



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF SEPTEMBER, 2024

PRESENT

THE HON'BLE MR JUSTICE S.G.PANDIT

AND

THE HON'BLE MR JUSTICE C.M. POONACHA

WRIT PETITION NO. 951 OF 2021 (S-KSAT)

BETWEEN:

SRI B ANJANEYA SETTY
S/O BHEEMA SETTY
AGED ABOUT 70 YEARS
RETIRED TAHSILDAR
KORATAGERE TALUK
TUMKUR DISTRICT
R/AT NO.D-4, 551/6TH MAIN
HAVANUR EXTENSION
BENGALURU-560073.

...PETITIONER

(BY SRI. NINGAPPA FAKEERAPPA AMARAD, ADV.)

AND:

1. THE PRINCIPAL SECRETARY TO GOVERNMENT
REVENUE DEPARTMENT
M S BUILDING, BENGALORE-560001.
2. THE DEPUTY COMMISSIONER
TUMKUR-572101.
3. THE ADDITIONAL DEPUTY COMMISSIONER
AND ENQUIRY OFFICER
TUMKUR DISTRICT-572101.
4. THE TAHSILDAR
KORATAGERE
TUMKUR DISTRICT-572132

...RESPONDENTS

(BY SRI.C.N. MAHADESHAWARAN, AGA FOR R1-R4)





THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE WRIT OF CERTIORARI OR ANY OTHER WRIT, QUASH THE IMPUGNED ORDER PASSED BY THE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL AT BANGALORE IN A.NO.7731/2018 DATED 24TH DAY OF NOVEMBER 2020 VIDE ANNEXURE-B IN SO FAR AS THE PETITIONER IS CONCERNED.

THIS PETITION, COMING ON FOR PRELIMINARY HEARINGIN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE S.G.PANDIT
AND
HON'BLE MR JUSTICE C.M. POONACHA

ORAL ORDER

(PER: HON'BLE MR JUSTICE S.G.PANDIT)

Petitioner, a retired Tahasildar is before this Court aggrieved by order of the Karnataka State Administrative Tribunal at Bengaluru (for short, 'the Tribunal') dated 24.11.2020 in Application No.7731/2018, rejecting petitioner's challenge to charge memo dated 25.05.2012 (Annexure-A4) as well as Government order appointing Enquiry Officer and Presenting Officer under order dated 08.12.2017 (Annexure-A6).

2. Brief facts leading to filing of the present writ petition are that, the petitioner who was working



as Tahasildar, retired from service on attaining the age of superannuation on 30.09.2011. Subsequent to his retirement, articles of charge dated 25.05.2012 (Annexure-A4) was issued for an incident which had taken place during the year 2010 alleging that the petitioner has effected change of Khatha in respect of the land in Sy.No.21/3 and Sy.No.175 of Hanumantapura Village, Koratagere Taluk, without obtaining 11E Sketch. Thereafter, Enquiry Officer was appointed to enquire into the charges leveled against the petitioner on 08.12.2017. Challenging the articles of charge dated 25.05.2012 as well as appointment of Enquiry Officer under Government Order dated 08.12.2017, petitioner was before the Tribunal in Application No.7731/2018. The Tribunal under impugned order dated 24.11.2020 rejected the petitioner's application only on the ground that application is premature and observing that contentions raised by the applicant before the Tribunal could be raised before the Enquiry Officer. Challenging



the said order of the Tribunal, petitioner is before this Court.

3. Heard the learned counsel Sri.Ningappa Fakeerappa Amarad for petitioner and Sri.C.N.Mahadeshwaran, learned Additional Government Advocate for respondents. Perused the writ petition papers.

4. Learned counsel for the petitioner would submit that petitioner retired from service as Tahasildar on attaining the age of superannuation on 30.09.2011 and subsequent to his retirement, articles of charge dated 25.05.2012 was issued. More than 5 years thereafter Enquiry Officer was appointed under Government Order dated 08.12.2017. Learned counsel would submit that the delay in commencement of enquiry proceedings against a retired Government servant has prejudiced his case. Further, learned counsel would submit that the circumstances under which Khatha was changed, 11E sketch was not



necessary. However, he submits that subsequently, 11E sketch was obtained and furnished before the Authority. Learned counsel would also contend that charge is so vague that no reasonable man could understand and submit his reply to the charge. Learned counsel would further submit that nowhere either in charge or imputation of charge, the Authorities have stated as to under what circumstances change of Khatha was effected. Thus, learned counsel would pray for allowing the writ petition.

5. Per contra, learned Additional Government Advocate supports the order passed by the Tribunal and submits that petitioner was before the Tribunal challenging the articles of charge and challenge to articles of charge would not be maintainable since the petitioner would get an opportunity to defend himself before the Enquiry Officer. Further, learned counsel would submit that the State has filed statement of objections to the application and it has stated that



irregularity on the part of the applicant came to light only after his retirement and it has consumed certain time to go through the nature of lapse committed. Hence, there is some delay and that itself cannot be a ground to quash the show cause notice. Thus, learned counsel would pray for dismissal of the writ petition.

6. Having heard the learned counsel appearing for the parties and on perusal of the writ petition papers, we are of the view that, order of the Tribunal in the facts and circumstances of the case is not sustainable as there is inordinate delay in appointing Enquiry Officer and in commencing the enquiry against a retired Government servant, for the following reasons:

7. It is not in dispute that petitioner retired as Tahasildar as long back as on 30.09.2011. Subsequent to his retirement, charge memo dated 25.05.2012 (Annexure-A4) was issued alleging that the petitioner had changed Khatha in respect of



Sy.No.21/3 and Sy.No.175 of Hanumantapura Village, Koratagere Taluk without obtaining 11E Sketch. A perusal of the articles of charge would not indicate or it is not forthcoming from the charge memo that under what circumstances the petitioner changed Khatha and whether in the facts and circumstances whether it warranted 11E sketch. The charge and imputation of charge are one and the same. Imputation would not explain the details or the basis of charge. The charge according to us is so vague that no reasonable man could understand and submit his reply.

8. Admittedly, charge memo is dated 25.05.2012 and Enquiry Officer was appointed under Government Order dated 08.12.2017 (Annexure-A6). There is more than 5 years delay in appointing Enquiry Officer. Normally, there should not be any delay in appointing Enquiry Officer. The stage of appointing Enquiry Officer would come immediately



after issuance of charge memo. Taking note of the fact that petitioner is a retired Government Servant by the time charge memo was issued, respondent/Government ought to have taken action to appoint Enquiry Officer immediately on issuance of charge memo. The statement of objections filed on behalf of the respondents before the Tribunal would not explain the delay in appointing Enquiry Officer. On the other hand, it would state that irregularity on the part of the applicant came to light only after his retirement and it has consumed certain time to go through the nature of lapses committed. Further, it is stated that there is some delay and that itself cannot be a ground to quash the show cause notice.

9. The Honb'le Apex Court has made it clear in catena of cases that unexplained delay in initiating and conclusion of departmental proceedings itself is an indication of prejudice caused to the employee. In a judgment reported in the case of **STATE OF A.P., VS.**



N.RADHAKISHAN¹ at paragraph 19, it is observed as follows:

"19. 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

¹ (1998) 4 SCC 154



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."

10. In the instant case also the delay in appointing Enquiry Officer is not explained that too, against a retired employee.

11. It is not the case of the respondent/Government that petitioner in any way is responsible for delay in appointing Enquiry Officer. In appointing of Enquiry Officer, the petitioner –



Delinquent Government Official would have no role to play. It is for the Government or the Disciplinary Authority to appoint Enquiry Officer.

12. Learned Additional Government Advocate tried to explain the delay by placing reliance on Annexure-A11 dated 10.06.2014 i.e., report of the Deputy Commissioner. The Deputy Commissioner's report is dated 10.06.2014, whereas appointment of Enquiry Officer is dated 08.12.2017. There also more than 3 years time is taken by the Government to appoint Enquiry Officer.

13. In the facts and circumstances of the case, the delay in commencement of enquiry by appointing Enquiry Officer, has caused prejudice to the petitioner – a retired Government servant. From the cause title, it can be seen that as on this date, petitioner is aged about 75 years. At this age and in the evening of his life, he cannot be expected to answer to a vague charge.



14. For the reasons recorded above, the following:

ORDER

- i) Writ petition is allowed.
- ii) Order dated 24.11.2020 in Application No.7731/2018 on the file of the Karnataka State Administrative Tribunal at Bengaluru is set aside.
- iii) Consequently, articles of charge dated 25.05.2012 (Annexure-A4) bearing No.ಆರ್ಟಿ 46 ಎಡಿಇ 2012 and Government Order dated 08.12.2017 (Annexure-A6) bearing No. No.ಆರ್ಟಿ 46 ಎಡಿಇ 2012 are quashed.

**Sd/-
(S.G.PANDIT)
JUDGE**

**Sd/-
(C.M. POONACHA)
JUDGE**

NC
CT:bms
List No.: 2 Sl No.: 2