



WP.No.14410 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2024

CORAM

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

W.P.No.14410 of 2012

and

MP.Nos.1 & 2 of 2012

T.Srirangan

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by its Secretary,
Environment and Forest Department,
Fort St.George, Chennai 600 009.

2.The Principal Chief Conservator of Forests,
Panagal Buildings,
Chennai 600 015.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent made in proceedings No.T/38666/2000, dated 26.3.2008 and the impugned order passed by the 1st respondent made in G.O. (3D) No.24, Environment and Forest (9) Department, dated 13.3.2012, and to quash the same and issue consequential direction to



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the respondents herein to include the name of the Petitioner in the appropriate place in the panel for promotion to the post of Foresters for the year 2007-2008 and to consequently promote the petitioner as Forester with retrospective effect from the date of promotion of his immediate juniors and grant him all monetary and other service benefits

For Petitioner : Mr.Sri Hari
for Mr.M.Ravi
For respondents : Mr.R.Murthi,
Government Advocate.

ORDER

Proceedings No. T/38666/2000, dated 26.3.2008 passed by the 2nd respondent and the order passed by the 1st respondent made in G.O. (3D) No.24, Environment and Forest (9) Department, dated 13.3.2012, are under challenge and a direction is also sought for to include the name of the Petitioner in the appropriate place in the panel for promotion to the post of Foresters for the year 2007-2008 and to consequently promote the petitioner as Forester with retrospective effect from the date of promotion of his immediate juniors and grant him all monetary and other service benefits.



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2. The petitioner was initially appointed as Forest Watcher on 12.4.1982. He was promoted as Forest Guard on 10.6.1994. The petitioner was issued with a Charge Memo in C.No. 3742/92/E, Charge Sheet No.35/92 dated 21.10.1992. Though the Charge Memo was issued as early as in the year 1992, Enquiry Officer was appointed only in the year 2005 and the enquiry report was submitted only in the year 2006. The 2nd Respondent passed an order, imposing punishment of stoppage of increment for a period of 3 years with cumulative effect under proceeding No.T/38666/2000 dated 26.3.2008.

3. It is further submitted that he preferred a statutory appeal before the 1st respondent on 03.06.2008 as it was not disposed of. He was constrained to prefer Writ Petition in W.P.No.27600 of 2011 before this Court and sought for a direction to dispose of the said statutory appeal; By an order dated 29.11.2011, the said Writ Petition was disposed of granting 8 weeks period to dispose of the appeal. His appeal was rejected by an order dated 13.03.2012 stating that he has



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not raised any valid grounds to set aside the order passed by the 2nd Respondent.

4. Heard Mr.Sri Hari, the learned counsel appearing for the petitioner and Mr.Murthi, the learned Government Advocate appearing for the respondents 1 and 2.

5. Mr.Sri Hari, the learned counsel appearing for the petitioner would contend that the charge memo was issued in the year 2005, after a period of 13 years based on the inordinate delay as mentioned supra, the orders passed by the respondents are totally erroneous and liable to be set aside. In support of the above said contention, the learned counsel appearing for the petitioner has referred the following judgments:

- (i) *S.Balasubramanian Vs. The District Collector and othes* made in W.A.NO.2924 of 2019;
- (ii) *P.V.Mahadevan Vs. MD.T.N.Housing Board* reported in (2005)6 Supreme Court Cases 636;
- (iii) *State of A.P. Vs. N.Radhakishan*



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reported in (1998) 4 Supreme Court Cases 154

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6. The learned counsel for the petitioner would submit that for no fault of him “ the disciplinary proceedings was protracted and he was promoted as “ Forester” only on 17.04.2013 for the charge memo having been issued in the year 1992. It was also submitted that he was promoted as “Forester” with effect from 17.04.213 but for initiation of disciplinary proceedings as mentioned supra, he was deprived of the promotion to the post of “Forester” in which he should have been given in the year 2008 itself. Therefore, he is entitled for notional promotion with all monetary benefits.

7. To buttress his argument, the Judgment of the Hon'ble Apex Court renewed in ***Union of India vs. K.V.Janakiraman, 1991(4)SCC 109*** is referred to. In Janakiraman case, sealed cover procedure was introduced by the Government of India by issuance of Office Memorandum No.22011/1/79 Estt.(A) dated 30.01.1982 and under what circumstances it can be resorted to.

8. Per contra, Mr.Murthi, the learned Government Advocate



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appearing for the respondents 1 and 2 would stoutly argued that the charge sheet was issued on 12.10.92, by District Forest Officer, Attur Division, the charge sheet could not be disposed of early since the Appropriate Enquiry Authority of the Government has taken up a detailed enquiry with the allegations of large scale felling of Sandalwood trees in Thammampatty Range where the petitioner was working and the Appropriate Enquiry Authority has also requested in letter dated 17.3.95, that further action on the departmental side, if any may be deferred, in view of the detailed enquiry taken up by the Appropriate Enquiry Authority. The said Authority after conducting a detailed enquiry had submitted its report to the first Respondent in the year 1999 and directed the second Respondent to proceed the departmental disciplinary action already initiated against the petitioner. Therefore, the delay cannot be considered as an inordinate delay and the disciplinary proceedings cannot be considered to have been vitiated on the ground of said delay as it is a reasonable one.

9. This Court heard the submissions made by either side learned



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counsel s and perused the materials available on record.

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10. In this case, the petitioner was issued with a charge memo in the year 1992 and the enquiry officer was appointed only in the year 2005 after a delay of 13 years ; however it appears that after the issuance of the charge memo to the petitioner and a detailed enquiry has been conducted on the allegation of the large scale felling of Sandalwood trees in Thammampatty Range was ordered.

11. It appears that in the year 1999 the report of the appropriate enquiry authority was filed. to that extent the delay put forth by the respondents is acceptable, considering the reasons for the enquiry was ordered due to the allegation of the large scale felling of Sandalwood trees. though the appropriate enquiry authority has filed the report in the year 1999, the enquiry officer was appointed in the year 2005 after a period of 7 years totally there is a delay of 13 years.

12. Whether this long delay caused in appointing the enquiry



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officer would vitiate the proceedings is the moot question in this Writ Petition.

13. A reference was made by the learned counsel for the petitioner in the judgment of the Hon'ble Division Bench of this Court in *S.Balasubramanian Vs. The District Collector and others* made in *W.A.N.2924 of 2019*, wherein the petitioner therein who was serving as Assistant in Sub-Collectors Office, Mettur was issued with a charge memo dated 24.01.2000 under Rule 17(b) of the Tamil Nadu Civil Services (D&A) Rules, has submitted his explanation on 15.03.2000 itself; but no action was taken to conduct the enquiry and final orders was not passed. He was permitted to retired from service on 30.01.2000 Afternoon on attaining the age of superannuation without prejudice to the pendency of the above said disciplinary proceeding. No provisional pension was sanctioned to him as he was suffering without any pensionary benefits with the past 16 years he filed a Writ Petition in WP.No.7882 of 2017, which was dismissed. Against the said order, the above said Writ appeal was filed wherein the Hon'ble Division Bench of this Court has observed that the charge memo issued under Rule 17(b)



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of the Tamil Nadu Civil Services (D&A) Rules has not proved without examining any witnesses and solely based on documents and holding that it is against the Rules, hence the charge memo was quashed. This case will not apply to the present facts and circumstances of the case.

14. Reliance is placed on, by the learned counsel for the petitioner in *P.V.Mahadevan Vs. MD.T.N.Housing Board* reported in (2005)6 *Supreme Court Cases* 636 ; the Hon'ble Supreme Court has held that the respondent submitted that the irregularity during the year 1990, for which disciplinary action had been initiated against the appellant in the year 2000, came to light in the audit report for the second half of 1994-95. But, Section 118 of the Tamil Nadu State Housing Board Act, 1961 specifically provides for submission of the abstracts of the accounts at the end of every year and Section 119 of the said Act relates to annual audit of accounts. Therefore, the explanation offered for the delay in finalizing the audit account cannot stand scrutiny in view of the above two provisions. There is no acceptable explanation on the side of the respondent



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explaining the inordinate delay in initiating departmental disciplinary proceedings. The stand taken by the respondent in the counter-affidavit is not convincing and is only an afterthought to give some explanation for the delay. 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 and ultimately it was ordered to quash the charge memo issued against them.

15. In the case of *State of A.P. Vs. N.Radhakishan* reported in (1998) 4 Supreme Court Cases 154 , it has been observed by the Hon'ble Supreme Court that

"...Normally disciplinary proceedings should be allowed to take its course as per relevant tales 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."



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16. In *State of Madhya Pradesh v. Bani Singh* , reported in *1990 Supp SCC 738* , the Hon'ble 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.

17. In *Ranjeet Singh Vs. State of Haryana & others* , made in Civil Appeal No.1491 of 2006, where in it is observed by the Hon'ble Supreme court that there was a delay of 9 years in issuing the charge memo and a further delay of 7 years in issuing the second show cause notice, after the enquiry report. As there was an inordinate and unexplained delay, the Hon'ble Supreme Court, upheld the decision of the lower Court, declaring the said proceeding as null and void. Relevant paragraph from the said judgment is as follows:

"9. We have extracted the charges against the appellant.



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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 year 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."

18. It cannot be denied that once the charge memo is issued it would cause mental agony and distress to the employee concerned. The belated departmental proceedings against the government employee, it would further cause a severe mental agony. therefore in the interest of government employees and in the public interest and in order to inspire the confidence of the minds of the government employees and the interest of the justice acceptance the disciplinary proceedings should come to logical conclusion at a reasonable period.



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19. With the above object the Hon'ble Supreme Court has come down heavily in the case of delayed departmental enquiry proceedings. In this case the reason for delay has been given. Totally the delay is about 13 years. On what date the appropriate enquiry authority filed the report to the 1st respondent is not explained properly. In the absence of the same, it has be construed that the enquiry officer was appointed in the year 2005. It is an inordinate delay, clearly can never be condoned. Therefore based on the above said reasons the order passed by the authorities gets vitiated and liable to be quashed.

20. It was submitted by the learned Government Advocate for the respondents No. 1 and 2 that the petitioner was promoted as Forester with effect from 17.04.2013 based on the promotion panel for the year 2011-2012.

21. The relevant portion in ***Union of India vs. K.V.Janakiraman,***



1991(4)SCC 109 is extracted hereunder:-
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25. "We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.
26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances



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under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz., “but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion”, we direct that in place of the said sentence the following sentence be read in the Memorandum:”

22. The common questions involved in the case are as follows:-

- i) What is the date from which it can be said that disciplinary/ criminal proceedings is pending against an employee?
- ii) What is the course to be adopted when the employee is held guilty in such proceedings if the guilt merits punishment other than that of dismissal?
- iii) To what benefits an employee who is completely or partially exonerated is entitled to and from which date?

23. In a case of employee who is completely exonerated thereby if



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he is deprived of promotion and the mandatory benefits therefrom, the Hon'ble Apex Court has observed that when an employee is completely exonerated and is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post.

24. Strong reliance was placed by the learned Government Advocate Mr.R.Murthi by indicating FR 17(1) of the Fundamental Rules and Supplementary Rules, which is extracted hereunder :-

“F.R.17(1) Subject to any exceptions specifically made in these rules and to the provision of sub-rule(2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post and shall cease to draw them as soon as he ceases to discharge those rules.

25. The Hon'ble Apex Court observed that in view of inordinate delay in initiating of disciplinary proceedings, the findings of the appointing authority is vitiated. As per the promotion proceedings dated 29.04.2008 taking into account of the date of the appointment of the petitioner, the petitioner did not come within the zone of consideration at



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all. However, as per the promotion proceedings dated 26.08.2009, the Forest Guard is placed in Sl.No.88, namely, P.Raju date of appointment as 15.06.1994 was selected for the promotion to the post of Forester in the year 2008-09. The petitioner's immediate junior – Sl.No.90 namely C.Periyannathan, his date of his appointment is 21.06.1994. He was also selected for the above said promotion. As mandated by the Hon'ble Supreme Court, as exception to F.R.17(1) the normal Rule of “ No work, no pay” will not apply to the petitioner's case. On the disciplinary proceedings initiated and completed, he should not have been deprived of the promotion. The petitioner who was willing to be promoted as Forester, was not considered for the promotion. Therefore, the petitioner is entitled for promotion along with the aforesaid persons with effect from 26.08.2009 in Proc.No.AB1/36940/2008 issued by the Principal Chief Conservator of Forests, Chennai with all attended benefits.

26. Based on the afore stated discussions, submissions and legal positions, this Writ Petition stands allowed. The impugned order passed by the 1st respondent made in G.O. (3D) No.24, Environment and Forest (9) Department, dated 13.3.2012 is quashed and



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consequential order passed by the appellate authority stands set-aside.

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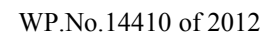
27. The petitioner was promoted to the post of Forester only with effect from 17.04.2013. The respondents shall disburse the monetary benefits for the period from 26.08.2009 to 16.04.2013. The said exercise shall be completed within a period of eight weeks from the date of receipt of copy of this order. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

26.07.2024

Index : Yes/No
Speaking order/Non-speaking order
Neutral: Yes /No
jrs/kkd

To

- 1.The Secretary,
Environment and Forest Department,
Fort St.George, Chennai 600 009.
- 2.The Principal Chief Conservator of Forests,
Panagal Buildings,
Chennai 600 015.
- 3.The Section Officer,



V.R.Section, High Court, Madras.