

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.906 OF 2016

DISTRICT : BULDHANA

Mr. Vijaykumar P. Narwade.)
Age : 46 Yrs, R/at Ashtavinayak Nagar,)
Jamrun Road, Buldhana.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through its Secretary,)
Law & Judiciary Department,)
Mantralaya, Mumbai - 400 032.)
2. Charity Commissioner, MS, 3rd Floor,))
3rd Floor, 83, Dr. Annie Beasant Road,)
Warali, Mumbai 18.)...**Respondents**

Mr. C.T. Chandratre, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)

R.B. MALIK (MEMBER-JUDICIAL)

DATE : 27.01.2017

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



JUDGMENT

1. This Original Application (OA) is presented by a member of the Clerical staff in the Office of the Assistant Charity Commissioner, Akola who has been facing a departmental enquiry (DE) from the year 2005 and he wants that in view of the inordinate delay in conducting the DE, the Applicant be exonerated.

2. We have perused the record and proceedings and heard Mr. C.T. Chandratre, the learned Advocate for the Applicant and Smt. K.S. Gaikwad, the learned Presenting Officer (PO) for the Respondents.

3. This OA, in fact, was initially filed before the Nagpur Bench of this Tribunal in the year 2011. By the order of the Hon'ble Chairman, it came to be transferred to the Principal Bench and has been re-numbered.

4. The events giving rise hereto arose when the Applicant was serving the Office of Assistant Charity Commissioner, Buldhana during 19.2.2002 and 30.6.2004. On 16.7.2005, he was given a Charge-sheet which was two pronged. It was alleged that while at Buldhana during the period above referred to, a proceedings was pending of



Gopi Shikshasn Prasarak Bahuuddeshiya Mandal, Kingaon and in order to ensure an order in favour of Shri Gnyaneshwar Chate, the Applicant allegedly took illegal gratification of Rs.1 Lakh because of which Shri Chate's opponent held out threat of self-immolation. The another facet of the charge was that the Applicant behaved with the litigants, Advocates and colleagues in such a manner as to evoke irritation and rage. He was unnecessarily picking up quarrels. The Applicant apparently responded to the Charge-sheet but then, till 9.4.2007, nothing happened and it was on that day, that by two separate orders, the Enquiry Officer (EO) and Presenting Officer came to be appointed. The EO was Shri V.D. Nimbalkar, Assistant Charity Commissioner. He was succeeded by Shri Sasane, Assistant Charity Commissioner, Akola. It is common ground that these two Officers could not or did not make any progress in the matter of the DE and the next incumbent was Shri Deshpande.

5. The record would show that the Applicant also went on making what is called Civil Applications before the Nagpur Bench of this Tribunal. One of his Civil Applications came to be withdrawn by him on 24.9.2012. It was CA No.376/2012. His CA No.446/2012 was for stay

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of the DE. That CA came to be disposed of on 5.2.2013. It will be appropriate to quote that particular order.

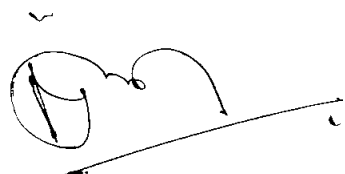
“Shri R.V. Shiralkar, the learned Counsel for the Applicant and Shri S.C. Deshmukh, the learned P.O. for the Respondents.

By filing the present O.A, the Applicant is seeking stay of the departmental enquiry initiated against him in the year 2005. According to the Applicant, because of inordinate delay in conduct of the enquiry, the enquiry itself stands vitiated. By filing the present C.A, the applicant is seeking stay of the enquiry. We have perused the charges, which are very grave in nature. An affidavit in reply has been filed explaining the delay. At this stage, we do not proposed to enter into the question as to whether the delay in the enquiry could be termed as “inordinate” so as to vitiate the enquiry itself. Nonetheless, we make it clear that the outcome of the departmental enquiry would be subject to the decision in this O.A. We expect the applicant to co-operate in the enquiry, as it appears that in the recent past, the applicant has remained absent. With the above observation, the C.A. stands disposed of.” (emphasis supplied)



It is pertinent to note that the Nagpur Bench of this Tribunal observed that even the Applicant had remained absent in the DE that was pending.


6. In a compilation along with brief notes of arguments, some documents and case law have been annexed by the Applicant's Advocate Shri Chandratre. There was a complaint from Shri Jagannath K. Darade, dated 28.4.2004, the sum and substance of which has already been set out hereinabove. Mr. Darade appears to be the adversary of Mr. Chate and he made a complaint against the Applicant and also conveyed a threat of self-immolation, if the Applicant was not transferred. There is an Affidavit also of the same Shri Darade. Then, in the said compilation, there are extract of Roznama of the DE from 25.10.2011 to 3.5.2014. A very detailed narration thereof maybe out of place. The crux of the matter is that the Applicant initially remained present, he made applications and when it was early days, in fact, the Presenting Officer was not remaining present. The enquiry was required to be adjourned also because the orders of the Charity Commissioner were awaited. It may be noted here that the 1st Respondent hereto is the State of Maharashtra in Law and Judiciary Department. The 2nd Respondent is the Charity Commissioner, the 3rd

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Respondent is the Assistant Charity Commissioner, Akola who is the Enquiry Officer, the 4th Respondent is the Superintendent in the Office of Assistant Charity Commissioner, Akola and the 5th Respondent who came to be impleaded by way of an amendment on 26.9.2012 is the Enquiry Officer-cum-Assistant Charity Commissioner, Buldhana.

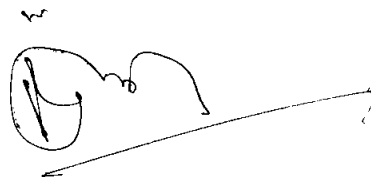
7. To return to the Roznama, on a few occasions, the enquiry was required to be adjourned, for example on 5.1.2014 because certain official information was to be gathered in deference to the order of the Hon'ble Supreme Court. That was for the office to do and it had nothing to do with DE. Thereafter, it is not necessary for us to note down the details of each date because the order of Nagpur Bench of this Tribunal hereinabove quoted would itself show that the Applicant was also remaining absent on some occasions.

8. In the above background, the sum and substance of the case of the Applicant is that there are GRs dated 19.11.1997, 22.4.1996 and 7.4.2008 which mandate that the departmental enquiries against the employees should be disposed of expeditiously. The GR of 19th November, 1997 pertains to the DE on the allegations of corruption.



It is emphasized by the Applicant that such enquiry should be completed within six months. The GR of 22nd April, 1996 deals with the issue of promotion pending DE. The GR of 7th April, 2008 prescribes the course of action to be adopted when the enquiry remained pending for more than five years. It *inter-alia* provides that in such matters, in fact, the responsibility must be fixed on those personnel who may be found responsible for causing delay in disposal of the DE.

9. The Applicant has also relied upon a number of Judgments of the Hon'ble Bombay High Court as well as of this Tribunal in so far as the matter relating to the expeditious disposal of the DE is concerned. The latest Judgment is of the Division Bench of the Hon'ble the Chief Justice is in **Writ Petition No.6347/2005 (The State of Maharashtra and Anr. Vs. Shri Pran U. Bisen, dated 16th March, 2016** which was the Writ Petition preferred by the State against the order in **OA 307/2014 (Shri Pran U. Bisen Vs. State of Maharashtra and 3 others, dated 2nd September, 2014)** whereby the 1st Bench of this Tribunal found that the delay in concluding the DE was not properly explained and the relief was accordingly granted to the Applicants. The Hon'ble Division Bench of the Bombay High Court was pleased to uphold the said order of this



Tribunal and in Para 7, relying upon the Judgment of the Hon'ble Supreme Court in **State of Andhra Pradesh Vs. N. Radhakrishan, AIR 1998 SC 1833**, the following observations were made.


“7. In the case of State of A.P. Vs. N. Radhakrishan, the Hon'ble Supreme Court has held 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. 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 delay is abnormal and there is no explanation for the delay. In considering whether delay vitiated the disciplinary proceedings, the court has to consider the nature of the 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 charge against its employee. 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.”

In that matter, the delay was there of eight years in even instituting the DE. In that particular Judgment as well as in other Judgments to which a reference will be made, a Judgment of the Hon'ble Supreme Court in **State of Madhya Pradesh Vs. Bani Singh and Anr., 1990 Supp. SCC 738** and **P.V. Mahadevan Vs. M.D. Tamil Nadu Housing Board, AIR 2006 SC 207** came to be referred to, wherein law is laid down with regard to the course of action to be followed when there was delay in initiation of the DE and it got protracted almost endlessly.

10. Mr. Chandratre, the learned Advocate for the Applicant has relied upon another Judgment of the Hon'ble Bombay High Court in **Ravindra R. Tondulkar Vs. Municipal Corporation of Greater Bombay, 2001 (1) Bombay Cases Reporter 744**. That was a matter arising out of a departmental enquiry against the Municipal employee and there was a delay of 10 years in initiating the DE from the date of the events that took place and the Hon'ble High Court was pleased to take an adverse view of the conduct of the DE by the employer. Another Judgment of the Bombay High Court cited by Mr. Chandratre was a batch of Writ Petitions, the leading one being **Writ Petition**



No.749/2004 (Union of India and 2 others Vs. Pralhad G. Vaidya and other Writ Petitions decided on 8th September, 2005 by a Division Bench of the Hon'ble Bombay High Court at Aurangabad.

11. We have carefully perused that Judgment. As a matter of fact, it would quite clearly appear therefrom that one person named there Mr. Dhok, who was not the Petitioner of the Hon'ble High Court was the one against whom main allegations were made and as far as the Petitioners were concerned, there was inordinate delay in initiating the departmental proceedings against them. Again, the Hon'ble High Court was pleased to take an adverse view of the matter against the employer.

12. For the same proposition, a Judgment of the Hon'ble High Court of Punjab and Haryana was cited by the learned Advocate Shri Chandratre in **Shri Jagir Singh Vs. The State of Punjab, (1993) 103 PLR 376**. Besides a few Judgments of this Tribunal which we have attentively perused came to be relied upon. The principles laid down pertained to belated initiation of the DE and its effect.

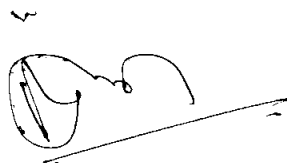
13. Now, quite pertinently, in all the citations above referred to, there was a delay in initiation of the DE. Here,



having perused the record and proceedings, we find that as far as the initiation was concerned, it was not much delayed because after-all, the usual Office procedure also takes some time and we have to show awareness thereto. But it is equally true that the DE has prolonged endlessly, but again for that eventuality to have happened, it is not as if the Applicant is not at all to be blamed. May be the degree of complicity may be less but he nevertheless has contributed to the delay. We have discussed this aspect of the matter already.

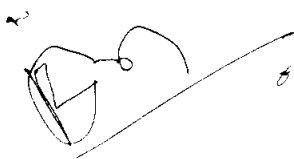
14. One of the grievances of the Applicant has been that in view of the pending DE, he has been denied promotion. We, however, find that in the Affidavit-in-reply of the 3rd Respondent, it is clearly mentioned that by Office Order No.555 of 13.9.2011, the Applicant came to be promoted as Senior Clerk and even otherwise 1996 GR above referred to, clearly provides that as a matter of Rule, the promotion may not be denied just because the DE was pending. Here, we are a little distressed to find that having been promoted already in the year 2011, the Applicant has pursued his case of he having been denied the promotion.

15. The crux of the matter, therefore, is that the allegations at least under the first head of the charge

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cannot be dismissed as minor. No doubt, the enquiry has to be concluded expeditiously. We mention with great respect that the EO and the Charity Commissioner are Hon'ble Judicial Officers and they are quite conscious of the fact that the DE should be expeditiously concluded. Here in the final order, having considered all aspects of the matter including the gravity of charge and the manner in which the DE has progressed for which all may have contributed but no single person or institution can be saddled with the blame entirely. We are, therefore, of the opinion that a final opportunity needs to be given to the Respondents to conclude the DE against the Applicant within a specified period with a request to the Charity Commissioner to instruct the concerned EO to hold the enquiry, if necessary on day to day basis and conclude it within the specified time limit.

16. The Respondents are hereby directed to conclude the DE against the Applicant within a period of four months from today and the Applicant is also directed to fully cooperate in the conduct of the DE. The enquiry shall be concluded within this period in every respect including passing of the final order and its communication to the Applicant. If the DE is not concluded within the period specified herein, it shall stand quashed and set aside ipso-

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facto without any further reference to this Tribunal. The Charity Commissioner is hereby requested to make sure that the Enquiry Officer conducts the enquiry expeditiously, if need be on day to day basis and conclude it within the period hereby prescribed.

17. The Original Application is disposed of in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
27.01.2017

Sd/-

(Rajiv Agarwal)
Vice-Chairman
27.01.2017

Mumbai

Date : 27.01.2017

Dictation taken by :

S.K. Wamanse.

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