

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 868 / 2018 (S.B.)**

Ramesh S/o Ramdas Mendole,
Aged about 49 years, Occupation:-Clerk,
R/o Plot No. 55, Yogendra Nagar, Near
Neharu Colony, Nagpur-13.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai- 32.
- 2) The Divisional Commissioner,
Nagpur Division, Nagpur-01.
- 3) The District Collector,
Nagpur, Civil Lines, Nagpur-01.

Respondents

Shri Bharat Kulkarni, Id. Advocate for the applicant.

Shri M.I.Khan, Id. P.O. for the Respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGMENT

Judgment is reserved on 01st April, 2022.

Judgment is pronounced on 07th April, 2022.

Heard Shri Bharat Kulkarni, Id. counsel for the applicant and
Shri M.I.Khan, Id. P.O. for the Respondents.

2. Case of the applicant is as follows. In October, 2005 the
applicant was working as Junior Clerk in Tahsil office, Kalmeshwar, Dist-

Nagpur. One Shri Charan Lokhande lodged a complaint against him with A.C.B. on 24.10.2005 that he had demanded bribe. Trap was laid by A.C.B.. On 25.10.2005 the applicant was trapped. Crime no. 3117/2005 was registered against him. He was placed under suspension and later on reinstated by order dated 11.01.2012 (A-5). In special case no. 15/2006 arising out of crime number 3117/2005 he was acquitted of offences under Section 7, 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act by judgment dated 23.07.2014 (A-R-1). Thereafter he was served with the chargesheet dated 16.04.2016 (at pages 19 to 24). Following two charges were framed against him:-

“वकील दंड 1 % यूपीआर इफ्रॉड कर; नक 1988 वल; सख्त नक [क्य-

Jh- jesh jkenkl eMky] fyi hd & Vdy]kd rgfl y dk; k;] dGeoj ; kuh Jh-pj.k jkepanjko yk[kM] jkg-fl mh rgfl y dGeoj] ftYgk ukxi j ; kpsukosek k xkojh i-g-u-18 v ; fky I -ua144 vkjkt 3-19 gsvkj- o ek k fl mh i-g-ua18 v ; fky I -ua127 vkjkt 1-98 gsvkj- 'kr tehuhs QjQkjckcr ek-ftYgk I = U; k; kf/k'k ; kps U; k; ky; kr Jh-ccu xtkuu yk[kM] ; kps fo#/n [kVy k nk[ky dsk vl Y; kus eR; w i ek.ki =kps vk/kjs Jh-ccu xtkuu yk[kM] ; kps ukokus QjQkj u djrk fkr fo. ; kdfjrk #-1000@& ykpph ekx.kh d#u ykpph jDde flodkjY; keG ykypir ifrcdkd foHkkxkus R; kauk ykypir ifrcdkd dk; nk 1988 psdye 7] 13¼1½MM½ l g dye 13¼2½ [kkyh i syhl LVsku dGeoj] ftYgk ukxi j xkeh.k ; fky ykypir ifrcdkd foHkkxkus vi-dz3117@05 vlo; s xtgk nk[ky d#u R; kauk fnukad 25-10-2005 jksth vVd dj. ; kr vkyh-

Jh-jesh jkenkl eMky] fyi hd & Vdy]kd rgfl y dk; k;] dGeoj ; kph gh drh 'kkl ukph ifrek eyhu dj.kkjh vl u fu' phrp l ak; kLin vkgs R; keGsf'kLrHkx fo" k; dkjokb l i k= Bjrr-

vki d 2 % vfhky [ko ukog; kv | kor u Bo. is

Jh-jesh jkenkl eMky] fyi hd & Vdy]kd rgfl y dk; k;] dGeoj ; fks fnukad 02-07-2003 rs 25-10-2005 ; k dkyko/khr dk; jr vl kauk R; kps dMsvl y; k dk; k l ukdMhy nlrj v | kor Boysys ul u LFkk; h vkns k uLR; k] fu; rdkyhd foj.ki =] i k d ukmogh] nMi at h

bR; knh ukmog; k Bdy; k ukghr- R; kph gh d'r h dk; kzy; hu f' kLrhyk /k#u ul Y; kusrsf' kLrHka fo" k; d dkjokb7 i k= vkgs-"

The applicant submitted his reply to the chargesheet on 30.05.2016 (at pages 25 to 29). The enquiry officer conducted enquiry and submitted report (at pages 30 to 39). He held that both the charges against the applicant were proved. Respondent no. 3, vide letter dated 21.07.2017 (at pages 40) called upon the applicant to make submission on the point of quantum of proposed punishment (Documents at pages 19 to 40 are collectively marked A-3). To the letter dated 21.07.2017 the applicant submitted reply dated 02.08.2017 (A-4). He submitted :-

"Rkj] egkn; kauk fourh djrks dh] ek>oj nk[ky ykp ypi r i frca[kd dk; | kvaxr xdg; ke/; sey k l Uekuuh; fo'ks'k U; k; ky; kus fufoj'k'k nks'keDr dsys vkgs r l p dk; kzy; hu dkedktkpk dk; Hkkj Jh- , e-, e-ok?kekj] fyihd ; kauk gLrkajhr djrkauk l a qkz nLrkost o ukmog; k R; kP; k rkc; kr fnY; k vl uu ns[khy rccy 10 o"kkaurj ekO; k vuq fLFkrhr nlrjkps fujh{k.k dsys vl rk] gLrkajhr dsy; k ukmog; k fnl uu vkY; k ukghr- ; kckcr eyk nks'kh Bjfo.ksgsvufpr vl uu ekO; koj vU; k; dj.; kl kj [ks vkgs ; k l ozckchpk ckj dkbZusvH; kl d#u ; kx; rksfu.kz ?ks; kl fourh vkgs"

On 14.08.2017 the disciplinary authority, respondent no. 3, imposed following punishment :-

"Jh- jes k jkenkl eMksys ; kP; k egkj k"V^a ukxjh l ok 1/4' kLr o vihy 1/2 fu; e&1979 P; k fu; e 5/4pkj 1/2 ud kj ns vl syh i qhy , d oruok< dk; e Lo#i kr 1/4xBfo.; kr 1/2 ; s vl uu R; kpk fuyz ukpk dkG gk l ozi z kst ukFkZdrD; dkG Eg.kuu xkg; /kj.; kr ; s vkgs"

The applicant preferred appeal against the punishment before respondent no. 2 (A-2). Respondent no. 2 dismissed the appeal by order dated 24.04.2018. (The orders whereunder punishment was imposed and confirmed by respondent nos. 3 and 2, respectively are

collectively marked A-1 at pages 9 to 15). According to the applicant, the impugned order cannot be sustained because enquiry was initiated more than a decade after the alleged cause of action had arisen, the initiation of enquiry itself was bad in law since it was after the criminal case against the applicant on the same charges had ended in acquittal. Hence, this application.

3. Reply of respondent nos. 2 and 3 is at pages 45 to 53. It is their contention that acquittal in criminal case could not have barred initiation of departmental proceedings and in these proceedings there was an additional charge i.e. failure of the applicant to properly maintain and update the record in his custody. Their further contention is that during the enquiry principles of natural justice were scrupulously followed and hence interference by this Tribunal, under judicial review would be uncalled for.

4. The judgment whereunder the applicant was acquitted is at A-R-1. The applicant was charged with demanding illegal gratification and accepting an amount of Rs. 1,000/- from the complainant Shri Charan Lokhande. This charge was held to be not proved by the Special Court. For want of challenge in appeal this Judgment of acquittal has attained finality. In the departmental enquiry charge no. 1 was in respect of demand and acceptance of bribe and charge no. 2 was in respect of not properly maintaining and updating record in his custody.

5. It was submitted by Shri Bharat Kulkarni, Id. counsel for the applicant that initiation of departmental enquiry on the same charge from which the applicant was already acquitted was bad in law. In reply, it was submitted by Shri Khan, Id. P.O. for the respondents that acquittal in criminal case could not have barred initiation of D.E. on the same charge. To support this submission reliance was placed on "**State of**

Bihar and Ors Vs. Phoolpuri Kumari (2020) 2 SCC 130". In this case F.I.R. was filed on 17.08.2013 and almost simultaneously, on 12.11.2013 disciplinary proceedings were initiated on the same charge of demanding and accepting bribe. On the date of delivery of judgment by the Hon'ble Supreme Court i.e. 06.12.2019 the criminal trial was pending for consideration as observed in the opening sentence of para no. 6 of the judgement. In the instant case D.E. was initiated after acquittal of the applicant. Thus, this case is clearly distinguishable on facts.

6. The respondents also relied on the following observations made in the case of Phulpari Kumari (Supra) :-

"6.1. It is settled law that interference with the orders passed pursuant to a departmental inquiry can be only in case of "no evidence". Sufficiency of evidence is not within the realm of judicial review. The standard of proof as required in a criminal trial is not the same in a departmental inquiry. Strict rules of evidence are to be followed by the criminal Court where the guilt of the accused has to be proved beyond reasonable doubt. On the other hand, preponderance of probabilities is the test adopted in finding the delinquent guilty of the charge."

It was argued by Id. P.O., Shri Khan that while exercising powers of judicial review this Tribunal can interfere only if it is a case of imposition of punishment though there was no evidence to do so. In this case the main submission of the applicant is that initiation of departmental enquiry after a decade and that, too, after acquittal of the applicant on the principal charge of demanding and accepting bribe, was bad in law.

7. The respondents have also relied on the judgement of **C.A.T., Chandigarh Bench 2016 SCC online CAT 230**. In this case C.A.T. refused to interfere with the findings of disciplinary authorities because the same were based on some evidence and there was no procedural lapse. In the instant case the main question is of delay in initiating departmental proceedings.

8. On the point of effect of delay in initiating departmental proceedings the applicant has relied on the following reliefs:-

“(i) Judgment dated 11.08.2017 delivered by this Tribunal in O.A. No. 142/2012. In this case facts were as follow:-

“4. *The Departmental Enquiry (D.E.) was initiated against the applicant vide memorandum for the period in between 18/7/1984 to 2/9/1988. The memorandum was served on the applicant on 19/1/2002, i.e., after 14 years from the alleged misconduct. It is admitted fact that during pendency of the inquiry a criminal case was also filed against the applicant. The applicant was tried for criminal charges before the Chief Judicial Magistrate, Pune in regular Criminal Case no.39/1992 (Original regular criminal case no.18/1989) from JMFC, Vadgaon, Maval, Dist. Pune. The applicant came to be acquitted from the criminal charges vide order dated 26/11/1998 by Additional Chief Judicial Magistrate, Pune. He was acquitted of the offences under sections 409 & 467 of the IPC. However on the similar charges the D.E. was conducted in*

which the punishment of compulsory retirement was inflicted upon the applicant and he was also directed to pay Rs.40,000/- to the State.”

In these facts this Tribunal held:-

“There is an inordinate delay in initiation of D.E. The memorandum has been issued on 19/1/2002 for the alleged misconduct which relates to the period between 18/7/1984 to 2/9/1988 and thereafter the inquiry was concluded vide order dated 2/3/2012 and finally vide order dated 28/8/2015. One can just imagine as to under what tremendous agony the applicant might be during such a prolonged period of almost 24 years. There is nothing on the record to show that the applicant was responsible for such delay and therefore the fact remains that the department itself was responsible for the delay for which the applicant cannot be punished.”

In the result the impugned orders imposing and confirming punishment were quashed and set aside.

(ii) **P.V.Mahadevan Vs. MD, T.N.Housing Board (2005) 6 SCC 636.** In this case following observations in **“N. Radakishan (1998) 4 SCC 154** have been quoted:-

“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 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."

9. In the instant case the alleged incident of demand and acceptance of bribe is dated 25.10.2005 for which the applicant was tried, and acquitted on 24.07.2014. The principal charge in chargesheet issued on the applicant in D.E. on 16.04.2016 was the same. The other charge laid against the applicant was that he had not properly maintained and updated record in his custody. Period of this alleged lapse is stated to be from 02.07.2003 to 25.10.2005. The respondent department was certainly not precluded from simultaneously initiating departmental proceedings. Had such proceedings been initiated either

simultaneously or soon after registration of offence under the Prevention of Corruption Act, that would have been a different matter. In the instant case there is absolutely nothing on record to explain why it took more than 11 years for the respondent department to initiate departmental proceedings. In view of the ratio laid down in the case of **Shri P.Mahadevan (supra)** which squarely applies to the facts of the case, the impugned order will have to be quashed and set aside. Hence, the order:-

ORDER

1. The O.A. is allowed.
2. The impugned orders dated 14.08.2017 and 24.08.2018 are quashed and set aside.
3. No order as to costs.

(Shri M.A.Lovekar)
Member (J)

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

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 07/04/2022.
and pronounced on

Uploaded on : 08/04/2022.