

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 6347 OF 2015**

The State of Maharashtra & Anr.	..	Petitioners
versus		
Shri Pransing U. Bisen	..	Respondent

Mr. C. P. Yadav – AGP for State - petitioners.
Mr. C. T. Chandratre for respondent.

**CORAM: D.H. WAGHELA, C.J. AND
M.S.SONAK, J.**
DATE : 16 MARCH 2016

P.C.:

- 1] Heard the learned counsel for the parties.
- 2] We are satisfied that in the peculiar facts and circumstances of the present case, the impugned order made by the Maharashtra Administrative Tribunal need not be interfered with in exercise of extra ordinary jurisdiction under Articles 226 and 227 of the Constitution of India.
- 3] The petitioners i.e. State of Maharashtra, issued the charge sheet dated 26 July 2013 to the respondent alleging that in the years 2004-2005, the respondent failed to take prompt steps in the context of certain petitions instituted by Shri Bisen SDE, a workman, who was consequently permitted to rejoin service, in terms of orders made by the court. The charge against the respondent no. 1 is that he should have obtaining opinion of the Government Pleader and thereafter submitted it to the Government so that the government could have

taken some decision in the matter of filing appeal. All this, admittedly, took place in the years 2004-2005. The charge-sheet however came to be issued after lapse of over eight years on 26 July 2013 and that too, when the respondent no. 1 was to retire on 31 December 2013 i.e. on the eve of his retirement. The only explanation for this inordinate delay is that there were certain administrative approvals required and such approvals took almost eight years.

4] The MAT, has taken cognizance of the undisputed circumstance that the respondent no. 1, was in fact, on leave (earned leave) at the stage when the case instituted by Shri Bisen SDE was decided and the said Bisen in pursuance of court's orders, was permitted to rejoin service. The MAT has also noted that there was no explanation whatsoever for the inordinate delay of over eight years in instituting the disciplinary proceedings on the eve of the retirement of respondent no. 1. There is neither any jurisdictional error nor legal infirmity in the view taken.

5] In the case of ***State of Madhya Pradesh vs. Bani Singh & Anr.***¹, charge sheet issued in the year 1987, in respect of incidents which had taken place in the year 1975-1976 was quashed by the Tribunal. The Hon'ble Supreme Court, whilst refusing to interfere with the Tribunal's decision observed thus :

“The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is

1 1990 Supp SCC 738

unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

6] In the case of ***P. V. Mahadevan vs. M.D. Tamil Nadu Housing Board***², the Hon'ble Supreme Court, quashed the disciplinary proceedings on the ground of inordinate and unexplained delay of ten years in issuance of the charge memo. At paragraphs 16 and 17 of the Hon'ble Supreme Court observed thus:

"16. 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.

17. We, therefore, have no hesitation to quash the charge memo issued against the appellant. The appeal is allowed. The appellant will be entitled to all the retiral benefits in accordance with law. The retiral benefits shall be disbursed within three months from this date. No costs."

² AIR 2006 SC 207

7] In the case of ***State of A.P. vs. N. Radhakishan***³, 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 essence of the matter is that the court has to take into consideration all 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.

8] As noted earlier, the charges leveled against respondent no.1 are neither very serious nor is there any explanation on the aspect of inordinate delay of almost eight years. There is material on record that respondent no.1 was on earned leave during the period he is alleged to have failed to take very steps. The chargesheet was issued virtually on the eve of retirement of respondent no.1. In a matter of this nature, assuming that some administrative approvals are indeed necessary, there is no explanation as to why this process took over eight years. The MAT, upon consideration of all such parameters has made the impugned order. Applying the principles laid down in the aforesaid

3 AIR 1998 SC 1833

decisions of the Hon'ble Supreme Court to the facts and circumstances of the present case, we see no reason to interfere with the impugned order made by the MAT in exercise of our extra ordinary jurisdiction under Articles 226 and 227 of the Constitution of India. This petition is therefore dismissed. There shall be no order as to costs.

(CHIEF JUSTICE)

(M.S.SONAK, J.)