

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 700/2014

Sau. Manisha Keshav Bante,
Aged about 46 years,
Occupation: service,
R/o C/o D-3, Sunflag Colony,
Warthi, Distt. Bhandara.

-----**Applicant.**

Versus

1. The State of Maharashtra,
Through its Secretary,
Public Health Services Deptt.,
Mantralaya, Mumbai.
2. The Director, Public Health Services,
Office at JJ Hospital Compound,
V.T. Mumbai.
3. The Dy. Director of Health Services,
Having its office, Near I.T.I.
Shradhanandpeth, Nagpur.

-----**Respondents.**

1. Shri S.P. Palshikar, Advocate for the applicant.

2. Shri M.I. Khan, Presenting Officer for the Respondents.

CORAM : B. Majumdar : Vice Chairman

and

S.S. Hingne : Member (J)

DATE : 11th April, 2016

ORDER**PER VICE-CHAIRMAN**

The applicant is a Medical Officer. She has filed this O.A. as she is aggrieved with the charge-sheet served after she was placed under suspension.

2. The applicant was posted at the Rural Hospital, Mohadi. While holding the charge of Medical Superintendent of the Hospital, she remained absent from the head quarters. On 30/9/2015 the dead body of a young girl, Priyanka Bhotmange, was brought to the hospital for post-mortem (PM). It related to the infamous Khairlanji murder case. In absence of the applicant the PM was conducted by Dr. John Shende. On 30/10/2006 an NGO- Samajik Nyay Sanghatna, made a complaint to the Civil Surgeon, Bhandara against the applicant and Dr. John Shende, alleging irregularities in preparation of the PM report in respect of late Ku. Priyanka Bhotmange. On 10/11/2006 the Dy. Director of Health Services, Nagpur (R/3) issued a show cause notice to the applicant for initiating disciplinary action against her for her

alleged absence and not conducting the above PM and also for remaining absent from headquarters on that critical occasion without approval of her superiors. The applicant replied to the notice on 10/11/2006. On 13/11/2006 she was placed under suspension and her headquarters were kept at Thane. This order has been challenged by the applicant in the O.A. On 11/4/2014 a charge-sheet under Rule 8 of the Discipline and Appeal Rules was issued to her. There were two charges relating to her negligence in not supervising the PM on 30/9/2006 and remaining unauthorizedly absent from duty. The applicant replied to the charge-sheet on 24/6/2014. She was reinstated vide order dtd. 17/9/2014 and posted at Khamgaon. The Enquiry Officer started hearing in the matter on 28/12/2015. It appears that the said enquiry is yet to be completed.

3. The applicant submits as follows :-

a) She left her headquarters (Mohadi) for Nagpur to attend to a health related emergency concerning her daughter who was staying alone with her father-in-law at

Nagpur. Before leaving Mohadi she had made a written application and had handed over her charge along with it to Dr. John Shende.

b) Her reply dtd. 11/11/2006 to the show cause notice dtd. 10/11/2006 was not considered although it was self-explanatory. She had stated that she had handed over her charge to Dr. Shende to perform the PM and to take guidance of the Civil Surgeon and according to Dr. Shende, he had sought approval of the Civil Surgeon. She was never informed about any irregularity in the PM conducted by Dr. Shende.

c) The Departmental enquiry was started after more than 1 year and 8 months of issue of the charge-sheet and the charge-sheet itself was issued more than 8 years after the alleged incident had taken place. No explanation is given for such prolonged delay in proceeding against her.

d) On being suspended her head quarters was fixed to a far away place like Thane, which obviously caused harassment to her.

e) The basis of issuing the charge-sheet was a complaint by Samajik Nyay Sanghatna dtd. 30/10/2006 and nothing else. This complaint was never enquired into before serving of the charge sheet.

4. The Secretary, Public Health Department (R/1) in his affidavit-in-reply submits as follows :-

Para 5 : *“ The respondent submits that, it is provided (sic)that the applicant failed to perform her work properly and there is deficiency on the part of the applicant in performing her o Office work. It is also provided that, all the reasons and excuses here in mentioned by the applicant are false and baseless. She left her office without obtaining the prior permission of her superior authorizes and by making an application only for the purpose of obtaining permission to leave headquarters. The applicant without obtaining any permission from Authorities to left headquarters where she was working as Medical Officer and Medical Superintendent incharge at that time when she*

went to Nagpur and she has not performed her work of supervision properly. In this way the applicant misconduct the Rule 3 of the Maharashtra Civil Services (Conduct) Rules, 1979 wrongfully remaining absent from her duties.

Para 6 : The respondent submits that, it is provided that, the applicant was working as Medical Officer and Medical Superintendent in charge at the time of the happening of the incidence i.e. on 30/9/2006. When the dead body of girl has been brought to the Gramin Hospital, Mohadi and where the applicant was Medical Superintendent in charge at that time and it is the duty of applicant to supervise the postmortem and to look after all the formalities and proper procedure to be followed at the time of doing the postmortem of that naked girl and because of absence of applicant at that time in Gramin Hospital, Mohadi the postmortem was performed by Dr. Shende and he was not followed the rules and made various mistakes in doing postmortem and therefore, the

applicant is also responsible for the same as she is the superintendent at that time and she failed to perform her work as superintendent by wrongfully remaining absent at that time hence applicant disobeyed the Rule 3 of the Maharashtra Civil Services (Conduct) Rule 1979”.

5. He further submits that a proposal for DE against the applicant was received from the Director of Health Services, Mumbai (R/2) on 20/12/2006 which was found to be incomplete. He further submits that the suspension period of the applicant will be decided after completion of the DE.

6. The Dy. Director of Health Service, Nagpur (R/3) in his affidavit-in-reply submits as follows :-

“ As the applicant was not present at hospital, one Dr. Avinash Shende who was present there and was on duty, asked telephonically to the applicant for her guidance to perform the post

mortem. At that time, it was duty of applicant to cancel to go to out of town and to remain present at hospital immediately. Instead of this, neither the applicant is given any guidance for performing post mortem to Dr. Shende now was present at hospital resulting to which post on the said corpse was performed without following due procedure of law and hence the material lacunae are left in the post mortem report as well as regarding collection of evidence like seizer of property like Vaginal Swab, Viscera etc. as it was alleged that she was a victim of rape.”

7. Shri S.P. Palshikar, Id. Counsel for the applicant and Shri M.I. Khan, Id. P.O. for the respondents reiterated the submissions made by the respective sides.

8. We find that, it is undisputed that the charge-sheet was served on the applicant nearly 8 years after the alleged incidence of her failure to conduct the PM in a case of suspected rape and murder that had received vide media's attention. However, with regard to such a long

period of delay no reasons are on record except the statement made by R/1 that the proposal for the DE received from R/2 on 20/12/2006 was found to be incomplete.

9. Hon'ble the Supreme Court in a number of its judgments had strongly deprecated the practice of prolonged delay in conducting D.E. without adequate reasons. **In P.V. Mahadevan vs M.D. Tamil Nadu Housing Board [Appeal (civil) 4901 of 2005]** the appellant was working as Superintending Engineer in the Tamil Nadu Housing Board and a charge memo was issued on 8.6.2000 in respect of certain alleged irregularities he was found to be involved in. Hon'ble the Supreme Court, observing that there was no acceptable explanation on the side of the respondents explaining the inordinate delay in initiating departmental disciplinary proceedings, squashed the charge memo on the ground of protracted delay. Their lordships observed as follows:-

“Under the circumstances, we are of the opinion that allowing the respondents to proceed further with the departmental proceedings at this

distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer."

10. The Apex Court relied on its earlier judgments in 1)

State of Madhya Pradesh v. Bani Singh (1990 Supp. SCC

738) and 2) State of A.P. v. N. Radhakrishan (1998 4 SCC

154). In the first case departmental enquiry proceedings and

issue of charge-sheet were initiated in 1987 in respect of

certain incidents that had happened in 1975-76. The Court

observed as follows:

"The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April 1977 there was doubt the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

11. In the second case the State issued two memos both dated 12.12.1987 in respect of three officials including the respondent- Radhakishan, the then Assistant City Planner. Till 31.07.1995 the article of charges had not been served on the respondent. The Apex Court observed as follows :

"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."

12. The Court held that there was hardly any explanation worth consideration as to why the delay occurred. In the circumstances, this Court held that the Tribunal was justified in quashing the charge memo dated 31.7.1995 and directing the State to promote the respondent as per recommendation of the DPC ignoring memos dated 27.10.1995 and 1.6.1996.


13. ***In Secretary, Forest Dept. & Ors vs Abdur Rasul Chowdhury [8 May, 2009: Civil Appeal No.3410 of 2009 in SLP(C) NO. 20691 of 2005] the Apex Court held as follows:***

In our view that the delay in concluding the domestic enquiry proceedings is not fatal to the proceedings. It depends on the facts and circumstances of each case. The un-explained protracted delay on the part of the employer may be one of the circumstance in not permitting the employer to continue with the disciplinary enquiry proceedings. At the same

time, if the delay is explained satisfactorily then the proceedings should be permitted to continue.

14. As can be seen from the above, the respondents have not provided any cogent reason as to why there was such a long delay in serving the charge-sheet to the applicant as also for the delay in conducting the enquiry which is yet to be completed. After her suspension the applicant's head quarters were kept at Thane for nearly about 8 years till her reinstatement. Thus it cannot be denied that the applicant was subjected to great hardship on this count alone.

15. After considering all these factors and the fact that the respondents have failed to justify the long period of nearly 8 years' delay in serving the charge-sheet to the applicant and their failure to complete the DE thereafter even till today, and in view of the law laid down by the Apex Court as above, we find that serving the charge-sheet on the applicant vide order dtd. 11/4/2014 is without any justification and hence



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Consequently the same is required to be quashed. Similarly we find no justification in keeping the applicant under suspension for such a long period. Hence both the order of suspension as well as the charge-sheet, being bad in law are required to be quashed and set aside. The O.A. therefore stands allowed in terms of the following order :-

- a) The order of suspension dtd. 13/11/2006 and the charge-sheet dtd. 11/4/2014 are quashed and set aside.
- b) The applicant will be treated as on duty for all purposes during the period that she was under suspension.
- c) No order as to costs.

sd/-

(S.S. Hingne)
Member (J)

sd/-

(B.Majumdar)
Vice-Chairman.

Skt.