

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.168/2022

DISTRICT:- BEED/PUNE

Shirish Ramchandra Yadav,
Age : 52 years, Occ. Govt. Service
Presently working Dy. District Election Officer,
C/o. Collector Office, Beed. **...APPLICANT**

V E R S U S

1. The State of Maharashtra,
Through Additional Chief Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai-400 032.
2. The Divisional Commissioner,
Pune Division, Pune.
3. The Municipal Commissioner,
Pune, Municipal Corporation,
Pune. **...RESPONDENTS**

APPEARANCE : Shri Jiwan J. Patil, Counsel for
Applicant.
: Shri M.S.Mahajan, learned Chief
Presenting Officer for respondent
nos.1 & 2.
: Shri Shailesh S. Chapalgaonkar,
learned Special Counsel for
respondent no.3.

**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN
AND
SHRI VINAY KARGAONKAR, MEMBER (A)**

Date : 06-02-2024

ORAL ORDER

1. Heard Shri Jiwan J. Patil, learned Counsel for the applicant, Shri M.S.Mahajan, learned Chief Presenting Officer for respondent nos.1 & 2 and Shri Shailesh S. Chapalgaonkar, learned Special Counsel for respondent no.3.

2. Applicant has filed the present O.A. seeking quashment of the charge memo dated 05-04-2021 issued by respondent no.1 for the misconduct allegedly committed by him while working as the Deputy Commissioner, Land Acquisition and Administration, Pune Municipal Corporation during the period between 19-06-2002 to 21-05-2005.

3. At the relevant time the applicant was working as Deputy Commissioner (General Administration) with respondent no.3 i.e. Municipal Corporation Pune. For certain period of time he was given additional charge of the Deputy Commissioner, Land Acquisition in Pune Municipal Corporation. It is the contention of the applicant that while holding additional charge of the Deputy Commissioner, Land Acquisition, applicant's office had received proposal in respect of grant of TDR along with remarks of the Special

Land Acquisition Officer-16, Collector Office, Pune. It is the further contention of the applicant that on the said proposal Subordinate Office Wing/Branch has recorded the necessary opinion and the applicant countersigned the said opinion and noted that the decision in respect of grant of TDR may be taken after verifying the relevant record, whether Land Acquisition compensation has been paid or not and rules and regulations in that regard. It is the further contention of the applicant that neither the applicant nor his subordinates has given any concrete opinion as about the grant of TDR for the reason that the data in respect of property against which the TDR was claimed was not the subject matter of the office of the applicant, and in the circumstances, the proposal was forwarded to the concerned authority for its decision.

4. It is the further contention of the applicant that for grant of TDR, 6 departments of the Pune Municipal Corporation were having certain roles and major responsibility/role was of the legal cell department and its officer. It is further contended that the Municipal Corporation on the opinion and advice of the law officer/legal advisor grants TDR in respect of the said properties. On the basis of the report of the legal

department, office of City Engineer prepared the final report and forwarded it to respondent no.3. It is further contended that the Land Acquisition Department under the control of the applicant prepared its opinion and forwarded it to City Engineer. It is further contended that, subsequently, it was revealed the documents supplied by the beneficiaries of the TDR for grant of TDR were fabricated and the information supplied by the Special Land Acquisition Officer-16 was also wrong, and therefore, FIR came to be registered as C.R.No.579/2005== against private persons and the Legal Advisor of the Pune Municipal Corporation on 10-01-2005.

5. It is further contended that, at the initial stage, the applicant was made as witness in the said criminal prosecution, however, later on applicant and others came to be impleaded as accused in the said crime on 28-02-2007. After his impleadment in the aforesaid crime as accused, the applicant was suspended on 01-03-2007. It is further contention of the applicant that he came to be reinstated by order dated 18-07-2011 by respondent no.1. It is further contention of the applicant that though there was no significant role of the applicant in grant of TDR, in the concerned matter, the applicant was unnecessarily

impleaded in the said crime as accused and was also made to suffer the order of suspension. It is the further contention of the applicant that after lapse of about 16 years from the registration of crime and after the period of about 14 years from the order of suspension issued against the applicant, a charge memo has been served upon him on 07-04-2021 and the departmental enquiry is to be conducted in the name of charge memo so served upon the applicant. Learned Counsel appearing for the applicant submitted that the inordinate delay committed in issuing the memo of charge against the applicant itself is sufficient for quashment of the said charge and the respondents cannot be permitted to conduct an enquiry on the basis of the said charge memo. Learned Counsel further submitted that, even on merits also the charge memo served upon the applicant would not sustain.

6. Learned Counsel further submitted that the applicant was not the final authority for granting TDR. Applicant has noted his opinion in the said matter and the said opinion was noted on the basis of the information provided and noted on the said proposal by his subordinate officers. Learned Counsel further submitted that the TDR sanctioning authority is not bound to act upon the opinion

submitted by the applicant about grant of TDR. Learned Counsel further argued that during the period 2002 to 2005, no departmental proceedings can be initiated after the lapse of more than 15 years and the memo of charge is liable to be quashed and set aside on this ground alone. Learned Counsel for the applicant submitted that the applicant had already suffered a lot by remaining under suspension for the period of about 4 years and by depriving him from the promotions to which he was entitled on the pretext of pending criminal case and the departmental proceedings.

7. Learned Counsel submitted that the General Administration Department of the State vide Circular dated 18-09-1974 has mandated that the chargesheet of the departmental enquiry has to be served within the period of 6 months as a Rule. Learned Counsel further submitted that vide Government Circular dated 18-09-1974, the chargesheet of the departmental enquiry has to be mandatorily served on the delinquent employee within the period of 6 months. Learned Counsel also referred to and relied upon the G.R. dated 14-10-2011 wherein it is mandated that the chargesheet of the departmental enquiry has to be served within the period of 6 months as a Rule.

Learned Counsel further submitted that the said time can be extended by Chief Secretary of the State in certain contingencies, and more particularly, if the criminal prosecution is pending against the delinquent.

8. Learned Counsel for the applicant also referred to the G.R. dated 14-10-2011 wherein guidelines are issued in respect of reinstatement of Government employees who are suspended either by reason of criminal prosecution or otherwise. Learned Counsel further submitted that as per clause 3 (A) of the said G.R. if the Government employee is suspended by reason of criminal prosecution against him, while taking decision on his reinstatement, after the period of one year lapses from the date of criminal prosecution, Government is required to take decision in respect of the disciplinary action against the said delinquent before reinstating him. Learned Counsel submitted that in the order of his reinstatement, it has been specifically mentioned that it is subject to outcome of the criminal prosecution, however, it is nowhere stated that it is subject to outcome of the disciplinary action. Learned Counsel further submitted that contrary to the provision made under the said G.R., decision to initiate departmental enquiry against the applicant has been taken after the

lapse of about 16 years. Learned Counsel submitted that the order so issued is wholly unsustainable, against the Government policy and amounts to victimization of the applicant.

9. Referring to and relying upon the judgment delivered by the Hon'ble Apex Court in the case of **State of Madhya Pradesh V/s. Bani Singh & Anr. [1990 (Supp) SCC 738]**, learned Counsel submitted that the Hon'ble Apex Court has upheld the decision of the Tribunal that of quashing the enquiry proceedings only on the ground of delay and laches. Learned Counsel cited the judgment of the Hon'ble Supreme Court in the case of **P.V. Mahadevan V/s. M.D. T.N. Housing Board [(2005) 6 SCC 636]**, wherein the Hon'ble Apex Court allowed the appeal filed by the appellant by observing that, "the mental agony and sufferings of the appellant due to protracted disciplinary proceedings against him were more than the punishment," and therefore, quashed the charge memo issued against the said appellant.

10. Learned Counsel further submitted that vide G.R. dated 09-07-2019, Government has framed policy in respect of reinstatement of suspended Government

employees in light of the law laid down by the Hon'ble Apex Court in the case of **Ajay Kumar Choudhary V/s. Union of India through its Secretary & Anr. [(2015) 7 SCC 291]**. Learned Counsel further submitted that as provided in the said G.R. the chargesheet of the departmental enquiry has to be served on the delinquent within the period of 90 days from the date of his suspension. Learned Counsel submitted that for all above reasons, memo of charge issued against the applicant and initiation of departmental enquiry against the applicant deserve to be quashed and set aside.

11. Affidavit in reply has been jointly filed on behalf of respondent nos.1, 2 and 3 on 01-08-2022. Said reply was filed by the learned Special Counsel appearing for respondent no.3 i.e. Municipal Commissioner, Municipal Corporation Pune. On 01-08-2022, time was sought by the learned CPO for filing affidavit in reply for the remaining respondents i.e. the Divisional Commissioner, Pune and State of Maharashtra. The time was granted for filing such affidavit in reply by imposing costs of Rs.1000/-. On 05-08-2022, learned Counsel Shri A.N.Patil holding for Shri S.S.Chapalgaonkar, learned Special Counsel for respondent no.3 filed authorization received for submitting affidavit in

reply on behalf of respondent nos.1 to 3. It appears that the respondent nos.1, 2 and 3 have filed a short additional affidavit in reply on 05-08-2022. In fact, in view of the contents of the affidavit in reply submitted by the learned Counsel appearing for respondent no.3 purported to be reply on behalf of respondent nos.1, 2 and 3, respondent nos.1 and 2 must have filed their separate affidavit in reply. However, it is a matter of record that the respondent no.1 and 2 asked respondent no.3 to submit the reply even on their behalf. In the affidavit in reply so filed, the objection has been raised as about the territorial jurisdiction for entertaining the O.A. by the Bench of this Tribunal. It is further contended in the said affidavit in reply that the applicant was found indulged in the illegal activities/irregularities and was also found liable for prosecution after detailed investigation. In the circumstances, according to the said respondents the time taken for issuance of memo of charge can only be considered as a procedural lapse, however, on that ground the said memo cannot be quashed.

12. In the affidavit in reply, it is admitted that signing controversial TDR proposal and the opinion noted by the applicant were subject to the sanctioning of the

competent officer. However, it is further averred that, still the fact remains that there were irregularities. It is further contended that the judgment relied upon by the applicant may not apply in the facts of the instant case.

13. Learned Special Counsel for respondent no.3 and learned CPO appearing for respondent nos.1 and 2 reiterated the contentions raised in the aforesaid affidavit in reply. Learned CPO and the learned Special Counsel for respondent no.3 both invited our attention to the contents of the affidavit in reply filed by the then Municipal Commissioner of Pune Municipal Corporation in Public Interest Litigation No.127/2006 before the Hon'ble Bombay High Court. Learned Counsel pointed out the contents of the said affidavit reveal the magnitude of the misconduct committed by the applicant. Learned Counsel submitted that it was a big scam at the relevant time into grant of TDR in several such matters and the applicant was found involved in the said matters. Learned Special Counsel for respondent no.3 submitted that having considered the seriousness in the charges levelled against the applicant it would be against public interest to quash the charge memo and thereby make the applicant scot-free. It has been further argued that the enquiry has already commenced,

however, because of the interim order passed by the Tribunal the same has not been proceeded further. It has also been argued that the applicant undertakes to complete the enquiry within the time bound manner if stay granted to the enquiry is vacated by the Tribunal. Learned Counsel in the above circumstances, prayed for dismissal of the O.A. filed by the applicant.

14. The O.A. was brought before the Tribunal firstly on 10-03-2022. On that day the order of issuance of notice against the respondents was passed by the Tribunal. Thereafter, the matter was fixed on 13-04-2022 for filing of affidavit in reply by the respondents. Since time was sought by the learned CPO for filing affidavit in reply, time was granted till 17-06-2022. On 17-06-2022 the time was again sought by the learned CPO which was granted and the matter was adjourned to 25-07-2022. On the said date, again time was sought by the learned P.O. which was granted by way of last chance and the matter was adjourned to 01-08-2022. On 01-08-2022 also the reply was not filed and the learned CPO sought time till 05-08-2022 for submitting the affidavit in reply on behalf of the respondents. Time was granted till then subject to costs of

Rs.1000/-. On 05-08-2022 joint affidavit in reply came to be filed on behalf of the respondent nos.1 to 3.

15. Learned Counsel Shri S.S.Chapalgaonkar caused his appearance for respondent no.3 i.e. Pune Municipal Corporation. The matter was thereafter time to time adjourned in view of the request made by the learned Counsel appearing for respondent no.3 or on request of learned CPO. On 07-10-2022 learned Counsel for the applicant insisted for considering the request for interim relief thereby preventing the respondents from proceeding with the enquiry. The request for interim relief was opposed by the respondents. Considering the submissions advanced by both the parties, the Tribunal directed parties to proceed with the present O.A. and ensure that the matter gets disposed of within the period of 3 months from the said date and till then the respondents were restrained from carrying enquiry proceeding further.

16. We have duly considered the submissions made on behalf of the applicant as well as the respondents. We have also perused the documents produced on record by the parties. Following facts are not in dispute:

“[i] that, the applicant was suspended vide order dated 05-03-2007 passed by the in-charge Municipal Commissioner of Pune Municipal Corporation;

[ii] that, the suspension was ordered on account of the criminal case registered against the applicant at Deccan Police Station, Pune for the offences punishable under section 420, 467, 468, 471, 120(b), 109, 465 and 201 of IPC as well as for the offences punishable under section 13(1)(d) with 13(2) of the Prevention of Corruption Act, 1988;

[iii] that, order of suspension has been passed by invoking powers under Rule 4(1)(c) and 4(2)(a) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979;

[iv] that, suspension was revoked vide order dated 18-07-2011 issued by the Government;

[v] that, statement of charge was served upon the applicant vide memo dated 05-04-2021 by the State Government; and,

[vi] that, the applicant filed the present O.A. on 04-02-2022.”

17. It is undisputed that the enquiry which has been initiated against the applicant is pertaining to the alleged misconduct allegedly committed by the applicant during the period between 19-06-2002 to 21-05-2005 while the applicant was working on deputation in Pune Municipal

Corporation on the post Deputy Municipal Commissioner (Land Acquisition). It is alleged that, while working on the aforesaid post, the applicant without verifying the record in respect of the concerned properties endorsed his opinion for grant of TDR to the alleged owners of the said properties. Shri Haridas Parekh and Shri Prabhakar Bhide, the original owners of Survey No.143/3, Survey No.143/1, 143/2 and 144/1+2, respectively, situation at Kothrud, Pune have moved a proposal seeking TDR grantable against the acquisition of the said properties by the Pune Municipal Corporation. As has been contended by the Pune Municipal Corporation, the said land owners have already received full compensation in the respective land acquisition proceedings and the entries in that regard were available in the relevant property extracts of the said properties. It is alleged that ignoring the said entries in the said registers and without verifying the facts whether the said applicants were eligible for grant of any TDR, the applicant relying on the proposal/note submitted by his subordinates recommended for grant of DRD to the said land owners.

18. The charge raised against him has been denied by the applicant. We have already referred to the pleadings

taken by the applicant in that behalf in the O.A. However, the moot question which falls for our consideration is, “whether the departmental enquiry proceedings initiated against the applicant in relation to the misconduct allegedly committed by the applicant in the year 2004-2005 can be sustained after a long lapse of 16 years ?

19. We have carefully gone through the pleadings of the parties as well as the documents produced on record by the parties. The alleged opinion was given by the applicant on 06-12-2004. In January, 2005 it was revealed that the documents supplied by the beneficiaries of the TDR were fabricated and the information supplied by the Special Land Acquisition Officer No.16 was also wrong. FIR, therefore, came to be registered at C.R.No.579/2005 against the private persons and on the Legal Advisor of the Pune Municipal Corporation on 10-01-2005. At the initial stage the applicant and the other officers were made as witnesses in the said criminal prosecution. Later on, the applicant was impleaded as accused in the said crime on 28-07-2007. On account of registration of the said crime, the applicant was suspended on 01-03-2007.

20. Documents on record, however, reveal that there was no proposal for initiating disciplinary proceeding against the applicant. In the PIL No. 127/2006 filed by Nagari Chetana Manch, the then Municipal Commissioner Shri Nitin Karir filed his affidavit on 22-01-2007. In the said affidavit, it is contended that in view of the criminal cases pending he had directed to keep in abeyance departmental enquiries till decision in the criminal matters. In paragraph XXV of the said affidavit, it is stated as under:

“I further say that Joint Municipal Commissioner (Estate and Housing) of the P.M.C. submitted Note on 31st December, 2005 before me. Considering the nature of a charge in the criminal case which is undoubtedly grave and the fact that the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the employees of the corporation is of a grave nature involving complicated questions of law and fact, I was of the view that it would be desirable to stay the departmental proceedings till the conclusions of the criminal case. Accordingly, I directed to keep in abeyance the Departmental Enquiry pending the criminal case.”

21. In the letter dated 14-12-2015 written by the Additional Municipal Commissioner (ज) to the Divisional Commissioner, Pune Division, it is stated that after the affidavit dated 22-01-2007 was filed in PIL No.127/2006 by the then Municipal Commissioner, Pune Municipal Corporation, the Hon'ble High Court on 09-12-2010 has

impliedly suggested for continuing with the departmental enquiries against the employees and officers of the Municipal Corporation and accordingly the enquiries which were deferred under the orders of the then Municipal Commissioner were restarted. It is significant to note that in the said letter dated 14-12-2015, it is stated that no departmental enquiry was proposed against the present applicant who was at the relevant time working as Deputy Municipal Commissioner. We have referred to the aforesaid facts to highlight that though the departmental enquiries were initiated against 13 employees and officers of the Municipal Corporation pertaining to the grant of TDR, no such enquiry was proposed against the applicant along with the said officers and even after some observations were made by the Hon'ble Bombay High Court in PIL No.127/2006. As is revealing from the contents of the letter dated 14-12-2015, till the said date there was no proposal for initiating departmental enquiry against the applicant.

22. The document filed on record by the respondents at Exhibit R-3, page 96 of the paper book reveal that from office of Divisional Commissioner (Revenue Branch), Pune vide letter dated 15-07-2019, information

was sought from the Pune Municipal Corporation whether any proposal is submitted to the Government for initiation of departmental enquiry against the applicant who was at the relevant time on deputation in PMC and was holding the post of Deputy Commissioner (Land Acquisition). In response to the information from the concerned officers in PMC so sought from PMC, it appears that the Commissioner, PMC had sought the necessary information as about the proposal in respect of initiation of departmental enquiry against the applicant and accordingly, Superintendent (Establishment), PMC and the Deputy Municipal Commissioner (General Administration), PMC submitted information to the Municipal Commissioner, PMC vide their letter dated 10-12-2019. As is revealing from the contents of the said letter, the enquiry against 13 officers and employees of the Municipal Corporation was restarted with the approval from the Municipal Commissioner. In the said letter, it is further stated that no proposal was forwarded to the State Government for initiating departmental enquiry proceedings against the applicant till then i.e. till 10-12-2019.

23. We have elaborately narrated the aforesaid facts to underline that till December, 2019 there was no proposal

and no decision was taken to initiate departmental enquiry against the applicant taking to the issue of TDR. The then Municipal Commissioner, PMC even after receiving necessary information from his subordinates on 10-12-2019, did not take any step during the entire year of 2020 to conduct departmental enquiry against the applicant. Documents demonstrate that the memorandum of charge came to be issued against the applicant on 05-04-2021 annexed with list of witnesses and the list of documents intended to be relied upon in the said enquiry proceedings. Statement of charge contains 3 charges against the applicant. Perusal of the said 3 charges reveal that, misconduct alleged against the applicant is in respect of TDR recommended in favour of Shri Haridas Parekh and Shri Prabhakar Bhide in respect of lands survey no.143/3, 144/3, 143/1, 143/2 and 144/1+2 situated at Kothrud, Pune during the period between 2002 to 2005 when the applicant was on deputation in the PMC as the Deputy Municipal Commissioner (Land Acquisition).

24. The question arises whether the departmental enquiry proceedings initiated against the applicant vide memo dated 05-04-2021 which relates to the alleged misconduct allegedly committed by the applicant during the

period between 2002 to 2005 can be sustained and whether the respondents can be permitted to proceed with such departmental enquiry after long lapse of 16 years.

25. It is well settled that the disciplinary proceedings must be conducted soon after the alleged misconduct is committed or soon after discovering the said misconduct. The departmental enquiry cannot be initiated after lapse of considerable time, for the reason that it would not be fair to the delinquent officer. Inordinate delay also makes the task of proving charges difficult and it is also not in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of powers. Moreover, such delay is likely to cause the prejudice to the delinquent officer in defending himself.

26. In the instant matter, the main thrust of the applicant is on the point that, he is being subjected to face departmental enquiry in regard to the misconduct allegedly committed by him sometime in the year 2004-2005. The departmental enquiry is thus initiated after a long lapse of 16 years. It has been argued on behalf of the applicant that

departmental enquiry initiated against the applicant after a long gap of 16 years would cause serious prejudice to him.

27. It has been argued on behalf of the respondents that, departmental enquiries cannot be quashed and set aside only on the ground of delay and the Tribunal has to take into consideration all the relevant factors, and more particularly, the nature of charges levelled against the delinquent. If the charges are grave in nature and the misconduct alleged against the delinquent is involving heavy stakes, merely on the ground of delay it would be unjust and unfair as well as against the public interest to set aside the said departmental enquiry and in such cases the Government deserves to be given adequate time for completion of the enquiry.

28. In the present matter, it is the contention raised on behalf of the respondents that the applicant was involved in TDR scam having involvement of huge monetary stakes. It has also been contended that having regard to the fact that the ample prima facie evidence is available against the applicant showing his involvement in the illegal recommendation of TDR on some extraneous considerations, the enquiry against the applicant cannot be

quashed and set aside on the ground that delay of few years has occurred in issuing the chargesheet (memo of charge).

29. After having considered the facts and circumstances involved in the present matter, it is difficult to agree with the submissions made on behalf of the respondents. The misconduct which is subject matter of the departmental enquiry against the applicant is admittedly of the period 2004-2005. In the circumstances, even if it is accepted that the charges levelled against the applicant are serious, respondents cannot be absolved from their liability to satisfactorily explain the delay so caused in the affidavit in reply. They have miserably failed in giving such explanation. It is the contention of respondents in paragraph 16 of the affidavit in reply that, "whatever time is taken is procedural one and the applicant cannot take the benefit of it". It has been argued on behalf of the respondents that, more weightage is to be given to the nature and substance of the charge raised against the applicant and not to the time being consumed for initiating the said enquiry.

30. It cannot be disputed that sometimes, it may not be possible for the Government to take all prompt steps in the stipulated period. It may also happen that few things may be beyond control of the authorities who are to take the necessary action against the delinquent officer. In the case of **State of Andhra Pradesh V/s. N. Radhakishan [1998 (4) SCC 154]**, Hon'ble Supreme Court in paragraph 19 of the said judgment has observed that, *“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 the delay, particularly when the delay is abnormal and there is no explanation for the delay.”*

31. In light of the aforesaid observations of the Hon'ble Apex Court, we have to examine whether the delay occasioned in initiating the departmental enquiry

proceedings against the applicant is justiciable. From this angle when we perused the affidavit in reply filed on behalf of the respondents, it is noticed that, except mentioning that the misconduct alleged against the applicant is of serious nature and further that the delay caused is procedural one, respondents have not assigned any other reason. When the respondents say that, misconduct alleged against the applicant is serious one and it has wide ramifications, the question arises why the respondents took long 16 years in initiating departmental enquiry against the applicant into the said allegedly serious misconduct.

32. We have elaborately discussed hereinabove that the documents which the respondents themselves have produced on record explicitly demonstrate that, till the year 2019, even the proposal for initiating departmental enquiry against the applicant was not forwarded by the concerned authorities to the Government. It is significant to note that, in respect of the alleged TDR scam the departmental enquiry was initiated against about 13 officers and employees immediately after the scam was unearthed.

33. In the affidavit in reply filed by said Shri Nitin Karir in Public Interest Litigation No.127/2006 before the

Hon'ble Bombay High Court on 22-01-2007, in paragraph XXV, it is stated as under:

“I further say that Joint Municipal Commissioner (Estate and Housing) of the P.M.C. submitted Note on 31st December, 2005 before me. Considering the nature of a charge in the criminal case which is undoubtedly grave and the fact that the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the employees of the corporation is of a grave nature involving complicated questions of law and fact, I was of the view that it would be desirable to stay the departmental proceedings till the conclusions of the criminal case. Accordingly, I directed to keep in abeyance the Departmental Enquiry pending the criminal case.”

34. We have noted hereinabove that, the applicant was not amongst the said 13 persons against whom the departmental action was commenced in the year 2005. The PMC administration and / or the concerned State authorities did not deem it necessary to initiate disciplinary proceedings against the applicant though the applicant was named in crime registered in the year 2007 in relation to the said TDR scam and was also arrested in the said crime. After arrest of the applicant in the said crime, respondents passed an order of suspension against the applicant invoking provisions under Rule 4(1)(c) r/w. Rule 4(2)(a) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. The applicant was thus not put under suspension by

invoking Rule 4(1)(a) of the said Rules i.e. in contemplation of the departmental enquiry.

35. We have also referred to the correspondence dated 10-12-2019. Till the said date no decision was taken for initiating departmental enquiry against the applicant. We reiterate that, when the respondents have now come out with a case that the misconduct alleged against the applicant is of serious nature having serious consequences, till end of 2019, there was absolutely no action from the side of the respondents in regard to initiation of such enquiry against the applicant.

36. It is the further contention of the respondents that the reasons for occurrence of delay in initiating departmental proceedings against the applicant are procedural. The contention so raised also cannot be accepted for the reason that it is not the case of the respondents that the proposal for initiating departmental proceedings against the applicant was moved immediately after the alleged occurrence, but was not considered by the authorities concerned. On the contrary, the documents on record that too produced by the respondents themselves demonstrate that till the end of December, 2019, no

proposal was moved in that regard. The conduct of the respondents revealed as such leads to an inference that the respondents were not of the opinion to initiate departmental proceedings against the applicant.

37. It is the matter of record, the Municipal Commissioner directed to stop the enquiries initiated in relation to the said TDR scam against 13 officers and employees of the P.M.C. allegedly involved therein on the ground that it would be unjust and improper to proceed with the departmental proceedings when the criminal case based on the identical set of facts and having similar charge was pending. In opinion of the then Municipal Commissioner there was no propriety in proceedings with departmental proceedings till conclusion of the criminal case. Admittedly the criminal case registered in the said matter has not yet been concluded. In the circumstances, it is not understood why during pendency of the criminal case against the applicant, memo of charge has been served on him. When in the affidavit in reply filed in P.I.L. No. 127/2006 the Municipal Commissioner has expressed a view that it would be desirable not to proceed with the departmental proceedings till conclusion of the criminal case, why a different criteria has been applied in the case of

the applicant against whom also the criminal case is pending is not explained by the respondents.

38. Ordinarily it is expected that the departmental enquiries are to be expeditiously completed. The State Government has time to time issued guidelines, Circulars and G.Rs. in this regard. The Government Circular dated 19.4.1979 provides that the departmental enquiry is to be in any case completed within the period of 06 months after the decision is taken to conduct such departmental enquiry. The said Circular further provides that for the reasons to be recorded why the departmental enquiry could not be completed within the period of 06 months, the competent authority can extend the said period; however, even the said authority cannot extend the said period beyond one year. In case the enquiry is not likely to be completed within the period of one year, the concerned department of the Government shall in consultation with the General Administration Department, may permit such extension. The Government has issued more than 20 Circulars during the period between 8.7.1974 to 21.2.2015, wherein the guidelines are provided for expeditious disposal of the departmental enquiry initiated against the Government servant. In the book titled as 'Maharashtra

Departmental Enquiries Rules and Procedure' authored by Advocate A.P. Deopujari all such Circulars are included.

39. The Hon'ble Supreme Court has time and again emphasized for expeditious disposal of the departmental enquiries. Law is well settled that the delay causes serious prejudice to the charged officer and when there is no proper explanation for delay in conducting the disciplinary proceedings, the disciplinary proceedings deserve to be vitiated only on the count of delay. In the case of **State of Madhya Pradesh vs. Bani Singh and another, 1990 (Supp.) SCC 738** the Hon'ble Supreme Court had held that if there is no satisfactory explanation for the inordinate delay in issuing the charge memo, it would be unfair to permit the departmental enquiry to proceed with at such late stage.

40. In the case of **P.V. Mahadevan vs. MD. T.N. Housing Board, (2005) 6 SCC 636**, certain disciplinary actions were initiated against the appellant therein, who was working as Superintending Engineer in Tamil Nadu Housing Board. A charge memo was issued against him in the year 2000 for the irregularities in issuing a sale deed in 1990. Said appellant preferred writ petition for quashing said charge memo and restraining the respondents from

proceeding with it. Certain other consequential prayers relating to disbursement of monetary benefits were also made. It was the contention of the said petitioner that though records were very-much available with the respondents, no action had been taken against the said petitioner for about 10 years and no explanation whatsoever offered by the respondents for inordinate delay caused in initiating the disciplinary action. The Hon'ble High Court, however, rejected the writ petition and the petitioner was required to approach the Hon'ble Supreme Court. While allowing the said appeal the Hon'ble Supreme Court held that:-

'allowing the respondents to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant.'

The observations made by the Hon'ble Supreme Court in para 11 of the said judgment are quite relevant in the context of the facts involved in the present matter. We, therefore, deem it necessary to reproduce the said observations, which read thus:-

"11. Under the circumstances, we are of the opinion that allowing the respondent 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.”

41. Learned counsel for the applicant has also referred to the G.R. dated 9.7.2019, which provides that the statement of charge is to be served on the delinquent officer within 90 days, if the officer concerned is suspended in contemplation of the departmental enquiry. In the present matter though the applicant was not suspended in contemplation of the D.E., the respondents cannot be absolved from their obligation to initiate the departmental enquiry against the applicant after the alleged misconduct was noticed by the authorities concerned. We have noted hereinabove that in respect of the TDR scam the PMC has initiated departmental enquiry against 13 officers and the employees allegedly involved in the said scam in the year 2005. The allegation against the present applicant is

pertaining to the said TDR scam. However, the decision to conduct the D.E. against the present applicant was taken in the year 2021 i.e. after long lapse of 16 years. The Hon'ble Supreme Court in the case of **P.V. Mahadevan vs. MD. T.N. Housing Board** (cited supra) has ruled that the delay of more than 10 years in initiating the disciplinary proceedings by issuance of charge memo would render the disciplinary proceedings vitiated and that in absence of any explanation for the inordinate delay in initiating such proceedings of issuance of charge memo would justify the prayer for quashing the proceedings.

42. After having considered the entire facts and circumstances involved in the present matter, it appears to us that in absence of any explanation provided by the State Government for occurrence of delay of the period of more than 16 years' in initiating the departmental proceedings against the applicant the D.E. so initiated must be held to have been vitiated. The contention raised on behalf of the respondents that there are serious charges against the applicant showing his involvement in the TDR scam occurred in the year 2005, which has wide ramifications, cannot be entertained for the reason that the respondents have not provided any cogent reason for the inordinate

delay of 16 years occurred on their part in taking a decision to initiate D.E. against the applicant and in issuance of charge memo to the applicant.

43. It has to be further noted that as mentioned in the affidavit in reply filed by the then Municipal Commissioner of PMC in PIL No.127/2006 before the Hon'ble Bombay High Court, the PMC had immediately taken requisite and corrective measures, wherein (i) DRC Nos. 3581 to 3588 were suspended, (ii) permissions were revoked, and (iii) TDR was withheld. In so far as other allegations are concerned, the respondents have already granted sanction for prosecution of applicant under the provisions of Prevention of Corruption Act and said case is pending before the Special Court.

44. In the aforesaid circumstances and mainly for the palpable inaction and serious negligence on part of the respondents in initiating disciplinary proceedings against the applicant after long lapse of 16 years, the applicant cannot be made to suffer. In the circumstances, following order is passed:

ORDER

(i) The memorandum dated 5.4.2021 issued by respondent no.1 whereby the departmental enquiry has

been initiated against the applicant and the statement of charge annexed with the said memorandum, both are quashed and set aside.

(ii) The Original Application stands allowed in the aforesaid terms without any order as to costs.

(VINAY KARGAONKAR)
MEMBER (A)

(P.R.BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 06-02-2024.