



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.12.2019

CORAM

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

W.P(MD)No.6975 of 2015

S.Muthiah

.. Petitioner

Vs.

1.Assistant Director,
Land Survey Office,
Sivagangai District.

2.The Regional Deputy Director,
Land Survey Office,
Madurai - 20.

3.The Additional Director,
Land Survey Office,
Survey House,
Cheppauk, Chennai.

4.The Director of Survey and Settlement,
Survey House,
Cheppauk, Chennai.

5.Assistant Director of Survey and Land Records,
Collectorate Campus,
Nagercoil, Kanyakumari District.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the 1st Respondent in his Proceedings in Na.Ka.A9/12026 99 dated 29.03.2006 and call for the records of the 2nd respondent in his Proceedings No.Na.Ka.6622/06 dated 16.03.2007 and call for the records of the 3rd respondent in his Proceedings Na.Ka.La1/12866/13 dated 28.10.2013 and call for the records of the 4th Respondent's in his Proceedings Na.Ka.Gna2/4652/2014 (Ni.A) dated 27.08.2014 and quash the same and direct the respondents to give notional promotion to the petitioner from the date on which his junior was promoted and also directing them to give all other attended and consequential benefits to him with retrospective effect and pass such further or other orders.



For Petitioner

: Mr.K.Muthumalai

For Respondents

: Mr.P.Kannidevan,
Addl. Govt. Pleader.

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ORDER

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records of the respondents 1 to 4, dated 29.03.2006, 16.03.2007, 28.10.2013 and 27.08.2014 respectively and quash the same and also direct the respondents to give notional promotion to the petitioner from the date on which his junior was promoted and also direct them to give all other attendant and consequential benefits to him with retrospective effect.

2.The case of the petitioner is that he joined the Government service as Section Writer in the year 1982 and he attained the age of superannuation on 31.01.2012 as Sub Inspector of Surveyor. It was alleged that when he was working as Surveyor in Updating Registry Unit No.3, Thirupattur during the year 1987, he assisted another surveyor in issuing bogus patta, for which, departmental proceedings were initiated on 23.11.1999 and charges were framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and a detailed enquiry was conducted. The enquiry officer concluded that no charge was proved against the petitioner. But, the 1st respondent, without giving any notice to him, mechanically rejected the findings of the enquiry officer and also imposed the punishment of stoppage of future increment for two years without cumulative effect excluding the leave period and without affecting pensionary benefits, by order, dated 29.03.2006. Against which, he filed appeals before the respondents 2, 3 and 4 and the same were also dismissed vide impugned orders dated 16.03.2007, 28.10.2013 and 27.08.2014 respectively. Against which, the present writ petition has been filed.

3.The learned counsel for the petitioner submitted that since the enquiry officer held that the charges were not proved, the 1st respondent without disagreeing the same and also without giving any notice to the petitioner, has passed the impugned proceedings and the respondents 2 to 4 have also erroneously dismissed the appeals filed by the petitioner. Thus, he prayed to quash the impugned proceedings passed by the respondents 1 to 4 and also to direct the respondents to give notional promotion and give all other attendant and consequential monetary benefits to him.

4.The learned Additional Government Pleader appearing for the respondents drawing the attention of this Court to the counter affidavit filed on the side of the 1st respondent, submitted that on the basis of the judgment passed in respect of another surveyor viz., M.Chandran, in the criminal case and also the evidence in



respect of the two charges framed against the petitioner, the 1st respondent passed the impugned proceedings, dated 29.03.2006, imposing the punishment and the respondents 2 to 4 also rightly dismissed the appeals filed by the petitioner. Thus, he prayed to dismiss the writ petition.

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5. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

6. Perusal of records shows that departmental proceedings were initiated against the petitioner on 23.11.1999, for the incident took place in the year 1987, i.e., after a period of 12 years. The enquiry officer concluded that the charges framed against the petitioner, were not proved. But, without disagreeing the same and also without issuing any notice to the petitioner, the 1st respondent has imposed punishment on the petitioner, vide his proceedings, dated 29.03.2006 and the respondents 2 to 4 have also erroneously dismissed the appeals filed by the petitioner.

7. 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.

8. 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. Mahadevean 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.

9. 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, it has been 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".

10.The ratio laid down in the above decisions is squarely applicable to the facts of the present case and even the enquiry officer concluded that no charge was proved against the petitioner. The disciplinary authority has not given any reason for deviating from the findings of the enquiry officer and no notice was given to the petitioner. The order was passed in total violation of the principles of natural justice. Moreover, there is a delay of 12 years in initiating the departmental proceedings, which would cause serious prejudice to the petitioner, which is considered in all the above Judgments. Therefore, for the reasons stated above and following the above Judgments, the impugned orders dated 29.03.2006, 16.03.2007, 28.10.2013 and 27.08.2014, passed by the respondents 1 to 4 respectively, are quashed and the respondents are directed to give notional promotion to the petitioner from the date on which his junior was promoted and also give all other attendant and consequential benefits to him with retrospective effect. The writ petition is allowed accordingly. No costs.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)



To

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Land Survey Office,
Sivagangai District.
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ORDER MADE IN
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VB(28.01.2020) 6P 6C