

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO.412/2024(D.B.)**

Sunilkumar s/o Manikrao Kandalkar,
Aged about 66 years, Occu.: Retired,
R/o Flat No.A-2, Prasanna Paradise Apartment,
Krushnarpan Colony, Amravati-444 607.

... **APPLICANT**

// V E R S U S //

- 1] State of Maharashtra,
Through its Additional Chief Secretary,
Social Justice and Special Assistance,
Mantralaya, Mumbai-32.
- 2] Commissioner of Social Welfare,
Maharashtra State, 3, Church Park,
Agarkar Nagar, Pune-411 001
- 3] Divisional Enquiry Officer,
Office of Divisional Commissioner,
Nagpur Division, Nagpur

... **RESPONDENTS**

Shri R.M. Fating, learned Advocate for the Applicant.

Shri S.A. Sainis, learned P.O. for the Respondents.

**Coram :- Hon'ble Shri Justice M. G. Giratkar,
Vice Chairman and
Hon'ble Shri Nitin Gadre,
Member (A).**

Dated :- 28/11/2024.

J U D G M E N T

Heard Shri R.M. Fating, learned counsel for the Applicant and Shri. S.A. Sainis learned P.O. for the Respondents.

2. The case of the applicant in short is as under :-

The applicant was initially appointed by Maharashtra Public Service Commission (M.P.S.C.) on the post of Social Welfare Officer on 06/05/1985. The applicant was promoted on the post of 'Special District Social Welfare Officer' on 21/06/2001. He was posted at Wardha. The respondents have granted further promotion on the post of Deputy Commissioner as per order dated 03/08/2012. However, one day before his retirement, the Respondent No.1 has issued the impugned charge-sheet for the alleged irregularity in schemes of scholarship implemented during the period of 2001-02 to 2003-04, when he was working on the post of Special District Social Welfare Officer at Wardha. The applicant is retired on 31/07/2015 after attaining the age of superannuation.

3. It is the case of the applicant that incident took place in the Year 2001-02 to 2003-04. The charge-sheet is issued after

12 years. The charge-sheet was issued one day before his retirement. Therefore, it is liable to be quashed and set aside.

4. The O.A. is strongly opposed by the Respondents. It is submitted in Para 3 as under:-

“3. It is submitted that Regional Social Welfare Officer, Amravati had submitted a report dated 12.06.2011 of the Committee under the Chairmanship of the Assistant Director (Audit) constituted for audit inspection from the year 2001-2010. The said Committee was directed to conduct an audit inspection for the period of 2010-2011 and 2011-2012. Accordingly, it was observed that there were irregularities in issuing the GOI Scholarship during the year 2010-2011 and 2011-2012 and a special audit report dated 31.12.2013 was submitted to the State Government.”

5. It is submitted that, the applicant has committed misconduct, therefore, the charge-sheet was issued to the applicant in the Year 2015 after the receipt of the report of the Audit Committee. There is no any delay. Hence, the O.A. is liable to be dismissed.

6. During the course of submission learned advocate for applicant has pointed out Judgment of the Hon'ble Supreme Court in the case of *State of Andhra Pradesh VS. N. Rahakishnan*,

reported in AIR 1998 (SC) 1833. Learned Advocate for applicant has submitted that the Hon'ble Supreme Court has held that there was delay of 10 years for initiating departmental enquiry, therefore, charge-sheet was quashed and set aside. In the present O.A., the delay is near about 12 years, therefore, the impugned charge-sheet is liable to be quashed and set aside. Learned Advocate Shri R.M. Fating has also pointed out Judgment of this Tribunal in O.A. No.858/2019, dated 04/01/2024.

7. Learned P.O. Shri S.A. Sainis has strongly objected to grant relief to the applicant on the ground that the charge-sheet was issued after the receipt of the report of Audit Committee and therefore there is no delay.

8. There is no dispute that incident of alleged misconduct against the applicant is of the Year 2001-02 to 2003-04. There is no dispute that the respondents have issued charge-sheet on 30/07/2015 for the charges levelled against him.

9. There is no dispute that till date the departmental enquiry is not completed by the Respondents. As per the Judgment of the Hon'ble Supreme Court in the case of *Prem Nath Bali Vs.*

Registrar, Delhi High Court & Another – AIR 2016 SC 101, the time limit is given to complete the Departmental Enquiry. As per the Judgment of the Hon'ble Supreme Court, the Departmental Enquiry is to be completed within 6 months and outer limit is given of 1 year. The applicant is facing departmental enquiry since last 9 years. Till date, the respondents have not completed Departmental Enquiry.

10. This Tribunal in O.A. No.858/19, in Para 8 has observed as under:-

*“8. Present applicant filed this O.A. alongwith the interim relief to grant stay to the departmental enquiry. This Tribunal had not granted any interim relief. Therefore, the applicant approached to the Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No.2628/2021. The Hon'ble Bombay High Court relying on the Judgment of the Hon'ble Supreme Court in the case of the **State of Andhra Pradesh Vs. N. Radhakishan (cited supra)** granted stay to the departmental enquiry till the decision of this O.A. The material observation of the Hon'ble Bombay High Court in para-4 is reproduced below:-*

“(4) On going through the charge sheet (page no.37), and the law laid down by the Hon'ble Apex Court, in the case of State of Andhra Pradesh Vs. N. Radhakishan (supra), we are convinced that the facts of this case are squarely covered by the law so laid down by the Hon'ble Supreme Court. In this case, the misconduct was in the nature of

alleged unruly behaviour of the petitioner under the influence of liquor and this alleged misconduct had taken place on 27.04.2007. The charge sheet for this misconduct however, has been issued to the petitioner on 17.12.2018. There is absolutely, nothing stated in the charge sheet or any other document explaining the 11 years long delay, which has been caused in the present case. The misconduct does not pertain to any charge of corruption or bribery or any financial irregularity. The charge pertains to the personal behaviour, which has been seen and perceived to be misconduct by the employer. In such a case, it was necessary for the employer to have initiated departmental enquiry proceedings without any delay, if at all, it was serious about disciplining the Officer. But, the employer has not done so. The employer has also not given any reason justifying the delay. Therefore, we are of the view that strong prima facie case has been made out by the petitioner seeking the stay of the departmental enquiry proceedings.”

11. The said judgment was relied by the Hon’ble Bombay High Court in Writ Petition No.2628/2021 and granted interim relief on the ground that departmental enquiry is in respect of the incident of 11 years before issuing the charge-sheet. Therefore, the departmental enquiry was stayed by the Hon’ble High Court.

12. This Tribunal has also decided the O.A. No.858/2019 and relying on the judgment of the Hon’ble Supreme Court quashed and set aside the charge-sheet on the ground that there is

delay of 11 years for issuing the charge-sheet in respect of the incident which took place before 11 years.

13. In the present O.A. there is no dispute that incident took place in the Year 2001-02 to 2003-04. The impugned charge-sheet is issued on 30/07/2015. There is delay of about 11-12 years. Hence, in view of the Judgment of Hon'ble Supreme Court in the case of *State of Andhra Pradesh VS. N. Radhakishnan, (cited supra)*, the impugned charge-sheet is not legal and correct. Moreover, in view of the judgment of Hon'ble Supreme Court in the case of *Prem Nath Bali Vs. Registrar, Delhi High Court & Another – AIR 2016 SC 101*, the enquiry is to be completed within 1 year, but since 9 years the respondents have not completed the departmental enquiry. On both the grounds, the charge-sheet issued by the respondents is liable to be quashed and set aside. Hence, we pass the following order:-

ORDER

- i. The O.A. is allowed.
- ii. The departmental proceeding initiated against the applicant by respondents as per charge-sheet dated 30/07/2015 is hereby quashed and set aside.

- iii. The respondents are directed to pay the regular pension and other pensionary benefits to the applicant within a period of three months from the date of receipt of this order.
- iv. No order as to costs.

(Nitin Gadre)
Member (A).

(Justice M.G.Giratkar)
Vice Chairman.

Dated :-28/11/2024.
PRM.

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

Name of Steno : Piyush R. Mahajan.

Court Name : Court of Hon'ble Vice Chairman
& Member (A).

Judgment signed on : 28/11/2024