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W.P.No.513 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.513 of 2017
and
W.M.P.No.541 of 2017

A.M.N.Siva

...Petitioner

Vs

1.The Principal Secretary to Government,
Environment and Forest Department,
Fort St. George, Chennai – 9.

2.The Principal Chief Conservator of Forest,
Head of Forest Force,
Panagal Building, Saidapet,
Chennai - 15.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to (1) Pro.No.T2/12710/07-02 dated 27.02.2014 of the second respondent and (2) G.O.(D) No.151, Environment and Forests (FR.12) Department, dated 11.08.2016 of the first respondent, quash the same and issue consequential direction to the respondents to sanction the withheld increment and further increments and disburse arrears thereof with interest.



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For Petitioner : Mr.T.Dharani

For Respondents : Mr.K.H.Ravikumar,
Government Advocate

ORDER

Heard Mr.T.Dharani, learned counsel for the petitioner and Mr.K.H.Ravikumar, learned Government Advocate for the respondents.

2. Under the charge memo dated 25.01.2011, the petitioner herein, while serving as an Assistant Draftsman, is alleged to have forwarded the quotations, estimates and completion reports submitted by the Forest Range Officer, Gene Pool Range, Nadugani, Gudalur Forest Division to the District Forest Officer, without perusing/scrutinizing the quotations and simply forwarding the same to the District Forest Officer for their pecuniary benefits. An enquiry came to be conducted against the petitioner, whereby the charges levelled against him was held to be proved. Consequently, the Disciplinary Authority had imposed the punishment of stoppage of increment for a period of one year with cumulative effect, through the order dated 27.02.2014. The appeal filed against the order of punishment was rejected by the second respondent



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on 11.08.2016. The order of punishment, as well as the order passed in appeal, are put under challenge in the present writ petition.

3. The learned counsel for the petitioner predominantly raised two grounds. Firstly, that there is an inordinate delay in framing of the charges. Secondly, that no witnesses were examined during the course of enquiry to substantiate the charges.

4. Per contra, the learned Government Advocate appearing for the respondents submitted that after the Directorate of Vigilance and Anti Corruption (DVAC) have registered a case against the Forest Range Officer, the petitioner's involvement was found, which had resulted in loss to the Government. Accordingly, the Government had directed to take departmental action against the petitioner on 27.05.2009 and hence, it cannot be said that there is a delay on the part of the respondents in initiating the charges. He further submitted that since sufficient documents were available for substantiating the charges against the petitioner, non-examination of the witnesses will not affect the findings of the Enquiry Officer.



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5. The reason assigned for the delay in initiating the disciplinary proceedings may not be acceptable. Firstly, when there is a responsible higher official above the rank of the petitioner, namely the District Forest Officer and the Conservator of Forest, who are required to check the measures of the works done by the Rangers, they ought to have monitored the quotations forwarded by the Assistant Draftsman. Merely placing reliance on the subsequent proceedings of the DVAC and the recommendations of the Government will not be a proper explanation to the delay in initiating the charges. Above all, the delay seems to be inordinate, since the delinquencies relate to the period between 2003-2004 and 2004-2005, whereas the charge memo has been issued in the year 2011, which is after 7 years. There is also a further delay of more than 3 years in completing the departmental action and imposing the punishment. There is also no explanation in the counter affidavit with regard to this delay in concluding the disciplinary proceedings.

6. The Hon'ble Supreme Court, as well this Court, on several occasions, have held that the disciplinary proceedings requires to be initiated and concluded within a reasonable time, if the fault of the



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pendency was not due to the delinquent's mistake. A learned single Judge of this Court, in the case of ***Kootha Pillai Vs. The Commissioner, Municipal Administration and 4 others*** passed in ***W.P.No.15231 of 2006 dated 05.11.2008***, had an occasion to refer to various decisions of the Hon'ble Supreme Court and ultimately held that the inordinate delay in initiating and completing the disciplinary proceedings, would cause prejudice to the delinquent and therefore, the proceedings itself cannot be continued. Some of the decisions referred to by the learned Single Judge in *Kootha Pillai's case (supra)* are as follows:-

“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 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.

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



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"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



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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



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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.



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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. The aforesaid extract is self explanatory. As such, the unexplained delay of 7 years in initiating the departmental proceedings and the further delay of 3 years in concluding the same, would have caused serious prejudice to the petitioner and thus, the consequential proceedings requires interference.

8. Insofar as the second ground raised by the petitioner is concerned, the Hon'ble Supreme Court, in the case of *Roop Singh Negi Vs. Punjab National Bank and others* reported in 2009 (2) SCC 570, has



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held that the contents of the documents produced before an Enquiry Officer requires to be substantiated through oral witnesses and in the absence of the same, the enquiry proceedings itself will stand vitiated.

The relevant portion of the judgement reads as follows:-

"14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence."

9. In the instant case, it is not in dispute that no documents were produced and that the Enquiry Officer had not examined any oral



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witnesses. In the absence of the same, the entire enquiry proceeding itself is vitiated and on this ground also, the impugned order of punishment cannot be sustained.

10. In the light of the above findings, the impugned orders dated 27.02.2014 and 11.08.2016 are quashed. In view of the quashing of the impugned orders, the petitioner would be entitled for all the service and monetary benefits, including award of notional promotions, if the same has been denied by stating the pendency of the charges or the currency of punishment. Accordingly, the second respondent herein shall pass appropriate orders, granting notional promotions to the petitioner, if any, together with all the service and monetary benefits, within a period of 8 weeks from the date of receipt of a copy of this order. The writ petition stands thus allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Speaking order/Non-speaking order
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M.S.RAMESH,J.

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