

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.40 OF 2017**

**DISTRICT :**  
**Sub.:- Dept. Enquiry**

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

**Versus**

The State of Maharashtra. )  
Through Principal Secretary, )  
Public Works Department, )  
Mantralaya, Mumbai – 400 032. )...**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 the Original Application to quash departmental enquiry initiated against him by charge sheet dated 25.02.2016 and also challenged appointment of Departmental Enquiry Officer invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985. Insofar as challenge to appointment of Departmental Enquiry Officer is concerned, the said relief is not pressed since after filing of O.A. independent Enquiry Officer has been appointed.

2. Briefly stated facts giving rise to this application are as under :-

While Applicant was serving as Sub Divisional Engineer at Nagpur, he allegedly committed certain financial irregularities amounting to negligence and misconduct for which he was served with charge sheet dated 25.02.2016. As per charge sheet, in the period from 25.08.2009 to 07.06.2011, the Applicant had committed serious financial irregularities of Rs.42,00,000/-. The Applicant submitted reply to the charge sheet denying allegation made against him. However, the Government was not satisfied with the reply and decided to conduct D.E. Initially, Departmental Enquiry Officer was appointed but later independent Enquiry Officer has been appointed in terms of G.R. dated 28.10.2009. The foremost contention raised by the Applicant is that alleged incident was of December 2009 but D.E. has been initiated after 7 years which caused serious prejudice in his defence. He stands retired on 31.05.2017. Thus, it is on this ground of inordinate delay caused for initiation of D.E., the Applicant prayed to quash and set aside the charge sheet dated 25.02.2016. Secondly, though the period of more than 7 years from the date of initiation of D.E. is over, till date it is not completed and there is huge and inordinate delay in completing D.E. The Applicant, therefore, prayed to quash and set aside the charge sheet dated 25.02.2016.

3. Shri A. V. Bandiwadekar, learned Counsel for the Applicant sought to assail the charge sheet dated 25.02.2016 mainly on the ground of delay in initiation of D.E. He further sought to canvass that there was no such financial irregularities so as to initiate the D.E. He has further pointed out that in terms of Circular dated 07.04.2008, the D.E. was required to be completed maximum within one year but in present case, though the period of 7 years is over, D.E. proceedings are still incomplete. On this line of submission, he urged that because of pendency of D.E., the Applicant is deprived of getting gratuity and suffered financial loss. To bolster up contention, he placed reliance on

the decision of the Hon'ble Supreme Court in **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** and **O.A. No.245/2016 (Naresh A. Polani V/s State of Maharashtra), decided on 5.12.2016.**

4. Per contra, learned P.O. in reference to contention raised in Affidavit in Reply urged that Government has received complaints against several financial irregularities in functioning of P.W.D. Nagpur and Government got report from Chief Engineer, Nagpur. The Chief Engineer, Nagpur submitted report on 13.08.2014 wherein several financial irregularities and misappropriation of Government money was noticed. It is in pursuance of reports, the Government examined the matter and found Applicant liable for gross financial irregularities. The D.E. was initiated by charge sheet dated 25.02.2016 and there is no such inordinate delay in initiation of D.E. As regard, non-completion of D.E., learned P.O. has pointed out that Applicant himself is responsible for delaying D.E. since he frequently remained absent in D.E. and, therefore, cannot take disadvantage of his own absence. She further submits that Enquiry Officer has submitted report on 10.04.2023 and now steps are being taken to pass appropriate final order in D.E. in accordance to law. On this line of submission, she prayed to dismiss the O.A.

5. In view of submissions, following issues are posed for consideration :-

- (A) Whether there is inordinate delay in initiation of D.E. and charge sheet is required to be quashed and set aside.
- (B) Whether there is inordinate and unexplained delay in completion of D.E. and charge sheet is required to be quashed on that ground.

6. To begin with let us see the charges framed against the Applicant by charge sheet dated 25.02.2016 which are as under:-

" उक्त श्री.टी.पी. राठोड, उपविभागीय अभियंता हे सार्वजनिक बांधकाम उपविभाग क्र. १, नागपूर येथे दि. २५.०८.२००९ ते दि.०७.०६.२०११ या कालावधीत कार्यरत असतांना, त्यांनी माहे डिसेंबर, २००९ मध्ये त्यांच्या कार्यालयांतर्गत प्रमाणकांच्या भुगतानासाठी दि.०७.१२.२००९, दि.१९.१२.२००९ व दि.२२.१२.२००९ रोजी विभागीय कार्यालयाकडून त्यांच्या उपविभागाच्या नावे ३ धनादेश प्राप्त करून एकूण रु. ४४,४९,५९५/- रक्कम जमा करून घेतली. तसेच, शाखा अभियंत्याकडे भाड्यापोटी जमा केलेली रु. २९,९४०/- रक्कम त्यांचे उपविभागास प्राप्त झाली. अशाप्रकारे उपविभागास एकूण रु.४४,७९,५३५/- रक्कम जमा होऊन त्याची नोंद त्यांनी उपविभागाचे रोकडवही क्र.४५(नमुना-१०) मध्ये जमेच्या बाजूस घेतली. उक्त जमा रकमेपैकी त्यांनी रु.२९,९४०/-रक्कम रिझर्व्ह बँकेत चलनाद्वारे जमा केली व रु. २,४९,५९५/- रकमेचे प्रदान त्यांनी, त्यांच्या उपविभागात उपलब्ध असलेल्या एकूण ५ प्रमाणकांद्वारे संबंधितांना केले. अशा प्रकारे त्यांनी प्रत्यक्षात रु.२,७९,५३५/- रकमेच्या प्रमाणकांची अदायगी करून त्याची नोंद रोकडवही क्र.४५ मध्ये प्रदानाच्या बाजूस घेतली. परंतु महिनाअखेरीस एकूण प्रदान रक्कम रु. ४४,७९,५३५/- दर्शवून अखेरीची शिल्लक 'निरंक' असल्याची नोंद केली.

ज्याअर्थी त्यांच्याकडे माहे डिसेंबर, २००९ मध्ये जमा असलेल्या रु.४४,७९,५३५/- रकमेपैकी त्यांनी रु.२,७९,५३५/- रकमेची प्रत्यक्ष अदायगी केली आणि ज्याअर्थी महिनाअखेरीस रु.४४,७९,५३५/- रक्कम खर्ची दाखवून अखेरीची शिल्लक 'निरंक' दर्शविली, त्याअर्थी त्यांनी रु.४२,०००/- (रु. ४४,७९,५३५/- -रु.२,७९,५३५/-) रकमेची प्रदाने प्रत्यक्षात न करता या रकमेची आर्थिक अनियमितता करून शासनाचे नुकसान केले आहे. या आर्थिक अनियमिततेस श्री.टी.पी.राठोड, उपविभागीय अभियंता हे वैयक्तिकरित्या जबाबदार असून उक्त रक्कम त्यांच्याकडून वसूलपात्र आहे.

वरिल कृत्यात श्री.टी.पी.राठोड, उपविभागीय अभियंता यांनी महाराष्ट्र सार्वजनिक बांधकाम नियमावलीतील परिच्छेद ४५, परिशिष्ट २४(१)(ए) व महाराष्ट्र नागरी सेवा (वर्तपूक) नियम, १९७९ मधील नियम ३(१) (एक) व नियम ३(१) (दोन) तसेच महाराष्ट्र सार्वजनिक बांधकाम लेखासंहिता परिच्छेद ६, ६.१, ६.६.२, ६.६.५, ६.६.६ चे उल्लंघन केले आहे."

7. 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.”*

8. Thus, in view of principles laid down in **Radhakishan's** case, ultimately, Court has to balance diverse considerations having regard to the gravity of charges, the effect of cancellation of D.E. in public governance, the extent of delay amongst other things. Each case has to be examined on the facts and circumstances and there is no such universal rule that whenever there is delay in initiation of D.E., it has to be interdicted. Now, turning to the facts of the present case, even if, the alleged incident has taken place in December, 2009, it is on receipt of enquiry report dated 13.08.2014 submitted by Chief Engineer, Nagpur, the gross financial irregularities were noticed by the Government and till then it was not surfaced nor within the knowledge of the Government. Therefore, on receipt of report of Chief Engineer, Nagpur Government swung into action and having regard to serious financial irregularities decided to initiate D.E.

9. Ture, the Applicant was due to retire on 31.05.2017 and charge sheet was issued on 25.02.2016. Thus, the period taken by the Government for initiation of D.E. from 13.08.2014 (report of Chief

Engineer) till 25.02.2016 cannot be said abnormal or inordinate delay. At Government level, the file needs to be processed and examined at various levels before taking such decision. This being so, having regard to serious allegations of financial irregularities to the tune of Rs.42 Lakhs, it is not possible to accept the contentions raised by Applicant's Counsel that inordinate delay is caused in initiation of D.E. Therefore, in our considered opinion, in the interest of clean administration, the disciplinary proceeding initiated against the Applicant must be upheld so as to take it logical conclusion in accordance to law.

10. The submission advanced by learned Counsel for the Applicant that there was no such enough material to initiate D.E. and on that ground also D.E. is required to be quashed is totally unpalatable. Once the disciplinary authority has taken conscious decision and charges are *prima-facie* supported by the material, in that event, it would be premature to examine the merits of charges by the Tribunal. Indeed, the Applicant is at liberty to raise all such defence available to him before Enquiry Officer and on consideration of the same, the Enquiry Officer has to submit his final report. It is on receipt of enquiry report, the disciplinary authority has to take final call.

11. The next question comes, whether D.E. can be quashed because of its non-completion though the period of more than 7 years from the date of initiation of D.E. is over.

12. True, in terms of G.R. dated 07.04.2008, the D.E. was required to be completed maximum within 1 year and where not completed, the Enquiry Officer has to seek extension from the competent authority as mentioned in the said G.R. Therefore, the Tribunal needs to see the cooperation rendered by the Applicant for completion of D.E. In this behalf, perusal of record reveals that hearing of the enquiry was held on

35 times but out of which for 26 times, the Applicant was absent. Thus, it is because of long and repeated absence of the Applicant, the D.E. could not be completed earliest. This being so, the Applicant cannot be allowed to take disadvantage of his own absence before Enquiry Officer otherwise it amounts to give premium to delinquent for his own omission and absence. Suffice to say, the delay caused for completion of D.E. is attributable to Applicant himself.

13. The reliance placed by learned Counsel for the Applicant on **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 some or other reasons, it is not possible in that event, time may be extended but the period shall not be extended beyond one year. The Hon'ble Supreme Court further observed that disciplinary authority must make sincere endeavor to conclude the D.E. within reasonable time by giving priority to it. However, in present case as stated above, it is the Applicant who is responsible for delay in completing D.E. since he repeatedly remained absent. He cannot be allowed to take disadvantage of his own wrongs. 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.

14. Similarly, reliance placed on the decision of the Tribunal rendered in **Krishna Jadhav** and **Naresh Polani's** case (cited supra) is also misplaced. The decision in those cases turn out on its own facts. In those cases, there was unexplained and inordinate delay for initiation of D.E. and, therefore, proceedings were quashed. Whereas in present case, there is no such inordinate delay for initiation of D.E. Insofar as period taken for completion of D.E. is concerned, the matter is delayed because of frequent and repeated absence of Applicant in D.E. Needless to mention, the decision rendered in one case cannot be applied to other

case by matching their colors and one need to see the facts and circumstances of the matter.

15. As pointed out by learned P.O., the Enquiry Officer has now submitted report and it is in process for further action. Therefore, it would be appropriate to direct the Respondents to take the matter to logical conclusion by passing final order in D.E. in accordance to law within stipulated period.

16. For the aforesaid reasons, we have no hesitation to sum up that challenge to initiation of D.E. is devoid of merit and the Original Application is liable to be dismissed. Hence, the following order :-

**ORDER**

- (A) The Original Application is dismissed.
- (B) The Respondent is directed to pass final order in D.E. in accordance to law within eight weeks from today and the decision be communicated to the Applicant.
- (C) No order as to costs.

Sd/-  
**(DEBASHISH CHAKRABARTI)**  
**Member-A**

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