IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.192 OF 2017

DISTRICT : Thane
Sub.:- Dept. Enquiry

Shri Prakash Babulal Patil)
Age : 57 Yrs, promoted as Executive)
Engineer and Waiting for posting.)
R/o. N4-F-115, CIDCO, Aurangabad.)**...Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Public Works Department,)
Mantralaya, Mumbai – 400 032.)

2. The Regional Departmental Enquiry)
Officer, Konkan Region, having office)
at Konkan Bhawan, Navi Mumbai.)**...Respondents**

Shri A.V. Bandiwadekar, Advocate for Applicant.

Smt. Kranti Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J
DEBASHISH CHAKRABARTY, MEMBER-A

DATE : 02.08.2023

PER : A.P. KURHEKAR, MEMBER-J

JUDGMENT

1. The Applicant has filed this Original Application for declaration that continuation of D.E. initiated against him by charge sheet dated 29.05.2015 is illegal in view of his subsequent acquittal in criminal case No.2039/2013 by judgment dated 29.09.2016 and for consequential service benefits.

2. The events culminated in filing this O.A. can be summarized in brief as under:-

(A) The Applicant joined Government service in 1980 and at the time of entry in service, in service book his caste was recorded as VJNT (Page 46 of PB).

(B) In the year 1995, the Applicant was due for promotion to the post of Deputy Engineer and that time Applicant produced Caste Certificate showing his caste 'Thakur' as Scheduled Tribe.

(C) It is on the basis of Caste Certificate of Scheduled Tribe, the Government promoted Applicant by order dated 05.05.1995.

(D) The Caste Certificate tendered by the Applicant that he belongs to ST category was sent to Caste Scrutiny Committee for validation and Caste Scrutiny Committee by order dated 17.04.2015 declared his Caste Certificate dated 07.11.1984 invalid and confiscated the same. Apart, the directions were also issued to take further appropriate action against him in terms of Section 10(1)(2)(3) of Maharashtra Scheduled Caste and Scheduled Tribe, D.T.N.T., O.B.C. and Special Backward Class Category (Regulation of Issuance and Verification of Caste Certificate) Act, 2000 (hereinafter referred to as 'Act 2000' for brevity).

(E) The Superintendent Engineer, P.W.D. Pune lodged report against the Applicant with Bund Garden Police Station alleging cheating and forgery for producing false Caste Certificate and in sequel offence under Section 420 and 468 was registered against him vide Crime No.242/2012 and after investigation charge sheet came to be filed before the learned Judicial Magistrate 1st Class, Pune vide RCC No.2039/2013.

(F) The Government initiated departmental proceeding against the Applicant by issuing charge sheet dated 29.05.2015 for production of false certificate of Scheduled Tribe and availing the benefits of promotion on the basis of false Caste Certificate.

(G) Learned JMFC, Pune by judgment dated 29.09.2016 acquitted the Applicant.

(H) After acquittal in criminal case, the Applicant made representation to the Government on 16.02.2017 stating that since he is acquitted in criminal case, continuation of D.E. is illegal but it was not responded by the Government.

3. It is on the above background, the Applicant has filed this O.A. on 03.03.2017 for declaration that continuation of D.E. is illegal in view of his acquittal in criminal case.

4. Shri A. V. Bandiwadekar, learned Counsel for the Applicant sought to assail continuation of D.E. on the following grounds: -

(I) In view of acquittal from the charge of production of false Caste Certificate in criminal case now for the same set of facts, the Applicant cannot be subjected to departmental proceedings and D.E. ought to have been dropped.

5. In D.E. though enquiry officer has submitted report on 17.05.2017 to the Government, no further action is taken and continuation of D.E. is prolonged unduly entailing withholding of gratuity.

6. The charge in D.E. is restricted to the factum of registration of crime in Bund Garden Police Station and that fact of requisition of crime per se cannot be termed misconduct.

7. To bolster up contentions, learned Counsel for the Applicant placed reliance on the decision of the Hon'ble Supreme Court in ***(2006) 5 SCC 446 (G. M. Tank V/s State of Gujrat & Ors.)***, ***Civil Appeal No.958/2010 (Prem Nath Bali V/s Registrar, High Court of Delhi & Anr.), dated 16.12.2015*** and decision rendered by this Tribunal in **O.A.**

No.352/2021 (Krishna G. Jadhav V/s State of Maharashtra & Ors.), decided on 03.02.2022.

8. Per contra, Smt. Kranti Gaikwad, learned P.O. sought to justify continuation of departmental proceeding *inter-alia* contenting that acquittal in criminal case per se is not bar for initiation or continuation of D.E. since principle governing legal principles in criminal case and departmental proceedings are totally different. She urged that in criminal case, proof beyond reasonable doubt is requirement to prove the charge but in departmental proceeding, charge can be proved on preponderance of probabilities. She has further pointed out that criminal court acquitted the Applicant by giving benefit of doubt and it cannot be termed hon'ble acquittal much less to operate as a bar for continuation of departmental proceeding. In this behalf, she referred to the decision of the Hon'ble Supreme Court in ***Civil Appeal No.5848/2021 (Union of India V/s Dalbir Singh), decided on 21.09.2021***.

9. In view of submissions, the issue posed for consideration is whether Applicant is entitled to declaration that continuation of D.E. is illegal as prayed for.

10. Before dealing with the contentions, it would be apposite to clarify certain aspects of the matter. When this matter was taken up initially for hearing on 14.06.2022 having found that D.E. is not completed within reasonable time, the Principal Secretary, P.W.D. was directed to file Affidavit and to explain the status of D.E. In response to it, Shri Sadashiv Salunkhe, Secretary, P.W.D. has filed Affidavit. Para No.6 of Affidavit is as under:-

> *"6. I humbly submit that the Departmental Enquiry Officer has already submitted the inquiry report vide letter dated 17.05.2017. As per rule no.9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, the said inquiry report has been sent to the applicant vide letter dated 05.07.2017 to submit his say within 15 days. The same was received by the applicant on dated 07.08.2017 (Annexed as Exhibit R-V). It*

is pointed that till date the applicant has not submitted his say. This fact has already been brought to notice of Tribunal vide affidavit in reply dated 12.07.2017 (Annexed as Exh. R-VI). The Hon'ble Tribunal has taken this reply on record in the hearing dated 14.07.2017 (Annexed as Exb.R-VII). Considering the fact that the applicant is not interested in submitting his say, further course of action is being taken in the disciplinary proceedings. From the above facts, it is clear that the delay is on the part of the Applicant."

11. Thus, as per Affidavit filed by the Secretary, inquiry report was received by letter dated 17.05.2017 and thereafter despite issuance of show cause notice dated 05.07.2017 to the Applicant, he failed to submit his reply. Insofar as this aspect is concerned, indeed on failure of the Applicant to submit reply within stipulated period, the Government ought to have passed further appropriate orders but there is failure on the part of concerned to take further steps in the matter.

12. In the meantime, due to change in the assignment, the matter could not be taken up for hearing for long time and it was again listed before us for final hearing on 27.07.2023. That time, having found that though the period of one year is over from the date of filing Affidavit, the Secretary did not take any steps in the matter. The Secretary was again directed to file Affidavit to apprise the Tribunal about steps taken by him in the meantime, if any. In pursuance to it, Shri Sadashiv Salunkhe (same Secretary) has filed Affidavit on 31.07.2023. From perusal of second Affidavit, it reveals that Applicant had filed W.P. No.5151/2015 challenging decision of Caste Scrutiny Committee, dated 17.04.2015 invalidating Scheduled Tribe Caste Certificate of the Applicant. In W.P., the Hon'ble High Court by order dated 06.05.2015 granted interim relief that till next date, the employer shall not take any adverse action as far as services of the Petitioner is concerned only on the ground that his tribe claim is invalidated. Thereafter, the Government suspended the Applicant by order dated 30.05.2015. The Applicant, therefore, filed Contempt Application No.276/2015 before the Hon'ble High Court. Later, the Government withdrew the suspension order and Applicant was

reinstated in service. Thus, for the first time in second Affidavit, the Secretary submits that because of pendency of W.P. and contempt proceeding filed by the Applicant as well as in view of interim relief granted by the Hon'ble High Court by order dated 06.05.2015, he did not pass final order in D.E.

13. When specific query was raised to learned Counsel for the Applicant as well as learned P.O., they made a statement that W.P. as well as contempt proceeding is still subjudice. Insofar as continuation of interim relief is concerned, all that learned Counsel for the Applicant as well as learned P.O. submits that they have to check from the office of AGP as to whether interim relief granted by the Hon'ble High Cort by order dated 06.05.2015 was continued later. Thus, they are not aware whether interim relief was extended and it is still in operation.

14. Now, reverting back to contentions raised by learned Counsel for the Applicant, let us first see the charges framed against the Applicant which is as under :-

> " श्री.पाटील यांच्या मूळ सेवापुस्तकात त्यांची ‘रजपूत भामटा’ वि.जा.भ.ज.’ अशी जातीची नोंद आहे. श्री.प्रकाश पाटील यांच्याकडे वि.जा.भ.ज. प्रवर्गाचे प्रमाणपत्र असताना, तसेच स्वत:ची जात वि.जा.भ.ज.प्रवर्गात समाविष्ट असल्याचे माहीत असताना जाणीवपूर्वक ‘ठाकूर’ या अनुसूचित जमातीचे प्रमाणपत्र मिळवून शासनास सादर केले. श्री.पाटील यांनी शासनास खोटे प्रमाणपत्र सादर करून पदोन्नतीचा लाभ घेतला व शासनाची फसवणूक केली. याप्रकरणी श्री.पी.बी.पाटील यांच्याविरुध्द अधिकक्षक अभियंता, सा.बां.मंडळ, पुणे यांनी बंडगार्डन पोलिस स्टेशन, पुणे येथे दि.०८/११/२०१२ रोजी गुन्हा दाखल केला आहे.’’

15. Bare perusal of charge is that Applicant allegedly submitted false Caste Certificate of Scheduled Tribe belonging to 'Thakur' and thereby cheated the Government knowing that he belongs to VJ-A as a Rajput Bhamata and in reference to this charge, it is further stated that criminal offence is registered in Bund Garden Police Station on 08.11.2012. Thus, the charge is basically pertains to production of false caste certificate and registration of criminal offence is culmination of alleged act of production

of false Caste Certificate. Suffice to say, the charge is not framed only on the basis of registration of crime but it germane from the fact of production of false Caste Certificate. This being so, the submission advanced by learned Counsel for the Applicant that the charge is based only upon registration of crime is totally fallacious and misconceived.

16. Notably, there is no dispute about production of Caste Certificate of ST by the Applicant when he was in the zone of consideration for promotion in 2015. Pertinently, the Applicant in his letter dated 12.06.2015 (page 112 of PB) candidly admitted that he has submitted Caste Certificate of Scheduled Tribe. What he stated in the letter is as under which makes it abundantly clear that he furnished the said Caste Certificate of ST category :

> *" मुख्यतः दोषारोप हा, मी खोटा जातीचा दाखला देवून अनुसूचित जमातीच्या संवर्गातुन पदोन्नती घेवून शासनास फसविले असा आहे. तरी या प्रकरणी मी आपणास माझ्या स्पष्टीकरणात असे नमुद करू इच्छितो की, मुख्यतः मी जातीने राजपूत (भामटा) असून आमच्या समाजास भारतात ब-याच भागात ठाकूर असेसुध्दा संबांधले जाते. राजपूत तसेच ठाकूर ही जात एकच असावी असा माझा समज झाला व त्या गैरसमजातुन मी ठाकूर जातीचे प्रमाणपत्र देवून त्याप्रमाणे शासनास पदोन्नतीसाठी दावा केला. परंतु कालांतराने माझा गैरसमज दूर झाल्याकारणाने मी माझी सेवा मुळ राजपूत (भामटा) विमुक्त जाती व भटके जमाती संवर्गातुन बदल करावी म्हणून शासनास कळविले होते व त्याप्रमाणे शासनाने देखील माझी अनुसूचित जमातीच्या संवर्गातुन दिलेल्या पदोन्नतीस विमुक्त जाती व भटक जमातीच्या संवर्गातुन बदल करून सन १९९९ मध्ये आदेश पारीत केले आहेत.''*

17. Thus, the record clearly spells that Applicant himself tendered Caste Certificate of Scheduled Tribe when he was in the zone of consideration and it was done prima-facie to secure the promotion. It is on the basis of Caste Certificate, the Government promoted the Applicant by order dated 05.05.1995. Material to note, in the said order, there is specific mention that it is ad-hoc promotion subject to validation of Caste Certificate of ST category by Caste Scrutiny Committee. True, the Government later by order dated 07.05.1999 converted promotion from ST category into VJ-A as pointed out by learned Counsel for the Applicant. However, conversion of promotion from ST category to VJ-A

category hardly makes difference insofar as production of false Caste Certificate is concerned.

18. It is well settled by the series of decisions of the Hon'ble Supreme Court that there is material difference between criminal case and departmental proceeding since the principle of proof are totally different. In criminal case, the proof beyond reasonable doubt is requirement whereas in departmental proceeding, preponderance of probability is the rule. In Dalbir Singh's case (cited supra), the Hon'ble Supreme Court considered its various earlier decision and in para nos.25, 26 and 29 held as under :

> *"25. This Court in Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corpn. Ltd., Haldia & Ors.7 held that the degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability". It was held as under:*
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> *"11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled.*
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> *7 (2005) 7 SCC 764 Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability". Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside ." (Emphasis Supplied)*

26. This Court in Noida Entrepreneurs Association v. NOIDA & Ors.8 held that the criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public, whereas, the departmental inquiry is to maintain discipline in the service and efficiency of public service. It was held as under:

8 (2007) 10 SCC 385 "11. A bare perusal of the order which has been quoted in its totality goes to show that the same is not based on any rational foundation. The conceptual difference between a departmental inquiry and criminal proceedings has not been kept in view. Even orders passed by the executive have to be tested on the touchstone of reasonableness. [See Tata Cellular v. Union of India [(1994) 6 SCC 651] and Teri Oat Estates (P) Ltd. v. U.T., Chandigarh [(2004) 2 SCC 130] .] The conceptual difference between departmental proceedings and criminal proceedings have been highlighted by this Court in several cases. Reference may be made to Kendriya Vidyalaya Sangathan v. T. Srinivas [(2004) 7 SCC 442 : 2004 SCC (L&S) 1011] , Hindustan Petroleum Corpn. Ltd. v. Sarvesh Berry [(2005) 10 SCC 471 : 2005 SCC (Cri) 1605] and Uttaranchal RTC v. Mansaram Nainwal [(2006) 6 SCC 366 : 2006 SCC (L&S) 1341] .

"8. ... The purpose of departmental inquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offense for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental inquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in the criminal cases against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental inquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offense generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When the trial for a criminal offense is conducted it should be in accordance with proof of the offense as per the evidence defined under the provisions of the Indian Evidence Act, 1872 [in short 'the Evidence Act']. The converse is the case of departmental inquiry. The inquiry in a departmental proceeding relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. ... Under these circumstances, what is required to be seen is whether the departmental inquiry would seriously prejudice the delinquent in his defense at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances."

29. The burden of proof in the departmental proceedings is not of beyond reasonable doubt as is the principle in the criminal trial but probabilities of the misconduct. The delinquent such as the writ petitioner could examine himself to rebut the allegations of misconduct including use of personal weapon. In fact, the reliance of the writ petitioner is upon a communication dated 1.5.2014 made to the Commandant through the inquiry officer. He has stated that he has not fired on higher officers and that he was out of camp at the alleged time of incident. Therefore, a false case has been made against him. His

further stand is that it was a terrorist attack and terrorists have fired on the Camp. None of the departmental witnesses have been even suggested about any terrorist attack or that the writ petitioner was out of camp. Constable D.K. Mishra had immobilized the writ petitioner whereas all other witnesses have seen the writ petitioner being immobilized and being removed to quarter guard. PW-5 Brij Kishore Singh deposed that 3-4 soldiers had taken the Self-Loading Rifle (S.L.R.) of the writ petitioner in their possession. Therefore, the allegations in the chargesheet dated 25.2.2013 that the writ petitioner has fired from the official weapon is a reliable finding returned by the Departmental Authorities on the basis of evidence placed before them. It is not a case of no evidence, which alone would warrant interference by the High Court in exercise of power of judicial review. It is not the case of the writ petitioner that there was any infraction of any rule or regulations or the violation of the principles of natural justice. The best available evidence had been produced by the appellants in the course of enquiry conducted after long lapse of time."

19. Thus, it is no more *res-integra* that acquittal in criminal case does not *ipso-facto* absolve a Government servant from disciplinary proceedings and disciplinary proceedings could be continued since delinquency of a Government servant has to be determined on the basis of preponderance of probability. This being settled legal position, the submission advanced by learned Counsel for the Applicant that disciplinary proceedings need to be interdicted or dropped in view of acquittal in criminal case is fallacious.

20. The reliance placed by learned Counsel for the Applicant on ***G. M. Tank's*** case (cited supra) is totally misplaced. In that case, the petitioner was subjected to D.E. on the charge of having illegally accumulated property which was disproportionate to his non source of income and came to be dismissed. Simultaneously, the prosecution was also filed under the provisions of Prevention of Corruption Act based on the same set of facts, charges and evidence in criminal case. He was honorably acquitted. As such, there was complete exoneration and it was not a case of benefit of doubt as specifically observed by the Hon'ble Supreme Court. The witnesses examined in D.E. and witnesses examined in criminal case were the same. Therefore, in fact situation, the Hon'ble Supreme Court held that it was a case of no evidence for sustaining dismissal and there was no iota of evidence in D.E. to hold that appellant is guilty of accumulating wealth disproportionate to his income.

Whereas in case in hand, the acquittal is not clear exoneration but benefit of doubt was given to Applicant. This being so, the decision in ***G. M. Tank's*** case is of little assistance to the Applicant.

21. Notably, the perusal of judgment of learned Magistrate acquitting the Applicant reveals that observation made that no enquiry was conducted by the Caste Scrutiny Committee about validity of Caste Certificate tendered by the Applicant is factually incorrect. Indeed, the Caste Scrutiny Committee had declared the certificate invalid and seized it by order dated 17.04.2015. It appears that said aspect was not brought to the notice of learned Magistrate. Be that as it may, the perusal of judgment of criminal case shows that benefit of doubt was given to the Applicant and one another lacuna in prosecution case was non-production of original caste certificate tendered by the Applicant in the criminal case. Indeed, original caste certificate was confiscated by Caste Scrutiny Committee. That apart, there is no denying that it is the Applicant who has tendered the Caste Certificate of ST category showing his caste as 'Thakur'.

22. That apart, pertinently this defence or stand taken by the Applicant that in view of acquittal, he cannot be held guilty needs to be considered by the Enquiry Officer as well as by the disciplinary authority. Admittedly, Enquiry Officer has submitted report by his letter dated 17.05.2017 and despite issuance of show cause notice dated 05.07.2017 (page 187 of PB) the Applicant did not submit reply. As such, the relief claimed in this O.A. for declaration of continuation of D.E. illegal is premature. Since Enquiry Officer has already submitted reply, it would be appropriate to direct the Government to take further action upon it in accordance to law so that matter may be taken to logical conclusion.

23. Now, the second question comes about inordinate delay in concluding departmental proceeding as canvassed by learned Counsel for the Applicant. True, the Hon'ble Supreme Court in ***Prem Nath Bali's*** case observed that employer must make sincere endeavour to conclude the departmental enquiry and it should be completed within reasonable time but not more than one year.

24. Needless to mention, there is no straight jacket formula that whenever there is delay in initiation of D.E. or its conclusion, it has to be interdicted. Whether disciplinary proceeding is liable to be terminated on the ground of delay has to be examined on the fact and circumstances of the case and no such hard and fast rule can be laid down. In this behalf, the decision of the Hon'ble Supreme Court in (***1998) 4 SCC 154 (State of A. P. v/s N. Radhakishnan)*** is important. Para 19 of the judgment is as under :-

> "***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 relevant factors and to balance and weight 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 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 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 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 its 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 consideration."*

25. In present case, perusal of Affidavit filed by the Secretary reveals that he was influenced by interim relief granted by the Hon'ble High Court by order dated 06.05.2015 whereby Respondents were directed not to take any adverse action against the petitioner on the ground that his tribe claim is invalidated. Indeed, that W.P. was filed challenging the decision of invalidating Caste Certificate by Caste Scrutiny Committee. Whereas in D.E., charge is of submission of false certificate of ST category. It appears that Government formed opinion that both the issues are interlinked and refrain itself from passing final order in D.E. In other words, to avoid any further complications in the matter like contempt action, the Government did not pass final order in D.E. and kept it on hold. Indeed, the Government ought to have inquired with Government Pleader to ascertain whether interim relief granted on 06.05.2015 was continued thereafter. During the course of hearing, when specific query is raised to learned P.O. as well as learned Counsel for the Applicant, they are also unable to say anything in this behalf about continuation of interim relief. In such situation, if the Government bonafidely believed that it would be inappropriate to pass any such final order apprehending contempt of the Hon'ble High Court, non-passing of final order in D.E. cannot be said inordinate or unexplainable. Suffice to say, this is not a case that delay in completion of D.E. is not explained. If the delay is reasonably explained and acceptable in the fact and circumstances of the matter, it per se cannot be the ground to interdict departmental enquiry.

26. The reliance placed by learned Counsel for the Applicant on the ***Prem Nath Bali's*** case (cited supra), in the facts and circumstances of the matter is totally misplaced. The Hon'ble Supreme Court held that enquiry proceeding shall be completed within prescribed period and if for some or other reasons, it is not possible in that event, time may be extended but the period shall not extended beyond one year. However, in

present case as stated above, in view of interim relief granted by the Hon'ble High Court in W.P. No.5151/2015, the Government refrained itself from passing final order in D.E. under the belief that it may amount to contempt. This being factual aspect of the matter, in our considered opinion, the decision in ***Prem Nath Bali's*** case is of no assistance to the Applicant. Similarly, reliance placed on the decision rendered by the Tribunal in ***Krishna Jadhav'*** case (cited supra) is also not useful to the Applicant. The said decision turned on its own facts. In that case, there was unexplained and inordinate delay for initiation of D.E. and therefore, proceedings were quashed. Whereas facts of present matter are totally distinguishable as discussed above. Needless to mention, the decision rendered in one case cannot be applied to other case by matching their colour and one need to see the facts and circumstances of the matter. Additional factor or little difference can make a lot of difference while determining precedential value of the decision.

27. The totality of the aforesaid discussion leads us to conclude that in fact and circumstances of the matter, continuation of D.E. cannot be declared illegal. It would be appropriate to direct the Respondent No.1 to ascertain position of interim relief in W.P. which is subjudice before the Hon'ble High Court and if there is no such continuation of interim relief, it shall pass final order in D.E. If interim relief is found still in continuation, it may take necessary steps to move Hon'ble High Court for liberty to pass final order in D.E. and then act accordingly. Hence, the following order:-

ORDER

(A) Original Application is dismissed.

(B) The Respondent No.1 is directed to ascertain position of interim relief in W.P. and if there is no continuation of interim relief, it shall pass final order in D.E. according to law within eight weeks from today.

(C) If interim relief in W.P. found in force, the Respondent shall move the Hon'ble High Court for liberty to pass final order in D.E. and shall pass order accordingly within eight weeks from receipt of order of the Hon'ble High Court as the case may be.

(D) No order as to costs.

Sd/-	Sd/-
(DEBASHISH CHAKRABARTY)	**(A.P. KURHEKAR)**
Member-A	**Member-J**

Place : Mumbai
Date : 02.08.2023
Dictation taken by : VSM
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