



W.P.No.9216 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2024

CORAM

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

W.P.No.9216 of 2012

and M.P.No.2 of 2012

R.Gopalsamy

...Petitioner

vs.

1. The State of Tamil Nadu Represented by
the Secretary Government,
Environment & Forests,
Secretariat,
Chennai – 9

2. The Principal Chief Conservator of Forests,
15, Jeenis Road,
Panagal Building,
Saidapet,
Chennai – 15

3. The District Forest Officer,
Villupuram Division,
Villupuram

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent in connection with the Order passed by him in G.O.(3D) No.83, dated 07.12.2010 signed on 01.12.2011 and quash the same and direct the respondents to permit the



W.P.No.9216 of 2012

petitioner to retire from service as a Forester with all monetary and service benefits with effect from the date of the superannuation i.e, 31.07.2002.

For Petitioner : Mr.P.A.Aravinth Viveks
for Ms.M.Sri Vidhya
For Respondents : Mr.R.Neelagandan
Additional Advocate General
for Mr.S.Rajesh
Government Advocate

ORDER

The Order passed in G.O.(3D).No.83 dated 07.12.2010 on the file of the first respondent is under challenge. A further direction is sought for, permitting him to retire from service as a Forester with all monetary and service benefits with effect from the date of superannuation i.e.31.07.2002.

2. Heard Mr.P.A.Aravinth Viveks, learned representing counsel for the petitioner and Mr.R.Neelagandan, learned Additional Advocate General for Mr.S.Rajesh, learned Government Advocate appearing for the respondents.

3. The facts which led to the filing of writ petition is set out



W.P.No.9216 of 2012

hereunder:

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i). The petitioner was selected for appointment to the post of Forest Watcher in the year 1974. He was promoted to the post of Forest Guard on 16.08.1980 and thereafter, he was promoted to the post of Forester on 07.07.1995. While he was serving as Forester, he was placed under suspension by an order dated 30.07.2002 for the alleged charge of corruption as framed by the Conservator of Forests, Salem Division.

ii). The petitioner was not permitted to retire from service on the afternoon of 31.07.2002 and he was retained in service. An enquiry was conducted and the Enquiry Officer has held that the charges framed against him and the Forest Watchers namely I.Chandran, G.Mohan Kumar and the Forester Madheswaran were not proved. The Government not agreeing with the findings of the Enquiry Officer, directed the Principal Chief Conservator of Forests to take further action as the Enquiry Officer ought not to have held that the first charge was not proved by giving the benefit of doubt in favour of the petitioner as well as the other persons as mentioned supra.

iii). While so, the Government Secretary, Environment and Forest Department has issued a show cause notice dated 06.02.2006 after a



W.P.No.9216 of 2012

lapse of 6 years from the date of the report of the Enquiry Officer
i.e.08.08.2008.

iv). It has been submitted by the learned counsel for the petitioner that after a lapse of nearly 18 years a major punishment namely dismissal from service was passed despite the finding of the Enquiry Officer that there are contradictions in respect of acceptance of the alleged bribe amount of Rs.1500/- between the statement of witness. The said finding was admittedly given by the Enquiry Officer on 08.08.2000. Whereas, the show cause notice was issued to the petitioner as Disciplinary Authority was not concurring with the findings of the Enquiry Officer, which was issued only on 06.02.2006.

4. Mr.P.A.Aravinth Viveks, learned counsel for the petitioner would vehemently contend that there is an inordinate delay on the part of the respondents to complete and conclude the enquiry proceedings and on the ground of such delay itself, the order of dismissal from service is liable to be set aside: There is an unreasonable delay in the service of the said order of dismissal: The Government had taken a decision to deviate from the findings of the Enquiry Officer on the charge No.1 after a lapse of 7 years from the date of the Enquiry Officer's report. He would further argue



W.P.No.9216 of 2012

that there is no acceptable evidence, and the demand by a specific person in a specific place, the corruption charge cannot said to have ruled. The order of punishment is disproportionate to the allegations levelled against him and thereby, the order of punishment is arbitrary and unreasonable, being violative of Articles 14, 16, 21, 300(A) and 311 of the Constitution of India. To buttress his arguments, the below said judgments of the Hon'ble Supreme Court are referred to:

1. S.N.Narula Vs. Union of India and others reported in 2004 SCC Online SC 134 and
2. P.V.Mahadevan Vs. MD, TN Housing Board reported in (2005) 6 SCC 636
3. Union of India and Others Vs. S.K.Kapoor reported in 2011 SCC Online SC 485
4. S.Balasubramanian Vs. The District Collector, Salem District, Salem and 2 others (W.A.No.2924 of 2019 dated 12.09.2019)

5. Per contra, Mr.R.Neelagandan, learned Additional Advocate General appearing for Mr.S.Rajesh, learned Government Advocate appearing for the respondents would strenuously argue that the disciplinary action was initiated against the petitioner R.Gopalsamy under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules by the Deputy Conservator of Forests, Minor Forest produce (Research), Division Salem in No.E/1471/92 dated 28.10.1993. The Enquiry Officer



W.P.No.9216 of 2012

was appointed and he gave his findings on 08.08.2000. In his findings, he has concluded that the charges are not proved as there is no direct evidence to substantiate the oral evidence and also there are contradictory statements of the prosecution witnesses. It was further submitted that the Principal Chief Conservator of Forests further examined the charge framed against the accused officer, his explanation and report of the Enquiry Officer and viewed that his findings are not acceptable.

6. The following details would prove that there is an inordinate delay on the part of the respondents to conduct and complete enquiry proceedings:

<i>Proceedings</i>	<i>Date</i>
<i>Date of Charge Memo</i>	<i>28.10.1993</i>
<i>Date of Appointment of the Enquiry Officer</i>	<i>13.01.1999</i>
<i>Date of the Enquiry Officer's report</i>	<i>08.08.2000</i>
<i>Date of opinion of the Government Joint Secretary</i>	<i>03.08.2001</i>
<i>Date of Show Cause Notice for difference of opinion</i>	<i>06.02.2006</i>
<i>Date of the Explanation given by the petitioner</i>	<i>11.03.2006</i>
<i>Date of punishment of Dismissal from service</i>	<i>24.12.2010</i>
<i>Date of the service of the said punishment order to the petitioner</i>	<i>01.12.2011</i>

7. The Charge memo details are set out hereunder:



i) Thiru. R. Gopalsamy while working as Forest Guard in Attur Range along with Thiru. 1. Chandran, Forest Watcher demanded Rs. 3,000/- as illegal gratification on 11.08.1989 from Thiru. Thangaraj S/o. Govindapadayachi of Thandanoor for not booking a sandal wood case against him and in pursuance of the said demand, Thiru. R. Gopalsamy had accepted Rs.1,500/- at 9:00 AM on 13.08.1989 at Vellallapatti and thereby both Thiru. R. Gopalsamy, Forest Guard and I. Chandran had exhibited lack of absolute integrity as public servant.

ii) Thiru. R. Gopalsamy, Forest Guard and 2 others threatened Thiru. R. Mohan S/o. AppavooUdayar of Kuruchi at Forest Range Office, Attur on 28.08.1989 at or about 11:00 AM to book an offence against him demanded Rs.2,000/- and reduced it to Rs.1,000/- as illegal gratification for not booking any case against the said Mohan accepted Rs.500/- from him through Thiru. Rajendran of Panamadal. In pursuance of the demand, Accused Officer 2 accepted the balance of Rs.500/- from Thiru. Rajendran at Panamadal on 29.08.1989 at or about 10:00 AM and thereby you had exhibited lack of absolute integrity as public servants, Thangaraj S/o. Govindapadayachi of Thandanoor, alleging that there was complaint against him to the effect that he was concerned in sandalwood offence, demanded Rs. 3,000/- as illegal gratification and reduced it to Rs.1,500/- on 11.08.1989 for not booking any case against him and in pursuance of the said demand both of them accepted Rs.1,500/- from Thiru.



W.P.No.9216 of 2012

Thangaraj on 13.08.1989 at about 9:00 AM at Vellalapatti and thereby the petitioner had exhibited lack of absolute integrity as public servant.

iii) Failed to record the visit to Kurichi on 27.08.1989 along with the Forester in the weekly diary for the week ending 02.09.1989.

8. The Enquiry Officer was appointed on 13.01.1999 and he filed his report on 08.08.2000. Opinion of the Joint Secretary was obtained on 03.08.2001 in respect of report of the Enquiry Officer. As the disciplinary authority did not concur with the finding of the Enquiry Officer, show cause notice issued to the petitioner on 06.02.2006, the petitioner submitted his explanation on 11.03.2006 and the order of dismissal from service was passed on 24.12.2010.

9. When the disciplinary authority does not concur with the findings of the Enquiry Officer, then he should have been issued show cause notice.

10. In a similar case, *Union of India and others Vs. S.K.Kapoor reported in 2011 SCC Online SC 485* is referred to by the learned counsel for the petitioner in order to contend that whenever the opinion of UPSC



W.P.No.9216 of 2012

sought for in the matters of disciplinary proceedings, when the report of UPSC sought to be relied upon, the copy of the report should have been supplied in advance to the employee concerned. The Hon'ble Supreme Court further held that, as the UPSC report was not communicated to the delinquent official which amounts to violation of principle of natural justice and the appellant was ordered to submit a representation within a period of two weeks to the disciplinary authority in order to dispose of the matter by the disciplinary authority within a stipulated time.

11. In P.V.Mahadevan Vs. MD, TN Housing Board reported in (2005) 6 SCC 636, a disciplinary action was initiated against the appellant who was working as Superintending Engineer in the Tamil Nadu Housing Board. A charge memo was issued against him in the year 2000 for irregularity in issuing a sale deed in 1990 to one B. The appellant preferred a writ petition was filed for quashing the said charge memo and restraining the respondent employer from proceeding with it. With consequential prayers relating to disbursement of monetary benefits, etc., were also made. It was the submission of the appellant that despite all the records, the respondents did not initiate any action against him for about 10 years, no explanation was offered by the respondents for the inordinate delay occurred in initiating the disciplinary action, in such a view of the



W.P.No.9216 of 2012

case, the Hon'ble Supreme Court has held that:

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“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 finalising the audit account cannot stand scrutiny in view of the above two provisions. There is no acceptable explanation on the side of the respondent 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.

Under the circumstances, allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. 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



W.P.No.9216 of 2012

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 the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.”

Therefore, the charge memo issued against the appellant is quashed. The appellant will be entitled to all the retiral benefits in accordance with law.

12. Useful reference may be made to the observations made by the Hon'ble Supreme Court in State of A.P. Vs. N.Radhakrishnan, reported in (1998) 4 SCC 154, wherein the Hon'ble Supreme Court has observed 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 show 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 consideration.”



W.P.No.9216 of 2012

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13. As per the dictum of the Hon'ble Supreme Court in *Union of India and others Vs.S.K.Kapoor reported in (2011) 4 SCC 589*, after obtaining opinion from the Joint Secretary to Government, show cause notice was issued to the petitioner and explanation was obtained from him, is quiet evident from the explanation given by the delinquent official dated 11.03.2006. However, copy of the opinion given by the Tamil Nadu Public Service Commission dated 09.09.2010 was not sent in advance to the petitioner before it was relied upon by the Disciplinary Authority.

14. In *State of Andhra Pradesh v. N. Radhakishan* reported in AIR 1998 SC 1833, the Supreme Court in paragraph 19 has held that:

"It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all relevant factors and to balance and weight them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is



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W.P.No.9216 of 2012

no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. 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 or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.”

15. From the holistic perusal of the available records, it appears that charge memo was issued on 28.10.1993 stating that the petitioner while



W.P.No.9216 of 2012

working as Forest Guard along with other Forest Watcher demanded Rs.3,000/- as illegal gratification on 11.08.1989 from Thiru.Thangaraj son of Govindapadayachi of Thandanoor for not booking a sandal wood case against him and accepted at Vellallajpatti, thereby he exhibited lack of absolute integrity as public servant. A similar charge was also issued to the petitioner which related to the corruption said to have taken place on 28.08.1989.

16. The Enquiry Officer commenced his enquiry on 06.11.1993 and the enquiry was conducted on the following dates:

*“06.11.1993, 25.11.1993, 10.06.1994, 04.07.1994,
20.09.1994, 14.07.1995, 21.07.1995, 14.08.1995,
22.08.1995, 25.09.1995, 06.10.1995, 20.10.1995,
13.05.1997, 17.07.1997, 09.06.1997, 15.12.1997,
31.12.1997, 24.02.1998, 04.04.1998, 18.06.1999,
03.07.1999, 24.07.1999, 21.08.1999, 18.09.1999,
16.10.1999, 19.11.1999, 27.11.1999, 22.02.2000, 24.02.2000
and 20.03.2000”*

The enquiry was also conducted in the presence of the Inspector of Vigilance and Anti Corruption, Salem.



W.P.No.9216 of 2012

17. Out of cited 21 witnesses, first 15 witnesses were examined.

Though the Enquiry Officer has given his finding that it is proved in respect of 1st and 2nd charges, he has held that the said charges were not proved.

18. The petitioners counsel has stated that the Enquiry Officer was appointed on 13.01.1999, but the enquiry report reveals the fact that the Enquiry Officer commenced his enquiry on 06.11.1993 itself.

19. More so, twice, opinions were sought for, from the Tamil Nadu Public Services Commission and copy of the opinion given by the Joint Secretary to the Government was sent in advance to the delinquent official. The show cause notice was issued on 06.02.2006 as the disciplinary authority did not concur with the opinion of the Enquiry Officer, for which, the petitioner has given explanation on 11.03.2006.

20. The enquiry was conducted in this case from November 1993 to June 2000 as mentioned supra. There was six years delay in the issuance of show cause notice. In respect of difference of opinion, show cause notice was issued to the delinquent on 06.02.2006. There was also



W.P.No.9216 of 2012

four years delay in passing final order. It is relevant to note that the petitioner was suspended from service on 30.07.2002 and he was not permitted to retire and retained in service. The charges were mainly corruption charges. Of course, there is a delay at two stages. One day before the date of superannuation, he was suspended from the service which is also not correct.

21. There is no predetermined principles governing the disciplinary proceedings, it depends upon each case. It cannot be denied that the delinquent official has always a right that the disciplinary proceedings initiated against him is concluded expeditiously, thereby he has not made to undergo mental agony as well as monetary loss.

22. It is the basic right of the delinquent employee that the disciplinary proceedings initiated against him get concluded at the earliest. Thereby, he should not be made to undergo mental agony. On the other hand, it cannot be denied that the government officer or government employee is expected to perform his duties with honesty and efficiency. If he fails to do so, he has to suffer for the same. Delay in disciplinary proceedings defeats justice. No doubt, in this case, the delay caused great prejudice on the mind of the charged officer. In this case, delay is



W.P.No.9216 of 2012

inordinate and it should go in favour of the delinquent. By balancing the two diverse considerations, I am of the considered view that the impugned G.O.(3D).No.83, dated 07.12.2010 has to be quashed and stands quashed.

23. Based on the aforesaid discussions and observations, this writ petition stands allowed. There is no order as to costs. Consequently, connected miscellaneous petition stands closed.

30.09.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

1. The Secretary to the Government,
Environment & Forests,
Secretariat,
Chennai – 9

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W.P.No.9216 of 2012

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R.KALAIMATHI, J.

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W.P.No.9216 of 2012



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W.P.No.9216 of 2012

30.09.2024