IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.245 OF 2016
WITH
MISC. APPLICATION NO. 455 F 2016

DISTRICT : KOLHAPUR

Shri Naresh Alwandar Polani.)
Age : 52 Yrs, Working as Inspector of)
Motor Vehicles, Office at the Regional)
Transport Officer at Nagala Park, Kolhapur)
R/o. Punya-Pavitra C.H.S, Belgag,)
Mangalwar Peth, Kolhapur.)...**Applicant**

Versus

The State of Maharashtra.)
Through the Principal Secretary)
(Transport), Transport Department,)
Mantralaya, Mumbai - 400 032.)...**Respondent**

Shri A.V. Bandiwadekar, Advocate for Applicant.

Ms. N.G. Gohad, Presenting Officer for Respondent.

CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)

DATE : 05.12.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. The Applicant Inspector of Motor Vehicles under the shadow of long pending departmental enquiry (DE) along with nine others having been directed to face it in a common DE hereby seeks quashing of the said order. The other reliefs sought earlier have been given up as not pressed.

2. We have perused the record and proceedings and heard Mr. A.V. Bandiwadekar, the learned Advocate for the Applicant and Ms. N.G. Gohad, the learned Presenting Officer for the Respondents.

3. Even before we commence the discussion, be it noted quite clearly that the delay in the conduct of the DE is the ultimate undoing of the Respondents and in fact, in the prayer clause itself, the Applicant has cited for sustenance the law laid down by the Hon'ble Supreme Court in **State of Andhra Pradesh Vs. N. Radhakrishan, AIR 1998 SC 1833** (to be called hereinafter as **Radhakrishan's case**). He has relied upon another recent Judgment of the Hon'ble Supreme Court in **Civil Appeal No.958/2010 (Prem Nath Bali Vs. Registrar, High Court**

of Delhi and Another, dated 16th December, 2015

(Coram : His Lordships the Hon'ble Mr. Justice J. Chelameswar and His Lordships the Hon'ble Mr. Justice Abhay Manohar Sapre.

4. It is common ground that even as the order impugned herein came to be issued as far back as on 13th August, 2010 which is at Exh. 'A' Page 18 of the Paper Book (PB) and it was against Shri R.A. Wardhekar, Deputy Regional Transport Officer and 10 other colleagues of the Applicant holding the same posts. But the events, in fact relate to a much earlier period of 2002 and thereabouts. By the impugned order, it was directed that a common enquiry would be held against all the delinquents.

5. In the above background, let us reproduce in Marathi verbatim the charges framed against the Applicant by way of Schedule 1 and somewhat amplified by Schedule 2.

"श्री. एन.ए.पोलानी, मोटार वाहन निरीक्षक यांचेविरूध्द तयार करण्यात आलेल्या दोषारोपातील बाबींचे विवरणपत्र

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जो ड प त्र - १

बाब क्रमांक (१) श्री. एन.ए.पोलानी, मोटार वाहन निरीक्षक हे प्रादेशिक परिवहन कार्यालय, नागपूर (शहर) येथे कार्यरत असताना वाहनांना क्षमतेपेक्षा जास्त माल वाहून नेण्याची परवानगी

नियमबाहयरित्या दिली व सर्व वाहनाची नोंदणी त्यांनी व्यक्तीश: केली, अशा प्रकारे त्यांनी केलेली कृती लोकसेवकास अशोभनीय असून शिस्तभंगाच्या कारवाईस पात्र आहेत.

बाब क्रमांक (२) श्री. एन.ए.पोलानी, मोटार वाहन निरीक्षक हे प्रादेशिक परिवहन कार्यालय, नागपूर (शहर) येथे कार्यरत असताना त्यांचे वैधानिक अधिकारकक्षेत नसतांना देखील देय असणा-या भाररहित वजनापेक्षा कमी भाररहित वनज व वाहनांस देय असणा-या भारसहित वजनापेक्षा जास्त वनज देऊन नोंदणी केली व परवाने जारी करण्यात आले असल्याने, त्यांनी कर्तव्यात सचोटी व कर्तव्यपरायणता दाखविलेली नाही.

बाब क्रमांक (३) वरील गैरकृत्यामुळे म.ना.से (शिस्त व अपिल) नियम, १९८९ च्या नियम ३ चा भंग झाला आहे.

सही/-
(प्र. चं. मयेकर)
शासनाचे अवर सचिव

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श्री. एन.ए.पोलानी, मोटार वाहन निरीक्षक यांचेविरूध्द तयार करण्यात आलेल्या दोषारोपातील बाबींचे विवरणपत्र

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जो ड प त्र - २

बाब क्रमांक (१) श्री. एन.ए.पोलानी, मोटार वाहन निरीक्षक हे प्रादेशिक परिवहन कार्यालय, नागपूर (शहर) येथे कार्यरत असताना त्यांनी एकूण १ वाहन नोंदणीसाठी तपासले. मोटर वाहन अधिनियम, १९८८ व त्याखालील नियम यामध्ये कर्तव्य व जबाबदा-या दर्शविण्यात आल्या आहेत. परंतू श्री पोलानी

यांनी या बाबींकडे दुर्लक्ष केले आहे. अशा प्रकारे त्यांनी केलेली कृती लोकसेवकास अशोभनीय असून शिस्तभंगाच्या कारवाईस पात्र आहेत.

बाब क्रमांक (२) श्री. एन.ए.पोलानी, मोटार वाहन निरीक्षक हे प्रादेशिक परिवहन कार्यालय, नागपूर (शहर) येथे कार्यरत असताना त्यांनी खालील १ वाहनाची नोंदणीकरिता तपासणी केली.

RMA / BT Cases

Sr. No.	OTHER STATE M.V.NO.	Home State M.V.NO.	R.M.A/ B.T.DATE	RLW	INCR EASE RLW	INSPECTED BY	ORDERED BY	DATE
1	MP20 G-5868	MP31A P-4386	11/7/2002	25000	29280	MR.POLANI	MR.NETE	11/7/2002

सदर वाहनांच्या मॉडेल क्रमांकावरून त्यांच्या माल वाहून नेण्याच्या क्षमतेचा बोध होत असतानादेखील जाणूनबुजून देय असणा-या भाररहित वजनापेक्षा कमी भाररहित वनज व वाहनांस देय असणा-या भाररहित वजनापेक्षा जास्त वनज दर्शवून तपासणी केली व परवाने जारी करण्यात आले. यामूळे प्रत्यक्ष किंवा अप्रत्यक्षपेण शासनाचे महसूल नुकसान झाले आहे. श्री एन.ए. पोलीनी यांनी मोटार वाहन अधिनियिम, १९८८ चे कलम ५८(१), ११३ (३) तसेच कलम १९४ या भंग केलेला आहे.

बाब क्रमांक (३) श्री. एन.ए.पोलानी, मोटार वाहन निरीक्षक यांनी त्यांचे कर्तव्यात सचोटी व कर्तव्यपरायणता दाखविलेली नाही. यास्तव, ते महाराष्ट्र नागरी सेवा (वर्तणूक) नियम, १९७९ मधील नियम) नियम, १९७९ मधील नियम ३ (१) (एक) (तीन) कडील तरतुदीनुसार शिस्तभंगाच्या कारवाईस पात्र आहेत.

सही/-
(प्र. चं. मयेकर)
शासनाचे अवर सचिव

6. Now, in the first Schedule, it has been mentioned that while posted in Nagpur City, the Applicant allegedly allowed vehicles to carry more than the permissible load and made the registration of the said vehicles personally. That was an act unbecoming of a Government servant. The second head of the charge was that while at Nagpur itself, he committed the misconduct pertaining to the discharge of his duties in relation to the vehicles.

7. Quite pertinently, however, in the 2nd Schedule, the details have been given only of one vehicle and not "vehicles" as set out in the 1st Schedule. Going by the tenor of the charge, it should become clear that unless the charge was sufficiently, factually particularized, the one that was required to meet with it would be prejudiced and embarrassed. This is something that is capable of being found here and now, we are deeply conscious of the jurisdiction and judicial restraint that the Tribunal endowed with the power to act as a judicial forum to review the administrative action of the authorities below does not have the appellate power, and therefore, it has to be within its confines. Judicial review of administrative action has its own inherent limitations. But even then, if a particular fact situation emerges and stares one in the judicial face that cannot be glossed over just for the asking. The pitfalls

in the Schedules are so glaring as to be missed only by a process which would be unacceptably pedantic, and therefore, unjust.

8. The Applicant had responded to the charge and therein there is a reference to the fact that it was no part of his duty to register the vehicles and there was a reference to the registration being from Madhya Pradesh. We need not examine these aspects closely for the facts do not necessitate such an examination.

9. Now, even ex-facie, with all the limitations on the judicial forum, we do not think, the Applicant could be compelled to continue to face the agony of such a charge which lacks in merit and it is completely laconic. However, there is another insurmountable difficulty in the way of the Respondents and that is delay. Quite pertinently, the events happened sometime in the year 2002 and the impugned order was issued in 2010 and it was only in the year 2015 that the communication of 9.11.2015 (Exh. 'C', Page 28 of the P.B.) was issued to 12 delinquents and even thereafter, not much progress has been made.

10. It is in this background that the two Judgments of the Hon'ble Supreme Court cited hereinabove would

have to be studied and taken guidance from. On facts, in both the matters, the issue of delay was there. It may not be necessary for us to narrate the facts therein but for principles, we may reproduce Paras 19 & 20 of **N. Radhakrishan** (supra).

> "**19.** It is not possible to lay down any pre-determined 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 or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse consideration.

20. In the present case we find that without any reference to records merely on the report of the Director General, Anti-Corruption Bureau, charges were framed against the respondent and ten others, all in verbatim and without particularizing the role played by each of the officers charged. There were four charges against the respondent. With three of them he was not concerned. He offered explanation regarding the fourth charge but the disciplinary authority did not examine the same nor did it choose to appoint any inquiry officer even assuming that action was validly being initiated under 1991 Rules. There is no explanation whatsoever for delay in concluding the inquiry proceedings all these years. The case depended on records of the Department only and Director General, Anti Corruption bureau had pointed out that no witnesses had been examined before he gave his report. The Inquiry Officers, who had been appointed on after the other, had just to examine the records to see if the alleged deviations and constructions were illegal and unauthorised and then as to who was responsible for condoning or approving the same against the bye-laws. It is nobody's case that respondent at any stage tried to obstruct or delay the inquiry proceedings. The Tribunal rightly did not accept the explanations of the state as to why delay occurred. In fact there was hardly any explanation worth consideration. In the circumstances the Tribunal

was justified in quashing the charge memo dated July 31, 1995 and directing the state to promote the respondent as per recommendation of the DPC ignoring memos dated October 27, 1995 and June 1, 1996. The Tribunal rightly did not quash these two later memos."

11. In as much as it appears that **Prem Nath Bali** (supra) has not been reported and a copy thereof has been furnished to us, for a proper grasp, we may as well reproduce a number of Paragraphs therefrom and in that connection, we would reproduce hereinbelow Paras 29 to 33.

"**29.** One cannot dispute in this case that the suspension period was unduly long. We also find that the delay in completion of the departmental proceedings was not wholly attributable to the appellant but it was equally attributable to the respondents as well. Due to such unreasonable delay, the appellant naturally suffered a lot because he and his family had to survive only on suspension allowance for a long period of 9 years.

30. We are constrained to observe as to why the departmental proceeding, which involved only one charge and that too uncomplicated, have taken more than 9 years to conclude the departmental inquiry. No justification was forthcoming from the respondents' side to explain the undue delay in completion of the departmental inquiry except to throw blame on the appellant's conduct which we feel, was not fully justified.

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.

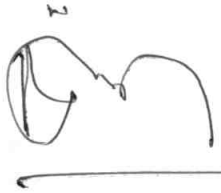
32. As a matter of experience, we often notice that after completion of the inquiry, the issue involved therein does not come to an end because if the findings of the inquiry proceedings have gone against the delinquent employee, he invariably pursues the issue in Court to ventilate his grievance, which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

12. In spite of being on a completely hopeless kind of situation, Ms. Gohad, the learned Presenting Officer still tried to stand her ground and told us that we should not

examine the correctness or the truth of the charge and we cannot arrogate to ourselves the role of an Enquiry Officer for which she referred us to **District Forest Officer Vs. R. Rajamanickam & Another, (2000) 9 SCC 284**. It must have been found that the legal position stated by the learned PO has already been taken note of by us. We have not determined the true or falsity of the charge, but we have noticed a demerit in the charge which after this length of time is difficult to be got over. Apart from that, the above discussion needs to be noted principally based on the 2 other Judgments of the Hon'ble Supreme Court. The present facts are such as completely distinct and distinguishable from **Rajamanickam** (supra).

13. In view of the foregoing, we are very clearly of the opinion that a case is made out for quashing the charge-sheet here and now, although we do acknowledge that it is not a common place order and such an order has to be made only after circumspection. Quite pertinently, the Respondents could have explained the delay. Somehow or the other, the Affidavit-in-reply was placed on record on 21.11.2016 sworn by Shri Arun N. Bhalchandra, Deputy Transport Commissioner, but we find nothing by way of justification for such an inordinate delay. We are,



therefore, quite clearly of the opinion that the impugned order has to be quashed.

14. The order herein impugned stands hereby quashed and set aside and the departmental enquiry initiated thereby in so far as the Applicant N.A. Polani is concerned, shall also stand quashed and set aside. Consequences to follow. The Original Application is allowed in these terms with no order as to costs.

15. The Misc. Application No.455 of 2016 was moved for stay which has now become redundant. It is disposed of.

Sd/- Sd/-

(R.B. Malik)
Member-J
05.12.2016

(Rajiv Agarwal)
Vice-Chairman
05.12.2016

Mumbai
Date : 05.12.2016
Dictation taken by :
S.K. Wamanse.
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