

HON'BLE SRI JUSTICE B. VIJAYSEN REDDY

WRIT PETITION No.2484 of 2019

ORDER:

This writ petition is filed aggrieved by the impugned Memorandum/Article of charge in PR.No.02/2019 (No.L&O/B8/558/2007) dated 31.01.2019 issued by the 1st respondent in connection with an incident that occurred in August, 2007 i.e., after a lapse of 12 years period from the date of that incident, allegedly for the purpose of denying legitimate promotion to the petitioner to the post of Office Superintendent and to circumvent common orders of the Andhra Pradesh Administrative Tribunal at Hyderabad, in O.A.Nos.7872 of 2013 and 3306 of 2014, dated 09.08.2016, and the contempt proceedings initiated in C.C.No.68010 of 2018.

2. The petitioner was initially appointed as Office Subordinate with effect from 19.04.1990 and subsequently he was promoted as Junior Assistant with effect from 22.03.1993. His services were regularised in the said cadre. The petitioner passed all departmental tests. It is stated that since the date of his appointment, the petitioner has been discharging his duties sincerely. The grievance of the petitioner is that after a lapse of more than 12 years from the date of an incident that occurred in August, 2007, he was issued impugned Memorandum/Article of

charge only to deny his legitimate promotion as Office Superintendent.

3. It is alleged that during the year 2013, the respondents tried to fill up three existing vacancies in the cadre of Senior Assistant with juniors by denying promotion to the petitioner on the ground that charge memo dated 05.08.2009 was pending against the petitioner for non-submission of his annual property return statements as contemplated under Rule 9 (7) of the Andhra Pradesh Civil Services (Conduct) Rules, 1964. The petitioner filed O.A.No.7872 of 2013 before the Andhra Pradesh Administrative Tribunal, Hyderabad (for short, 'the Tribunal'). The Tribunal passed interim orders on 11.11.2013, wherein a direction was given to consider the case of the petitioner for promotion to the post of Senior Assistant in the existing vacancies without reference to pendency of the disciplinary proceedings initiated *vide* charge memo dated 05.08.2009, as the post of Senior Assistant is a non-selection post. However, due to election schedule, the vacancies in the cadre of Senior Assistant were not filled up. In the year 2014, one vacancy in the cadre of Senior Assistant arose due to promotion of one Senior Assistant to the level of Superintendent. At that point of time, the authorities issued another charge memo dated 13.03.2014 under Rule 22 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 ('Rules

1991' for brevity) by entertaining false complaints from the expelled members of the Mosque Committee. The petitioner was constrained to file O.A.No.3306 of 2014 before the Tribunal. In the said O.A., interim orders dated 13.05.2014 were passed in favour of the petitioner directing the respondents to consider the case of the petitioner for promotion to the post of Senior Assistant in the existing or future vacancies subject to eligibility and seniority.

4. It is contended that despite the above clear directions from the Tribunal, ignoring the case of the petitioner, six vacancies in the cadre of Senior Assistant were filled, out of which, three juniors *viz.*, B. Murali Krishna, Smt. E.J.M. Jayasri and Venkata Ramana were promoted as Senior Assistants by proceedings dated 05.11.2014. As there was no alternative, the petitioner filed contempt applications in C.A.No.21 of 2015 in O.A.No.7872 of 2013 and C.A.No.22 of 2015 in O.A.No.3306 of 2014. The petitioner also filed petitions for amendment of prayers seeking notional promotion and other consequential benefits on par with the above juniors. At that point of time, the respondents considered the case of the petitioner as Senior Assistant by order dated 13.02.2015, after receiving notices in the contempt applications.

5. It is stated that O.As. were finally disposed of by the order dated 09.08.2016 with the following observations:

"POINT (i)

... .. Therefore, I am of the view that the action of the applicant in not granting notional promotion as Senior Assistant to the applicant on par with his immediate junior bad in law. Therefore, I hold that the applicant is entitled for notional promotion on par with his junior with all consequential benefits. This point is answered accordingly.

POINT (ii) : For the reasons stated under Point (i), both the O.As are disposed of with a direction to the respondents to accord promotion to the applicant in the cadre of Senior Assistant, on par with his immediate junior B. Murali Krishna, with notional benefits, within a period of three months from the date of receipt of a copy of this order. Accordingly, the CA and the VMA are closed."

6. The petitioner submitted that the above orders have attained finality. Consequent upon withdrawal of the complaints, further action was dropped in pursuance of charge memo dated 13.03.2014. In respect of the other charge memo dated 05.08.2009, the punishment of censure was awarded *vide* G.O.Rt.No.70 dated 02.02.2015. Aggrieved thereby, the petitioner filed appeal petition. The same was allowed setting aside the punishment of censure. Later, further action was dropped *vide* G.O.Rt.No.491 dated 26.04.2017 by the Government. Even though

the Tribunal was pleased to dispose of O.As on 09.08.2016, whereunder a direction was given to the respondents to accord promotion to the petitioner in the cadre of Senior Assistant, on par with his immediate junior B. Murali Krishna, with notional benefits, the respondents utterly failed to comply with the above orders of the Tribunal. Thereupon, the petitioner filed contempt application in C.C.No.68010 of 2018. The said Contempt Case is still pending.

7. It is submitted that while the matter stood thus, Smt. E.J.M. Jayasri, immediate junior of the petitioner, was further promoted to the post of Superintendent *vide* orders dated 24.11.2018, ignoring the case of the petitioner. The petitioner filed W.P.No.43557 of 2018 seeking a direction to consider his case for promotion to the post of Superintendent in the existing vacancies. The said writ petition is pending for consideration.

8. Even though the petitioner was promoted as Senior Assistant with effect from 13.02.2015, his probation was not declared even after he rendered more than 3 years 11 months service in the cadre of Senior Assistant.

9. In the year 2007, one Sri P. Balya Naik, Constable, lodged a complaint with Anti Corruption Bureau (ACB) officials alleging that the petitioner demanded bribe for his pay fixation. Trap proceedings were conducted on 25.08.2007. The petitioner is

not the authority to fix individual pay, as he was only working as Junior Assistant at that point of time. Much before the said complaint, a note was put up on 18.08.2007 itself and the Unit Officer has approved the said draft with regard to pay fixation on 20.08.2007 and also signed on fair copy of pay fixation order on 23.08.2007 itself. However, the trap proceedings were unsuccessful. The ACB officials wrote a letter to the Government.

10. It is further stated that the Government, *vide* orders in G.O.Ms.No.165 Home (SC.A) Department dated 25.06.2010, observed that as per the remand diary prepared by the ACB after the trap, the chemical test did not yield positive result; that further, the complainant reported that the accused Officer did not take the amount, but asked him to keep it in his table drawer and the same was mentioned in the FIR; that these points strengthen the argument of the accused Officer that the solution remained colourless; that further it reveals from the record that the note orders on the pay fixation of the Police Constable were taken on 20.08.2007; that fair copy of the order was also ready by 23.08.2007 i.e., much in advance by the time trap was conducted on 25.08.2007; that this also disproves the version of the police constable in his complaint that the accused Officer told him that his fixation would not be done until he pays the bribe; and that ultimately, the Government ordered to initiate departmental action

against the petitioner by duly withdrawing the case from the Tribunal for disciplinary proceedings.

11. It is also stated that basing on the final reports, the ACB Court, by order dated 08.12.2010 in Crime No. 23/ACB - CBI/2007 was pleased to close the FIR by recording the final report submitted by the ACB officials. After lapse of more than 12 years period from the alleged incident, the impugned Memorandum/Article of charge dated 31.01.2019 was issued initiating departmental action and the petitioner was called to submit his explanation.

12. The case of the petitioner is that the incident alleged in the impugned order occurred in the year 2007. The Government dropped criminal proceedings *vide* G.O.Ms.No.165 dated 25.06.2010 ordering departmental action. The respondents were silent for all these years. Merely because the contempt case being C.C.No.68010 of 2018 was filed for non-implementation of orders of the Tribunal in O.A.Nos.7872 of 2013 & 3306 of 2014, dated 09.08.2016, the impugned Memorandum/Article of charge is issued to cause wrongful loss to the petitioner.

13. Heard Mr. S. Satyanarayana Rao, learned counsel for the petitioner, and Mr. M.V. Rama Rao, learned Special Government Pleader for Home, and perused the material on record.

14. Learned counsel for the petitioner submitted that in similar circumstances, the Honourable Apex Court in **State of M.P v. Bani Singh¹**, **State of A.P. v. N. Radhakishan²**, **P. V. Mahadevan v. M.D., Tamil Nadu Housing Board³**, and **M. V. Bijlani v. Union of India⁴**, and deprecated the practice of delay in disciplinary proceedings and came to the conclusion that inordinate delay causes prejudice to the delinquent Officer unless he is blamed for the delay. The petitioner lost two promotions despite favourable orders passed in his favour by the Tribunal. The complaint of P. Balya Naik, Constable, was found to be false and the criminal proceedings were closed. There is delay of eight years in initiating disciplinary proceedings. There is no justification for continuing the proceedings. W.P.No.43557 of 2018 was filed by the petitioner seeking a direction for consideration of his case as Superintendent notionally on par with his junior and the writ petition is pending. On account of filing of contempt case in C.C.No.68010 of 2018, the impugned Memorandum / Article of charge is issued for the incident related to August, 2007.

15. Learned Special Government Pleader for Home submitted that the petitioner was placed under suspension *vide* D.O.No.227 dated 30.08.2007 on the charges of being caught red-

¹ AIR 1990 SC 1308

² 1998 (4) SCC 154

³ 2005 (6) SCC 636

⁴ 2006 (5) SCC 88

handed by the officials of ACB when he demanded and accepted bribe amount of Rs.1,000/- from Sri Balya Naik, for attending to his pay fixation work. Crime No.23/ACB-CR/2007 was registered against the petitioner for the offence under Section 7 of the Prevention of Corruption Act, 1988. Subsequently, the petitioner was reinstated into service. The Government, *vide* G.O.Ms.No.269, Home (SC.A) Department dated 23.05.2009, have sent the Article of charge on two charges against the petitioner. While oral enquiry in that regard was in progress, the Government *vide* G.O.Ms.No.165 Home (SC.A) Department dated 25.06.2010 decided to withdraw the case before the Tribunal for disciplinary proceedings and directed the Director General, ACB, to furnish Articles of charge on the allegation of corruption. In compliance of the directions, draft Article of charges was framed against the petitioner *vide* letter C.No.166/RCT-CR-2/207-S2 dated 26.08.2010 of the Director General, ACB, A.P. Hyderabad. The draft Article of charges was framed on three counts i.e., (1) allegation of non-submission of Annual Property Returns to the competent authority (2) allegation of non-maintenance of personal register and (3) allegation of corruption of accepting Rs.1,000/- as illegal gratification from ARPC 2463 for doing official favour. Enquiry Officer submitted enquiry report by giving reasonable opportunity of hearing to the petitioner – charged Officer, holding charge No.1

as 'proved' and charge No.2 as 'not proved' *vide* proceedings dated 18.02.2013. After completion of oral enquiry, as per Rule 20 of Rules, 1991 and in compliance of the directions issued by the Government in G.O.Ms.No.269 Home (SC.A) Department dated 23.05.2009, the connected oral enquiry records and finding of the enquiry authority were sent to the Government for disposal of the disciplinary proceedings initiated against the petitioner *vide* office letter dated 25.01.2014. But, on 3rd count i.e., on the allegation of accepting Rs.1,000/- as illegal gratification, draft Article of charge was not received from the Government. The same was received after approval on 23.01.2019. In addition to the above, the petitioner was involved in two criminal cases i.e., Crime No.66 of 2013 registered for the offence under Section 506 of IPC on the file of Kalapathar P.S, Hyderabad, and Crime No.95 of 2013 registered for the offence under Section 324 and 506 IPC on the file of Kamatipura P.S. In view of these two criminal cases, the petitioner was dealt on punishment roll under Section 22 of Rules, 1991 *vide* proceedings in PR.No.97 of 2014 dated 13.03.2014. Later, further action was dropped as criminal proceedings in Crime No.95 of 2013 of P.S. Kamatipura and Crime No.66 of 2013 of P.S. Kalapathar, registered against the petitioner ended in compromise before Lok Adalat.

16. Learned Special Government Pleader further submitted that the petitioner filed C.A.No.21 of 2015 in O.S.No.7872 of 2013 requesting to initiate contempt proceedings against the respondents for non-implementation of the orders of the Tribunal, dated 11.11.2013. In view of the interim orders of the Tribunal, the petitioner was promoted as Senior Assistant in the existing vacancy under Rule 10 (a) of the A.P. State and Subordinate Services Rules, 1996, *vide* office D.O.No.1110/2015 dated 13.02.2015, subject to outcome of O.As/W.Ps. The Government *vide* G.O.Rt.No.70 Homes (SC) Department, dated 02.02.2015, imposed the punishment of censure against the petitioner for non-submission of Annual Property Returns Statements. Subsequently, the same was set aside *vide* G.O.Rt.No.491 Home (SPL) Department dated 26.04.2017. Since the Article of charge with regard to the allegation of demanding and accepting Rs.1,000/- as illegal gratification was pending, the Director General, ACB, TS, Hyderabad has addressed a reminder letters dated 09.02.2018, 21.12.2018 and 31.12.2018. The petitioner filed W.P.No.43557 of 2018 to fix his seniority as per the common orders of the Tribunal dated 09.08.2016 and to promote him as Office Superintendent. The contempt case was filed by him for non-implementation of the common orders of the Tribunal dated 09.08.2016. An affidavit in Contempt Case No.3141 of 2018 and counter affidavit in

W.P.No.43557 of 2018 were filed by the Government on 05.02.2019. The Government *vide* memo dated 23.01.2019, requested the Director General of Police, Telangana State, Hyderabad, to conduct departmental action against the petitioner on the allegation of demanding and accepting Rs.1,000/- as illegal gratification from Armed Reserve Police Constable 2463 for doing official favour. The same was communicated to the Commissioner of Police through endorsement No.247/T2/2014 dated 24.01.2019. The delay, if any, caused was due to administrative reasons. On receipt of orders from the Government, immediately Article of charge was issued to the petitioner.

17. The point that arises for consideration in this writ petition is:

“Whether there is inordinate delay in initiating departmental action against the petitioner?”

18. Though a detailed counter affidavit is filed by the respondents giving the background history of criminal cases and departmental proceedings initiated against the petitioner, the delay caused in initiating departmental proceedings in connection with Anti Corruption Case is not satisfactorily explained. In the last unnumbered paragraph of page 11 of the counter affidavit filed on behalf of the respondents, the respondents stated that:

"... .. the delay was occurred due to the administrative reasons i.e., communication between the O/o the Director General, ACB, Telangana, Director General of Police, Telangana. And Government of Telangana. Before proceeding further it is mandatory to seek prior approval of the Government on the draft article of charge sent by the D.G., ACB to the Government in the year 2010 on the main charge i.e., allegation of demand and acceptance of bribe. On receipt of orders from the Government of Telangana and Director General of Police, Telangana, this office has immediately issued article of charge to the petitioner without any further loss of time."

19. In **Bani Singh's** case (Supra 1), it was held as follows:

"The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April, 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the

charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage.""

20. In **N. Radhakishan's** case (Supra 2), the Hon'ble Apex Court held as under:

"It is not possible to lay down any predetermined 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 the relevant factors and to balance and weigh 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 the delay is abnormal and there is 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 the 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 the 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 their 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 the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

21. In **P.V. Mahadevan's** case (Supra 3), the Hon'ble Apex Court held as follows:

"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. 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."

22. In **M.V. Bijlani's Case** (Supra 4), it was held as follows:

"... .. The Tribunal as also the High Court failed to take into consideration that the disciplinary proceedings were initiated after six years and they continued for a period of seven years and, thus, initiation of the disciplinary proceedings as also continuance thereof after such a long time evidently prejudiced the delinquent officer."

23. As observed in **N. Radha Krishna's case** (Supra 2), mere delay cannot be a ground to hold that the disciplinary proceedings are vitiated. It depends on facts and circumstances of each case. The paramount consideration, which needs to be seen is the prejudice that is caused to the employee on account of such delay. In a case of simple charge/s involving few witnesses, the delay of 2 or 3 years may be unwarranted. However, in case of serious and complex charges, for example charges involving corruption allegations or related to ACB case, the delay is understandable on account of procedural wrangles involved. The sanction / approval from the competent authority may be mandatory and there may be administrative delay. However, such delay has to be properly explained. By merely stating that approval of the competent authority is awaited, the respondents cannot wash off their hands.

24. in the instant case, the Government dropped criminal proceedings *vide* G.O.Ms. No.165 dated 25.06.2010. It was specifically pointed out therein that the version of the complainant, who is a Police Constable, in his complaint that the petitioner-Accused Officer told him that his fixation would not be done until he pays bribe, is disproved, however, the Government decided to order departmental action against the petitioner. The respondents seriously contested the cases filed in O.A. Nos.7872 of 2013, 3306 of 2014, C.C. Nos.21 and 22 of 2015, 68010 of 2018 and W.P. No.43557 of 2018 and consistently referred to withdrawal of case of disciplinary proceedings against the petitioner from the file of Tribunal *vide* G.O. Ms. No.165 dated 25.06.2010. At every stage of such cases, the respondents had opportunity to expedite initiation of disciplinary proceedings. But, it appears that the respondents were not diligent in doing so and the delay of nine (9) years is not properly explained. Going by the sequence of events, the circumstances clearly show that the departmental action was initiated under the impugned Memorandum / Article of charge to circumvent orders of the Tribunal in O.A.Nos.7872 of 2013 and 3306 of 2014, dated 09.08.2016, and C.C. No.68010 of 2018. The action of the respondents authority is not fair and is not for any bona fide reasons, but for extraneous consideration.

25. In view of the above observations, the writ petition is allowed setting aside the impugned Memorandum/Article of charge in PR.No.02/2019 (No.L&O/B8/558/2007) dated 31.01.2019. The respondents are directed to consider the case of the petitioner for promotion to the post of Superintendent without reference to the impugned Memorandum/Article of charge. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition shall stand closed.

B. VIJAYSEN REDDY, J

Date: 20.04.2022

NOTE:

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