

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.9004 of 2016 and

W.M.P.Nos.8000 and 8001 of 2016

K.G.Thulasirangan

... Petitioner

Vs

1.The Secretary to Government,
Revenue Department,
Fort St.George, Chennai 600 009.

2.The Personal Assistant (General) to the Collector,
Chennai 600 001.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the first respondent in letter No.6799/Ser 4(2)/2009-11, Revenue (Ser 4(2)) Department, dated 25.10.2012 and the consequential order of punishment imposed by the first respondent in G.O.(2D) No.231, Revenue (Ser 4(2)) Department, dated 13.04.2015 and quash the same on the ground of arbitrariness and non-application of mind.

For Petitioner : Mrs.Dakshayani Reddy for
Mr.P.Nethaji

For Respondents : Mr.J.Pothiraj,
Special Government Pleader

O R D E R

Heard Mrs.Dakshayani Reddy, learned counsel for the petitioner and Mr.J.Pothiraj, learned Special Government Pleader appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorari, to call for the records of the first respondent in letter No.6799/Ser 4(2)/2009-11, Revenue (Ser 4(2)) Department, dated

25.10.2012 and the consequential order of punishment imposed by the first respondent in G.O.(2D) No.231, Revenue (Ser 4(2)) Department, dated 13.04.2015 and quash the same on the ground of arbitrariness and non-application of mind. "

3. The case of the petitioner is as follows:-

The petitioner was originally appointed in the post of Field Surveyor-cum-Draughtsman in the Survey and Land Records Department with effect from 15.09.1983. Subsequently, he was promoted to the post of Sub-Inspector of Survey with effect from 16.09.1996 and further promoted to the post of Deputy Inspector of Survey with effect from 12.04.2012. While he was working as Sub-Inspector of Survey, it appeared that one S.Balasubramanian and P.Jayalakshmi applied for transfer of patta with respect to piece of land on 13.11.2000. Along with the application submitted in support of the claim of transfer of patta, two documents, namely, a sale deed and unregistered power of attorney executed by one K.Arunachalam in favour of A.N.Annamalai, were enclosed.

4. According to the petitioner, the application was thoroughly enquired into and entries made in the Town Survey Land Register was also ascertained and thereafter, on personal visit to the subject property and based upon the entry in the Town Survey Register, the petitioner recommended for transfer of patta in the name of the said applicant. However, in respect of the above matter, a charge memo was issued to the petitioner after a lapse of several years on 25.10.2012 under Section 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The charges that are framed against the petitioner are extracted below:-

"Charge No.1 : That the said Thiru.Thulasirangan while functioning as Sub-Inspector of Survey, he has processed the patta transfer application in respect of land situated in T.S.No.4 Block No.64 S.No.37 (part) admeasuring an extent of 0.09.22.5 Sq.mt. Of the Koyambedu Village without verifying the genuineness and correctness of the documentary evidence produced by the applicant, he has given report to the Tahsildar and thus responsible for the issue of wrong patta transfer orders.

Charge No.2 : he has not made any field inspection in respect of the patta transfer requests.

Charge No.3 : Thus he had violated rule 20(1) of the Tamil Nadu Government Servants Conduct Rules 1973."

5. In response to the charge memo, the petitioner submitted a reply on 02.05.2013, strongly denying the allegations. According to the explanation offered by the petitioner that as on 13.11.2000, the subject land was classified as "Ryotwari Manai" and mandatory registration of power of attorney came into effect only from 2012. The classification of the land was changed to "Sarkar Poramboke" under the proceedings of the Collector dated 27.03.2008 and requested that the charges be dropped as the same was unfounded and without any basis. Not satisfied with the reply given by the petitioner, an enquiry was conducted not only against the petitioner, but, also against the other co-delinquent for the same matter by named Durga Shankar. The said Co-delinquent also appeared to have raised identical defence as that of the petitioner.

6. On conclusion of the enquiry, strangely, the Enquiry Officer accepted the explanation offered by the co-delinquent and exonerated him from the charges. But, found the petitioner guilty of the charges. Thereupon, by proceedings dated 31.01.2014, the charges came to be dropped as against the co-delinquent Durga Shankar. As far as the petitioner was concerned, G.O.Ms.No.231, Revenue Department, dated 13.04.2015, was passed imposing the penalty of stoppage of increment for a period of one year with cumulative effect. The punishment as well as the charge memo are the subject matter of challenge in the present writ petition.

7. The learned counsel for the petitioner would contend that the charge memo was issued belatedly after a period of 12 years from the date of the alleged occurrence for an act of misconduct and there was no proper or valid explanation for such long delay in issuing the charge memo and also the conclusion of the disciplinary proceedings in 2015. Therefore, on this ground alone, the disciplinary action stood vitiated as Courts have held that the long unexplained delay by itself constitute prejudice to the interest of the employee and interfered with such belated disciplinary action.

8. Apart from assailing the disciplinary proceedings on the ground of delay, the learned counsel for the petitioner would also submit that the charges as it framed do not have any basis as could be seen from the records. The learned counsel would submit that firstly, the charge that the petitioner had not verified the correctness of the documentary evidence produced by the applicant and also not properly verified the entries, cannot be countenanced on facts as well as on law for the reason that at that relevant point of time in 2000, there was no requirement of compulsory registration of power of attorney document. Moreover, the classification of the land was changed from "Ryotwari Manai" to "Sarkar Poramboke" only by proceedings of the Collector dated 27.03.2008. But, as in the year 2000, when

an application was made, it was described only as "Ryotwari Manai" in the Survey Register.

9. Further, the learned counsel for the petitioner would contend that the allegations that the petitioner has not made field inspection, cannot be accepted, since he had conducted field inspection before he recommended for transfer of patta. Therefore, on all counts, the charge framed against the petitioner are liable to be interfered with and also the delayed conclusion of disciplinary action is also vitiated by unexplained and inordinate delay for over 15 years.

10. The learned counsel for the petitioner in support of her contentions would rely on the following decisions in W.A (MD).No.1009 of 2014 dated 22.04.2016, wherein, the learned Division Bench of this Court has adverted to various decisions on the aspect of delay in framing charges and ultimately, held that such long delay had vitiated the disciplinary proceedings. The lengthy observation of the learned Division Bench of this Court and its reference to various judgments on the subject matter as found in paragraph No.12, is reproduced below:-

"12.On the aspect of the delay in framing charges, this Court deems it fit to consider the following decisions.

(i) In State of Madhya Pradesh v. Bani Singh and another reported in 1990 (Supp) SCC 738, the Supreme Court had come down heavily against the laches on the part of the employer in conducting departmental enquiry and after finding out that there was no satisfactory explanation for the inordinate delay, held that it would be unfair to order departmental enquiry to proceed further.

(ii) In State of Punjab and others Vs. Chaman Lal Goyal, reported in 1995 (2) SCC 570, the Hon'ble Supreme Court held as follows:

"9.Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also

in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the court has to indulge in a process of balancing... "

(iii) In *M. Balakrishnan and 7 others Vs. The Corporation of Madurai and another*, reported in 1995 (II) CTC 589, for certain improper acts on the part of the petitioners therein, departmental proceedings were initiated after 14 years. While quashing the said proceedings, a learned single Judge has observed that such proceedings after a long period would result in great prejudice and amount to violation of the principles of natural justice.

(iv) In *Commissioner, Sankarapuram Panchayat Union etc. Vs. S.A. Abdul Wahab and others*, reported in 1996 W.L.R. 677, a Division Bench of this Court held that if there is unnecessary, unexplained and unjustifiably long delay in initiating departmental proceedings, it would result in causing great prejudice to the person against whom such a proceeding is initiated and it will be a ground for quashing the proceedings.

(v) In *B. Loganathan Vs. The Union of India*, rep. by the Secretary to Government of Union Territory of Pondicherry, Department of Local Administration, Pondicherry and another, reported in 2000 (III) CTC 351, for the allegations relating to the period of the year 1982, based on a vigilance report, a charge memo was issued in 1997 and the said proceedings were put to challenge. While quashing the charge memo on the ground of inordinate and unexplained delay, this Court has observed that the delay in initiating disciplinary proceedings constitutes denial of reasonable opportunity to defend himself and that the

same, violates principles of natural justice. At Paragraph 12 has held as follows:

"12. Learned counsel appearing for the second respondent by relying on a decision of the Supreme Court in Secretary to Government, Prohibition and Excise Department v. L. Srinivasan, 1996 (3) S.C.C. 15 would contend that the scope of judicial review is very limited and sought to distinguish the above referred decisions. No doubt, in the said decision. Their Lordships have observed that it would not be open to the Tribunal or the court to quash the suspension order and charges even at the threshold. The perusal of the judgment does not show the details such as when the incident had taken place and when the Government have initiated action etc. In Union of India v. Ashok Kacker, 1995 Supp (1) S.C.C. 180, no doubt, Their Lordships have observed that it is open to the delinquent to file his reply to charge-sheet and raise all objections and also invite the decision of the disciplinary authority thereon. In this case also, no other details have been furnished such the date of occurrence, steps taken by the Government etc. In such circumstances, I am of the view that both the decisions relied on by the Government Pleader are not helpful to their case. I have already stated that even according to the 2nd respondent, the alleged irregularities had taken place in the year 1982 and even after receipt of the report from the Vigilance and Anti-Corruption, Pondicherry Government in the year 1993 the impugned charge memo was issued only on 5.11.97. The inordinate and unexplained delay vitiates the impugned charge memo and the same is liable to be quashed. As observed by Their Lordships of the Supreme Court in State of Punjab and others v. Chaman Lal Goyal, 1995 (2) S.C.C. 570, the disciplinary proceedings cannot be initiated after a lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of

administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the Court may well interfere and quash the charges. Here, in our case, the petitioner has raised a plea that the delay is likely to cause prejudice to him in defending himself. If such plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. I have already stated that the first charge states that the petitioner did not disburse cash from January, 1982 and, as rightly contended by the learned counsel for the petitioner, not even the period is mentioned clearly and like-wise, the statement that cash book was not maintained properly is a bald statement. Further, the nature of the charges relate to day-to-day activities of disbursement of cash and maintenance of registers, which are routine affairs, hence the unexplained delay of 15 years cannot be accepted. It would be impossible for the petitioner to remember the identity of witnesses whom he could summon to appear before the enquiring authority to support his case. Even If he could summon their presence, it would be a doubtful proposition whether they would be in a position to remember that happened more than 15 years back and help him in his defence. Further more, the petitioner may not be in a position to effectively cross-examine the witnesses to be examined on the side of the second respondent in support of the charges. Practically, it would be a doubtful proposition that either the prosecution witnesses or the defence witnesses would be in a position to remember the facts of the case and advance the case of either the department or the petitioner. Under these circumstances and on the facts and circumstances disclosed, I hold that the un-explained inordinate delay will constitute denial of reasonable opportunity to the petitioner to defend himself that it would amount to violation

of principles of natural justice and as such, the impugned charge memo must be struck down on this ground alone. By weighing all the factors both for and against the petitioner/delinquent officer quashing the charge memo is just and proper in the circumstances".

(vi) In C.P. Harish Vs. The Central Warehousing, represented by its Managing Director, 4/1, Siri Institutional Area, New Delhi, reported in 2000 (IV) CTC 517, for the alleged lapses of the year 1982-1983, charge memos were issued on 20.06.1995 and 14.07.1998 respectively, nearly after 15 years. By observing that disciplinary proceedings cannot be initiated after lapse of considerable time, which would give room for allegations of bias, mala fides and misuse of power and that it would be impossible for the delinquent to remember and identify the witnesses, this Court has held that delay constitutes denial of reasonable opportunity to defend herself and it also violates the principles of natural justice and quashed the charges impugned in the above writ petition.

(vii) In A. Obaidullah Vs. The State of Tamil Nadu, rep. by the Secretary to Government, Home Department, Secretariat, Chennai and another reported in 2005 (5) CTC 380, a Division Bench of this Court, after considering the decisions in State of Uttar Pradesh Vs. N. Radhakishan reported in 1998 (4) SCC 154 and P.V. Mahadevan Vs. Managing Director, Tamil Nadu Housing Board, 2005 (4) CTC 403:2005 SCC (L&S) 861, quashed a disciplinary proceeding which was initiated after 12 years, holding that inordinate and unexplained delay defeats justice.

(viii) In Union of India v. Central Administrative Tribunal reported in 2005 (2) CTC 169 (DB), this Court held that, "The delay remains totally unexplained. Therefore, we have no hesitation at all in concluding that the ground of inordinate delay in proceeding with the departmental enquiry as referred to above by us, would come in the way of the Govt., to continue with the enquiry any further....."

(ix) In P.V. Mahadevan v. M.D. Tamil Nadu Housing Board, reported in 2005 (4) CTC 403, this Court after referring to various decisions, held that, "The protracted disciplinary enquiry against a government employee should, therefore be avoided not only in the interest of the government employee but in public

interests 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 department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

15. We therefore, have no hesitation to quash the charge 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 cost."

(x) In the Special Commissioner and Commissioner of Commercial Taxes, *Chepauk v. N. Sivasamy*, reported in 2005 (5) CTC 451, the Division Bench of this Court held as follows:

"Though the alleged lapse occurred in the year 1995 and certain charges related to the period 1993-94, the charge memo was issued on 15.07.1997 and served on 23.07.1997, just 7 days before the date of retirement. The contention of the appellant that only with a view to cause hardship, agony and anguish, the charge memo was issued cannot be ignored..... We have already pointed out that though the applicant filed Original Application No.6284/97, challenging the charge memo, dated 15.07.1997, admittedly, no stay was granted. Despite the above fact that the department had not proceeded with the disciplinary proceedings, there is an inordinate and unexplained delay on the part of the department. According to the applicant, he is 67 years of age as on the date and had rendered 38 years of service in the department. He had undergone sufferings from mental worry, agony, anguish and hardship for all these years. We are satisfied that there is no

need to pursue the charge memo, dated 15.07.1997."

(xi) In yet another decision in R.Tirupathy and others v. the District Collector, Madurai District and others reported in 2006 (2) CTC 574, this Court was pleased to quash the charge memo, dated 02.02.2005 on the ground that the charges relate to purchase of uniforms during the year 1994- 95 and 1995-96 and the inordinate delay on the part of the department in issuing a charge memo was not properly explained.

(xii) The Supreme Court in M.V.Bijlani v. Union of India and other reported in 2006 (5) SCC 88, quashed the order of removal from service, confirmed by the appellate authority on various grounds particularly, on the ground that initiation of disciplinary proceedings after six years and continuance thereof, for a period of seven years prejudiced the delinquent officer.

(xiii) In M.Elangovan v. The Trichy District Central Co-operative Bank Ltd., reported in 2006 (2) CTC 635, this Court, while quashing the second show cause notice on the ground of inordinate and unexplained delay in initiating and completing the disciplinary proceedings, allowed the Writ Petitions holding that the petitioners therein were entitled to all the benefits in accordance with law. The same view has been expressed by this Court in yet another decision in Parameswaran v. State of Tamil Nadu reported in 2006 (1) CTC 476.

(xiv) In G.Anand Vs. The Principal Commissioner and Commissioner of Revenue Administration, Chempauk, Chennai-5 and others reported in 2006(5) CTC 723, the alleged lapses on the part of the petitioner therein was of the year 1994. Disciplinary action was initiated in the year 2005. Finding that the charge memo had been issued with an inordinate delay, this Court set aside the charge memo impugned in the said writ petition.

(xv) In A.Bommusamy Vs. The Government of Tamil Nadu and others reported in 2007 (3) CTC 518, a Division Bench of this Court has considered a case where disciplinary proceedings was initiated on the verge of retirement. The petitioner was to retire on 31.03.1987. By proceedings dated, 27.02.1987, disciplinary proceedings were initiated under Rule 17-a of the Tamil Nadu Civil Services (Discipline and Appeal) Rules for imposing minor penalty. On receipt of the petitioner's explanation, a revised charge

memo dated 13.03.1987, involving a procedure for imposing major penalty was issued, just 17 days before retirement. Though, an enquiry was initiated as early as on 10.08.1987, the passing of an order of punishment was kept pending for about five years and finally a punishment was imposed on 21.01.1993. Having regard to the ratio decidendi of the Courts in the matter, where no reasonable explanation is offered, the Division Bench, at paragraph 13 observed as follows:

"13. Further, there was inordinate delay in passing the order of punishment. Though the enquiry was initiated as early as on 10.8.1987, the passing of the order of punishment was kept pending for about five years and finally the punishment was imposed on 21.1.1993. There is no explanation for such an inordinate delay in passing the final order. Time and again, the Supreme Court and this Court has deprecated the initiation of Disciplinary Proceedings against an employee or the fag end of his retirement and keeping the matter pending for a long time by keeping the matter pending for a long time by keeping the employee under suspension. Further when the petitioner had pleaded that there was official prejudice and enmity between him and the third respondent in the matter of use and maintenance of the official vehicle, the Tribunal has failed to consider this aspect of the case in proper perspective while dismissing the Original Applications. The Disciplinary Proceedings were initiated against the petitioner when there was hardly fifteen days left for his retirement. More over, when his date of retirement is on 11.3.1987 and the order of suspension was passed on 25.3.1987 by invoking G.O. No. 173. Therefore, when once the petitioner has reached the age of superannuation on 11.3.1987, the placing the petitioner under suspension after his date of superannuation is without authority and that when the relationship of master-servant ceased to exist, no Disciplinary Proceedings could be initiated against the petitioner. On this ground also, the

impugned order of the Tribunal is liable to be set aside."

(xvi) In K.Kumaran Vs. The State of Tamil Nadu by Secretary to Government, Agricultural Department, Chennai and another reported in 2007(3) CTC 763, the alleged lapses relate to the period 1987-1988. A charge memo was issued on 08.05.2004, after nearly 16 years. By observing that delay causes prejudice to the charged officer, unless it can be shown that he was to be blamed for the delay or when there was proper explanation for the delay in conducting the disciplinary proceedings, this Court quashed the charges, issued belatedly.

(xvii) In Ranjeet Singh Vs. State of Haryana & others reported in 2008 (3) CTC 781, the Hon'ble Supreme Court considered the correctness of a judgment made in a second appeal, dismissing the plea that there was no substantial question of law in interfering with the judgment and decree made by the District Court, which reversed a decree passed in a suit for declaration, declaring a show cause notice issued after a delay of 7 years after concluding the departmental enquiry, as illegal. There was also a delay of 9 years in initiating disciplinary proceedings. In the above reported case, for an allegation of the year 1974, a charge memo was issued in 1983, after 9 years. The Enquiry Officer submitted his report on 01.01.1985. After a delay of nearly 7 years, the department issued a show cause notice with a copy of the report, proposing to impose a penalty. After submission of the explanation, the Government servant preferred a suit to declare a show cause notice proposing to impose a punishment as invalid. The trial Court decreed the suit holding that the action of the employer imposing punishment as illegal. The State preferred an appeal to the District Court. The first appellate Court allowed the appeal and dismissed the suit. Aggrieved by the same, the Government servant filed a second appeal to the High Court. The decision made by the District Court was confirmed. Testing the correctness of the judgment and decree and following the decision in State of Andhra Pradesh Vs. N. Radhakrishnan reported in AIR 1998 SCC 1833 : 1998 (4) SCC 154 and P.V. Mahadevan V. Managing Director, Tamil Nadu Housing Board reported in 2005 (4) CTC 403, the Hon'ble Supreme Court, at paragraph 9 has held as follows:

"We have extracted the charges against the appellant. These charges did not require any detailed investigation. In view of the unexplained delay of nine years the Trial Court was justified in holding that the entire enquiry was vitiated and in declaring that the order of punishment to be null and void. The Appellate Court did not have any justifiable reason to interfere with the said finding. In the circumstance, we are of the view that the High Court ought to have interfered in the matter as the Appeal involved a substantial question of law, i.e whether issue of charge sheet after nine years when there are no special circumstance to explain the delay vitiated the enquiry. As the matter is old and as we have already found that the delay vitiated the enquiry, no purpose will be served by remitting the matter. We propose to dispose of the Appeal on merits".

The Hon'ble Supreme Court reversed the judgment and decree of the High Court and the first appellate Court and consequently, restored the judgment of the decree of the trial Court, setting aside the penalty.

(xviii) In *S.Rathinavelu Vs. The Chairman, Tamil Nadu Water Supply and Drainage Board, 31, Chepauk, Chennai-5* and another reported in 2009 (2) CTC 513, for certain incidents alleged to have occurred in 1988-1989, disciplinary proceedings were initiated, after 10 years. After considering a catena of decisions, this Court set aside the punishment on the ground of inordinate delay of 10 years in initiating the disciplinary proceedings.

(xix) In *Kootha Pillai Vs. Commissioner, Municipal Administration, Chennai* and others reported in 2009 (1) MLJ 761, this Court has quashed the disciplinary proceedings on the ground of inordinate delay.

(xx) Following the ratio decidendi in *N.Radhakrishnan's* case cited supra, a recent judgment reported in *S.Sekar Vs. Commissioner of Social Welfare, Ezhilagam, Chennai* reported in 2010 (1) MLJ 708, a learned Judge at paragraph 11 has observed as follows:

"11.Also, it is a settled proposition that while 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 its course as per relevant rules; but then, delay defeats justice. Delay causes prejudice to the charged officers unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting disciplinary proceedings. Ultimately, the Court is to balance these two diverse considerations". In the above reported case, there was a delay of 12 years in concluding the disciplinary proceedings and that there was no explanation for such delay."

11. The learned counsel would further rely on yet another decision of the learned Division Bench of this Court in the case of A.Obaidhullah Vs. The State of Tamil Nadu and another, reported in 2005 (5) CTC 380, she would draw the attention of this Court to paragraph Nos.11 to 14, which are reproduced below:-

"11. Coming to the delay in both the writ petitions, it is the claim of A. Obaidhullah, petitioner before the Tribunal that there had been inordinate delay on the part of the department/ Government and in the absence of proper explanation or the delay had been caused at the instance of the petitioner himself, the charge memo cannot be proceeded. Though the Tribunal has referred to the fact that charge memos have been issued as early as on 5-6-78 in respect of the events that had taken place during February, 1976 and February, 1977 and absolutely there is no explanation at all for not

pursuing the charge and the need for issuing a fresh charge memo on 5-12-90 i.e., after a period of 12 years. The Tribunal proceeded on the assumption that inasmuch as the enquiry was headed by a sitting Judge of the High Court and based on the findings of the Commission, charge memos had been framed, the same cannot be lightly ignored. We are unable to accept the said conclusion. In T.T. ANTONY v. STATE OF KERALA AND OTHERS, reported in J.T. 2001 (5) SC 440, the Honourable Supreme Court has held that the report and findings of the Commission of Inquiry are meant for information of the Government. Acceptance of the report of the Commission by the Government would only suggest that being bound by the Rule of law and having duty to act fairly it has endorsed to act upon it. The Court has further held that the duty of the police/ investigating agency of the State is to act in accordance with the law of the land. The Courts civil or criminal are not bound by the report or findings of the Commission of inquiry as they have to arrive at their own decision on the evidence placed before them in accordance with law. The Tribunal failed to consider the said relevant fact while considering the delay.

12. As rightly pointed out by Mr.K.V. Srinivasaraghavan, the Tribunal by pointing out various writ petitions filed by one K. Vidyasagar, the then Superintendent, Central Prison, Madras, questioning the enquiry proceedings, ignored the claim of the petitioner-A. Obaidhullah and projected that the delay was caused only at his instance.

13. In STATE OF U.P. v. N. RADHAKISHAN, reported in (19 98) 4 Supreme Court Cases 154, the following conclusion in para 19 is relevant: "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."

After holding so, the Honourable Supreme Court finding that the respondent (delinquent) at any stage tried to obstruct or delay the enquiry proceedings, confirmed the order of the Tribunal in quashing the charge memo dated 31-7-1995. As observed by the Supreme Court, whether the delay has vitiated the disciplinary proceedings, the Court has to consider a) the nature of charge; b) its complexity; and c) 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. As pointed out by the Supreme Court, it is the duty of the Court to verify how much the disciplinary authority is serious in pursuing the charges against the delinquent. Though disciplinary proceedings should be allowed to take their course, as pointed out, undoubtedly, the delay defeats justice and causes prejudice to the charged officer.

14. In recent judgement in the case of P.V. MAHADEVAN v. MD. T.N. HOUSING BOARD, reported in 2005 Supreme Court Cases (L&S) 8 61, the Supreme Court after finding that there is inordinate delay of 10 years in initiating the departmental enquiry against the appellant P.V. Mahadevan, in the absence of explanation from his employer Tamil Nadu Housing Board, concluded that allowing the Housing Board to proceed with the departmental proceedings at this

distance of time would be very prejudicial to the appellant and consequently quashed the charge memo issued against him. While arriving such a conclusion, Their Lordships made a reference to N. Radhakrishnan's case (1998) 4 SCC 154 (cited supra). After considering the factual details and rival contentions, the Supreme Court has concluded that: (para 11) "11. 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." After holding so, the Supreme Court quashed the charge memo issued against the appellant and also directed settlement of all retiral benefits in accordance with law within 3 months from the date of the order."

12. The above two decisions have laid down the law in categorical terms that the undue and unexplained delay would be a vitiating factor and such delay would be fatal to the disciplinary proceedings against the Government employees. The Courts have thus interfered with such disciplinary action on the ground of delay alone. The learned counsel would further submit that in this case, there cannot be any valid or proper explanation for such a long delay of 12 years in framing the charges and completion of disciplinary proceedings in 2015. Moreover, the charge against the petitioner is not a one of moral turpitude or corruption and therefore, it is not open to the respondents to frame charge after a period of 12 years. Such belated framing of charge as would itself constitute a grave prejudice to the interest of the employee and therefore, on this ground alone, the learned counsel would impress upon this Court

to interfere with the disciplinary action against the petitioner.

13. Besides, the learned counsel for the petitioner would also rely on the decision in the case of R.Pitchandi Vs. The Principal Chief Conservator of Forest and others, reported in 2011 SCC Online Mad 1586 and she would draw the attention of this Court to paragraph Nos.6 to 7, which are reproduced below:-

"6. The fact remains that the Disciplinary Authority has held that the charges were not proved against the petitioner and other delinquents. However, the Disciplinary Authority awarded the punishment to the petitioner and the second co-delinquent as stated above and insofar as the first co-delinquent is concerned, he has been totally exonerated from the charges. Therefore, it is crystal clear that different yardstick was adopted in respect of the petitioner and the second co-delinquent than that of the first co-delinquent and it would certainly amount to discrimination in awarding punishment to the petitioner and other co-delinquents. The learned counsel for the petitioner has rightly placed reliance on the decision of the Hon'ble Apex Court in M.Raghavelu v. Govt. of A.P. and Another reported in (1997) 10 SCC 779. The Hon'ble Apex Court in the said decision has held as hereunder:

"5. The argument of the learned counsel for the appellant is that if the persons directly in charge of the construction work were found not guilty of the charge framed, the appellant, who was indirectly in charge of the work, cannot be punished for similar charge levelled against him. We find force in the argument of the learned counsel for the appellant and we do not think that the argument of the learned counsel for the respondent that the enquiry officer in this particular case has gone into the merits and has given different finding should be accepted. As pointed out earlier, on the basis of the same set of evidence the officers who were directly in charge of the construction work were exonerated of the charge and we see no reason to pick out the appellant along for finding him guilty of the charge."

The learned counsel for the petitioner has also rightly placed reliance on the decision of this Court

in N.Nandagopalan v. The Secretary to Government reported in 2007 Writ L.R.52, wherein a learned Single Judge of this Court has held as hereunder:

"9. It is well settled in law that if employees are involved in the same incident, the Department should proceed against all or should not proceed against none. There is no discretion to proceed against some of employees and no action against the other employees, since they are identically placed and their involvement being identical. In the instruction submitted by the Government Advocate, it is not stated as to how the petitioner's involvement is not similar to other 28 persons. In the absence of such distinct feature, the proceedings conducted by the respondent against the petitioner and imposing punishment on the basis of the charge is illegal and hence the impugned order is set aside."

The principles laid down by the Hon'ble Apex Court and this Court in the decisions cited supra are squarely applicable to the facts of the instant case as in this case also, as already pointed out earlier, there is a discrimination in respect of awarding punishment between the petitioner and other co-delinquents.

7. In view of the aforesaid reasons, this Court is of the considered view that as the first co-delinquent has been totally exonerated from the charges, the same benefit should be given to the petitioner also. Accordingly, this Court is constrained to set aside the impugned order passed by the first respondent dated 27.06.2010 in proceedings Se.Mu.Aanai.No.A.A2/29499/2009. Consequently, the first respondent herein is hereby directed to give promotion to the petitioner as Forester, if the petitioner is otherwise eligible and entitled for such promotion. "

14. The learned counsel would further rely on the decision rendered by the learned single Judge of this Court in W.P.(MD). No.8192 of 2014 dated 01.10.2015, with reference to paragraph Nos.5 to 7 of the said order passed by the learned Single Judge which are reproduced below:-

"5. The aforesaid portion of the counter affidavit infers that the co-delinquents of the petitioner, against whom similar charges were framed, have been imposed with a lighter of punishment of

censure. However, in the case of the petitioner, the respondent imposed a harsher punishment as stated above, without taking note of the fact that they are all involved in the same incident. Such approach adopted by the respondent is against the doctrine of equality.

6. In such circumstances, the Hon'ble Apex Court in the case of *Rajendra Yadav v. State of Madhya Pradesh and others* ((2013) 3 SCC 73), while dealing with the doctrine of equality, held thus:

12. The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences.

13. The principle stated above is seen applied in few judgments of this Court. The earliest one is *Director General of Police and Others v. G. Dasayan* (1998) 2 SCC 407, wherein one Dasayan, a Police Constable, along with two other constables and one Head Constable were charged for the same acts of misconduct. The Disciplinary Authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan and that of compulsory retirement on Head Constable. This Court, in order to meet the ends of justice, substituted the order of compulsory retirement in place of the order of dismissal from service on Dasayan, applying the principle of parity in punishment among co-delinquents. This Court held that it may, otherwise, violate Article 14 of the Constitution of India. In *Shaileshkumar Harshadbhai Shah*

case (supra), the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary retirement scheme. In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of voluntary retirement from service from the month on which the others were given the benefit.

7. In the light of the above said ratio of the Hon'ble Apex Court, the impugned punishment passed only against the petitioner cannot be sustained, especially when the co-delinquent of the incidents, namely, Mr.Veerarajan and Mr.Ponswamynathan, who have faced similar charges, were imposed with a lighter punishment of censure as observed above. Besides, from the date of punishment imposed against the petitioner i.e. on 13.03.2014, now more than twenty months have gone by and on account of a passage of time, he has lost his promotional avenues, that itself, in my view, would be much more than the punishment. Hence, this Court is inclined to allow the writ petition by setting aside the impugned order. Accordingly, the impugned order passed by the respondent is set aside. Consequently, the writ petition stands allowed. No Costs. M.P.No.1 of 2014 is closed."

15. The learned counsel for the petitioner would therefore submit that from the above two case laws cited by her in support of her contention, there cannot be a different yardstick in the matter of conclusion by the Enquiry Officer as against the petitioner as well as the said Durga Shankar, who was identically charge sheeted and identically raised defence as that of the petitioner. But, the Enquiry Officer had chosen to accept the explanation offered by the said Durga Shankar and exonerated him from the charges, whereas, the same defence put up by the petitioner was ignored and negatived and the Enquiry Officer found the petitioner guilty of the charges. Therefore, the report of the Enquiry Officer is nothing, but, perverse. The conclusion of such report cannot be the basis for the impugned penalty imposed by the disciplinary authority. The learned counsel would further submit that the disciplinary authority failed to appreciate that there was a long delay in initiation of disciplinary action against the petitioner and also the charges which are completely baseless and unfounded in the teeth of the explanation offered by the petitioner. In any event, it is not open to the respondents to subject the petitioner to a

prolonged disciplinary action for the so called acts of misconduct committed by him as early as in the year 2000.

16. The learned counsel for the petitioner would finally submit that the fact of he undertook field inspection has not been disputed by the respondents in the counter affidavit and in any event, how such fact could be verified after a period of 12 years, was anybody's guess. In any event, the petitioner asserted that he had undertaken the field inspection before making any recommendation for transfer of patta. In the absence of any contra materials and in the absence of specific denial by the respondents in the counter affidavit, the explanation on this aspect of the petitioner has to be necessarily accepted. For all the above said reasons, the learned counsel for the petitioner would submit that the petitioner is entitled to grant of relief in the present writ petition.

17. Upon notice, learned Special Government Pleader appearing for the respondents, entered appearance and filed a detailed counter affidavit by resisting the claim of the petitioner.

18. The learned Special Government Pleader appearing for the respondents would submit that the impugned action was taken only after careful consideration of the petitioner's explanation as well as the report of the enquiry. Once the report concluded that the petitioner was guilty of the charges on the basis of the evidence which was made available in the enquiry, it was rather imperative on the part of the disciplinary authority to impose suitable punishment on the petitioner. As far as the delay is concerned, there appears to be no valid or proper explanation in the counter affidavit. However, the submission was, there occurred some delay and such delay cannot be taken advantage of by the petitioner for striking down the disciplinary action.

19. Upon consideration of the relevant materials and pleadings and the legal submissions made on behalf of the petitioner as well as the respondents, this Court is of the view that there has been no proper explanation forthcoming from the respondents to the enormous delay in framing charges against the petitioner, this is particularly so, when the petitioner was not charged with for any act of moral turpitude or corruption. Atmost, the allegation can be construed to be one of negligence or minor dereliction of duty. Therefore, such act of misconduct even assuming that it was committed by the petitioner, cannot invite disciplinary action after a passage of 12 long years. As rightly contended by the learned counsel for the petitioner that such long delay by itself would constitute prejudice and therefore, the petitioner herein is entitled to the benefit of the ratio laid down by the learned Division Bench of this Court

as cited supra.

20. Even otherwise, on merits, it appears that the petitioner has come forward with cast iron case as at the time of application made on 13.11.2000, the subject land was described only as "Ryotwari Manai" in the Survey Register and only subsequently, on 27.03.2008, the Collector had changed the classification to "Sarkar Poramboke". The Mandatory registration of power of attorney came into effect only in 2012 and therefore, the unregistered power of attorney which was presented in 2000, and accepted by the petitioner at that point of time cannot be faulted with. As regards the allegations that the petitioner had not undertaken field inspection, the same was denied by the petitioner and asserted that such inspection was undertaken by him. As rightly contended by the learned counsel for the petitioner that the fact of field inspection undertaken by the petitioner, has not been disputed in specific terms by the respondents in the counter affidavit. Therefore, this Court is of the considered view that even on merits, the petitioner is entitled to succeed.

21. For the above said reasons, this Court has no hesitation in allowing the writ petition both on the ground of delay as well as on merits. In the said circumstances, the impugned order in letter No.6799/Ser 4(2)/2009-11, Revenue (Ser 4(2)) Department, dated 25.10.2012 and the subsequent Government Order in G.O.(2D) No.231, Revenue (Ser 4(2)) Department, dated 13.04.2015, are hereby set aside.

22. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gsk

To

1.The Secretary to Government,
Revenue Department, Fort St.George, Chennai 600 009.

2.The Personal Assistant (General) to the Collector,
Chennai 600 001.

+1cc to Ms.Dakshayani Reddy, Advocate, S.R.No.52735

+1cc to the Government Pleader, S.R.No.53249

W.P.No.9004 of 2016

NRL(CO)

BM 06/08/2018