

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 858 of 2019 (D.B.)

Dr. Anil S/o Namdeorao Wankhede,
Aged about 51 years, Occu.: Service,
R/o Additional Civil Surgeon, District Hospital, Wardha.

Applicant.

Versus

- 1) State of Maharashtra,
Through its Principal Secretary,
Public Health Department G.T. Hospital Complex Building
10th Floor, New Mantralaya, Fort, Mumbai-01.
- 2) Commissioner,
Public Health Department,
Arogya Bhawan, St. Georges Hospital Compound,
P.D. 'Mello Road, CST, Mumbai-01.
- 3) Director-1,
Public Health Department,
Arogya Bhawan, St. Georges Hospital Compound,
P.D. 'Mello Road, CST, Mumbai-01.
- 4) Deputy Director of Health Services Akola Region,
Lady Hospital Compound, Akola.
- 5) Regional Departmental Enquiry Officer,
Nagpur Division, Civil Lines, Nagpur.
- 6) Chief Administrative Officer and Presenting Officer,
Office of the Deputy Director Health Services, Nagpur.

Respondents.

S/Shri N.D. Thombre, S.P. Chavhan, Advs. for the applicant.
Shri V.A. Kulkarni, learned P.O. for respondents.

Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.

Dated :- 04/01/2024.

JUDGMENT

Heard Shri N.D. Thombre, learned counsel for the applicant and Shri V.A. Kulkarni, learned P.O. for the respondents.

2. The regular Division Bench is not available. The Hon'ble Chairperson, M.A.T., Principal Bench, Mumbai issued Circular No.MAT/MUM/JUD/469/2023, dated 24/04/2023. As per the direction of Hon'ble Chairperson, if both the parties have consented for final disposal, then regular matter pending before the Division Bench can be disposed off finally.

3. As per the M.A.T., Principal Bench, Mumbai office order / letter No.MAT/MUM/JUD/1350/2023, dated 21/11/2023, the Hon'ble Chairperson, M.A.T., Principal Bench, Mumbai has given direction to this Tribunal to decide the Division Bench matters if the matter is covered by the Judgments of Hon'ble Supreme Court, Hon'ble High Court and the Benches of the M.A.T. etc.

4. The matter is heard and decided finally with the consent of learned counsel for both the parties.

5. The case of the applicant in short is as under –

The applicant is working in the cadre of Civil Surgeon, Maharashtra Medical and Health Service Group-A since 29/05/2003. The applicant has passed MBBS and MD in Medicine. The applicant is

presenting working on the post of Additional Civil Surgeon at District Hospital, Wardha from 30/10/2018. The respondent no.1 by order dated 02/08/2019 appointed Enquiry Officer to conduct departmental enquiry against the applicant, when the applicant was working as a Medical Superintendent at Rural Hospital, Ashti, Dist. Gadchiroli. The said inquiry is related to the alleged incidence which was said to be happened before 2008, i.e., on 27/04/2007. The same is ordered after a period of more than 12 years. Hence, the applicant approached to this Tribunal for the following reliefs –

“(10) (i) Quash and set aside the Departmental Enquiry and appointment of Enquiry Officer by Order dated 02/08/2019 issued by the Respondent No. 1 Principal Secretary, Public Health Department, Mumbai, at Annexure No.A-1;

(ii) Saddle the cost of the present Original Application upon the Respondent No.1 Principal Secretary, Public Health Department, Mumbai for initiating the Department Enquiry after a a period of 12 years;

(iii) Any other relief, which this Hon'ble Tribunal deems fit and proper in the circumstances, be granted in the interest of justice.

(11) INTERIM RELIEF IF ANY PRAYED FOR:

Grant Ad-interim Exparte Stay to the Order dated 02/08/2019 issued by the Respondent No.1 Principal Secretary, Public Health Department, Mumbai, at Annexure No.A-1, during pendency of the Original Application and also grant Stay to the Departmental Enquiry proceeding, until further order.”

6. The O.A. is strongly opposed by the respondents. It is submitted that the applicant has committed misconduct and therefore the departmental enquiry is initiated against him. The respondents are at liberty to find out the facts and punish the delinquent employee, if he is found guilty. Hence, the O.A. is liable to be dismissed.

7. During the course of submission the learned counsel for applicant has pointed out the Judgment of the Hon'ble Supreme Court in the case of the ***State of Andhra Pradesh Vs. N. Radhakishan, 1998 AIR (SC) 1833.***

8. Present applicant filed this O.A. alongwith the interim relief to grant stay to the departmental enquiry. This Tribunal had not granted any interim relief. Therefore, the applicant approached to the Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No.2628/2021. The Hon'ble Bombay High Court relying on the Judgment of the Hon'ble Supreme Court in the case of the ***State of Andhra Pradesh Vs. N. Radhakishan (cited supra)*** granted stay to the departmental enquiry till the decision of this O.A. The material observation of the Hon'ble Bombay High Court in para-4 is reproduced below –

“(4) On going through the charge sheet (page no.37), and the law laid down by the Hon'ble Apex Court, in the case of State of Andhra Pradesh Vs. N. Radhakisan (supra), we are convinced that the facts of this case are squarely covered by the law so laid

down by the Hon'ble Supreme Court. In this case, the misconduct was in the nature of alleged unruly behaviour of the petitioner under the influence of liquor and this alleged misconduct had taken place on 27.04.2007. The charge sheet for this misconduct however, has been issued to the petitioner on 17.12.2018. There is absolutely, nothing stated in the charge sheet or any other document explaining the 11 years long delay, which has been caused in the present case. The misconduct does not pertain to any charge of corruption or bribery or any financial irregularity. The charge pertains to the personal behaviour, which has been seen and perceived to be misconduct by the employer. In such a case, it was necessary for the employer to have initiated departmental enquiry proceedings without any delay, if at all, it was serious about disciplining the Officer. But, the employer has not done so. The employer has also not given any reason justifying the delay. Therefore, we are of the view that strong prima facie case has been made out by the petitioner seeking the stay of the departmental enquiry proceedings.”

9. The Hon'ble Supreme Court in the case of the **State of Andhra Pradesh Vs. N. Radhakishan (cited supra)** has held that delay of more than 10 years to initiate departmental enquiry without any explanation and it was also found that delay was not on the part of delinquent. Therefore, memo of charge sheet being highly delayed was liable to be quashed.

10. In the present O.A. the misconduct alleged against the applicant is on 27/04/2007. The respondents have issued chargesheet on 17/12/2018. It appears that there is delay of 11 years to initiate

departmental enquiry. The charges levelled against the applicant are not so serious. The only charge of misconduct in respect of complaint made by the relatives of some patients, there is no any allegation of bribery etc. against the applicant. There is nothing on record to show that the applicant was responsible for the delay.

11. Hence, in view of the Judgment of Hon'ble Supreme Court in the case of the ***State of Andhra Pradesh Vs. N. Radhakishan (cited supra)***, the departmental enquiry initiated by the respondents after the delay of 11 years is liable to be quashed and set aside. Hence, the following order -

ORDER

(i) The O.A. is allowed.

(ii) The inquiry initiated as per the charge sheet dated 17/12/2018 and order of appointment of Enquiry Officer, dated 02/08/2019 are hereby quashed and set aside.

(iii) No order as to costs.

Dated :- 04/01/2024.

**(Justice M.G. Giratkar)
Vice Chairman.**

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 04/01/2024.