.P. Palshikar, learned counsel for the applicants, Shri H.K. Pande, learned P.O. for respondent no.1 and Smt. J.J. Alkarni, learned counsel for respondent no.2.

2. Both the applications are filed by the applicant and they have nexus, therefore, both the applications are heard together and being disposed of by this common order –

3. In O.A. No. 959/2019 the applicant is challenging the disciplinary proceeding initiated against him by the respondents. It is contention of the applicant that he joined the service on 12/9/1983 as Junior Engineer, he was upgraded as Sectional Engineer on 1/4/1989. On 9/9/2019 the applicant was promoted as Deputy Engineer and on 1/10/2019 the applicant joined the post of Deputy Engineer, Wardha.

4. The applicant received order dated 5/11/2019, by this order the applicant's promotion as Deputy Engineer was cancelled. It

is contention of the applicant that the reason for cancellation of promotion was that the disciplinary inquiry was pending against the applicant. The charge sheet was issued on 23/3/2018. In the charge sheet there were total six other delinquent Officers beside the applicant. It is grievance of the applicant that though the charge sheet was served on the applicant in March,2018, Inquiry Officer was not appointed. The respondent no.1 exonerated three Officers, Shri Dhumne, Shri Yerawar and Shri Tote who were facing same charges along with the applicant. In view of this, it is submitted that the case of the applicant was not examined by the respondents. It is submitted that the applicant was unable to submit reply to the charge sheet within a period limited by the respondents, as applicant lost his wife in May,2018. It is submitted that the applicant thereafter submitted reply to the charge sheet and requested the respondents to consider why applicant could not be departmentally prosecuted for the misconduct. It is submitted that the charges against Shri Dhumne, Shri Yerawar and Shri Tote were similar, all of them were working in one project, but in a discriminatory manner the respondent no.1 exonerated Shri Dhumne, Shri Yerawar and Shri Tote and similar relief was not given to the applicant. The learned counsel for the applicant submitted that as per law of parity, as three Officers who were facing same charges

are exonerated, therefore the respondents do not have legal right to proceed against the applicant without considering his reply.

5. The disciplinary proceeding is also attacked on the ground that there was inordinate delay in serving the charge sheet. It is submitted that the alleged misconduct was committed in the year 2009 and the charge sheet was served on 23/3/2018. The second submission is that specific direction is given by the Hon'ble Apex Court in case of **Premnath Bali Vs. Registrar, High Court of Delhi, AIR 2016 SCC 101** that the departmental inquiry once initiated shall be completed within period of six months and as an outer limit within one year, but not more than one year. The learned counsel for the applicant submitted that though the inquiry was initiated on 23/3/2018, it should have been completed at the most before 23/3/2019. It is submitted that till today the inquiry is going on without any progress. Nothing is done other than serving charge sheet on the applicant. It is submitted that the applicant stood retire from the service on 30/6/2020 and now he is facing real difficulties as the departmental proceeding is pending, the applicant is unable to receive his retiral benefits. In view of this, it is submitted that the disciplinary proceeding against the applicant be quashed and he be exonerated.

6. The respondent no.2 has filed reply which is at page no.82 of the P.B. and the respondent no.1 reply is at page no.102 of the P.B.

We have heard oral submissions of the applicant and the respondent nos.1&2.

7. It is contention of the respondent no.2 that charge sheet was served on the applicant and six other Officers as they did not discharge their duties. As per the Public Works Manual 6<sup>th</sup> edition Appendix-24 and due to such working of the applicant, the Contractor M/s Yash Engineers Enterprises has filed a proceeding before the Arbitrator to recover amount Rs.51,80,885/-. It is admitted by the respondent no.2 that other Officers Shri Dhumne, Shri Yerawar and Shri Tote are exonerated by the respondent no.1, but it is submitted that the reply submitted by the Officers were examined by the Department and considering their cases, they are exonerated. After reading the reply of the respondent no.2, it seems that all the delinquent officers were discharging duty of survey work of Lower Painganga Project and charges against them were, without verification, entries were made in the measurement book, without receiving No Objection Certificates they had made survey and these Officers made respective recommendations for releasing money to the Contractor. The respondent no.2 has filed the copy of the charge sheet which was served on Shri R.M. Dhumne then Assistant Engineer, Grade-I, it is at Annex-R-1. The copy of the charge sheet served on Shri V.D. Yerawar, then Sectional Engineer is at page

no.141 of the P.B. The copy of the charge sheet served on Shri G.D.Tote, then Assistant Engineer, Grade-II is at page no.128. We have perused the Annex-A-1 to the charge sheet which were served on Shri Dhumne, Shri Yerawar and Shri Tote. After reading the Annex-A-2 with the charge sheet, it seems that the charges were the identical. The charges were Shri Dhumne made the survey of the land which was not part of the contract, without verification he made entries in the measurement book and made recommendation to release money to the Contractor and liability of Shri Dhumne was to the tune of Rs.2,63,158/-.

8. So far as charges against Shri Tote are concerned, similar allegations were made against him and it was alleged that the responsibility of Shri Tote was to the tune of Rs.2,10,527/-. Similarly allegations against Shri Yerawar were also identical and this responsibility was shown to the amount of Rs.2,10,527/-. Only difference between the charges against the applicant and these three persons is concerned, the applicant was held responsible to the tune of Rs.14,60,542/-.

9. The respondent no.2 contended that the charges against the applicant and Shri Dhumne, Shri Yerawar and Shri Tote were distinct and therefore applicant cannot say that as these three Officers are exonerated, therefore, the applicant is also entitled for the same

relief. It is alleged by the respondent no.2 that the applicant was called upon to submit reply to the charge sheet within 10 days and as it was not done the applicant submitted his reply on 29/10/2018, therefore, no proposal could be forwarded to the disciplinary authority. According to the respondent no.2, no illegality is committed by the respondent no.2 in continuing with the disciplinary proceeding. The respondent no.1 also contended that there is no illegality in the disciplinary proceeding, therefore, the O.A. is liable to be dismissed.

10. In O.A. No. 11/2020 it is contention of the applicant that his portfolio was examined by the DPC. The respondent no.2 did not place the fact before the DPC that the applicant was facing disciplinary proceeding and for this applicant was not responsible. It is contended by the applicant that the applicant's name was recommended by the DPC after examining his record, consequently the respondent no.1 promoted the applicant as Dy. Engineer and in this background the respondents had no authority in law to cancel the promotion.

11. The respondent nos.1&2 have filed their reply and justified their action. It is contended by the respondent no.2 that when the meeting of the DPC was held on 19/7/2019, the G.R. dated 15/12/2017 was in force and as per this G.R., the DPC was bound to follow the procedure, but it was not done. It is submitted that even if it

is accepted that the applicant was not responsible to inform the DPC that the applicant was facing disciplinary proceeding, then also in view of the G.R. dated 15/12/2017 there was no legal authority to promote the applicant. Thus the respondents have justified that the illegality was committed by the DPC in promoting the applicant.

12. The learned counsel for the respondent no.2 has submitted that the applicant cannot be exonerated in this matter and his inquiry cannot be quashed for the reason that period of one year is expired. The learned counsel for the respondent no.2 has placed reliance on the Judgment in case **Union of India & Ano. Vs. Kunishetti Satyanarayana (2006) 12 SCC,28**. In this case, the Hon'ble Apex Court has expressed that only in some very rare case, the High Court can quash the charge sheet or the show cause notice, if it is without jurisdiction or if it is illegal.

13. In case of **Secretary, Ministry of Defence & Ors. Vs. Prabhash Chandra Mirdha, AIR 2012, SC 2250**, the Hon'ble Apex Court has observed that the charge sheet cannot generally be a subject matter of challenge in Writ Petition as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge sheet be quashed at an initial stage as it would be a premature



stage to deal with the issues. The proceeding cannot be quashed on the grounds that it has been initiated at belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. In case of **Raj G. Kuwatkar Vs. Union of India & Ano. 2012 (6) Mh.L.J.,437**, similar view was taken by the Hon'ble Bombay High Court. In case of **Union of India & Ano. Vs. G.S. Suryawanshi, 2006 (5) Mh.L.J.,369**, the Hon'ble Bombay High Court has laid down that examining the correctness of the charge sheet at the stage of framing of the charge is beyond jurisdiction of the Tribunal. The other Judgments on which the reliance is placed by the learned counsel for respondent no.2 are similar.

14. In the present case the material aspect is that three responsible Officers who were facing same charges are already exonerated by the respondents. The legal position is settled that the law of parity is applicable even in disciplinary proceeding. The legal position is that when all the delinquents are facing same charges, it is not open for the disciplinary authority to exonerate some of the delinquents and proceed against the other particularly when the charges are identical.

15. It is important to note that the decision was taken by the disciplinary authority to exonerate Shri Dhumne, Shri Yerawar and Shri Tote vide order dated 15/5/2019. It is undisputed that when the

cases of Shri Dhumne, Shri Yerawar and Shri Tote were examined by the disciplinary authority, reply of the applicant was received by the respondent no.2, no just explanation is given why reply of the applicant was not considered by the disciplinary authority. It is important to note that no specific reasons are given why it was not suitable to proceed against Shri Dhumne, Shri Yerawar and Shri Tote.

16. The respondent no.2 has filed letter dated 15/5/2018 from the Section Officer, Water Resources Department, Mantralaya, Mumbai. This letter was addressed to the Superintending Engineer, Irrigation Department, Yavatmal Circle. The subject of the letter was disciplinary inquiry in relation to Lower Painganga Project, Tq. Ghatanji, District Yavatmal and left main canal and lift irrigation Mukutban Scheme. In the letter, it is mentioned that the proposal was received from the VIDC, Nagpur for initiating disciplinary proceeding against 13 Officers. It was further observed that 7 Officers were in service and therefore decision was taken by the Government to proceed against them. This decision was taken on 23/3/2018. Similarly it was observed that as Shri J.T. Shirao, Sectional Engineer, Shri Ashok Tikhe, Sub Divisional Engineer, Shri Shivdas Ulangwar, Sectional Engineer, Shri Ramesh Pise, Executive Engineer, Shri Sahebrao Thakre, Sub Divisional Engineer and Shri S.R. Borse, Executive Engineer retired from the service on superannuation,

therefore, decision was taken by the Government not to proceed against them as provided in Rule 27 of the Maharashtra Civil Services (Pension) Rules,1982. We have read this order at page no.154 which is as follows –

^ mi jkDr fo" k; kojhy l nHkhz; dækad 1 ; fkyh i =klo; sdk; ðlkjh l pkyd] fonHkz i kvcaðkkjsfodkl egkeMG] ulxi j ; kP; kdMmu i ktr >kyv; k , dqk 13 vf/kdk&; kfo#/nP; k foHkxh; pksd'kh i LrkMkP; k vuqfakusR; ke/khy , dmk 07 vf/kdkjh gs 'kk l u l sr dk; jr vl Y; kusR; kP; kfo#/n foHkxh; pksd'kh l # dj.; kpk 'kk l uLrjkoj fu.kz ?ksÅu fnukad 23@3@2018 P; k Kki ullo; s nks'kkjki i =s ct kfo.; kr vkyh vkgs- mojh r Jh-t-rqJhjko] 'kk[kk vfHk; ark] Jh-v'kscd fr[kj mi foHkxh; vfHk; ark] Jh- f'konkl myaxokj] 'kk[kk vfHk; ark] Jh-jes'k fi l j dk; ðlkjh vfHk; ark] Jh- l kgsjko Bkdj j mi foHkxh; vfHk; ark o Jh- l qjk-ckj l j dk; ðlkjh vfHk; ark gs 06 vf/kdkjh l ðkfuorR >kyv l Y; keGsR; kP; kfo#/n egjk"V<sup>a</sup>ukxjh l ðk ½fuorRhoru½ fu; e]1982 e/khy fu; e 27 P; k i k/fu; e 2 ¼ch½ ¼nku½ [kkyh foHkxh; pksd'kh l # u dj.; kpk fu.kz 'kk l uLrjkoj ?ks; kr vkyk vkgs

2- l cc] egjk"V<sup>a</sup>ukxjh l ðk ½fuorRhoru½ fu; e]1982 e/khy fu; e 27 P; k i k/fu; e 2 ¼ch½ ¼nku½ ojhy vf/kdk&; kfo#/n 'kk l uLrjko#u ðkskrhgh foHkxh; pksd'kh pkyqdj.; kr vkysh ukgh- gh clk fopjkr ?ksÅu vki .k l æðlhrP; k l ðkfuorRhoru i dj.kh i pfyr fu; ekuð kj mfpr dk; ðkgh djkohgh fourh- \*\*

17. After reading this letter, it seems that no cogent reason is given why it was not suitable to proceed against the retired Officers. The Rule 27 of the Maharashtra Civil Services (Pension) Rules,1982 provides that even after retirement of Government servant, there can be a disciplinary proceeding against him. The only qualification is that he cannot be punished in that matter, but there could be recovery from his pension. It is very surprising that it was a matter of causing loss more than Rs.51,00,000/- and in one stroke six responsible Officers

were exonerated as they were retired and for this no justification is given. In our opinion, it was obligation on the respondents to discuss what were the allegations against these retired Officers and what actual role was played by them which was amounting to misconduct. After taking into account these two aspects, it seems that the respondents have not proceeded against six Officers though disciplinary action was proposed against them and the respondent no.1 has exonerated three other Officers. In our opinion, once decision is taken by the respondents not to proceed against the retired Officers, then as per law of parity after retirement of the applicant, the disciplinary proceeding cannot be continued. It is important to note that though the charge sheet is served on the applicant in the month of March,2018 and period of two years is over there is no progress in the inquiry and no reason is shown why it was not concluded. As per the direction in case of **Premnath Bali Vs. Registrar, High Court of Delhi, AIR 2016 SC, 101**, the respondents do not have any right to proceed against the applicant. In this regard, we would like to reproduce para-30 & 33 of the Judgment-

*\*“30) We are constrained to observe as to why the departmental proceeding, which involved only one charge and that too uncomplicated, have taken more than 9 years to conclude the departmental inquiry. No justification was forthcoming from the respondents’ side to explain the undue delay in completion of the departmental inquiry except to throw blame on the appellant's conduct which we feel, was not fully justified.*

*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”.*

18. As far as the para-33 is concerned, there is a mandate that every employer State or Private must make sincere endeavour to conclude the departmental inquiry proceeding once initiated against the delinquent employee within a reasonable time by giving priority and as far as possible it must be completed within six months. Whenever it is not possible to complete the inquiry within six months due to some unavoidable circumstances, then such period can be extended to one year, but not more than one year. Now admittedly in the present matter, the respondents were unable to complete the disciplinary inquiry pending against the applicant within two years and the respondents have not shown a cogent reason what were their difficulties for not completing the inquiry within the stipulated period as directed by the Hon'ble Apex Court. Under these circumstances, considering the conduct of the respondents exonerating six retired Officers and three Officers in service, as per the law of parity, we are of the view that if the inquiry against the applicant is proceeded after

his retirement, then it will be grave injustice to the applicant. We, therefore, accept submission of the applicant that the O.A. No. 959/2019 be allowed by giving him relief as per prayer clause 8 (ii) and we allow the O.A. No.959/2019 in terms of prayer clause 8 (ii), no order as to costs.

19. So far as O.A.No. 11/2020 is concerned, it is admitted position that the situation was governed by G.R. dated 15/12/2017 when the matter was before DPC and it was necessary to keep the case of the applicant in sealed cover, but it was not done. In view of this, the respondents are directed to consider the case of the applicant as per the guidelines in the G.R. dated 15/12/2017 and shall take suitable decision within a period of 60 days from the date of this order, regarding his promotion. No order as to costs.

**(Anand Karanjkar)**  
**Member(J).**

**(Shree Bhagwan)**  
**Vice-Chairman.**

**\*Dated** :- 05/01/2021.

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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 Hon'ble V.C. and Member (J).

Judgment signed on : 05/01/2021.

Uploaded on : 05/01/2021.\*