

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION No. 157 OF 2019 (D.B.)

District : Akola

Nilikrao Ukarda Jadhao,
Aged 49 years, Occ. Service,
(At present dismissed),
R/o Kadonewadi Patur, Patur,
Tq. Patur, District : Akola.

Applicant.

Versus

- 1) **The State of Maharashtra,**
Through its Additional Chief Secretary,
Home Department,
Mantralaya, Mumbai.
- 2) **Inspector General of Police,**
Amravati Range Amravati.
- 3) **Superintendent of Police,**
Akola.

Respondents.

Shri S.P. Palshikar, Advocate for the applicant.

Shri A.M. Ghogre, P.O. for respondents.

**Coram :- Shri Shree Bhagwan, Vice-Chairman
and
Shri Anand Karanjkar, Member (J).**

Date of Reserving for Judgment : 08th January, 2021.

Date of Pronouncement of Judgment : 14th January, 2021.

J U D G M E N T

Per : Anand Karanjkar : Member (J).

(Delivered on this 14th day of January, 2021)

Heard Shri S.P. Palshikar, learned counsel for the applicant and Shri A.M. Ghogre, learned P.O. for respondents.

2. In this Original Application, the applicant is challenging the order passed by the respondent No. 3, thereby, dismissing the applicant from the service and order passed by the appellate authority dismissing departmental appeal filed by the applicant.

3. In the year 2010, the applicant was on duty at Police Station, Patur as Naik Police Constable a Crime No. 126/2010 was registered against the applicant under sections 302, 201 read with Section 34 of Indian Penal Code and Section 3 (2) (5) of the Prevention of Atrocities Act, 1989. The applicant was arrested on the same day, thereafter, charge sheet was filed against the applicant in the Court of Sessions Judge, Akola and in Sessions Crime No. 107/2010, learned Sessions Judge by judgment dated 17.12.2012 convicted the applicant and sentenced him to suffer imprisonment for life and to pay fine of Rs. 10,000/-. The applicant thereafter preferred an appeal before the Hon'ble High Court and in Criminal Appeal No. 39/2013 decided on 22.09.2015, the Hon'ble High Court acquitted the

applicant in all the offences, consequently, the respondent No. 3 reinstated the applicant in the service in the year 2017.

4. It is case of the applicant that since 24.04.2010 till his acquittal by the Hon'ble High Court, he was in Jail. It is submitted that that the respondent No. 3 disciplinary authority decided to initiate departmental proceedings against the applicant when the applicant was in Jail. It is grievance of the applicant that when he was in Jail, he was called upon by the Enquiry Officer vide Annexure A-2 (page No. 26 of paper book) to appear before him on 07.09.2011 for recording his primary statement by the Enquiry Officer, to the charge sheet served by the respondent No. 3. It is submitted that the application dated 07.09.2011 (Annexure A-3) was submitted by the applicant to the Enquiry Officer and it was requested that as the applicant was in the custody in Akola jail, he was not in a position to appear before the Enquiry Officer and therefore, he should not be called till his release on bail from the jail. It is submitted by the applicant that he was in jail, he could not engage next friend for his defence and disregarding this fact, the Enquiry Officer was intending to proceed with the Departmental Enquiry in violation of the service rules. It is submitted that the applicant was not aware of the further progress in the Departmental Enquiry. The respondents filed SLP before Hon,ble S.C. for challenging the acquittal of the applicant, but

the SLP was dismissed, thereafter, applicant was reinstated in the service by the respondent No. 3 vide order Annexure A-9 dated 10.11.2017 and his period of suspension / absence was treated as duty period.

5. It is grievance of the applicant that all of a sudden, the respondent No. 3 served on him notice Annexure A-10 and informed that the Enquiry Officer SDOP, Murtijapur submitted enquiry report and it was held by the Enquiry Officer that misconduct of the applicant was proved therefore, called upon the applicant to submit explanation as to why he should not be dismissed from the service. The applicant submitted his reply to the show cause notice, Annexure A-10. The reply of the applicant is Annexure A-11. It was submitted by the applicant that when he was in the Jail, he was not represented by next friend, the Enquiry Officer completed the enquiry in his absence and back and therefore, it was in violation of the service rules and the law. It was submitted that the enquiry officer did not conduct the enquiry as per the service rules. The enquiry was mere farce and without considering the objections raised by the applicant, the respondent No. 3 mechanically passed the order dated 13.11.2017 (Annexure A-12, page No. 76 of paper book) and dismissed the applicant from the service. It is submitted that the departmental appeal was preferred by the applicant and the appellate authority without application of mind,

dismissed the appeal. It is submitted that as the enquiry was not conducted as per the service rules applicable to the applicant, consequently the enquiry report has no value and therefore, dismissal based on such enquiry is illegal and it required to be quashed.

6. The respondent No. 3 has filed his affidavit in reply, which is at paper book page No. 105 of the paper book. The respondent No. 3 has contended that as the departmental appeal and revision was provided, therefore, as the applicant approached without availing that remedy, therefore, the present O.A. is not maintainable in view of Section 20 of the Administrative Tribunals Act, 1985 .

7. Next contention of the respondents is that the charge sheet was served on the applicant on 01.08.2011, the enquiry officer obtained permission from the concerned Magistrate and visited the Jail for enquiry, but the applicant not cooperated, consequently the Enquiry Officer proceeded with the enquiry ex-parte. It is contended by the respondent No. 3 that before proceeding ex-parte, the Enquiry Officer gave ample chances to the applicant, consequently enquiry was perfectly legal. It is submitted that in fact the enquiry was completed, but as the applicant was convicted by the Sessions Court, therefore, the applicant was dismissed from the service and the departmental enquiry was kept dormant.

8. There is no dispute about the fact that latter on, the applicant was acquitted by the Hon'ble High Court and S.L.P. filed by the respondents was dismissed by the Hon'ble Apex Court. It is submitted that the applicant was thereafter reinstated in the service and the disciplinary authority decided to proceed with the Departmental Enquiry which was in dormant state, therefore, second show cause notice was issued by the respondent No. 3 to the applicant on 31.08.2017 and thereafter respondent No. 3 passed the order on 13.11.2017 and dismissed the applicant from the service. It is contended that the applicant suppress many material facts from this Tribunal and therefore, there is no substance in the present Original Application and it is liable to be dismissed.

9. In view of the above rival contentions, following points arises for consideration and we record the findings on the points for the reasons stated hereinafter :-

I) Whether the enquiry conducted is legal ?

No.

II) Whether dismissal of the applicant is legal and proper ?

No.

10. We have heard oral submissions of the learned Advocate for the applicant and respondents. Before going to merits of the case we would like to examine the contention of respondents as to tenability of the OA. The applicant has placed reliance on judgment in case of **State of Maharashtra v/s Dr. Subhash Dhondiram Mane 2015(4) Mh.L.J. 791**. In view of the law laid down in this case we are of the view that present OA is tenable.

11. In order to decide the other contentions we have perused the original record of enquiry produced by the respondent No. 3. Learned Advocate for the applicant has submitted that the applicant was admittedly in jail since his arrest in the year 2010 till the order of acquittal of the applicant passed by the Hon'ble High Court and there is no dispute about this fact. It is contention of the respondents that in the year 2012 itself report was submitted by the Enquiry Officer, the enquiry Officer had visited the jail for the enquiry, the applicant refused to participate in the enquiry, consequently ex-parte enquiry was conducted by the Enquiry Officer and the report was submitted. It is further contended that as the applicant was convicted in the mean time by the Sessions Court, therefore, the respondent No. 3 not acted upon the Enquiry Officer's report, the enquiry the enquiry was kept dormant, but the respondent no.3 dismissed the applicant from service as he was convicted by the Sessions Court.

12. Learned Advocate for the applicant has submitted that the enquiry report itself is sufficient to falsify the contention of respondent No. 3 that the Enquiry Officer acted fairly and followed the principles of natural justice and the service rules applicable to the applicant. It is submitted that the enquiry report, Annexure A-4 (page No. 30 of paper book) is undated document, there is no outward number and inward number. We have perused the original record and proceedings of the disciplinary enquiry. The report of the Enquiry Officer is in file No. 8. On perusal of this original enquiry report, it seems that it is undated and there is no outward number and inward number on this enquiry report. Second fact is that it is contention of the respondent No. 3 that the Enquiry Officer visited Akola jail on 17.09.2012 and request was made to the Jailer to produce the applicant to participate in the enquiry. At that time, the applicant refused to appear before the Enquiry Officer, as he was not feeling well and thereafter, Enquiry Officer recorded the information given by the applicant in presence of the Jailer. It is submitted that as the applicant not participated in the enquiry, therefore, document was recorded to that effect and decision was taken by the Enquiry Officer to proceed ex-parte. On the basis of this, it is contended by the respondent No. 3 that as the applicant himself avoided to participate in the Enquiry, therefore, the applicant cannot blame the Enquiry Officer.

13. In order to examine whether really the applicant refused to participate in the enquiry, we have minutely gone through the enquiry report which is at page No. 32 of the paper book (internal page No. 3 of the enquiry report). It is mentioned on page number 3 that on 17.09.2012, the Enquiry Officer visited the District Jail, Akola after seeking permission of learned Additional Sessions Judge, Akola, the Enquiry Officer visited the jail for examining the witnesses and for their cross examination by the applicant. The Enquiry Officer contacted Shri Shedge, Senior Jailer, Akola and requested him to produce the applicant before him for the Enquiry. It was informed that the applicant was not willing to appear before the Enquiry Officer, when the second message was given, the applicant did not come, he told that his mental condition was not good, consequently Enquiry Officer recorded this fact in presence of senior jailer. The material relevant portion reads as under :-

“.....“vi pljh fuyhdjko tk/ko gs ; s ; kl r ; kj u0grs” fuyhdjko tk/ko ; kuk i qgk ckykfoysi jarqrs vkysukghr- ek>h eufLFkrh %i xdrh% [kjk vkgs eh ; sq'kdr ukgh vl s vi pljh fu ikuk- fuyhdjko tk/ko ; kuh rkh I kixrys R ; kps Eg.kus ofj”B r q akf/kdkjh] vdkyk dkjkxg ; kpsl e{k fygu ?kryS”

14. In order to verify this story, we have perused Rojnama written by the Enquiry Officer, which is in file No. 1 of the original enquiry papers. In this regard, Roznama dated 15.09.2012 and

17.09.2012 are very much important and relevant, therefore, we are producing both, which are as under :-

“15-9-2012 Bk.knkj i ksfu i krj [kku] vdkyk ckGki y] vdk/ ; kauk I jdkjh I k{knkj gktj dj.ksdkeh o ofj”B rj akf/kdkjh dkjxg vdkyk ; kauk vi pk&; kd fn- 17-9-2012 jksthgtj Bp.; kclcr fcurkjh I msk dsys

17-9-2012 fn- 17-9-2012 jksthftYgk dkjxg ; fksfoHkxh; pkcl' kh dkeh vkEgh xsyks vl rkvi pkjh ; kauh ek>h euflFkrh ¼i drrh½ [kjkc vkgsvl srkMh I kxq foHkxh; pkcl' kh I kBh I e{kgtj vkysukgh- foHkxh; pkcl' khpsi qhy dk; bkgh I q dj.; kr ; rs”

After reading Roznama dated 15.09.2012, it is clear that on 15.09.2012 intimation was given through Senior Jailer, Akola to the appellant that on 17.09.2012 there would be enquiry. After reading Rozmana dated 17.09.2012, it seems that the Enquiry Officer visited District Jail, Akola on 17.09.2012 and at that time the applicant informed that his health was not good and he did not appear.

15. It is pertinent to note that, in Roznama dated 17.09.2012, it is nowhere mentioned that the Enquiry Officer visited the jail along with witnesses. Similarly names of the witnesses who accompanied the Enquiry Officer are not mentioned in the Roznama. It is nowhere mentioned in the

Roznama that second message was also sent to the applicant and at that time, the applicant informed that his mental health was not good. The most vital fact is that it is nowhere mentioned in this Roznama that any document was recorded by the Enquiry Officer in the presence of the Senior Jailer, Akola to the effect that the applicant refused to participate in the enquiry. Learned Presenting Officer was asked as to whereabouts of the document recorded by the Enquiry Officer in the presence of Senior Jailer, Akola, but he was unable to point out any such document in the enquiry papers. In view of this, it must be accepted that case is made out for drawing adverse inference that the Enquiry Officer has prepared false story that the applicant refused to participate in the enquiry in presence of Senior Jailer, Akola.

16. Secondly, we would like to point out that, names of 16 witnesses were cited by the department as witnesses for proving misconduct of the applicant. This list is in file No. 2 in the original enquiry papers. Now the question arises whether the Enquiry Officer visited the jail along with all these 16 witnesses, it is nowhere cleared. Even in Roznama dated 17.09.2012, it is nowhere mentioned that the Enquiry Officer was accompanied

with the witnesses. As a matter of fact, as the Enquiry Officer visited the jail along with witnesses then why, he avoided to mention this material fact in the Roznama dated 17.09.2012. Thus, it seems that the facts stated in the enquiry report that the Enquiry Officer visited the jail along with witnesses and the applicant refused to participate in the enquiry is very suspicious and difficult to digest.

17. In this case, it is undisputed fact that the applicant was in jail, he had no opportunity and means to engage next friend. On 15.09.2012, intimation was given by the Enquiry Officer to the applicant that for the purpose of enquiry, he will visit the jail on 17.09.2012. In such situation whether two days time was sufficient to engage next friend, as the applicant was in jail. In our opinion, the Enquiry Officer should have taken notice of fact that as per the service rules the applicant was entitled to be defended by the next friend in the enquiry. The Enquiry Officer was very much aware that the applicant was not represented by the next friend and in spite of it, the Enquiry Officer rushed to the jail. In our opinion, the Enquiry Officer should have given reasonable time to the applicant for engaging next friend, but it

was not done, therefore, in our view this approach of the Enquiry Officer was totally in violation of law and principles of natural justice. As a matter of fact, in this situation as the applicant was in jail, it was duty of the disciplinary authority to make necessary arrangement for providing next friend to the applicant, as it was provided in rules that the delinquent had right to appoint next friend for defence, but it was not done. We have already discussed that this story prepared by the Enquiry Officer that the document was recorded in the presence of Senior Jailer, Akola, is highly suspicious and as the names of witnesses are not mentioned in the enquiry report, as we well, as in the Roznama dated 17.09.2012 is also difficult to believe this story. The last noting in Roznam dated 29.09.2012 of the enquiry is as under :-

“29-9-2012 fn- 29-9-2012 jksth tkod dækd 3595 i æk.ksl nj foHkkxh;
pkfd' ktpk l ekjki vgoxy ek- i ksyhl vf/k{kd l k- vdkxyk ; kulk l knj dxyk-

After reading this Roznama, it seems that the enquiry report was forwarded on 29.09.2012 vide outward No. 3595. It is material to note that this original enquiry report is undated and without outward number. It is nowhere mentioned in the Roznama when the Enquiry Officer made inquiry with the

witnesses and who were those witnesses, in fact these suspicious circumstances create serious doubt about the truth in the contention of the Enquiry Officer that the applicant refused to participate in the enquiry. It is pertinent to note that since beginning the applicant was requesting that he was not represented by the next friend, as he was in jail and he was unable to make such arrangement and disregarding this the Enquiry Officer proceeded in very hasty manner.

18. It is important to note that when the second show cause notice dt/ 31.08.2017 was served by the respondent No. 3 on the applicant, it was replied by the applicant. These contentions were raised by the applicant in his reply to the show cause notice, therefore, being disciplinary authority, it was necessary for the respondent No. 3 to examine the contentions raised by the applicant in reply to the show cause notice. It was contended by the applicant in the reply that he was unable to engage next friend, as he was in jail. It was also contended that the Enquiry Officer did not write letter to the applicant in advance and sufficient time was not given to engage next friend. Intimation was also not given by the Enquiry Officer that he would

visit the jail along with witnesses. It seems that the applicant was completely in dark and all of a sudden, the Enquiry Officer visited the jail for enquiry after giving only two days notice. It was also contended by the applicant that in his presence no witness was examined by the Enquiry Officer in the jail. It seems that all these contentions raised by the applicant were not considered by the respondent No. 3 at all and respondent No. 3 mechanically passed the impugned order. It seems that even the Enquiry Officer in his report has observed that on 17.09.2012 opportunity was given to the applicant to defend him, but he did not avail the opportunity and consequently the Enquiry Officer decided enquiry ex-parte. In our opinion, this approach of the Enquiry Officer and the respondent No. 3 disciplinary authority was contrary to the law and the service rules applicable to the applicant. The Enquiry Officer has avoided to follow the principles of natural justice, we are of the view that it was not suitable to proceed with the enquiry, as the applicant was not represented by the next friend. This story of the Enquiry Officer that the applicant avoided to participate in the enquiry is also highly doubtful. In view of this, we are completed to say that the enquiry conducted in this matter is contrary to the law and it is in violation of the principles of

natural justice, consequently dismissal of the applicant based on such enquiry report cannot be sustained. The enquiry conducted in this matter is in violation of law, but considering the nature of misconduct and seriousness of the charges, we are of the firm view that this is a fit case to direct the respondent No. 3 to conduct *de-novo* enquiry and it shall be completed within a stipulated time, as it is in the interest of society at large. In the result, we pass following order:-

ORDER

1. The Original Application is allowed.
2. The impugned order of dismissal dated 13.11.2017 is hereby declared illegal and it is therefore, quashed and set aside.
3. The respondent No. 3 is directed to reinstate the applicant in the service with continuity and back wages within 30 days from the date of this order. The respondent No. 3 is also directed to conduct *de-novo* enquiry and it shall be completed within a period of six months from the date of this order.
4. There shall be no order as to costs.

(Anand Karanjkar)
Member(J).

***Dated** :- 14/01/2021.

KPB

(Shree Bhagwan)
Vice-Chairman.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : K.B. Borude

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 14/01/2021.

Uploaded on : 14/01/2021.