



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2021

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.30980 of 2005 and
W.P.Nos.33386 & 5290 of 2006

M.Sukumaran ...Petitioner in WP.30980/2005 and
33386 of 2006

Vs

1.Government of Tamil Nadu

Rep. by its Secretary to Government Environment
and Forests Department,
Fort St. George, Chennai-600 009.

2.The Principal Chief Conservator of Forests,
Panagal Building, Saidapet, Chennai-15.

3.The District Forest Officer,
Vellore Division, Vellore.

... Respondents in WP.30980/2005
and 33386 of 2006

PRAYER in WP.No.30980 of 2005: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, call for the records of the third respondent to C.No.104/90/E1 dated 7.8.1990 (Charge memo) quash the same and to issue consequential directions to the respondents to include the name of the petitioner in the panel for the year 2003-2004 for the promotion as Forest Ranger approved by the second respondent in Pro.No.B1/43765/2003 dated 18.11.2003 at Sl.No.48 therein without reference to the above said disciplinary proceedings and to promote the petitioner as such with retropective effect from the date of promotion of his immediate junior with all consequential benefits.

PRAYER in WP.No.33386 of 2006: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, calling for the records of the First Respondent in G.O. (2D) No. 39 Environment and Forests



Dept. dt. 21.12.2005 quash the same and issue consequential direction to the respondents herein to refund the amount recovered if any from his pay with 18% interest per annum.

WP.No.5290 of 2006

1.M.Sukumaran (Deceased)

2.S.Renganayaki

3.S.Balaji

4S.Swapna

5.M.Selammal

... Petitioners

(P2 to P5 are sub as L.R.s of Deceased P1

by order dated 04.08.2010 in

MP.No.458 of 2010 in WP.No.5290 of 2006)

Vs.

The Principal Chief Conservator of Forests,

No.1, Panagal Maligai,

Jeenis Road, Saidapet, Chennai-15.

... Respondent

PRAYER in WP.No.5290 of 2006: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, to call for the records of the respondent in Proc.No. B1/69433/2005-1 dated 3.1.2006 and quash the same and consequently direct the respondent to include the name of the petitioner in the forthcoming panel of foresters fit for promotion to the post of forest ranger for the year 2005-2006.

For Petitioner : Mr.S.Balakrishnan
(In all WPs)

For Respondents : Mr.S.John J.Raja Singh
(In all WPs) Government Advocate

COMMON ORDER

The petitioner had joined service in the Forest Department as a Forester on 12.01.1981. The challenge in the matter is in regard to the non-inclusion of the petitioner in the promotion panels for Forest Ranger for the years 2003-2004 and 2005-2006, wherein though his name figures at serial Nos.49 and 31 in proceedings dated 18.11.2003 and 26.11.2004, the petitioner has been declared to be 'Not Selected'. No reason has been adduced for such non-selection/inclusion.



2.Charges were laid against the petitioner on 07.08.1990 to the effect that while serving as a Forester in the Thali Range of Mettur Soil Conservation Scheme, the petitioner had caused loss to the Government by incurring excess expenditure in collusion with other Foresters in relation to certain works in the plantations in Nelmar Bit-I during the period 1980-1981 and 1981-1982. Moreover, he had connived with two persons in the preparation of bogus vouchers for the plantation works in Nelmar Bit-I and Bit-II that had been actually executed by engaging Mazdoors, but had been projected as though executed through petty contractors and had failed to obtain proper signatures of the concerned persons in the nominal muster rolls while disbursing wages to the Mazdoors.

3.Admittedly, the petitioner had not appeared before the enquiry officer and thus the officer, had rightly proceeded to complete the enquiry, submitting a report adverse to the petitioner in March 1997, ex parte. Thereafter, and based on the enquiry report, a show cause notice was issued to the petitioner, who filed a response to the same.

4.Based on charge sheet dated 07.08.1990 and the enquiry report issued by the enquiry officer in 1997, a notice was issued to the petitioner on 06.08.1997 calling upon him to show cause as to why investigation and further proceedings not be taken as against him. To this, an explanation was furnished by the petitioner on 20.10.1997 and further explanation on 07.03.2005. Proceedings have been completed only on 21.12.2005 by way of the impugned order.

5.Two contentions have raised by the petitioner herein, the first relating to the merits of the charged levelled as against him. He would submit that he had been deputed to serve in Nelmar Bit-II of the Mettur Soil Conservation Project only and was never deputed to, or part of the activities carried out in Bit-I. The first charge relates to alleged discrepancies, specifically in Nelmar Bit-I and that too, during the years 1980-1981 and 1981-1982. He cannot hence, be held responsible for the same since he was unconnected to that area.

6.The subsequent two charges draw sustenance only from the first charge, though the 2nd charge incidentally mentions Nelmar Bit-II also. Thus, it is the case of the petitioner that the



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charges are baseless and are wholly unconnected to the location where he was stationed and the activities carried on by him there. To this, there is no effective defence and nowhere in the pleadings or in the course of the hearing before me were the facts as narrated hereinbefore, disputed.

7. The second and more fundamental contention is the inordinate delay in the conduct and finalisation of the proceedings themselves. The charge sheet has been issued in 1990, and related to certain allegations in relation to the period 1980-1981 and 1981-1982. Enquiry was conducted in 1997 and the proceedings concluded in 2005. Thus, the proceedings in entirety, commencing from the year of activity in relation to which charges were laid, to the passing of the final order, span nearly 25 years.

8. The question is as to whether one can be subject to disciplinary proceedings that traverse such an inordinate length of time. He would also point out that though the aforesaid submissions have specifically been raised in the response to the show cause notice, the impugned order does not touch upon or deal with the same at all.

9. Per contra, Mr.S.John J.Raja Singh, learned Government Advocate appearing for the State would point out that the delay, if any was caused only by way of the dilatory tactics adopted by the petitioner. In fact, the petitioner had not appeared before the enquiry officer, thus constraining the officer to pass an order ex parte in 1997. Thus, there can be, according to him, no delay attributable to the respondents.

10. Though the officer was right in issuing an ex parte enquiry report in the light of there having been no response to the notices issued by him, it cannot be disputed that the enquiry itself had commenced only in 1990 in regard to alleged violations that transpired one decade ago. Moreover, after the issuance of the enquiry report in 1997, the proceedings have been concluded only in 2005 with a long and unexplained gap of 8 years in between.

11. In all, a period of 25 years is, in my view, too long to be an acceptable time frame for completion of disciplinary proceedings. In fact, this very argument has found favour with



the Tamil Nadu Administrative Tribunal (TNAT/Tribunal) Tribunal in the case of Mr.P.V.Balakrishnan, Forester in Nelmar Bit-I Region, who had also been implicated under the same charges. Mr.Balakrishnan had approached the TNAT by way of a series of Original Applications.

12. Considering the length of time for which the proceedings have been pending, the Tribunal had, by its order dated 21.06.2001 passed in O.A.No.5627 of 1997, directed the respondents to pass final orders in the disciplinary proceedings within a period of three months from the date of receipt of its orders, further stating that if no final orders were passed within the period as stipulated by it, then the disciplinary proceedings initiated by the District Forest Officer, Vellore shall stand quashed for that very reason.

13. Since no orders had been passed within the time as set by the Tribunal, Mr.Balakrishnan filed O.A.No.7572 of 2001 pointing out the violation in the time frame as set by the Tribunal and accepting the contention, the Tribunal, by order dated 29.11.2001, quashed the disciplinary proceedings initiated, directing the respondents to grant him all terminal benefits in view of the annulment of the proceedings themselves.

14. In my considered view, the setting aside of proceedings in the case of a co-delinquent that involved the same timelines as in the case of the petitioner, would support the present case. Though not all the orders of the Tribunal referred to in paragraph 14 are before me, the facts in relation to the trajectory of the proceedings in the case of Mr.Balakrishnan are not disputed by the respondents.

15. Mr.Singh would finally draw attention to the fact that two other individuals by name Mr.N.Swaminathan and Mr.T.Mohan, who are co-delinquents along with the petitioner have suffered the imposition of punishment and fine and recovery that was initiated in their cases under G.O.Ms.No.401 Environment and Forest Department, dated 19.12.2005 (in the case of Mr.Swaminathan) and G.O.Ms.No.114, Environment and Forest Department, dated 03.04.2002 (in the case of Mr.Mohan).

16. This may well be so; however, the mere fact that those delinquents did not chose to challenge the delay that has



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transpired in their cases would not save the case of the State as regards the case of the petitioner. It is an undisputed fact that there has been unreasonable delay in the conduct of the proceedings in the case of the petitioner and the challenge to the same is liable to be accepted for the reasons stated above.

17. That apart, I also find that the impugned order 03.01.2006, after setting out the narration of the history of the matter, merely proceeds to confirm the findings of the enquiry officer imposing punishment of stoppage of increment for six months without cumulative effect and without indicating any reasons/rationale for the same. It was incumbent upon the authority to apply his mind to the facts of the matter, specifically the explanations put forth by the petitioner and come to a reasoned conclusion by way of a speaking order. This has not been done in the instant case, which, in my view, is also fatal to the proceedings.

18. In fine, the impugned orders in W.P.Nos.30980 of 2005 and 33386 of 2006 are set aside and both the writ petitions are allowed as a consequence of which the petitioner is liable to be notionally empaneled as Forest Ranger for the year 2003-2004 with all consequential benefits to be paid over within a period of eight weeks from today. No costs.

19. In WP.No.5290 of 2006 the petitioner seeks a direction to the respondents to include the name of the petitioner pending constitution of the panel. Nothing survives in this matter and thus, this writ petition is rendered infructuous and is dismissed as such. No costs.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Secretary to Government Environment
and Forests Department,



Government of Tamil Nadu
Fort St. George, Chennai-600 009.

2.The Principal Chief Conservator of Forests,
Panagal Building, Saidapet, Chennai-15.

3.The District Forest Officer,
Vellore Division, Vellore.

+1cc to the Special Government Pleader, S.R.No.43716

W.P.No.30980 of 2005 and
W.P.Nos.33386 & 5290 of 2006

SJ(C0)
SB(04/10/2021)