

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE**

ORIGINAL APPLICATION NO.170/1697/2019

ORDER RESERVED ON 18.06.2021

DATE OF ORDER: 30.06.2021

CORAM:

HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)

(On video conference from Central Administrative Tribunal, Chandigarh Bench, Chandigarh)

HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)

(On video conference from his residence at Bangalore)

Sri H.S.Shivashankar Murthy

Age: 58 years

S/o Sri.Sahukaiah

Deputy Conservator of Forests

Plant Division

Chikmagalur: 577 102.

...Applicant

(By Advocate Shri P.A. Kulkarni - through video conference)

Vs.

1. Union of India

Represented by its Secretary

Ministry of Environment, Forest & Climate Change

No.402, Agni Wing, Level IV

Indira Paryavaran Bhawan

Jor Bagh Road, Aliganj

New Delhi: 110 003.

2. Department of Personnel and Training (DOPT)

By its Secretary

Govt. of India

North Block, Central Secretariat

Lok Nayak Bhavan

New Delhi: 110 001.

3. State of Karnataka

By its Principal Secretary

Department of Personnel & Administrative Reforms

(Services-IV)

Vidhana Soudha

Bengaluru: 560 001.

4. Principal Chief Conservator of Forests

Aranya Bhavan
18th Cross, Malleswaram
Bengaluru: 560 055.

5. Union Public Service Commission
Through its Secretary
Dholpur House, Shahajehan Road
New Delhi: 110 069.Respondents

(By Advocates Shri M.V.Rao for R1 & 2, Shri M.V.Ramesh Jois for R3 & 4
& Shri M.Rajakumar for R5 – through video conference)

O R D E R

PER: RAKESH KUMAR GUPTA, MEMBER (A)

1. The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

“Quash the disciplinary proceedings initiated against the applicant by State of Karnataka under charge memos bearing No: DPAR.80 SEP 97 dated 18.04.2000 and 13.03.2002 on the ground of protraction of this disciplinary proceeding initiated against the applicant in terms of the ratio laid down by the Apex Court in P.V.Mahadevan’s case reported in (2005) 6 SCC 636 (Ann-A8) and in view of applicant’s retirement due on 18.07.2021 on account of attaining the superannuation age from that date.”

2. The applicant had also prayed for the following interim relief:

“Stay of further proceedings pursuant to the charge memos bearing No: DPAR.80 SEP 97 dated 18.04.2000 and 13.03.2002 issued by Government of Karnataka and now pending before the Ministry of Environment, Forest and Climate Change, Govt. of India, New Delhi R-1 herein.”

3. The Tribunal while admitting the application on 14.01.2020 had directed that ‘status quo be maintained as of today in the matter’.

4. The applicant in his pleadings as averred as follows:

a. The applicant belongs to Indian Forest Service and he was appointed as Deputy Conservator of Forests w.e.f. 1.1.1993 after his allotment to Karnataka State.

b. During the year 2000, he was issued with a charge memo under Rule 8 of 'All India Services (Discipline and Appeal) Rules 1969' on 18.04.2000 containing the following charges:

Charge No.I:-

Having spouse living namely, Smt.Doddamma and having begotten two children from her and further having nominated the said Smt.Doddamma in GPF as his wife, he marries Smt.Shobha on 6.6.1996 by suppressing the fact of his earlier marriage with Smt. Doddamma.

Charge No.II:-

By suppressing the fact of his earlier marriage with Smt. Doddamma and having two children from her again marries Smt. A.Shobha and when she questions him about his relationship with Smt.Doddamma, he assaults Smt.Shobha and subjects her to mental and physical cruelty.

Charge No.III:-

Compels Smt.Shobha to get a sum of Rs.30,000/- from her mother Smt.Vijayalaxmi to secure a posting to convenient place at the time of his transfer and collects the said sum without obtaining the previous sanction of the Government which act is in contravention of Rule 14(4) of the All India Services (Conduct) Rules, 1968".

c. On 13.03.2002, one more charge sheet was issued with the charge as follows:

"That you Shri.H.S.Shivashankar Murthy, IFS now working as DCF ZP Mysuru maintain illicit physical relationship with one Smt.Doddamma d/o Puttaiah residing in LIG 92, 'M' Block, Kuvempu Nagar, Mysuru and begetting children from her in spite of your marriage with Smt.A.Shobha, d/o Smt.M.B.Vijayalaxmi and thereby committed a grave misconduct of unbecoming of a Government Servant within the meaning of Rule 3 of All India Service (Conduct) Rules 1968."

d. In his written statement dated 24.05.2000 to the charge memo dated 18.04.2000, the applicant has stated as follows:

“I had contacts with said Doddamma before I was appointed as Government Servant. I do further submit that even during my studies she was helpful to me and she was a source of inspiration for my completion of Indian Forest Service. I had not taken her as Spouse, but I had bodily contact with her, two children have been born and those children are being presently maintained by me. Even Doddamma, d/o Puttaiah has not claimed herself as wife of mine. I do further submit that I intended to marry Smt.Doddamma, there was strong opposition among my family members, therefore, I did not marry her. With an intention to marry her I had given the nomination in the GPF showing Doddamma as my wife, but with force I was married to one Shobha, d/o Vijayalaxmi on 6.6.1996 and before I could communicate the factum of marriage to Accountant General, with Shobha, with the request to change the nomination in favour of Shobha, the same had been accepted.

I had made attempts to take Shobha to my matrimonial house, but she was not willing to join the matrimonial house at the instance of her mother and one maternal uncle by name Shivabasappa who is working in the office of Commissioner of Police Mysuru. I have not committed any act of misconduct calling for disciplinary inquiry.”

e. The applicant’s case is that before his marriage with Smt.A.Shobha, he was in a live-in-relationship with one Smt.Doddamma and two children were born out of such relationship on 1.5.1991 and 1.6.1995 i.e., before his marriage with Smt.Shobha on 6.6.1996. Further he mentioned the name of Smt.Doddamma as a nominee in the GPF records since he was hoping to marry her all the while. However, since there was strong opposition from his mother’s side, he had to marry Smt.Shobha and after his marriage with Smt. Shobha, he has no connection with Smt.Doddamma except maintaining his two children from her which he considers as his bounden

duty. Subsequent to his marriage with Smt.Shobha, out of their wedlock, they also have a son born on 2.2.1998 by name Likith.

- f. Applicant's wife Smt.Shobha under the wrongful influence of her mother Smt.M.B.Vijayalaxmi and maternal uncle by name Sri.Shivabasappa, on 23.8.1997 reportedly gave a complaint to the Principal Chief Conservator of Forests Bengaluru against the applicant by making false allegations that he did not reveal his earlier marriage with Smt.Doddamma. The purpose of her complaint was mainly to force the applicant for changing the GPF nomination in her favour.
- g. Inquiry Officer Sri B.Rangaswamy retired District and Sessions Judge, who held the inquiry proceedings in respect of all the articles of charges, as per his report dated 4.2.2005, held that charge No.1 of both the charge sheets as 'proved' and charges 2 and 3 of the first charge sheet dated 18.4.2000 as 'not proved'.
- h. The State Government tentatively decided to impose a penalty of reduction of pay by one grade i.e., from JAG to minimum of senior time scale of pay for a period of three years and to make him to earn increments only thereafter with eligibility for promotion after expiry of the punishment period.
- i. However, the State Government sought UPSC advice in view of the applicant belonging to All India Service before passing the final orders. The UPSC under letter dated 19.9.2006 tendered its advice for imposing the penalty of 'compulsory retirement' from service on the applicant.

- j. The State Government vide its letter dated 13.07.2011 communicated the punishment order dated 26/31.5.2011 imposing the penalty of compulsory retirement on the applicant. Along with punishment order under this covering letter, a copy of the UPSC letter dated 5.4.2011 reiterating its advice already tendered on 19.9.2006 was also supplied. However, until this stage, copy of the UPSC advice was not furnished to the applicant and he was not given any opportunity of making his submission on the UPSC advice to the Disciplinary Authority.
- k. The OA.No.236/2011 challenging the above punishment order of compulsory retirement was filed before this Tribunal. The Tribunal vide its order dated 6.11.2012 set aside the punishment order on the grounds that the copy of the UPSC advice was furnished to the applicant only along with the punishment order, and as such, the punishment order is vitiated in terms of the law laid down by the Apex Court in S.K.Kapoor's case reported in (2011) 4 SCC 589. The Tribunal further directed that the applicant may submit a representation within 4 weeks to the Disciplinary Authority in respect of UPSC Advice dated 19.9.2006 and UPSC letter dated 5.4.2011 and the Disciplinary Authority shall dispose of the said representation by passing a reasoned and speaking order, as expeditiously as possible, but not later than 90 days therefrom, in accordance with law.
- l. As directed by the Tribunal, the applicant submitted his representation with reference to UPSC advice to the Disciplinary Authority. However, the Disciplinary Authority once again on 20.10.2016 imposed the penalty of compulsory retirement based on the UPSC advice without giving due weightage to the contentions raised by the applicant in his representation

submitted with reference to the UPSC advice. The applicant again challenged the punishment order of compulsory retirement before this Tribunal in OA.No.978/2016. The Tribunal vide order dated 19.06.2017 set aside the punishment order imposed on the applicant with a direction to the Disciplinary Authority to pass a fresh order in terms of the observations made by it. A specific direction was issued by this Tribunal to decide the case within a period of three months from the date of receipt of the copy of the order.

m. Pursuant to the directions issued by the Tribunal on 19.6.2017, the applicant once again submitted a representation to the Disciplinary Authority on 12.7.2017. However, even after 2 ½ years having elapsed after submitting the representation, the Disciplinary Authority has failed to pass the final orders within three months from the date of receipt of its order dated 19.06.2017 in OA.No.978/2016. At this stage, applicant has approached the Tribunal seeking relief against his continued persecution in the disciplinary case initiated in the year 2000.

n. Applicant's case is that this type of protracted disciplinary enquiry is clearly opposed as ruled by Hon'ble Supreme Court in the case of '*P.V.Mahadevan versus MD T.N.Housing Board' Civil Appeal No.4901/2005* decided on 8.8.2005 and reported in (2005)6 SCC 636. The Hon'ble Supreme Court in the said case has held that "*the protracted disciplinary enquiry against a Govt. employee should therefore be avoided not only in the interest of the Govt. employee but in public interest and also in the interest of inspiring confidence in the minds of the Govt. employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. Sri.P.V.Mahadevan*

had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings undergone by the said Sri.Mahadevan due to the protracted disciplinary proceedings would be much more than the punishment".

5. The respondent No: 1 has filed its reply statement wherein it has been averred as follows:

- a. The disciplinary proceeding was initiated against the applicant as he committed a grave misconduct unbecoming of a Government Servant within the meaning of Rule 3, 9 and 14(4) of All India Service (Conduct) Rules. In this regard, charge memos bearing No.DPAR.80 Sep 97 dated 18.04.2000 and 13.03.2002 were issued by the Govt. of Karnataka against the applicant. Subsequently, being the Disciplinary Authority, (Ministry of Environment and Forests), vide its order dated 26/31.05.2011 imposed the penalty of 'compulsory retirement' on the applicant after obtaining advice from UPSC vide its letter dated 05.04.2011(Annexure-R1). Thereafter the applicant filed an OA.No.236/2011 before this Tribunal wherein this Tribunal vide its order dated 06.11.2012, quashed the penalty order of 'compulsory retirement' dated 26/31.05.2011 issued by the Ministry and directed to consider the matter afresh after giving an opportunity to the applicant to represent against the advice of UPSC before the Disciplinary Authority. Subsequently, a penalty order of 'compulsory retirement' dated 20.10.2016 was again passed by the Ministry in consonance with the advice tendered by the UPSC after reconsidering the representation filed by the applicant. However, this Tribunal vide its order dated 19.06.2017 passed in

OA.No.978/2016, set aside the said penalty order with a direction to consider the representation of the applicant and pass a fresh speaking order.

- b. Subsequent to the order passed by this Tribunal, Govt. of Karnataka vide its letter dated 26.09.2017 forwarded the representation dated 12.07.2017 of the applicant to the Ministry for consideration. The applicant vide his said representation contended that the judgments quoted by UPSC in its advice regarding conduct unbecoming of a Govt. servant are not relevant. On examination of his representation, with the approval of Disciplinary Authority, the matter was referred to Department of Legal Affairs (DoLA) on 26.07.2018 with a request to render its advice on the interpretation of the judgments referred in the advice of UPSC.
- c. Thereupon, DoLA vide its note dated 30.08.2018(Annexure-R2) opined that facts of present disciplinary proceedings case appears to be quite distinguishable from the facts of the cases of Ram Narayan Dubey and S.B.Ramesh mentioned by UPSC in its advice. In view of said advice of DoLA, this Ministry examined the instant case and held that the penalty of 'Compulsory Retirement from Service' as advised by UPSC is too harsh and decided to reduce the penalty.
- d. Consequently, the Ministry proposed to impose the minor penalty of 'reduction to a lower stage in the time scale of pay for a period not exceeding three years, without cumulative effect and not adversely affecting his pension. This decision of the Ministry was in variance with the advice of UPSC tendered vide their letter dated 05.04.2011. Thus, as per DoPT guidelines issued vide OM No. dated 02.03.2016(Annexure-R3), which inter-alia states that where it is proposed by the Disciplinary

Authority (in disciplinary cases)/ competent authority to disagree with the advice of UPSC, a reference shall be made to the DoPT (Establishment Division) in the relevant file indicating reasons for the proposed disagreement and its advice is taken into consideration before a final order is passed.

e. Accordingly, the file was referred to DoPT on 12.09.2019 for their advice.

Now, DoPT vide its ID Note dated 24.12.2019 has informed that Prime Minister has decided to resolve the disagreement between the Ministry and UPSC in the instant case, in favour of UPSC for imposing the penalty of compulsory retirement on the applicant.

f. The advice of DoPT received vide their ID Note dated 24.12.2019 was under examination, in the meantime Ministry received a communication from the Govt. Counsel informing that the Tribunal has stayed the proceedings vide its order dated 13.01.2020. Accordingly, the final order of disposing the disciplinary proceedings has not been issued so far. Hence, it may be seen that the delay was not malafide, but rather was a procedural delay which involved multiple agencies.

6. The State Government of Karnataka (Respondent No.3) in its separate reply has averred as follows:

a. The State Government after the conclusion of the inquiry and based on the reply to the inquiry report by the applicant, had decided to impose penalty. In this regard a proposal was sent to UPSC for opinion on 15.02.2006. After obtaining the recommendation/opinion from UPSC, the proposal was forwarded to the Competent Authority (MOEF) to take necessary action on

the recommendation of the UPSC on the Departmental Enquiry against the applicant. The competent authority (MoEF) felt that the recommendation of UPSC to impose a penalty of compulsory retirement from service is too harsh and decided to refer the matter back to UPSC for. The matter was referred by MoEF to Union Public Service Commission for reconsideration of their advice vide letter No.12011/06/2008-AVU, dated: 24.01.2011. The UPSC in its letter No. F.3/461/2005-SI dated: 05.04.2011 had opined that there are no new facts/evidence in this case and that there is no merit for reconsideration of the case by the Commission. MoEF accepted the recommendation of the UPSC and with the approval of the competent authority imposed the penalty of "Compulsory Retirement" upon the applicant vide orders dated 26/31.05.2011. The same was communicated to the officer vide letter dated 13.07.2011 as per Rule 12 of AIS (DA) Rules 1969.

b. As per the order dated 06.11.2012 in OA.No.236/2011 of this Tribunal, the applicant submitted a representation with reference to UPSC advice which was examined and considered by the competent authority viz MoEF. After thorough examination of records of case, submissions made in the representation by the applicant, comments of the State Government on the representation and advice of the UPSC, it was observed by the MOEF that

"no new facts or evidence have been brought out by the applicant. The contention of the applicant is that his case is based on the natural human conduct and there is no misconduct or conduct unbecoming of a Government servant. The same is not tenable in view of the judgements relied upon by the UPSC."

c. The Competent Authority ordered imposing the penalty of Compulsory Retirement in its order dated 20.10.2016. Aggrieved by this order the

applicant filed OA 978/2016 before this Tribunal. This Tribunal set aside the order of punishment on 19.6.2017 and directed the Disciplinary Authority to pass a fresh order. The applicant made a representation on 12.07.2017 based on the order of the Tribunal, which was forwarded to MOEF on 26.07.2017 for consideration. Till date, the compliance report has not been received from MOEF.

- d. The departmental enquiry proceedings were initiated based on the complaint of Smt. Shobha, wife of the applicant. In her statement submitted before the IO she stated that the complaint was lodged before ACJM, Mysuru and the complaint submitted to the PCCF HoFF, was lodged on the basis of wrong information given to them. But in his written statement dated 24.05.2000 the applicant has stated that before his appointment as Government servant, he had a relation with Smt. Doddamma and had two daughters with her and he was intending to marry her. He nominated her in the GPF and the nomination continued after his marriage with Smt. Shobha. This itself shows a strong evidence to establish illicit relationship with Smt. Doddamma even after his marriage with Smt. A. Shobha. Even he admits that the maintaining of two children is his bounded duty, in para 4.4 of the application. This itself shows he had illicit relationship with Smt. Doddamma.
- e. It is reiterated that in this case, charge sheet was issued on 18.04.2000 and 13.02.2002, inquiry officers submitted their report on 04.02.2005 and UPSC has tendered its advice on 19.09.2006. Based on the advice of the UPSC the proposal was sent to MoEF for further necessary action. MoEF has imposed penalty of Compulsory retirement on applicant on 26/31.05.2011. The same was challenged in the OA.236/2011 wherein the Tribunal ordered to

maintain status-quo on 27.06.2011. In its final order dated 06.11.2012, the Tribunal directed the disciplinary authority to consider in the light of the observation order. Applicant has submitted representation against the UPSC advice as directed by the Tribunal on 03.12.2012. After considering the application, the disciplinary authority imposed a penalty on 20.10.2016. The Tribunal in its order dated 19.06.2017 set aside the punishment order and directed the disciplinary authority to again pass the final order within three months. Applicant has submitted additional representation on 12.07.2017 and the same has been forwarded to MoEF for necessary action.

- f. From the above events it may be seen that disciplinary proceedings against the officer had been concluded in the year 2011 itself. The disciplinary authority issued the penalty order after considering all the facts and circumstances of the case and did not merely act on the advice of the UPSC.
7. In his rejoinder, the applicant has broadly reiterated the points made in the OA. He has also further raised the following points:
 - a. He is due for retirement on attaining superannuation and disciplinary proceedings still remain pending. Hence, he has sought the relief of quashing of disciplinary proceedings initiated against him.
 - b. UPSC makes it clear that its advice is not binding on the Disciplinary Authority and DA is supposed to arrive at its own conclusions after taking into consideration the advice of the Commission among other things.
 - c. He submits that for this Tribunal's effective and proper adjudication of the controversy of the matter on hand, it is essential to be peruse DOPT's ID Note correspondence dated 24.12.2019 addressed to R-1 Ministry about

which a reference has been made in paragraph 6 of the reply statement. If the R-1 would make available its communication dated 12.09.2019 addressed to DOPT and DOPT's ID response dated 24.12.2019 to it as stated in paragraph 6 of the reply statement, then only whether the DOPT's stand in the matter is justified or not can be gone into by this Tribunal while undertaking a judicial scrutiny of the controversy. In the absence of that, the averments made in paragraph 6 can be classified as bald averments and cannot be relied upon for decision making process.

d. The UPSC in its communication dated 22.01.2020 produced as Ann-R4 to the reply statement of R-1 has not provided any reasoning as to why it is not in agreement with the opinion tendered by the Ministry of Law and Justice, Department of Legal Affairs of Govt. of India which is available as Ann-R2 in the reply statement. In that view of the matter, UPSC advice may not be above board in the instant case and appears to be self-serving so as to reiterate its initial advice tendered on 19.09.2006 as at Ann-A1 of the OA, unmindful of the valid legal opinion tendered by the Authorized Agency of Govt. of India i.e., Ministry of Law and Justice.

8. Heard learned counsels for the parties.

9. In this particular case, the main prayer of the applicant is to quash the disciplinary proceedings initiated against him on the grounds of protraction of proceedings and delays in terms of the ratio laid down by the Hon'ble Apex Court in P.V.Mahadevan's case and keeping in view the fact that the applicant's retirement is due on July 2021, since he would be attaining the age of 60 years on 18.07.2021.

10. The applicant had been charge sheeted in the year 2000/2002. The enquiry was conducted by the inquiry officer and completed by him in Feb 2005. Subsequently, the matter was referred by the State Government to the UPSC for its advice, which was tendered in Sept 2006 recommending imposing the penalty of “compulsory retirement from service” on the applicant.

11. A copy of the UPSC advice dated 19.09.2006 was submitted by the applicant as Annexure A1. Perusal of the advice indicates that the UPSC had inter-alia observed the following while examining the case:

The available case records showed that for his GPF, the CO's nomination of Smt.Doddamma as wife and Namitha as daughter had not been changed/cancelled by him even after his marriage with Smt.A. Shobha which took place as long ago as on 06.6.96. In this regard, the Commission observe that under the AIS (Provident Funds) Rule, 1955, a subscriber may at any time cancel the nomination by sending a notice in writing to the Accounts Officer. Further, under the said Rules, it is specified that “if at the time of making the nominations, the subscriber has a family, the nomination shall not be in favour of any person or persons other than the members of his family. Also, under the said Pension Rules, if at the time of making nomination, the subscriber has no family, he shall provide in the nomination that it shall become invalid in the event of his subsequently acquiring a family. The Commission note that taking all these provisions together, it is evident that once a subscriber is married, the nomination of his/her GPF needs to be in favour of a member or members of his/her family. Further, the said Rules provide that family means in the case of a male subscriber, the wife or wives and/or children of a subscriber and the widow or widows of a deceased son of the subscriber. In this case, the CO married Smt. Shobha on 6.6.1996 but in his nomination for GPF, as made on 16.5.95 (i.e before acquiring a family), he showed Smt. Doddamma as his wife so as to extend the benefit of GPF in her favour, though he did not marry her. This seemed to have been done by the CO consciously because had he not shown her as his wife, he would have to provide in the nomination paper that the nomination would become invalid in the event of his acquiring a family subsequently and had to revise the same after his marriage with Shobha on 6.6.96. No evidence was produced by the CO to show that on his marriage with Shobha, the earlier nomination was revised. Therefore, in view of I.O.'s findings as discussed above and the C.O's own confession in his letter dated 24.5.2000 in reply to the charge-memo, there is no force in the C.O's plea that the nomination [Ex.P4(a)] was not proved. And, this fact i.e. the C.O. continued his nomination of Smt.Doddamma, showing her to be his wife and her daughter Namitha as his daughter even after his marriage with Smt. A.Shobha itself provides a strong evidence to establish CO's illicit relationship with Smt. Doddamma even after his marriage with Smt.A.Shobha.

As per the Judgement of a Division Bench of the Calcutta High Court in the case of State of West Bengal Vs Ram Nagina Dubey 1992 (6) SLR 22 at 26 (Cal.), “The test is whether the act complained of contradicts or violates the accepted standards of the community, moral turpitude in our view means and implies a conduct which does not befit a person of his present avocation or employment. Too narrow or pedantic approach would not subserve the ends of justice. What is moral turpitude ought to depend upon the facts and circumstances of the matter under consideration.”

Further, as held by the Hon’ble Supreme Court [M/s. Finance Vs S.B.Ramesh (1998) 3 SCC 227: JT 1998(1) SC 319] “Living together of a male Government servant with a lady and having extramarital sexual relationship with her is conduct unbecoming of a Government servant and amounts to misconduct”.

In view of above, the Commission have held that both the components of Charge stand substantiated against the CO which is clearly unbecoming of a Member of the Service and in violation of Rule (3) of the AIS (Conduct) Rules, 1968.

In the light of their findings as discussed above and after taking into account all other aspects relevant to the case the Commission consider that ends of justice would be met in this case if the penalty of compulsory retirement from service is imposed on Shri H.S.S.Murthy. They advise accordingly.

12. The State Government forwarded the case to the Ministry of Environment and Forests (MOEF) since they were the Disciplinary Authority for the IFS officer. The Disciplinary Authority (Min. of Environment & Forests), Govt. of India considered that the penalty advised by the UPSC is harsh and decided to refer the matter to UPSC for reconsideration of its advice vide letter dated 24.01.2011. The UPSC vide its reply dated 05.04.2011 observed that there are no new facts/evidence and there is no merit for reconsideration of the case by the Commission. Subsequently, the matter was considered by the Disciplinary Authority (Min. of Environment & Forests) and it decided to accept the advice of UPSC and accordingly, after considering all the facts and circumstances, a penalty of “compulsory retirement” was imposed upon the applicant vide orders dated 26/31.05.2011.

13. Subsequently, there have been two rounds of litigations where the applicant challenged the decision of the Disciplinary Authority before this Tribunal.

14. In the first round of litigation, this Tribunal vide its order dated 06.11.2012 had observed that the copy of the UPSC advice was not provided to the applicant before passing the penalty order. The Hon'ble Apex Court in the case of Union of India & Others vs. S.K. Kapoor (decided on 16.03.2011) reported in 2011(4) SCC 589, had held that '*if the authorities do consult UPSC and rely on its report for taking disciplinary action, then copy of the report must be supplied in advance to the employee concerned, otherwise it would amount to violation of principles of natural justice*'. The Tribunal directed that the applicant should be provided an opportunity to submit a representation within 4 weeks to the Disciplinary Authority in respect of UPSC Advice and the Disciplinary Authority shall dispose of the said representation by passing a reasoned and speaking order within 90 days in accordance with law.

15. The Disciplinary Authority, subsequently, after considering the representation made by the applicant on 03.12.2012, again passed a detailed order dated 20.10.2016 whereby after considering his representation and examining the records of the case etc., the penalty of compulsory retirement was imposed on the applicant.

16. This order was again challenged by the applicant before this Tribunal. The Tribunal set aside the said order keeping in view that '*the present order passed by the Disciplinary Authority is not a proper speaking order and the matter was remitted back to the Disciplinary Authority to consider all the aspects raised by the applicant in his representation dated 03.12.2012 and pass a fresh order addressing these points*'. The respondents were directed to pass a reasoned

order within a period of two weeks from the date of receipt of a copy of the order.

17. Subsequently, as revealed by the reply furnished by respondent No.1 in this matter, the matter was under examination in consultation with the Ministry of Law and also DoP&T since the Ministry proposed to disagree with the UPSC advice concerning the quantum of punishment. In the meanwhile, the applicant filed the present OA seeking quashing the entire proceeding on account of delay keeping in view the ruling given by the Hon'ble Apex Court in *P.V.Mahadevan vs. MD T.N.Housing Board*.

18. The facts of the case, therefore, reveal that the process of conducting the disciplinary enquiry and seeking of UPSC advice etc., had taken place within a period of 6 years from 2000 to 2006. Subsequent time of five years elapsed primarily on account of examination of UPSC advice by the Disciplinary Authority, requesting UPSC to reconsider its advice, since it considered the proposed punishment as advised by UPSC to be harsh. Further delay, since 2011, is on account of repeated litigations by the applicant challenging the penalty order finally imposed on him.

19. In the case of *P.V.Mahadevan versus M.D. Tamil Nadu Housing Board, Appeal (civil) 4901 of 2005*, the Hon'ble Supreme Court, has observed as follows:

It is stated in the counter affidavit for the first time 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 1994-1995.

Section 118 and 119 of the Tamil Nadu State Housing Board Act, 1961 (Tamil Nadu Act No. 17 of 1961 read thus:

"118. At the end of every year, the Board shall submit to the Government an abstract of the accounts of its receipts and expenditure for such year.

119. The accounts of the Board shall be examined and audited once in every year by such auditor as the Government may appoint in this behalf."

Section 118 specifically provides for submission of the abstracts of the accounts at the end of every year and Section 119 relates to annual audit of accounts. These two statutory provisions have not been complied with at all. In the instant case the transaction took place in the year 1990. The expenditure ought to have been considered in the accounts of the succeeding year. In the instant case the audit report was ultimately released in the 1994-1995. The explanation offered for the delay in finalising the audit account cannot stand scrutiny in view of the above two provisions of the Tamil Nadu Act 17. It is now stated that the appellant has retired from service. There is also no acceptable explanation on the side of the respondent explaining the inordinate delay in initiating departmental disciplinary proceedings.

20. Hence, the observations made by the Hon'ble Apex Court in P.V.Mahadevan's case pertain mainly to the unexplained delay in initiating disciplinary proceedings.

21. However, in this particular case, there is no inordinate delay in initiating disciplinary proceedings against the applicant. Subsequent to a complaint made by the wife of the applicant in August 1997, the disciplinary proceedings were initiated in the year 2000, and the final report was submitted by the inquiry officer in the year 2005. The advice of UPSC was obtained in 2006. The subsequent delays have been due to the time taken by the Disciplinary Authority to decide on the quantum of punishment to be imposed upon the applicant and due to the two rounds of litigation initiated by the applicant himself. Hence, the ratio of P.V.Mahadevan's case is not at all applicable to the present case since there is no unexplained or inordinate delay in initiation or completion of the enquiry.

22. As revealed by the respondents in their reply, the process of consultation with the Law Ministry as well as the Department of Personnel & Training, as

envisioned in the DoP&T OM dated 02.03.2016/05.12.2006, has also been completed.

23.The Disciplinary Authority, in quasi-judicial capacity, is now required to pass the final orders in accordance with law, in its own wisdom after taking into account all aspects, including the advice of UPSC, the representation made by the applicant as well as the opinion rendered by Law Ministry and the DoPT.

24.Keeping in view the above points, the present OA, being devoid of any merit, is liable to be dismissed. Accordingly, the OA is dismissed and the Disciplinary Authority (Respondent No: 1) is directed to issue the final orders in the matter as per law.

25.However, there shall be no orders so as to costs.

(RAKESH KUMAR GUPTA)
MEMBER(ADMN)

/ps/

(SURESH KUMAR MONGA)
MEMBER(JUDL)