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W.P.No.30883 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 10.06.2024

Orders pronounced on : **25.06.2024**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.30883 of 2022
and W.M.P.No.30284 of 2022

S.Sankara Narayanan

.. Petitioner

Versus

The National Institute for Empowerment of Persons
with Multiple Disabilities (NIEPMD)
Represented by its Chairperson, Executive Council
and Joint Secretary,
Department of Empowerment of
Persons with Disabilities, (DEPwD), MSJ & E,
5th Floor, Pt. Deendayal Antyodaya Bhawan,
CGO Complex, Lodhi Road,
New Delhi – 110 003.

.. Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India,
pleaded to issue a Writ of Certiorari, by calling for records of the respondent
in his impugned Memorandum bearing F.No.8-24/2015-NI dated 06.09.2018



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and order bearing F.No.N-802/15/2021-NI dated 10.10.2022 and quash the same.

For Petitioner : Mr.Karthik

For Respondent : Ms.S.P.Arthi,
Senior Panel Counsel

ORDER

This Writ Petition is filed to quash the impugned charge memorandum, dated 06.09.2018 and the order, dated 10.10.2022.

2. The case of the petitioner is that he was initially working at Bhabha Atomic Research Center, Mumbai as Upper Division Clerk and he participated in the selection for the post of Administrative Officer in the respondent Organisation namely, The National Institute for Empowerment of Persons with Multiple Disabilities (NIEPMD). Upon being selected, he gave his technical resignation and joined as Administrative Officer with effect from 11.09.2013. While so, the petitioner was issued with a show-



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cause notice on certain allegations levelled against him, for which, he submitted his reply on 25.02.2016. Thereafter, the petitioner was placed on suspension by the order, dated 05.04.2016. On 30.10.2016, the suspension was thereafter revoked and the petitioner was posted at the Nagpur centre of the respondent Organisation. Thereafter, he travelled back to the Chennai office of the respondent Organisation by the order, dated 22.11.2016.

3. The petitioner was served with a charge memo, dated 06.09.2018 containing nine articles of charges. The first charge is that the petitioner suppressed the fact that he was drawing a pension from his previous organisation. The second charge is that when the respondent Organisation is a Society registered under the Society Registration Act, the petitioner committed serious lapses in not renewing the registration of the Society with the office of the Registrar of Societies, Government of Tamil Nadu even after receipt of a letter from the said office. The third charge is that the petitioner initiated a proposal of extension counters at Bhadrachalam, AP,



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Tripura and Manipur without the approval of the Executive Council resulting in irregular expenditure. The fourth charge is that the petitioner passed the LTC bill of one *Dr.Neeradha Chandramohan* irregularly as travelling by private airlines is not admissible. The fifth charge again relates to the passing of the TA bill of the same individual as the journey of the said person is admissible up to Chandigarh, however, his journey up to Amritsar is irregularly accepted. The sixth charge is that the petitioner was also involved in the appointment of one *Sh.E.Suresh* as Rehabilitation Officer which was not in accordance with the recruitment rules. The seventh charge is that the petitioner was also involved in the purchase of an RO machine for a price of Rs.25,00,000/- while the EC had approved up to Rs.4,00,000/- for the purchase of the same. The eighth charge is a similar purchase of CCTV for Rs.65,00,000/- as against the EC approval of Rs.30,00,000/-. The ninth charge is that he did not correct the discrepancies in the action relating to the recruitment of the Phase - II post which was approved by EFC.



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4. The petitioner denied the charges. After due oral enquiry, the Enquiry Officer submitted a report, dated 06.12.2021. By the said report, the Enquiry Officer found Articles 3, 6 and 7 of the charges as partly proved and he held that the other charges as not proved. While the matter stood thus, the respondent also permitted the petitioner to go on voluntary retirement with effect from 31.12.2021. Thereafter, the petitioner seems to have been empaneled with the respondent after retirement. On 10.10.2022, the respondent authority passed an order not accepting the report of the Disciplinary Authority. The Disciplinary Authority directed further enquiry into the following issues:-

" (i) Whether any proposal of extension Center at Bhadrachalam, AP, Tripura and Meghalaya initiated by the CO?

(ii) On what basis is the charge at Article No. 3 of Para 3 of Note 10 held to be partially proved by the Inquiring Authority;

(iii) Why was Dr Neerdha Chandramohan's bill for journey undertaken by private airlines approved by the CO? Why inspite of this violation, the Inquiring Officer has recommended that the charge may be dropped?

(iv) Whether any reasoning given by the charged officer as to why the travelling bill upto Amritsar was approved when approval to travel was only upto Chandigarh?"



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5. Thereafter, one *Sakti Prasad Das*, Director, DRIEMS, Cuttack was appointed as the Enquiry Officer and by the communication, dated 11.10.2022, he replied to the Disciplinary Authority that he will do everything he can to honour his choice. He agreed to look into the issues and points the Disciplinary Authority brought up in further detail about the aforementioned subject. It is at this stage, the petitioner has filed this Writ Petition.

6. The primary contention of the petitioner is that on a perusal of the charge memorandum, it can be seen that the delinquencies are related to the year 2014-2015. There is a huge delay in the initiation of the Disciplinary Proceedings itself which happened only in the year 2018. Thereafter, there is a further delay in the conclusion of the proceedings. Both the said delays in initiation as well as in conclusion cause prejudice to the petitioner in defending himself. Therefore, the proceedings are liable to be quashed for



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the inordinate and unexplained delay. It is the further contention of the petitioner that on a perusal of the brief of the Presenting Officer, it can be seen that almost, with respect to all the charges, the case is either conceded or accepted that the charges are flimsy. Therefore, in respect of such charges, continuing the Disciplinary Proceedings, even after permitting the petitioner to go on voluntary retirement, is arbitrary.

7. It is the further contention of the petitioner that this is not a case where further enquiry ought to have been ordered by the Disciplinary Authority. It is the further case of the petitioner that from the very reply of the Enquiry Officer, dated 11.10.2022, it can be seen that now the Enquiry Officer is biased and is inclined to hold against the petitioner even before the conduct of the further enquiry. Therefore, at this stage, the respondent should not be permitted to proceed further with the enquiry.

8. The Writ Petition is resisted by the respondent by filing a counter-



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affidavit. It is stated that the respondent followed all the Rules, Regulations and procedures while issuing the charge memorandum. Only after coming to a conclusion by holding a preliminary enquiry, the charges are levelled. The Enquiry Officer was appointed on 15.11.2018 and the enquiry proceedings commenced on 22.10.2020. After the commencement, the enquiry encountered a two-year setback owing to the COVID-19 pandemic. Thereafter, upon the enquiry report being submitted on 06.12.2021, the petitioner also proceeded on voluntary retirement with effect from 31.12.2021 and got empanelled with the Department of Empowerment of Persons with Disabilities. Therefore, the Disciplinary Authority directed the conduct of further enquiry in terms of Rule 15(1) of *CCS(CCA) Rules*. There was no willful or unexplained delay. The allegation of bias is unfounded and the very fact, that the Presenting Officer and Enquiry Officer have reported in his favour, should only add strength to his belief in their ability and integrity. When the petitioner has chosen to participate in the Disciplinary Enquiry and the enquiry is in the advanced stage, at this stage,



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the petitioner cannot turn around and challenge the very charge memorandum as well as the order of further enquiry.

9. Heard *Mr.Karthik*, the learned Counsel for the petitioner and *Ms.S.P.Arthi*, the learned Senior Panel Counsel for the respondent.

10. *Mr.Karthik* the learned Counsel for the petitioner, reiterating the above contentions that there is unexplained and inordinate delay in the initiation and conclusion of the proceedings, relied upon the following judgments:-

<i>S.No.</i>	<i>Case</i>	<i>Proposition</i>	<i>Relevant paragraphs</i>	<i>Citation</i>
1.	<i>Union of India Vs. K.D.Pandey</i>	When specific findings have been given in respect of each charge, the matter can't be remitted to the Enquiry Authority for further enquiry.	Para Nos. 3, 4 and 5	<i>(2002) 10 SCC 471</i>



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2.	<i>Prem Nath Bali Vs. High Court of Delhi</i>	The period of unexplained inordinate delay in completion of Departmental Proceedings during which the employee is under suspension cannot be excluded while calculating pension.	Para Nos.25 to 30	(2015) 16 S C C 415
3.	<i>Union of Indis Vs. Rajasekaran and Anr.</i>	When there is a gross delay in initiating departmental proceedings from the date of the complaint till the date of issuance of charge memo, for which, there is no satisfactory explanation is offered by the department. Hence, the Tribunal set aside the impugned order and allowed the original application.	Para No.3	W.P.No.2412 of 2007
4.	<i>S.M.Chellasamy Vs. The Secretary to</i>	It is settled law that unexplained and inordinate delay in		



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	Government	initiating and continuing departmental enquiry causes immense prejudice to the officer and vitiates the proceedings.	Para No.9	W. P. No.1118 of 2009
5.	N.Annadurai Vs. The State of Tamil Nadu	It is held that when there is an inordinate delay in initiating and completing the disciplinary proceedings, it would cause prejudice to the delinquent and therefore, the proceedings itself cannot be continued.	Para Nos.6 and 7	W. P. No.1973 5 of 2023
6.	S.Matheswaran Vs. The State of Tamil Nadu and Anr.	When the entire inquiry proceedings would stand vitiated, owing to the inordinate delay in commencing and completing the disciplinary proceedings and thus, the consequential punishment also cannot be sustained.	Para Nos.6, 7 and 8	W. P. No.6810 of 2023



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11. Per *contra*, Ms.S.P.Arthi, learned Senior Panel Counsel for the respondent, by producing the copy of the enquiry report, would firstly submit that the delinquencies are of the year 2013. The irregularity came to the notice of the Disciplinary Authority only in the year 2016. A show-cause notice was thereafter issued and a preliminary enquiry was conducted and the charge memorandum was issued in the year 2018. Therefore, there was no delay in the initiation of the Disciplinary Proceedings. As far as the delay in the conduct of the enquiry is concerned, firstly, the delay was attributable to the COVID – 19 pandemic. Secondly, the delay further occurs because of the further enquiry being ordered in the case of the petitioner. When the Enquiry Officer's report was of such nature that required further enquiry, the Authority is bound to exercise the said power conferred under Rule 15(1) of *CCS(CCA) Rules* and therefore, the delay is explainable. Further, when the delinquent has submitted his explanation and is facing the enquiry there is no prejudice caused to him and therefore, this Writ Petition is liable to be dismissed.



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12. I have considered the rival submissions made on either side and perused the material records of the case.

13. The question which arises in the instant case is whether, for the reason of delay in initiation and conduct of the Disciplinary Proceedings, the impugned proceedings are liable to be quashed or not?

14. The law in the subject is very well settled. Disciplinary Proceedings can be quashed for the inordinate and undue delay in initiation as well as in the conduct of the proceedings. While mere delay by itself would not vitiate the proceedings, the delay should be such that it causes prejudice to the delinquent employee to have a fair enquiry. If, by lapse of time, the delinquent employee is not in a position to effectively defend himself either by remembering the correct facts or by mustering such evidence, then, the same would cause prejudice and the proceedings cannot



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be continued. There cannot be hard and fast rule in respect of the period of delay. In a given case, a short period of two or three months would cause prejudice, whereas, in another situation, even ten years would be explainable. While considering the delay, the Court has also to consider the nature of the charges.

15. Useful reference, in this regard, can be made to the following judgment of the Hon'ble Supreme Court of India in *State of Madhya Pradesh and Anr. Vs. Akhilesh Jha and Anr.*¹ and paragraph No.15 of the said judgment is extracted hereunder :-

" 15.... Every delay in conducting a disciplinary enquiry does not, ipso facto, lead to the enquiry being vitiated. Whether prejudice is caused to the officer who is being enquired into is a matter which has to be decided on the basis of the circumstances of each case. Prejudice must be demonstrated to have been caused and cannot be a matter of surmise. ."

16. In this background, firstly, it can be seen that the charges relate to procedural lapses and are not gross misconduct/serious and the petitioner

¹ (2021) 12 SCC 460



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was even permitted to go on voluntary retirement when the Disciplinary Proceedings are pending. In this background, as far as the initiation is concerned, even though the delinquencies relate to the period 2013-2014, it is the case of the respondent that the irregularity came into the light of the Disciplinary Authority in the year 2016. A show-cause notice was issued and a preliminary enquiry was completed on 11.11.2016. Therefore, up to 11.11.2016, the delay is explained. However, from 11.11.2016 up to 06.09.2018, there is an unexplained delay of one year and ten months. Again, when the charge memorandum was issued on 06.09.2018, the petitioner submitted the reply on 21.08.2018 and the Enquiry Officer and the Presenting Officer were also appointed as on 15.11.2018. However, subsequently, in the year 2019, the COVID-19 pandemic set in and every activity suffered a two-year setback. Therefore, no delay can be attributed to the conduct of the enquiry by the Enquiry Officer and the Enquiry Officer submitted a report on 16.12.2021. When the report is submitted on 16.12.2021, there is again a delay of ten months in passing the impugned



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order. Now, even though the Disciplinary Authority has powers to order a further enquiry as per Rule 15(1) of *CCS(CCA) Rules*, it can be seen that against the queries (extracted *supra*), further enquiry was sought to be conducted.

17. On the said queries, it can be seen that questions Nos.2 to 4 were only the disagreements with the findings of the Enquiry Officer, for which, further enquiry could not have been ordered. As far as query No.1 is concerned, it again relates to the day-to-day working of the organisation as to sending of proposals etc., and now, if again, further enquiry is sought to be conducted on the said lines, since the delinquencies relate to the period 2013-2014, certainly, it would not only result in the delinquent officer not remembering the exact particulars to face the further enquiry and he will not also be in a position to muster such evidence that may be in his favour to defend the said charge. Therefore, now, the further proceedings which are now sought to be continued after October, 2022, would certainly cause



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prejudice to the petitioner. Even though the Writ Petition was filed in the year 2022 and there is no interim order in favour of the petitioner, still, the enquiry remains at the said stage itself. It can be seen that the petitioner was permitted to go on voluntary retirement. It is also contended on behalf of the petitioner that the petitioner is a single parent, maintaining an autistic child, 23 years of age, which facts are not denied by the respondent.

18. Considering all the above, I am of the view that there is an unexplained delay of about two years in the initiation of the Disciplinary Proceedings and similarly, there is a delay at every stage of conduct of the proceedings except the COVID – 19 pandemic period where the delay is bound to occur. The Presenting Officer, appointed by the Disciplinary Authority himself, in his written proof, pleads in favour of the delinquent official. When the Enquiry Officer accepts the same and accordingly renders the findings, the Disciplinary Authority orders further inquiry leading to the delay. This inconsistency is solely attributable on the part of



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the Disciplinary Authority and cannot be put against the delinquent official.

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The reason for further delay is thus attributable on the part of the Disciplinary Authority. Thus, when the petitioner has demonstrated the prejudice, I am of the view that this is a fit case for this Court to interfere on the ground of delay in initiation as well as conducting of the Disciplinary Enquiry.

19. For all the above reasons, this Writ Petition is allowed by quashing the impugned charge memorandum, dated 06.09.2018 and the consequential order, dated 10.10.2022 ordering further enquiry. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

25.06.2024

Neutral Citation : yes
grs

To

The Chairperson, Executive Council

<https://www.mhc.tn.gov.in/judis>



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and Joint Secretary,

The National Institute for Empowerment of Persons
with Multiple Disabilities (NIEPMD),
Department of Empowerment of
Persons with Disabilities, (DEPwD), MSJ & E,
5th Floor, Pt. Deendayal Antyodaya Bhawan,
CGO Complex, Lodhi Road,
New Delhi – 110 003.

D.BHARATHA CHAKRAVARTHY, J.

grs



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