

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.956 OF 2022**

**DISTRICT : KOLHAPUR**

**Sub.:- Departmental Enquiry**

Shri Mohan Shankar Kembalkar. )  
Age : 56 Yrs, Working as Assistant )  
Commissioner [Food], Having Office at )  
Raghukul Building, Subhash Road, )  
Kolhapur and R/o. House No.7, Samaj )  
Seva Society, Bhosale Wadi, Kolhapur -3. )...**Applicant**

**Versus**

The State of Maharashtra. )  
Through Principal Secretary, )  
Medical Education and Drugs Department, )  
9<sup>th</sup> Floor, G.T. Hospital Campus, L.T. Marg,)  
New Mantralaya, Mumbai – 400 001. )...**Respondent**

**Shri A.V. Bandiwadekar, Advocate for Applicant.**

**Smt. S.P. Manchekar, Chief Presenting Officer for Respondent.**

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

**DATE : 21.08.2023**

**PER : A.P. KURHEKAR, MEMBER-J**

## **JUDGMENT**

1. The Applicant has filed the present Original Application to quash and set aside the Departmental Enquiry (DE) initiated by charge-sheet dated 19.06.2014 mainly on the ground of inordinate and unexplained delay for completion of DE and also prayed for direction to the Government to promote him to the post of Joint Commissioner, Food and Drugs, alleging that because of pendency of DE, he is deprived of the promotional avenues.

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

The Applicant is serving as Assistant Commissioner, Food and Drugs Administration in 2014. While he was serving as Assistant Commissioner, Food and Drugs Administration, Bhandara, the Government initiated DE by charge-sheet dated 19.06.2014 alleging negligence in discharging duties as Assistant Commissioner, Food and Drugs. The Applicant submitted reply on 25.07.2014 denying the charges and tried to contend that there was no such negligence on his part to initiate DE against him. Thereafter, matter was kept in cold storage at the level of Government for 9 years and Enquiry Officer itself came to be appointed on 28.02.2023 i.e. during the pendency of O.A. The Applicant contends that he is due for promotion to the post of Joint Commissioner, Food and Drugs, but because of pendency of DE, he is deprived of promotional avenues. He, therefore, filed the present O.A. to quash and set aside initiation of DE on the ground of inordinate and unexplained delay on the part of Government and also prayed for direction to the Government to consider his claim for promotion to the post of Joint Commissioner, Food and Drugs.

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail initiation of DE mainly on the ground of inordinate and huge delay in completing the DE though in terms of Circular issued by GAD

dated 07.04.2008, DE was to be completed maximum within one year. In this behalf, he referred to the decision of Hon'ble Supreme Court in **(2015) 16 SCC 415 [Prem Nath Bali Vs. Registrar, High Court of Delhi and Anr.]**. He further referred to **2016(1) Mh.L.J 827 [Prabhakar J. Rangiri Vs. Hon'ble Minister of Industries and Chairman, Maharashtra Industrial Development Corporation, Mumbai & Ors.]** wherein it has been held that that denial of promotion only on the basis of pendency of DE is unjustified and Government was directed to promote the Petitioner, subject to outcome of DE.

4. Per contra, Smt. S.P. Manchekar, learned Chief Presenting Officer made feeble attempt to justify the initiation of DE, but she had pain to explain the delay in completion of DE. All that she submits that Applicant for the first time came in the zone of consideration for promotion to the post of Joint Commissioner, Food and Drugs in 2022 and in DPC meeting dated 30.09.2022, three persons who were senior to the Applicant were promoted. She, therefore, tried to contend that it is not a case of denial of promotion because of pendency of D.E.

5. When Tribunal has taken up the matter for hearing on 10.08.2023, having found that there is inordinate delay in completion of DE, directions were issued to Principal Secretary, Medical Education and Drugs Department to file Affidavit and to explain why DE is not completed within reasonable period and what action he propose to take against the concerned erring Officers.

6. In response to order dated 10.08.2023, today learned C.P.O. has tendered Affidavit of Shri Saurabh Vijay, Principal Secretary, Food and Drugs Administrative Department, which is also totally silent on the point of huge and inordinate delay in completion of DE. Indeed, the contents of Affidavit are interesting to note which also clearly spells huge and unexplained delay on the part of Government.

7. Indisputably, Applicant was subjected to DE by charge-sheet dated 19.06.2014 for negligence allegedly committed in 2011-2012. The charges framed in DE are as under :-

“श्री. मो.शं. कॅबळकर, सहाय्यक आयुक्त (अन्न) निलंबित, अन्न व औषध प्रशासन, म.राज्य, भंडारा यांचेविरुद्ध तयार करण्यात आलेल्या दोषारोपांतील बाबींचे विवरणपत्र

**बाब क्र.१-**

मे. शिव शक्ती रेस्टॉरंट, आमगाव, जिल्हा गोंदिया या पेढीतून दि.१३.१०.२०११ रोजी घेण्यात आलेल्या खवा अन्नपदार्थाचा नमुना, मानंदाप्रमाणे नसल्याचे अन्न विश्लेषक, नागपूर यांनी दि.२९.१०.२०११ रोजीच्या अहवालांन्वये घोषित केले आहे. सदर प्रकरणाचे गांभीर्य पाहता ते विनाविलंब संमती आदेशाकरिता सादर करणे आवश्यक होते. तसेच सदर पेढीविरुद्ध तात्काळ खटला दाखल करणे अनिवार्य होते. तथापि, सदर प्रकरण दि.११.१२.२०१२ रोजी म्हणजेच सव्वा वर्षांच्या विलंबाने मुख्यालयास सादर करून श्री. मो.शं. कॅबळकर, सहाय्यक आयुक्त (अन्न) निलंबित, अन्न तथा पदावधित अधिकारी, भंडारा यांनी त्यांच्या कर्तव्यात कसूर केली आहे.

**बाब क्र.२-**

मे. महालक्ष्मी इंटरप्राईजेस, आमगाव, जिल्हा गोंदिया या पेढीवर दि.१६.१०.२०११ रोजी अडाणी विलमर कंपनीचे फॉर्ट्यून ब्रँड रिफाईंड सोयाबीन तेलाचा नमुना घेऊन उर्वरित साठा जप्त करण्यात आला होता. सदर नमुना प्रादेशिक आरोग्य प्रयोगशाळा, नागपूर यांनी मानंदाप्रमाणे नसल्याचे व केंद्रीय आरोग्य प्रयोगशाळा, मैसूर यांनी असुरक्षित असल्याचे घोषित केले आहे. पेढीमालक श्री. अशोक कुमार मोदी, मे. महालक्ष्मी इंटरप्राईजेस, आमगाव, जिल्हा गोंदिया व पुरवठादार श्री. मूलचंद खडवानी, मे. सरस्वती ट्रेडर्स, नागपूर यांचेविरुद्ध अन्नसुरक्षा मानके अधिनियम २००६ चे कलम ३(zf), ३(zzf) व कलम ५९ आमगाव पोलीस स्टेशन येथे प्रथम खबरीचा अहवाल (एफआयआर) नोंदविण्यात आला आहे. तसेच पोलिसांमार्फत दोषारोप दाखल करण्यात येत असल्याचे पोलिस निरीक्षक, पोलीस ठाणे, आमगाव यांचे दि.२०.१२.२०११ रोजीच्या पत्रांमुळे कळविण्यात आले आहे. सदर प्रकरणाचे गांभीर्य पाहता ते विनाविलंब संमती आदेशाकरिता सादर करणे आवश्यक होते. तसेच सदर पेढीविरुद्ध तात्काळ खटला दाखल करणे अनिवार्य होते. तथापि, सदर प्रकरण दि.११.१२.२०१२ रोजी म्हणजेच सव्वा वर्षांच्या विलंबाने मुख्यालयास सादर करून श्री. मा.शं. कॅबळकर, सहाय्यक आयुक्त (अन्न) तथा पदावधि अधिकारी, भंडारा यांनी त्यांच्या कर्तव्यात कसूर केली आहे.

**बाब क्र.३-**

मे. हिंदुस्तान लिम्बिटेड या अन्न उत्पादक कंपनीचे वितरक व किरकोळ विक्रेत्याकडून प्रशासनातील नागपूर व अमरावती या विभागातील अधिका-यांनी अन्न नमुने घेतले होते. सदर अन्न नमुने अप्रमाणिक घोषित करण्यात आल्याने त्यांनी सदर अन्न उत्पादक कंपनीचे वितरक व किरकोळ विक्रेत्याविरुद्ध कोर्टात केसेस दाखल करण्याकामी बराच विलंब लावला त्यामुळे अधिका-यांनी कोर्टकेस दाखल करताना कायद्याचे पालन केले नाही. सदर अधिका-यांविरुद्ध कारवाई करून त्यांच्याविरुद्ध आयपीसी कलम १६६ खाली खटले दाखल करावेत, असे आदेश मा. उच्च न्यायालयाच्या नागपूर खंडपीठाने दिले होते, असे असतानासुद्धा श्री. मो.शं. कॅबळकर, सहाय्यक आयुक्त (अन्न) तथा पदावधित अधिकारी (निलंबित), भंडारा यांनी संमती आदेशासाठी प्रस्ताव विहित वेळेत सादर न करून, श्री. मो.शं. कॅबळकर यांनी त्यांच्या कर्तव्यात कसूर केली आहे.

यावरून श्री. मो.शं. कॅबळकर, सहाय्यक आयुक्त (अन्न) तथा पदावधित अधिकारी (निलंबित) भंडारा, यांनी त्यांच्या कामात नितांत कसोटी व कर्तव्यपरायणता राखलेली नाही.

म्हणून त्यांनी नागरिक महाराष्ट्र नागरिक सेवा (वर्तणूक) नियम, १९७९ अंतर्गत नियम ३(१)(एक) व ३(१) (दोन) चा भंग केलेला आहे.”

8. Admittedly, Applicant has submitted reply to the charge-sheet on 25.07.2014 (Page Nos.26 to 32 of Paper Book). The contention of learned CPO that the Government received reply in 2016 belatedly, and therefore, no further steps could be taken by the Government for two years is

totally unpalatable. Be that as it may, the fact remains that thereafter matter was simply kept in cold storage and Enquiry Officer itself was appointed on 28.02.2023 i.e. during the pendency of O.A. It is thus apparent that the Government woke-up from slumber after filing of O.A, which is nothing but attempt to salvage the damage.

9. Now reverting back to the Affidavit filed by Shri Saurabh Vijay, Principal Secretary, Food and Drugs Administrative Department, the reading of the same is quite interesting, as that itself shows total inaction, lethargy and negligence on the part of concerned for not completing DE within stipulated period. Para Nos.6, 7 and 8 are material, which are as under :-

**6.** I say and submit that, considering the representation of the Applicant and opinion of the Commissioner, Food & Drugs Administration, a proposal to close the Departmental Enquiry against the Applicant was submitted for the approval of the Competent Authority on 24.09.2017. But the same proposal remained undecided.

**7.** I say and submit that, considering the representation of the Applicant and opinion of the Commissioner, Food and Drugs Administration, a proposal to initiate Departmental Enquiry under rule 10 of the Maharashtra Civil Service (Discipline and Appeal) Rules, 1979 against the Applicant instead of Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 was submitted for the approval of the Competent Authority i.e. Hon'ble Minister of Food and Drugs Administration on 14.11.2022. On the said proposal, Competent Authority i.e. Hon'ble Minister of Food and Drugs Administration had given direction that "*enquiry under rule 8 is to be completed as early as possible.*"

**8.** I say and submit that, as per the direction given by Competent Authority i.e. Hon'ble Minister of Food and Drugs Administration, Respondent has appointed the Enquiry Officer to enquire the charges framed against the Applicant by vide order dated 28.02.2023. Hereto marked and attached copy of order dated 28.02.2023 as **Exhibit R-1s.**"

10. Indeed, as per order passed by the Tribunal on 10.08.2023, directions were given to Principal Secretary to file Affidavit to explain the delay and also what action he proposes to take against the concerned. However, Affidavit filed today is totally silent on the point of proposed action against the concerned, who are responsible for the delay.

Curiously, in Affidavit-in-reply, it is stated that at one point of time, the Commissioner, Food and Drugs gave his opinion to close the DE, but no further decision was taken thereon. No such File Notings are tendered. All that, in Affidavit, he stated that on receipt of proposal of Commissioner, the Department proposed to convert DE into Rule 10, but Minister Incharge of the Department directed that the enquiry initiated under Rule 8 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as 'D & A Rules of 1979' for brevity) be completed as early as possible. The Minister Incharge of the Department seems to have made endorsement to that effect on 14.11.2022. Thereafter, Enquiry Officer was appointed on 28.02.2023. Suffice to say, no explanation worth the name is forthcoming for huge and inordinate delay of 9 years in completion of DE. The Applicant is retiring in the month of April, 2024, but still DE is without any progress. Even first hearing date in DE is scheduled on 22.08.2023 as fairly conceded by the learned CPO.

11. In view of above, the issue posed for consideration is whether DE could be interdicted as prayed for in the facts and circumstances of the present case, *vis-à-vis* charges framed against the Applicant.

12. Needless to mention that there is no straight-jacket formula that whenever there is delay in initiation of DE 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 facts and circumstances of a case and there is no such hard and fast rule. The learned Advocate for the Applicant placed reliance on **(1998) 4 SCC 154 [State of A.P. Vs. N. Radhakishan]**. In Para No.19, Hon'ble Supreme Court summarized the legal situation, which 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.”*

13. As regard importance of expeditious completion of DE and time limit, the Hon'ble Supreme Court in **Prem Nath Bali's** case (cited supra). In Para Nos. 31 to 33 held as under :-

**31.** *Time and again, this Court has emphasized that it is the duty of the employer to ensure that the departmental inquiry initiated against the delinquent employee is concluded within the shortest possible time by taking priority measures. In cases where the delinquent is placed under suspension during the pendency of such inquiry then it becomes all the more imperative for the employer to ensure that the inquiry is concluded in the shortest possible time to avoid any inconvenience, loss and prejudice to the rights of the delinquent employee.*

**32.** *As a matter of experience, we often notice that after completion of the inquiry, the issue involved therein does not come to an end because if the findings of the inquiry proceedings have gone against the delinquent employee, he invariably pursues the issue in Court to ventilate his grievance, which again consumes time for its final conclusion.*

**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.”*

14. That apart, as rightly pointed out by the learned Advocate for the Applicant in terms of Circular dated 07.04.2008 issued by the Government, the DE was required to be completed maximum within one year and where it could not be completed within one year, in that event, an extension for completion of DE is required to be obtained from the Administrative Head of the Department. Apart, it further provides where DE is not finished within five years, the responsibility has to be fixed on the concerned person for not completing the DE. Whereas in the present case, though the period of more than 9 years is over, there is absolutely no progress in DE and it is standstill. Even first date of hearing is scheduled on 22.08.2023. Needless to mention, the expeditious disposal of DE is recognized as a right of a Government employee, so that he should not be subjected to mental agony and deprivation of promotional avenues, if otherwise found eligible and suitable. In the present case, Affidavit filed by Secretary as well as reply filed by the Government is totally silent about compliance of Circular dated 07.04.2008. No extension is sought in terms of Circular dated 07.04.2008. Lack of accountability and casual approach is obvious which needs to be condemned.

15. Insofar as charges are concerned, it does not appear to be that much serious so as to continue DE even after lapse of 9/10 years' period. Indeed, Commissioner, Food and Drugs at one point of time proposed to drop the enquiry and Department placed Note before Minister Incharge of the Department for converting DE into Rule 10 of 'D & A Rules of 1979' for minor penalty. Suffice to say, the charges framed against the Applicant appears not so serious. In such situation, the continuation of DE is nothing but mental harassment and agony to a Government servant. There is total failure on the part of Government to abide by its



own Circular dated 07.04.2008. This is not a case where anything can be attributed to the Applicant for delay in completion of DE.

16. Hon'ble Supreme Court in **Radhakishan's** case (cited supra) held that whether on the ground of delay, the disciplinary proceedings are required to be terminated has to be examined and decided on the facts and circumstances of a case and Court is required to strike balance. If the charges are serious and continuation of DE is in the interest of purity of administration, then DE cannot be interdicted merely on the ground of delay. But where charges are not serious and Department has taken undue delay which now comes to near about 10 years from the date of misconduct and there is no fault on the part of Applicant and Department is silent about the explanation for delay, the Tribunal will have no option except to quash and set aside such DEs so that Applicant is not subjected to further mental harassment and monetary loss.

17. In this view of the matter, in the light of legal principles highlighted by Hon'ble Supreme Court in **Radhakishan's** case and time limit of one year as observed by Hon'ble Supreme Court in **Prem Nath Bali's** case, there being absolutely no explanation for huge delay and total casual approach of the Government, we are constrained to conclude that DE is vitiated and liable to be quashed.

18. The Applicant is now due for promotion to the post of Joint Commissioner, Food and Drugs. The learned Advocate for the Applicant as well as learned CPO fairly stated that one post of Joint Commissioner, Food and Drugs occupied by Shri P.M. Raut is going to fall vacant in view of his retirement at the end of August, 2023. In this view of the matter, it would be appropriate to direct the Respondent to convene special DPC within two months from the retirement of Shri P.M. Raut to consider the promotion to the Applicant on the post of Joint Commissioner, Food and Drugs.

19. The totality of aforesaid discussion leads us to conclude that the continuation of DE by charge-sheet dated 19.06.2014 would be very unjust, oppressive and needs to be interdicted. We, therefore, proceed to pass the following order.

**ORDER**

- (A) The Original Application is allowed.
- (B) Departmental proceedings initiated by charge-sheet dated 19.06.2014 are hereby quashed and set aside and Applicant stands exonerated from the charges.
- (C) The Respondent is directed to convene special DPC within two months from the retirement of Shri P.M. Raut to consider the promotion of the Applicant for the post of Joint Commissioner, Food and Drugs and shall take decision accordingly. It be communicated to the Applicant within two weeks from the date of meeting of DPC.
- (D) No order as to costs.

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

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

Mumbai

Date : 21.08.2023

Dictation taken by :

S.K. Wamanse.

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