

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No. 20778 OF 2017

ORDER :

This writ petition is filed seeking writ of mandamus declaring the action of the respondents in not finalizing the disciplinary proceedings initiated against the petitioner vide charge memo No.2861/AC(G)/MCH/93 dated 31.12.1993 and consequential memo No.2402/Vig(1) 2001-7, dated 14.07.2008 as illegal and arbitrary as there is inordinate delay in concluding the disciplinary proceedings and further to direct the respondents to regulate the salaries and allowances payable to the petitioner by duly effecting the revised scales of pay ordered from time to time and by adjusting the provisional pension which is being paid to the petitioner and all other consequential benefits like promotion etc., arising thereof with interest @ 12% per annum.

2. It is the case of the petitioner that he joined in service in the year 1952 as Tracer in the 2nd respondent Corporation, subsequently promoted as Sub-Overseer, Supervisor, Section Officer, Additional Town Planner and Additional Chief Town Planner. The ACB authorities registered a case in CC in the Court of Special Judge for SPE & ACB Cases, Hyderabad in Cr.No.16/ACB-CR/1985

under Section 5(1)(e) r/w Sec 5(2) of Prevention of Corruption Act, 1947 and same is numbered as CC No.65/1992 (old CC No.13/1988). That the petitioner was acquitted by the SPE & ACB Court of the charge under Section 5(1)(e) r/w Sec.5(2) of Prevention of Corruption Act, 1947 vide Judgment dated 11.12.2006. Thereafter, the Government after receipt of the judgment and letter from ACB authorities have issued G.O.Ms.No.475 MA & UD (Vig.I(i) Department dated 14.07.2008 dropping further action against the petitioner in so far as criminal prosecution is concerned as he retired on 31.12.1993. Basing on the Disciplinary proceedings initiated against the petitioner vide G.O.Rt.No.87, MA & UD (F1) department dated 27.01.1988, the Director of Town and Country Planning was appointed as Enquiry Officer and charge memo was issued vide Roc.No.1655/88-P.A, dated 27.06.1988. However, the Government in the year 1993 before his retirement issued G.O.Rt.No.899 MA & UD (F1) department dated 14.06.1993 appointing Sri Adityanath Das, IAS, Additional Commissioner (Gen.) MCH as Enquiry Officer. Petitioner submitted his explanation.

2. Ultimately, after conducting enquiry, the enquiry officer submitted his report to the 1st respondent vide letter dated 10.10.1994 holding first part of Charge No.1 as proved and second part of charge No.1 as not proved.

However, the Government differing with the findings of the enquiry officer with respect to 2nd part of Charge No.1 which was held by the enquiry officer as not proved and the respondent Government called for explanation from the petitioner by issuing Memo No.2402/Vig.I(1)/2001, dated 11.05.2007 differing with the findings of enquiry officer. In response to the same, petitioner filed explanation on 18.07.2007. The Government had issued show-cause notice dated 14.07.2008 calling upon the petitioner to show-cause as to why the punishment of 20% cut in pension permanently should not be imposed under Rule-9 of AP Revised Pension Rules, 1980. Though the petitioner made an endorsement on the reserve side of the show-cause notice dated 14.07.2008 stating that he has already submitted a detailed explanation to the memo issued differing with the findings of enquiry officer and no further explanation is required to be made by him, no orders are passed, but petitioner is paid only 75% provisional pension under G.O.Ms.No.285, dated 19.06.1995 and getting pension of Rs.2,000/- per month. Aggrieved by the same, present writ petition is filed.

3. Counter affidavit is filed by the 1st respondent denying the averments in the affidavit filed in support of the writ petition stating that though the Government has issued Memo No.2402/Vig.I(1)/2001-7, dated 14.07.2008, directing

the petitioner to submit his explanation within 15 days from the date of receipt of same to show-cause as to why the punishment of 20% cut in pension permanently should not be imposed on him under Rule 9 of AP Revised Pension Rules, 1980, he submitted explanation only on 18.02.2017. That the Government vide its letter dated 27.03.2017 requested the Secretary, TSPSC, Hyderabad for concurrence of TSPSC, Hyderabad for the proposed penalty as per Revised Pension Rules, 1980 and that the concurrence of TSPSC is awaited and as and when the concurrence from TSPSC is received, necessary action would be taken for sanction of pensionary benefits to the petitioner.

4. Reply affidavit is filed by the petitioner to the counter affidavit of the 1st respondent denying the averments in the counter affidavit stating that after receipt of Memo dated 14.07.2008 through Commissioner and Special Officer, GHMC, he made an endorsement on the reverse side of the same stating that "I have already submitted my explanation to the Government enclosing copy of Court judgment in CC No.65/92 accordingly the Government dropped further action and issued GOMS No.475 dt.14.07.2008. Now further explanation does not arise.", as such, there is no inordinate delay in sending explanation to the show-cause notice/memo dated 14.07.2008. That the Government had called for his service register from GHMC and did not return

back to the GHMC and that the petitioner made representation dated 06.10.2012 requesting the Government to return the same to GHMC for release of pensionary benefits and also for fixation of pay in accordance with PRC.

5. Heard learned counsel for the petitioner, learned Assistant Government Pleader for Municipal Administration & Urban Development and Sri P.Keshava Rao, learned Standing Counsel for the 3rd respondent.

6. Learned counsel for the petitioner while reiterating the averments in the writ affidavit submits that there is no delay in submitting the explanation to the impugned show-cause notice dated 14.07.2008 and that in fact, the petitioner had made endorsement on the reverse side of the Memo stating that already he was acquitted by the SPC and ACB Court, as such, no further explanation is required. He further submits that the petitioner is aged about 82 years and disciplinary proceedings have commenced way back in the year 2008 and that the delay in conclusion of disciplinary proceedings is prejudicial to the petitioner as he is not paid pensionary benefits and therefore, the same are liable to be quashed. In support of his contention, he relied on the judgments reported in **State of AP v. N.Radhakishan¹**,

¹ (1998) 4 Supreme Court Cases 154

P.V.Mahadevan v. Md.T.N.Housing Board² and M.V.Bijlani v. Union of India and others³

7. On the other hand, Sri P.Keshava Rao, learned Standing Counsel for the 3rd respondent submits that they wrote a letter to the Government for return of Service Register of the petitioner and as soon as they get the same, they will release the pensionary benefits of the petitioner in accordance with the Rules.

8. Disciplinary proceedings have also been initiated against the petitioner much before his acquittal and the Government issued G.O.Rt.No.87, MA & UD (F1) department dated 27.01.1988 appointing the Director of Town and Country Planning as Enquiry Officer. However, the Government again in the year 1993 before his retirement issued G.O.Rt.No.899 MA & UD (F1) department dated 14.06.1993 appointing Sri Adityanath Das, IAS, Additional Commissioner (Gen.) MCH as Enquiry Officer, and charges were framed against the petitioner as follows:

“That you have failed to obtain permission from the Special Officer, MCH, for purchase of house in your name at Kutbiguda and also another house in the name of your children at Himayathnagar as required under Rule 9(2) of the APCS (Conduct) Rules, 1964. Thus you have violated Rule-9(2) of the APCS (Conduct Rules, 1964”.

The petitioner has submitted written statement denying the aforesaid charge. However, the Enquiry Officer, after conducting a detailed enquiry submitted his report to the 1st

² (2005) 6 Supreme Court Cases 636

³ (2006) 5 Supreme Court Cases 88

respondent vide letter No.2565/Ac(G)/MCH/94, dated 10.10.1994 holding first part of Charge No.1 as proved and second part of charge No.1 as not proved. After petitioner was acquitted by the Court of SPE & ACB Cases vide its judgment dated 11.12.2006, the Government issued Memo No.2402/Vig.I(1)/2001 dated 11.05.2007 differing with the findings of the enquiry officer with respect to 2nd part of Charge No.1 which was held by the enquiry officer as not proved and called for the explanation from the petitioner. Subsequently, petitioner received a memo reminding him to file explanation for the show-cause notice dated 25.06.2007 and in response to the same, petitioner filed explanation on 18.07.2007 denying the stand of the disciplinary authority with regard to second part of Charge No.1 and second charge. Subsequently, the Government had issued show-cause notice No.2402/Vig.1(1)2001-7, dated 14.07.2008 calling upon the petitioner to show cause as to why the punishment of 20% cut in the pension permanently should not be imposed under Rule 9 of AP Revised Pension Rules, 1980. In response to the same, the petitioner made an endorsement on the memo stating that he had already submitted a detailed explanation to the memo issued differing with the enquiry officer's report and that no further explanation is required to be made by him, which is evident from the material papers filed along with reply by the

counsel for the petitioner, as such, it cannot be said that petitioner has not submitted explanation to the impugned show-cause notice in time. Therefore, the contention of the learned counsel for the respondents that the petitioner had submitted explanation only on 18.02.2017 as alleged in the counter affidavit and contended by learned Assistant Government Pleader, is not correct.

9. Learned counsel for the petitioner contends that inordinate delay has occurred in concluding the disciplinary proceedings against the petitioner by the respondents, as such same is liable to be quashed on that ground alone. It is an admitted fact the disciplinary proceedings have been initiated against the petitioner in the year 1988 and the Government issued G.O.Rt.No.87, MA & UD (F1) department dated 27.01.1988, which means almost 30 years have elapsed after initiation of disciplinary proceedings. Admittedly, the petitioner was also acquitted by the Court of SPE & ACB Cases of the charges levelled against him under Section 5(1)(e) r/w Sec.5(2) of Prevention of Corruption Act, 1947 vide Judgment dated 11.12.2006 in CC No.65/1992. Even from the date of issuing show-cause notice dated 14.07.2008 to the petitioner, almost 10 years have been elapsed and no valid reasons are forthcoming from the respondents except stating that the petitioner had not submitted explanation immediately after issuing of show-

cause notice dated 14.07.2008, but he only submitted on 18.02.2017, which is not correct. The petitioner has categorically stated in writing on the reverse side of the Show-cause notice dated 14.07.2008 that there is no further explanation is required. Unexplained delay in conclusion of the proceedings itself is an indication of prejudice caused to the petitioner, who is aged about 82 years. 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. There is no acceptable explanation on the part of respondents explaining inordinate delay in concluding departmental disciplinary proceedings. The stand taken by the respondents in the counter affidavit is not convincing and is only an afterthought to give some explanation for the delay. Hon'ble Supreme Court in its judgment reported in **P.V.Mahadevan v. MD.T.N.Housing Board (Supra)**, held:

“12. 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.”

b) In **State of AP v. N.Radhakishan (supra)**, the Hon’ble Supreme Court held as follows:

“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 considerations.”

c) In **M.V.Bijlani v. Union of India (supra)**, the Hon’ble Supreme Court held as follows:

“16. So far as the second charge is concerned, it has not been shown as to what were the duties of the Appellant in terms of the prescribed rules or otherwise. Furthermore, it has not been shown either by the disciplinary authority or the appellate authority as to how and in what manner the maintenance of ACE-8 Register by way of sheets which were found attached to the estimate file were not appropriate so as to arrive at the culpability or otherwise of the Appellant. The appellate authority in its order stated that the Appellant was not required to prepare the ACE-8 Register twice. The Appellant might have prepared another set of register

presumably keeping in view the fact that he was asked to account for the same on the basis of the materials placed on records. The Tribunal as also the High Court failed to take into consideration that the disciplinary proceedings were initiated after six years and it continued for a period of seven years and, thus, initiation of the disciplinary proceedings as also continuance thereof after such a long time evidently prejudiced to the delinquent officer."

d) In **State of Madhya Pradesh v. Bani Singh**⁴, the Hon'ble Supreme Court observed as follows:

"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 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."

Admittedly, petitioner is aged about 82 years and if the respondents are allowed to proceed further with the departmental proceedings at this distance of time, it will be very much prejudicial to the petitioner. Moreover, as I have already observed supra, that more than 30 years have elapsed since initiation of disciplinary proceedings against the petitioner, but the same are not concluded.

It is noticed by this Court that number of writ petitions are being filed for quashing the disciplinary proceedings alleging either delay in initiation or their conclusion on the ground that they were initiated after long lapse of time or they are not concluded even after long lapse of time. In some cases, even though serious charges are levelled

⁴ 1990 Supp SCC 738; 1991 SCC (L&S) 638

against the incumbents, the competent authorities are unable to conclude the disciplinary proceedings. When the serious charges are levelled against any incumbents, it is not known as to why the disciplinary proceedings are not concluded within a time frame by the inquiring authorities. The Hon'ble Apex Court in the aforesaid judgments have categorically held that the disciplinary proceedings have to be concluded within a time bound manner. Though the Governments have prescribed three months period for completion of disciplinary proceedings in cases of simple nature and six months in case of grievous nature, the same are not being followed. Hence, this Court is of the opinion that responsibility should be fixed on the disciplinary authority as well as enquiring authority, if the disciplinary proceedings are not concluded within the time bound programme fixed by the Government. This Court as well as the Hon'ble Apex Court held that disciplinary proceedings have to be initiated and concluded within a reasonable time. If the directions issued in the aforesaid judgments of the Hon'ble Supreme Court as well as the guidelines framed by the Government in this regard are not adhered to, thus resulting in quashing of said proceedings, which is not in the interest of administration of justice. When disciplinary proceedings are dropped or quashed, the delinquent employees will be entitled to salaries and other benefits,

without performing any work, which is also loss to the public exchequer.

In view of above facts and circumstances, writ petition is allowed setting aside the disciplinary proceedings initiated against the petitioner vide charge Memo No.2861/AC(G)/MCH/93, dated 31.12.1993 and consequential Memo No.2402/Vig.(1)2001-7, dated 14.07.2008 and the respondents are directed to regulate the salaries and allowances payable to the petitioner by duly effecting the revised scales of pay along with pension, in accordance with Rules, as expeditiously as possible preferable within a period of two months from the date of receipt of a copy of this order.

There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand disposed of.

A.RAJASHEKER REDDY, J

19-09-2017
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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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Date:19.09.2017

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