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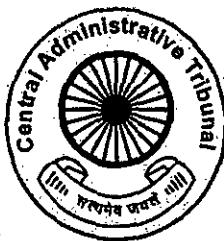
**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH**

Original Application No. 351/00666/2019

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE MR. N. NEIHSIAL, ADMINISTRATIVE MEMBER

Dr. R. Thulasidasan,
Son of Late P. Raman Pillai,
ex- Director of Health
Services, A & N
Administration having
permanent residence at
Atlanta Point, P.O. Aberdeen
Bazaar, Port Blair – 744104.



....Applicant

-VERSUS-

1. The Union of India, service through the Secretary to the Government of India, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi – 110011.
2. The Home Secretary, Ministry of Home Affairs, Government of India, North Block, New Delhi – 110001.
3. The Lt. Governor, A & N Islands Raj Niwas, Port Blair – 744101.
4. The Chief Secretary, A & N Administration, Secretariat, Port Blair – 744101.

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5. The Principal Secretary
(Health) A&N Administration,
Secretariat Port Blair –
744101.

6. The Director (DP)
Ministry of Home Affairs
Government of India, UT
Division (ANL Desk), North
Block, New Delhi – 110001.

... Respondents

For the Applicant: Sri B Samanta & Mr P K Mandal



For the Respondents: Sri R Halder

Date of hearing: 24.09.2019 Date of Order: 05.2.2020

ORDER

MANJULA DAS, MEMBER (J):-

In this O.A. filed under section 19 of the Administrative Tribunal Act, 1985 the applicant is seeking following reliefs:

"8.a) An order be passed quashing and/or setting aside the impugned reasoned order dated 25.02.2019 of the respondent no. 4 Chief Secretary, A & N Administration, being Annexure "A-9" hereto, and all consequent communications/orders/memoranda in furtherance thereof, and thereupon directing the respondent authorities to release all the service benefits including promotion and all consequential benefits as well as pensionary benefits of the

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applicant as if there had never been any departmental proceedings against the applicant, if necessary by quashing and/or setting aside all action taken on the 2 departmental proceedings after the order dated 14.05.2018 of the Hon'ble Supreme Court of India, including the enquiry report dated 14.09.2018 with covering letter dated 22.10.2018, being Annexure A-6 hereto and the enquiry report dated 18.09.2018 with covering letter dated 30.10.2018 being Annexure A-7 hereto;

b) INJUNCTION do issue restraining the respondent authorities from acting in any manner or any further manner on the basis of the impugned reasoned order dated 25.02.2019 of the respondent No. 4 Chief Secretary, A & N Administration, being Annexure "A-9" hereto, and all consequent communications/ orders/ memoranda in furtherance thereof, the enquiry report dated 14.09.2018 with covering letter dated 22.10.2018, being Annexure A-6 hereto and the enquiry report dated 18.09.2018 with covering letter dated 30.10.2018 being Annexure A-7 hereto;

c) DIRECTION do issue upon a competent authority to enquire into and fix up responsibility for proceeding with the 2 departmental proceedings after the order of rejection dated 14.05.2018 of the Hon'ble Supreme Court of India of the prayer for extension of time for proceeding with and completing the said two departmental proceedings and thereupon a direction do issue for proceeding in accordance with law on the basis of such report on fixation of responsibilities for such illegalities/irregularities;



- d) An order be passed initiating contempt proceedings under the Contempt of Courts Act, 1971 read with section 17 of the Administrative Tribunals Act, 1985 against the respondent no. 4 herein for violation of the solemn order dated 08.01.2019 passed by this Learned Tribunal in O.A. No. 351/1654 of 2018;
- e) DIRECTION in the nature of certiorari do issue upon the respondent authorities directing them to produce and/ or cause to be produced the entire records of the case and thereupon to pass necessary orders for rendering conscientiable justice;
- f) Cost and costs incidental hereto;
- g) And/or to pass such other or further order or orders as to your Lordships may seem fit and proper."

2. Sri S. Samanta, learned counsel assisted by Sri P. K. Mandal, learned counsel for the applicant submitted that the Hon'ble Supreme Court, while deciding the SLP of the applicant heard analogously with the SLP of A & N Administration directed, inter alia, that the two departmental proceedings against the applicant be completed within three months and also directed that the applicant be posted in the Charge Officer on ad hoc basis in the post of Director of Health Services, A & N Islands; the posting would, however, abide the result of



the two departmental proceedings. As the administration failed to complete the two departmental proceedings despite repeated extension of time granted towards the same, on 14.05.2018, the Hon'ble Supreme Court dismissed the IA of the A & N Administration for extension of time.



3. According to the learned counsel, since the Hon'ble Supreme Court dismissed the prayer for further extension of time to conclude the departmental proceedings, both the proceedings have died a natural death and the applicant is entitled to all service benefits as if there had never been any such departmental proceedings against the applicant. Applicant accordingly submitted representation in this regard. However, vide forwarding letters dated 22.10.2018 and 30.10.2018 applicant was served two enquiry reports dated 14.09.2018 and 18.09.2018 respectively directing to submit his representations within 15 days.

4. Assailing the aforesaid actions of the respondents and for release of all the service benefits,

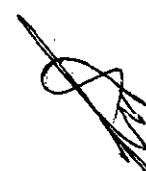
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applicant filed OA.351/1654/2018 which was disposed of vide order dated 08.01.2019 directing to consider and dispose of his pending representation dated 04.07.2018 by a speaking order within six weeks. In terms of the said order the respondent no.4 had disposed of the representation and rejected his prayer vide order no.572 dated 25.02.2019. According to the learned counsel, due to non extension of further time proceeding with both the proceedings is not justified and the applicant is entitled to all the service benefits including promotion as well as pensionary benefits. Learned counsel accordingly prayed for relief(s), as quoted above.

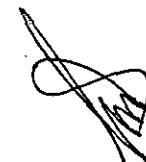
5. Sri R. Haldar, learned counsel for the respondents submitted that while dismissing the IA for further extension of time vide order dated 14.05.2018, the Hon'ble Supreme Court had not quashed the departmental proceedings, therefore, it cannot be said that the said proceedings have died a natural death. Therefore, the disciplinary authority had directed the IO's to complete enquiry. The applicant had refused to cooperate with the enquiry. Accordingly, the enquiry

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reports dated 14.09.2018 and 18.09.2018 were submitted which were forwarded to the applicant to submit his written reply. According to the learned counsel, several times inquiry officers had to be changed as they were transferred to mainland and the applicant (charged officer) tried all sorts of dilatory tactics to delay the proceedings like insisting for original documents although certified documents were provided, non-receipt of orders seeking extensions now and then so that the disciplinary proceeding could not be concluded within the specified time as directed by the Hon'ble Supreme Court and to blame the Administration for the delay in disciplinary proceedings and reap the benefit of delay in disciplinary proceedings in the court.

6. Learned counsel further submitted that departmental proceedings were initiated against the applicant while in service but the enquiry reports were submitted after his retirement, therefore, the said proceedings are required to be concluded under Rule 9 of the CCS (CCA) Rules, 1972 for which the case records along with tentative views of the disciplinary authority



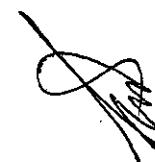
are required to be sent to the Ministry of Home Affairs for conclusion of the same. According to the learned counsel, the A & N Administration vide letters dated 21.02.2019 and 19.03.2019 respectively referred both the cases to the said Ministry with the views of disciplinary authority for conclusion.

7. We have heard both the sides, perused pleadings and the materials placed on record.

8. We have also gone through the orders of the Hon'ble Supreme Court. The Hon'ble Supreme Court heard both the SLP(C) No.7202/2016 filed by the applicant SLP (C) No.7547/2016 filed by the A & N Administration together and disposed of the same by the common order dated 29.03.2016. The operative portion of the said order dated 29.03.2016 is reproduced below:

.....
Having considered the respective submissions, we are also convinced that the grievances expressed by the petitioner are genuine while at the same time it may not be appropriate for this Court to reach a definite conclusion that the disciplinary action initiated against the petitioner are not based on any relevant materials or not

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supported by appropriate material evidence. In such circumstances, we are of the view that interest of justice can be sub-served by directing the respondent-Administration to pass orders appointing the petitioner purely on ad hoc basis and by posting as in charge Officer in the post of Director of Health Services of Andaman and Nicobar Islands, Port Blair so that he can ultimately retire in the said position subject, however, to the outcome of the disciplinary proceedings already initiated against him in the charge sheet dated 4th March, 2015 and in the one dated 2nd March, 2016, as well as the outcome of the DPC proceedings under Recruitment Rules of 2013 as directed by the Tribunal and as affirmed by the Division Bench of the High Court. For that purpose, it will be permissible for the Administration of the Andaman & Nicobar Islands to keep the process of retirement of the petitioner beyond 31st March, 2016 pending and also by not allowing him to retire by applying the Rules providing any such course to be adopted. We only direct that in the first instance, the Union Territory of Andaman & Nicobar Islands to proceed with the disciplinary action after getting the reply of the petitioner to the respective charge sheets which the petitioners shall submit within four weeks from today and conclude the inquiry proceedings within a period of three months from today. Depending upon the outcome of the disciplinary proceedings and the final orders to be passed, it will be open for the respondent-Union Territory to proceed with the DPC as directed by the Tribunal under Recruitment Rules of 2013. Again depending upon the outcome of the said proceedings in the event of the petitioner being eligible for SAG and consequent



promotion to the post of Director of Health Service, the temporary ad hoc duty charge posting issued to the petitioner as directed in this order shall be confirmed in his favour and whatever benefits accrue to him based on such final orders to be passed shall be granted. In the event of the petitioner not becoming entitled to get the said promotion as of right based on the outcome of the disciplinary action as well as the DPC proceedings under Recruitment Rules of 2013, it is needless to state that whatever consequences that should follow will follow subject, however, to the entitlement of the petitioner to work out his remedies in the manner known to law. Therefore, we direct the Union Territory of Andaman and Nicobar Islands to forth with pass orders posting the petitioner as In charge Officer in the post of Director of Health Services, Andaman and Nicobar Islands till he reaches the age of superannuation. Even while passing such posting orders, Union Territory can make it clear that he will not be empowered to exercise any power of monetary liability and he shall not deal with the files pertaining to disciplinary action issued and pending against him. We are confident that the learned Standing Counsel for the Administration will give due intimation to the concerned authorities to comply with the orders relating to the posting of petitioner as Director in charge of Health Services as directed in this order without any further loss of time. The Special Leave Petitions stand disposed of on the above terms. Pending applications, if any, stands disposed of...."

9. In pursuance of the said order dated 29.03.2016 passed by the Hon'ble Supreme Court of India, the



applicant was allowed to hold the post of Director of Health Services, A&N Administration till his superannuation on 31.03.2016. However, having failed to complete the departmental proceedings within the stipulated time framed by the Hon'ble Supreme Court, the A & N Administration filed several IAs for extension of time and they were granted extension of times on four occasions. Relevant portion of the orders passed by the Hon'ble Supreme Court in IAs seeking extension of time are quoted as under:



"I) I.A. No. 2/2016 in Petition(s) for Special Leave to Appeal (c) No(s). 7547/2016 dated 05.08.2016

'Heard learned counsel appearing for the parties and perused I.A. No.2 of 2016. For the reasons stated, we allowed the aforesaid application and extend the time for a period of three months from today. In the meanwhile, the applicants are directed to release the provisional pension in accordance with Rules.'

II) I.A. No. 3/2016 dated 05.12.2016

'Time to comply with order dated 05.08.2016 is extended by a period of three months from today. I.A. No. 3 is disposed of accordingly.'

III) I.A. No. 4/2016 dated 10.04.2017

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'Heard learned counsel appearing for the parties and perused interlocutory application for extension of time.

By way of last chance, three months' further time is granted to the Disciplinary Authority to complete the disciplinary proceeding/inquiry against the respondent(s).

In view of the above, I.A. 4/2017 stands disposed of.'

IV) M.A. No. 239/2017 dated 04.09.2017



'At the request of Mrs. G. Indira, learned counsel for the applicants-petitioners, by way of last chance, six months' further time is granted to comply with the order dated 10.04.2017 passed by this court in I.A. No. 4/2017 in SLP(c) No. 7547 of 2016. Accordingly, the interlocutory application for extension of time is disposed of'

V) I.A. No. 31190/2018 dated 14.05.2018

'I.A. No. 31190/2018, application for extension of time is dismissed.'

10. Admittedly, the Hon'ble Supreme Court did not grant any further time on the fifth IA No.31190/2018 filed by the Administration for extension of time and rejected the same vide order dated 4.05.2018. However, said order dated 14.05.2018 did not have any observation of the Hon'ble Supreme Court to the effect that the proceedings shall stand dissolved in case they are not

concluded within a particular time. Therefore, it cannot be presumed that the proceedings are abated automatically due to non-extension of further time by the Hon'ble Supreme Court. Undisputedly the respondents could not complete the proceedings within the time as extended by the Hon'ble Supreme Court. However, the applicant has failed to demonstrate that the delay was attributable to the A & N Administration. From the reply of the A & N Administration and also on perusal of the impugned order dated 25.02.2019 it appears that applicant was not cooperating with the enquiries and also that the IO's and PO's were changed several times as they were transferred to mainland. Besides, due to retirement of the applicant during pendency of the said proceedings, the case records along with tentative views had to be sent to the Ministry of Home Affairs. All these contributed to delay. The applicant had not filed any rejoinder controverting the said contentions. It has already been noticed that enquiry reports have been forwarded to the applicant. It is also apparent from the reply affidavit filed by the A & N Administration that the tentative views along with the



case records had already been forwarded to the Ministry of Home Affairs. Thus it is clear that enquiries had already proceeded to a large extent. In the case of

State of Punjab & Ors vs Chaman Lal Goyal, 1995 (2) 570

the Hon'ble Supreme Court had as under:-

"It is more appropriate and in the interest of justice as well as in the interest of administration that the enquiry which had proceeded to a large extent be allowed to be completed."



In the case of **Anant R Kulkarni vs Y P Education Society & Ors, (2013) 6 SCC 515** the Hon'ble Supreme Court held as under:-

"8. The court/tribunal should not generally set aside the departmental enquiry, **and quash the charges on the ground of delay in initiation of disciplinary proceedings**, as such a power is de hors the limitation of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. **Therefore, a charge-sheet or show cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings.** The facts and circumstances of the case in question, must be carefully examined, taking into consideration the gravity/magnitude of charges involved therein. The Court has to consider the seriousness and

magnitude of the charges and while doing so the Court must weigh all the facts, both for and against the delinquent officers and come to the conclusion, which is just and proper considering the circumstances involved. The essence of the matter is that the court must take into consideration all relevant facts, and balance and weigh the same, so as to determine, if it is infact in the interest of clean and honest administration, that the said proceedings are allowed to be terminated, only on the ground of a delay in their conclusion."

(emphasis supplied)



11. Thus it is settled position that when the enquiry had proceeded to a large extent it is more appropriate that it should be allowed to be completed. In this case, proceedings have already been proceeded to a large extent, therefore, at this stage it would be more prudent to allow the same to be concluded. Besides, the contention of the respondents in the written statement that the applicant had not cooperated in the enquiry and adopted dilatory tactics to delay the proceedings has not been controverted by the applicant by filing rejoinder or in the arguments advanced on his behalf. The applicant was only harping on the point that since the Hon'ble Supreme Court did not extend any further time vide order dated 14.05.2018, both the proceedings

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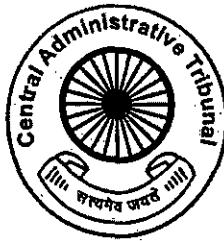
have died a natural death and he should be released all the service benefits and promotion including pensionary benefits. It cannot be concluded that the delay in completing both the departmental proceedings initiated against the applicant was solely attributable to the disciplinary authority.

12. For the above reasons, the argument of the applicant that the proceedings have died a natural death due to non-extension of time cannot be accepted. We are of the considered opinion that in the interest of justice and administration, it would be more appropriate that both the proceedings should be completed at the earliest since the case records with tentative views had already been forwarded to the Ministry of Home Affairs as the applicant had retired during pendency of the OA. Accordingly, the disciplinary authority is directed to conclude both the departmental proceedings with utmost expedition but not later than three months from the date of receipt of this order. Needless to mention that for whatsoever reason delay had already been occurred, therefore, no



further time would be granted in this regard. If the disciplinary authority fails to conclude both the proceedings within this period, the same shall stand abated immediately after the expiry of the stipulated period.

13. The OA is disposed of as above. There shall be no order as to costs.



(N. NEHSIAL)
ADMINISTRATIVE MEMBER

(MANJULA DAS)
JUDICIAL MEMBER

/BB/