

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 15176 OF 2017

The State of Maharashtra and others .. Petitioners

Versus

H. N. Laxmikant - Laxmikant
Nanjvudachari Chintamani .. Respondent

Shri P. S. Patil, Addl. G. P. for Petitioners.

Shri Avinash S. Deshmukh, Advocate for the Respondent.

**CORAM : S. V. GANGAPURWALA AND
A. M. DHAVAL, JJ.**

CLOSED FOR ORDERS ON : 28.02.2018

ORDER PRONOUNCED ON : 26.04.2018

FINAL ORDER (Per S. V. Gangapurwala, J.) :-

. The respondent had filed original application bearing Original Application No. 605 of 2014 before the Maharashtra Administrative Tribunal, Aurangabad challenging the order dated 19.07.2013.

2. Upon completion of departmental enquiry under the order dated 19.07.2013 the State/employer directed permanent withdrawal of 50% of his pension with further order of recovery of an amount of Rs. 4,27,553/- from the amount of gratuity and

leave encashment. The original application filed by the respondent is allowed by the Maharashtra Administrative Tribunal, Aurangabad. Aggrieved thereby the State has filed present writ petition.

3. The respondent herein joined the services of the State on 12.03.1965 as a Junior Engineer in Class - III cadre. Subsequently, he was designated as Sectional Engineer. On or about 28.01.1998 the Divisional Commissioner Aurangabad issued a memorandum U/Sec. 6(A) of the Maharashtra Employment Guarantee Scheme Act, 1977 r/w Rule 6(3) and 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (for the sake of brevity hereinafter referred as to the "Rules of 1979") thereby initiating departmental enquiry against the respondent. Five charges were framed against the respondent. Before the departmental enquiry could be concluded, the respondent stood retired on attaining age of superannuation on 31.12.2003.

4. Mr. Patil, the learned Additional Government Pleader for petitioners submits that the Tribunal has committed an error in setting aside the punishment imposed upon the respondent. The charges against the respondent are serious in nature and only on the ground of delay in enquiry, the departmental enquiry cannot be said to be illegal, nor the same could have been a ground to set aside the departmental enquiry. The learned Addl. G. P. further

submits that, the Rules of 1979 make provision for extension of time to conclude the departmental enquiry. The departmental enquiry was conducted by giving every opportunity to the respondent. In the enquiry charges have been proved viz misappropriation of an amount of Rs. 5,68,658/-. The respondent had shown more expenses on the work done at Gondankheda Pazar Talav and Kendra Talav. The Tribunal has not considered the conclusions in the enquiry report. Once the charges are proved against the respondent, the Tribunal ought not have interfered only on the ground of delay in concluding the departmental enquiry. The reliance placed by the Tribunal in the case of Mr. Tolgatti against whom joint enquiry along with the respondent was initiated is erroneous. The exoneration of Mr. Tolgatti is by default and the same is altogether different facts and circumstances and that cannot be applied to the present respondent. The Tribunal cannot have applied principal of parity in exonerating the respondent. The learned Addl. G. P. relies on the judgment of the Apex Court in a case of **Prem Nath Bali Vs. Registrar, High Court of Delhi and another** reported in ***AIR 2016 SC 101***.

5. Mr. Deshmukh, the learned counsel for the respondent submits that, the respondent is an employee in irrigation department. The punishment is imposed by the planning department. The irrigation department/water resource department only would be competent to take action against the

respondent under Rule 22 of the M. C. S. (Pension) Rules, 1982. The petitioner No. 2 had no authority to take the decision. The Commissioner of a Division had very limited power to the extent of imposing only minor penalty in respect of government servants in Class - I and Class - II cadre and does not empower the Commissioner to impose major penalties. The memorandum of charge was *ab-initio-void* and the action taken on the basis of memorandum of charge is negatory. The learned advocate further submits that, the departmental enquiry initiated against him by the Commissioner under the memorandum of charge dated 28.01.1998 was joint enquiry against the respondent and one Mr. R. A. Tolgatti, who was his superior officer from the cadre of Deputy Engineer/Sub Divisional Engineer. Mr. Tolgatti stands exonerated. The petitioners/State accepted the order of the Tribunal so far as Mr. Tolgatti is concerned. The Tribunal in a case of Mr. Tolgatti had passed order in Original Application No. 340 of 2009 on 25.03.2009. The Tribunal observed that, Tolgatti had retired about eleven years back and directions were given to complete the enquiry within a period of six months from the date of order. The State did not complete the enquiry within six months as directed by the Tribunal in case of Tolgatti. The subsequent application filed by the State for extension of time was rejected and the State has accepted the order of the Tribunal in the case of Shri Tolgatti and granted him all the benefits and no punishment was imposed upon him. Shri Tolgatti was a superior officer. Joint enquiry was conducted against Shri

Tolgatti and the respondent. The Tribunal has rightly observed and allowed the application of the respondent. The enquiry was initiated in the year 1998. The respondent retired in the year 2003 and it is only in the year 2013 the order was passed. On the ground of delay itself the enquiry is liable to be set aside. The learned advocate relies on the judgment of the Apex Court in a case of State of Andhra Pradesh Vs. N. Radhakishan reported in (1998) 4 SCC 154. The delay is attributable to the State and not to the respondent.

6. We have considered the submissions canvassed by the learned counsel for respective parties, so also have gone through the judgment delivered by the Tribunal.

7. The joint departmental enquiry was initiated against the present respondent and one Mr. R. A. Tolgatti. Mr. Tolgatti was the Sub Divisional Engineer and the respondent was at the relevant time Sectional Engineer. The departmental enquiry commenced in the year 1998 in respect of events for the period 1991 to 1994. The enquiry officer upon conclusion of the enquiry submitted his report on 31.05.2005. By that time the respondent had already retired on attaining age of superannuation on 31.12.2003. The petitioner No. 3 sent the enquiry report by letter dated 08.07.2005. It was received by the present respondent on 02nd September, 2005. The respondent filed his reply on 22nd September, 2005. For four years no action was taken by

petitioners on the report of the enquiry officer. Mr. Tolgatti filed Original Application No. 340 of 2009 before the Maharashtra Administrative Tribunal. The Tribunal under order dated 25.03.2009 directed the respondents therein to complete the departmental enquiry pending against Mr. Tolgatti including the joint departmental enquiry along with the present respondent within one year from the date of the order and if the final order is not passed within one year, the departmental enquiry would stand quashed. The petitioners did not complete the departmental enquiry against Mr. Tolgatti as per the order of the Tribunal within one year. The departmental enquiry against Mr. Tolgatti stood quashed. Miscellaneous application filed by the State seeking extension of time to comply the order of the Tribunal in the case of Mr. Tolgatti in Original Application No. 340 of 2009 was dismissed and petitioners accepted the order of the Tribunal in the case of Mr. Tolgatti and it is stated that, Mr. Tolgatti has been given all the benefits and no further action is taken against him.

8. Joint departmental enquiry against Mr. Tolgatti and the present respondent stood quashed and set aside to the extent of Mr. Tolgatti in view of the order of the Tribunal. The respondent is similarly situated. In fact, Mr. Tolgatti was the superior officer. In the report, he is also made liable, but the State has accepted the order of the Tribunal to the extent of Mr. Tolgatti and the joint departmental enquiry stood quashed to the extent

of Mr. Tolgatti on the ground that it is not completed within one year as per the order of the Tribunal but for the same charges the respondent is punished.

9. The Tribunal has relied upon Government Circular dated 08.04.1974, which states that, the departmental enquiry has to be completed within six months. It has also relied upon the circular dated 24.02.1997 to the effect that, the departmental enquiry against a retired government employee is required to be completed as early as possible and within maximum period of one year. The petitioner stood retired in the year 2003. The petitioner is punished under the impugned order in the year 2013.

10. The delay is solely on the part of petitioners. The respondent even remotely cannot be attributed of having caused delay in the departmental enquiry. The enquiry report was also submitted in the year 2005, still no decision was taken till the issuance of the impugned order in the year 2013. The Tribunal has observed that, such a abnormal and unexplained delay in passing final order in the departmental enquiry as against a retired employee is not justified.

11. The Apex Court in a case of State of Andhra Pradesh Vs. N. Radhakishan has observed thus :

"(19) 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. 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 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 the 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 the 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 the 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 their 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 blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

12. In a case of Prem Nath Bali Vs. Registrar, High Court of Delhi and another referred to supra, the Apex Court has observed thus :

"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. Whether 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 reasonable extended period depending upon the cause and the nature of inquiry but not more than a year."

13. The co-delinquent has been exonerated. The said factor has also been considered by the Tribunal.

14. Considering the aforesaid aspects of the matter, we do not feel that the Tribunal has committed any error in passing the impugned order.

15. In the light of the above, writ petition is dismissed, however, with no order as to costs.

[A. M. DHAVAL, J.]

[S. V. GANGAPURWALA, J.]