



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2021

CORAM

THE HONOURABLE MR.JUSTICE **M.S.RAMESH**

W.P.(MD)No.19815 of 2020

and

W.M.P.(MD)Nos.16507 and 16509 of 2020

K.Mahadevapandiyan

: Petitioner

Vs.

1.The Chief Conservator of Forest,
Conservator of Forest Office,
No.1, Jons Road, Panagal Maligai,
Saidapet, Chennai -15.

2.The District Forest Office cum Wild Life Guard,
Tirunelveli Forest Range,
North Main Road, N.G.O. 'A' Colony,
Tirunelveli.

3.The Forest Ranger,
Sankarankovil Forest Range, Puliyankudi,
Tenkasi District.

: Respondents

PRAYER:- Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, to call for the records relating to the second respondent proceedings in charge memo No.2120/14/Pa2 dated on 13.10.2020 and quash the same and consequently to direct the respondents to permit the petitioner to join the promoted post of Forester at social forest Extension, Tirunelveli.

For Petitioner

:Mr.P.Muthusamy

For Respondents

:Mr.P.Mahendran

Additional Government Pleader

ORDER

The petitioner herein is a Driver under the second respondent. On 22.03.2014, there was an accident, when the petitioner was driving the car, resulting in the death of one person and injury of another person. A criminal case in Cr.No.144 of 2014 was registered and among other offences, the petitioner was implicated for an offence under Section 304(A) IPC. After about 6½ years, the second respondent had served a charge memo, dated 13.10.2020



implicating the petitioner for certain charges under Rule 17(b) of the Tamil Nadu Subordinate Service (Regulation and Appeal) Rules. The said charge memo is under challenge in the present Writ Petition.

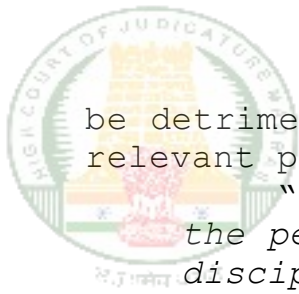
2.The learned Counsel for the petitioner submitted that the delay in framing the charges is inordinate and therefore, the departmental enquiry itself cannot be proceeded further in view of the delay. The learned Counsel for the petitioner also submitted that in view of the impugned charges being levelled against the petitioner, his name for promotion to the post of Forester has been kept in abeyance, thereby, causing serious prejudice to him.

3.The learned Additional Government Pleader placed reliance on the averments in the counter affidavit and submitted that pursuant to the accident, that occurred on 22.03.2014, the legal heir of the deceased had filed a claim petition in M.C.O.P.No.541 of 2017 before the Motor Accidents Claims Tribunal and the District Forest Officer was directed to compensate 50% of the liability and the remaining liability of 50% was fixed on the Writ Petitioner. In view of the liability cast on the department, they were constrained to proceed against the petitioner by framing charges under Rule 17(b) of the said Rule. It is also submitted that it is always open to the petitioner to establish his innocence before the Enquiry Officer and that this Court should not interfere with the departmental proceedings at the stage of charge memo.

4.I have given careful consideration to the submissions made by the respective learned Counsels.

5.Before advertng to the submissions made by the respective learned Counsels, it would be appropriate to mention that this Court, exercising its powers under Article 226 of Constitution of India, would not generally interfere with the departmental enquiry at the stage of levelling of charges. Nevertheless, certain exceptions have been carved out for such interferences and one among such exception is the inordinate delay in the departmental proceedings, which could cause prejudice to the delinquent.

6.The Honourable Supreme Court in the case of ***the Secretary, Ministry of Defence vs Prabhash Chandra Mirdha***, reported in ***2012 11 SCC 565***, had laid down such a ratio and held that the delay in initiating departmental proceedings would be fatal to the department, when such delay causes prejudice to the delinquent. Likewise, a learned Single Judge of this Court in the case of ***Kootha Pillai vs The Commissioner, Municipal Administration and others***, reported in ***2009 (1) MLJ 761***, had taken into account various decisions holding a similar ratio and held that such inordinate delay, that causes prejudice to the delinquent, would



be detrimental to the continuance of the departmental action. The relevant portion of order reads thus:

"44.The next contention of the learned counsel for the petitioner is that the subject matter of the proposed disciplinary action, as stated in the impugned order, relate to incidents, which took place more than 18 years ago. The following judgments are pressed into service for the proposition that inordinate delay, not explained satisfactorily would cause serious prejudice and therefore, there cannot be any disciplinary action, after retirement.

45.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 latches 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.

46.In State of A.P., v. N.Radhakrishnan reported in 1998 (4) SCC 154, the Supreme Court, at Paragraph 19, held as follows:

"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 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."

47.In Union of India v. CAT 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....."

48.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."

49. 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 failed 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."

50. 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.



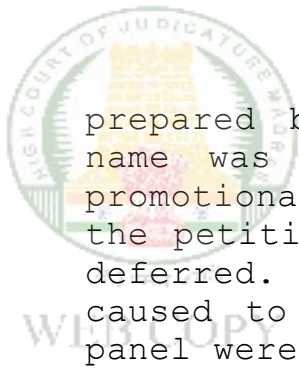
51.The Supreme Court in *M.V.Bijlani v. Union of India* and other reported in 2006 (5) SCC 88, quashed the order of removal from service, confirmed by the appellate authority on various grounds particularly, on the ground that initiation of disciplinary proceedings after six years and continuance thereof,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

52.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."

7.In this background, when the facts of the present case are looked into, it is seen that the accident, admittedly, took place on 22.03.2014, when the petitioner was driving the car. The accident involved collusion with a motorcycle, whereby, the rider of the motorcycle died on the spot. In connection with the accident, a criminal case was also registered in Cr.No.144 of 2014. Nothing prevented the respondents to initiate departmental action against the petitioner at that point of time itself, when the accident had occurred and a criminal case was also registered. Rather, they had chosen to wait for more than 6½ years and on 13.10.2020, the charges were levelled against the petitioner for involving the car in an accident and causing the death of the motorcycle rider.

8.The respondents have attempted to justify the delay by referring to the award passed by the Motor Accidents Claims Tribunal on 27.10.2015 and since 50% of the liability over the compensation was mulcted on them, they had preferred to proceed against the petitioner departmentally. The nature of the charges is not connected with the liability cast on them by the Motor Accidents Claims Tribunal, but only for the alleged negligent driving by the petitioner and thereby, causing an accident about 6½ years back. No other explanation has been rendered with regard to the delay in framing the charges. In this background, it can be said that such a delay is inordinate in nature.

9.The next aspect that requires consideration is the prejudice that could have been caused to the petitioner owing to the delay. Admittedly, the promotional panel for the post of Forester was



prepared by the respondents on 13.10.2020 and the petitioner's name was included in Sl.No.9 with Seniority No.222. In the promotional panel, the disciplinary proceedings pending against the petitioner was referred to and thereby, the posting order was deferred. In view of the same, serious prejudice could have been caused to the petitioner, since his juniors in the promotional panel were promoted, overlooking his candidature.

10.When there is an inordinate delay in framing of the charges, which has caused serious prejudice to the petitioner, the further departmental action cannot be proceeded with, in view of the well laid down legal position referred to in the decisions cited above in this order. While that being so, the respondents may not be entitled to proceed any further pursuant to the impugned charge memo.

11.In the light of the above observations, the impugned order, dated 13.10.2020 stands quashed. Consequently, the petitioner would be entitled to all the monetary and service benefits including his promotional benefits. The respondents shall extend such benefits to the petitioner forthwith and insofar as it relates to the promotional benefit is concerned, he shall be extended with such promotion to the post of Forester effective from the date on which, his immediate junior was promoted. Such promotion and posting order shall be issued at least within a period of eight weeks from the date of receipt of a copy of this order.

12.The Writ Petition is allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

cmr

To

1.The Chief Conservator of Forest,
Conservator of Forest Office,
No.1, Jons Road, Panagal Maligai,
Saidapet, Chennai -15.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The District Forest Office cum Wild Life Guard,
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North Main Road, N.G.O. 'A' Colony,
Tirunelveli.

3.The Forest Ranger,
Sankarankovil Forest Range, Puliyankudi,
Tenkasi District.

+1 CC to MR.P.MUTHUSAMY, Advocate (SR-9098[F] dated 05/03/2021)

W.P.(MD)No.19815 of 2020
03.03.2021

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