

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 402 OF 2019

DISTRICT : BEED

Sayed Salim Sayed Yaqub,)
Age : 52 years, Occu. : Service,)
R/o. Karanja Road, Beed, Tq. & Dist. Beed.)

.. **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through its Secretary,)
Urban Development Department,)
Mantralaya, Mumbai – 32.)

2. **The Commissioner-cum-Director,**)
Directorate of Municipal Administration,)
Government Transport Service Building,)
3rd Floor, Sir Pochkhanwala Road,)
Worli, Mumbai-30)

3. **The District Collector, Beed,**)
Dist. Beed.)

4. **The Municipal Council, Beed,**)
Tq. and Dist. Beed.)

.. **RESPONDENTS**

APPEARANCE : Shri S.P. Urgunde, Advocate for Applicant.

: Shri M.P. Gude, P.O. for the Respondent
authorities.

: Shri R.D. Khadap, Advocate holding for Shri
S.S. Thombre, Advocate for respondent No. 4.

CORAM : **Shri V.D. Dongre, Member (J)**
and
Shri Bijay Kumar, Member (A)

Reserved on : **13.03.2023**

Pronounced on : **25.04.2023**

ORDER**(Per : Shri V.D. Dongre, Member (J))**

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 the present Original Application is filed seeking following relief in terms of prayer clause 9(B) as follows :-

“B) By issuing appropriate order, direction like nature the impugned order dated 24.04.2019 issued by respondent No. 2 (Exhibit “G”) thereby to examine the witnesses in respect of departmental enquiry initiated against the present applicant may kindly be quashed and set aside;”

2. The facts in brief giving rise to this application are as follows :-

(i) The applicant was initially appointed as Tracer by the respondent No. 4 i.e. Municipal Council, Beed vide order dated 01.05.2001. Thereafter by order dated 17.05.2014, he was absorbed in the State Government cadre. The said orders dated 01.05.2001 and 17.05.2014 are at Annexure-A collectively. The applicant was promoted to the post of Assistant Town Planner on 18.04.2015. At present, he is working on that post at Municipal Council, Sailu, Dist. Parbhani.

(ii) While working in the office of Municipal Council, Beed one Rajendra, Surendra, Ravindra and Jitendra Kasat filed

application dated 19.06.2014 (part of Annexure-B collectively) for construction permission of House No. 1-2-2605. The applicant scrutinized the said application and charged amount of Rs. 1,40,020/- as fees for construction permission and the proposal was forwarded to the concerned Clerk of Planning Department of Municipal Council, Beed for further steps. It was duty of the concerned Clerk to accept the fees calculated by the applicant as per the calculation dated 29.09.2014 (part of Annexure-B collectively).

(iii) Thereafter one of the councilors of the Municipal Council, Beed filed complaint dated 18.07.2017 against the applicant alleging that the applicant without accepting the legal fees of 1,40,020/- issued construction permission in favour of the said Kasat family and misappropriated the said amount by not depositing it in the Treasury of Municipal Council, Beed. In view of the said complaint, the respondent No. 2 i.e. the Commissioner-cum-Director, Directorate of Municipal Administration, Mumbai directed the Chief Officer of Municipal Council, Beed to enquire into the matter and to submit the report.

(iv) The respondent No. 2 thereafter vide order dated 22.02.2018 (part of Annexure-C collectively) directed the respondent No. 3 i.e. the District Collector, Beed to initiate the Departmental Enquiry against the applicant. The respondent No. 3 i.e. the District Collector, Beed vide order dated 19.04.2018 (part of Annexure-C collectively) appointed the Sub-Divisional Officer, Beed as an Enquiry Officer and directed him to submit his report. In that respect, memorandum of charge sheet (part of Annexure-D collectively) was served upon the applicant under memo dated 22.02.2018 (part of Annexure-D collectively). Thereafter, the Enquiry Officer i.e. the Sub-Divisional Officer, Beed served notice dated 07.05.2018 (part of Annexure-D collectively) to the applicant (delinquent), as well as, four witnesses to remain present for hearing on 14.05.2018.

(v) The Enquiry Officer conducted the Departmental Enquiry against the applicant and concluded it on 19.04.2018. In the said D.E., witnesses were examined and the applicant submitted his statement of defence. The said enquiry papers are at Exhibit-E collectively.

(vi) After conclusion of D.E., the Enquiry Officer submitted his report dated 31.08.2018 (part of Annexure-F collectively) to the respondent No. 2, wherein the present applicant was exonerated of all the allegations levelled against him in the charge sheet. The respondent No. 2 served the copy of the said enquiry report on the applicant on 10.09.2018. Thereafter, the applicant made application dated 13.02.2019 (part of Annexure-F collectively) to the respondent No. 2 requesting to accept the enquiry report exonerating him of all the charges levelled against him.

(vii) However, after conclusion of D.E. and without considering the report of Enquiry Officer in order to harass the applicant, the respondent No. 2 sent letter dated 14.02.2019 (part of Annexure-F collectively) addressed to the respondent No. 4 i.e. the Chief Officer, Municipal Council, Beed seeking details about the officers working in the office of respondent No. 4 during the period of 01.01.2014 to 31.04.2018. The respondent No. 4 by its letter dated 20.02.2019 (part of Annexure-F collectively) furnished requisite information giving names of the concerned officers working with respondent No. 4.

(viii) It is the contention of the applicant that the Enquiry Officer had properly followed the procedure as contemplated under Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and submitted report exonerating the applicant. The disciplinary authority, however, without considering the said report and provisions of law specifically provided under Rule 9(1) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 issued impugned communication dated 24.04.2019 (Annexure-G), thereby directing the Enquiry Officer to examine four new witnesses listed therein. The said impugned communication is issued without assigning any reasons. Hence, it is illegal and violative of Rule 9(1) and (2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979.

(ix) Aggrieved by the said impugned communication/order dated 24.04.2019 (Annexure-G), the applicant previously filed O.A. No. 393/2019 before this Tribunal. By the order dated 02.05.2019, the applicant was allowed to withdraw the said O.A. with liberty to file fresh O.A. Hence, the present Original Application.

3. The present Original Application is resisted by filing affidavit in reply on behalf of respondent No. 2 by one Milind S/o Bhalchandra Sawant working as the District Administrative Officer, in the office of District Collector, Beed. Thereby he denied all the adverse contentions raised in the O.A. and raised specific pleadings as follows :-

(i) It is submitted that the respondent No. 2 i.e. the Commissioner-cum-Director, Directorate of Municipal Administration, Mumbai, who is the disciplinary authority initiated D.E. against the applicant by serving memorandum of charges under order dated 22.02.2018 (part of Annexure-D collectively) after suspending the applicant vide order dated 07.09.2017. The Deputy Director, Directorate of Municipal Administration, Mumbai vide communication dated 22.02.2018 (Annexure R-1) addressed to the respondent No. 3 i.e. the Collector, Beed appointed the Presenting Officer and Enquiry Officer and consequently, the respondent No. 3 i.e. the Collector, Beed appointed the Sub-Divisional Officer, Beed, as an Enquiry Officer as per the order dated 19.04.2018 (part of Annexure-D collectively). The Enquiry Officer i.e. the SDO,

Beed conducted the enquiry and submitted enquiry report dated 31.08.2018.

(ii) It is submitted that from the D.E. Report the respondent No. 2 noticed that the incidents mentioned in the charge-sheet were happened during May-2017.

(iii) Some of the concerned officers and employees, who are working within that period must have been witnesses in order to bring on record facts. So the respondent No. 2 vide communication dated 24.09.2019 (Annexure R-2) addressed to the Enquiry Officer gave list of additional witnesses and directed to examine them. It is well within the right of the respondent No. 2 to initiate fresh enquiry in order to check all the facts by examining new witnesses as provided under Rule 7.3-(1)(2) of Departmental Enquiry Rules, 1991 (Annexure R-3). In view of the same, the impugned action taken by the respondent No. 2 by remitting the enquiry report for examining the new witnesses, who ought to have been examined, but keeping intact the charges levelled against the applicant and calling for fresh enquiry report is perfectly legal and proper. In the

circumstances, there is no merit in the present O.A. and the same is liable to be dismissed.

4. We have heard the arguments advanced by Shri S.P. Urgunde, learned Advocate for the applicant on one hand, Shri M.P. Gude, learned Presenting Officer for the respondent authorities and Shri R.D. Khadap, learned Advocate holding for Shri S.S. Thombre, learned Advocate for respondent No. 4 on the other hand.

5. After having considered the rival pleadings, documents and submissions on record, what emerges before us is that the matter revolves around Rule 9 of the Maharashtra Civil Services (Discipline and Appeal) Rule, 1979 dealing with "Action on the enquiry report". The said provision is as under :-

"9. Action on the inquiry report.- (1) *The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report, and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of rule 8 of these rules as far as may be.*

(2) *The disciplinary authority shall forward or cause to be forwarded a copy of the report of the enquiry, if any held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not the said Government servant.*

(2-A) The disciplinary authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (3) and (4).

(3) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the minor penalties should be imposed on the Government servant, it shall, notwithstanding anything contained in rule 10 of these rules on the basis of the evidence adduced during the inquiry held under rule 8 determine what penalty, if any should be imposed on the Government servant and make an order imposing such penalty:

Provided that, in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice, and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant.

(4) If the disciplinary authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of the opinion that any of the penalties specified in clauses (vii) to (ix) of sub-rule (1) of rule 5, should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed;

Provided that, in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice, and such advice shall be taken into consideration before making an order imposing any such penalty on the Government servant.”

6. In the present case, as per the impugned order / communication dated 24.04.2019 (Annexure-G), the respondent No. 2 i.e. the Commissioner-cum-Director, Directorate of Municipal Administration, Mumbai which is admittedly disciplinary authority, through the respondent No. 3 i.e. the Collector, Beed called upon the enquiry officer to examine four more relevant witnesses, who ought to have been examined, but not examined in the Departmental Enquiry held against the

applicant. While doing so, no additional or modified charge-sheet was served in addition to already three charges levelled against the applicant as per Annexure-1 and 2 of the charge-sheet. Original Annexure-3 was consisting of list of witnesses and Annexure-4 was list of documents. By impugned order only modified Annexure-3 was annexed giving names of four more relevant witnesses to be examined.

7. There is no dispute that as per findings in the Enquiry Report dated 31.08.2018 (part of Annexure-F collectively), charges levelled against the applicant were not proved. Immediately thereafter the applicant sent letter dated 13.02.2019 (part of Annexure-F collectively) to the respondent No. 2 seeking his exoneration from Departmental Enquiry as per enquiry report dated 31.08.2018. Further thereafter, impugned order / communication dated 24.04.2019 was sent by the respondent No. 2 i.e. the Commissioner-cum-Director, Directorate of Municipal Administration, Mumbai to the respondent No. 3 i.e. the District Collector, Beed together with modified Annexure-3 containing list of four more witnesses to be examined in Departmental Enquiry by keeping intact the three charges originally levelled against the applicant as per Annexure-1 and 2. This action taken by the respondent No. 2 on the enquiry report

dated 31.08.2018 amounts to remittance of a case to the Enquiry Officer for further hearing and report as contemplated under Rule 9(1) of the Maharashtra Civil Services (Discipline and Appeal) Rule, 1979.

8. Learned Advocate for the applicant while advancing arguments has laid much stress on the provisions of Rule 9(2) and 9(2-A) of the Maharashtra Civil Services (Discipline and Appeal) Rule, 1979, which deal with the aspect of the duty of the disciplinary authority to either agree or for reason to disagree and to give right of submission of representation on the same and after considering the representation ought to move further. According to him, the respondent No. 2 has failed to follow the said provision of Rules 9(2) and (2-A) of the Maharashtra Civil Services (Discipline and Appeal) Rule, 1979 and as such, the impugned order/ communication dated 24.04.2019 (Annexure-G) is contrary to abovesaid provisions and is liable to be quashed and set aside.

9. In support of the above-said submissions, he placed reliance under case law of the Hon'ble Supreme Court of India reported in **1999 AIR (SC) 3734** in the matter of **Yoginath D. Bagde Vs. State of Maharashtra and Anr.** In the said citation

case, the Departmental Enquiry as per Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rule, 1979 was initiated against the appellant leveling two charges in accordance with law. After holding D.E., the Enquiry Officer submitted enquiry report to the disciplinary authority holding that both the charges were not proved against the appellant (delinquent). The disciplinary authority considered the enquiry report and disagreeing with the Enquiry Officer held that charges were proved against the appellant. The disciplinary authority further tentatively decided to impose penalty of dismissal from service upon the appellant. Accordingly, the appellant was called upon by a notice to show cause as to why the proposed penalty of dismissal from service be not imposed upon him. The appellant was served with copy of enquiry report together with reasons recorded for disagreeing with findings of Enquiry Officer. After considering the reply of the appellant, he was dismissed from service. In para Nos. 38, 39 & 54, it is observed as follows :-

“38. Mr. Harish N. Salve, learned Senior Counsel appearing on behalf of the respondent, has contended that the disciplinary proceedings come to an end either when the delinquent is exonerated of the charges or when punishment is inflicted upon him on charges being proved. Since in the instant case, the Disciplinary Committee had given an opportunity of hearing to the appellant before finally recommending to the State Government to dismiss him from service, the principles of natural justice were fully complied with and that too at a stage earlier than the stage

when the curtain was finally brought down on the proceedings. He contended that not only the findings recorded by the Enquiry Officer but the reasons for which the Disciplinary Committee had not agreed with those findings, were communicated to the appellant to whom a notice was also issued to show-cause why he be not dismissed from service. He further contended that the appellant submitted a reply in which he attacked the reasons for which the Disciplinary Committee had decided to disagree with the findings of the Enquiry Officer and, therefore, in the given circumstances of this case, it cannot be said that there was failure or denial of opportunity at any stage.

39. *The contention apparently appears to be sound but a little attention would reveal that it sounds like the reverberations from an empty vessel. What is ignored by the learned counsel is that a final decision with regard to the charges levelled against the appellant had already been taken by the Disciplinary Committee without providing any opportunity of hearing to him. After having taken that decision, the members of the Disciplinary Committee merely issued a notice to the appellant to show-cause against the major punishment of dismissal mentioned in Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. This procedure was contrary to the law laid down by this Court in the case of Punjab National Bank (1998 AIR SCW 2762 : AIR 1998 SC 2713; 1998 Lab IC 3012; 1998 All LJ 2009)(supra) in which it had been categorically provided, following earlier decisions, that if the Disciplinary Authority does not agree with the findings of the Enquiry Officer that the charges are not proved, it has to provide, at that stage, an opportunity of hearing to the delinquent so that there may still be some room left for convincing the Disciplinary Authority that the findings already recorded by the Enquiry Officer were just and proper. Post-decisional opportunity of hearing, though available in certain cases, will be of no avail, at least, in the circumstances of the present case.*

54. *In the instant case, we have scrutinised the reasons of the Disciplinary Committee and have found that it had taken its final decision without giving an opportunity of hearing to the appellant at the stage at which it proposed to differ with the findings of the Enquiry Officer. We have also found that the complainant's story with regard to the place at which the demand was allegedly made by the appellant was inconsistent. We have also noticed that the trap laid by the A.C.B., Nagpur against the appellant had failed and was held by the Enquiry Officer to be a farce and not having been laid with the permission of the Chief Justice. We have also noticed that there was absolute non-consideration of the statements of defence witnesses, namely, Dr. Naranje and Mr. Bapat, advocate, by the Disciplinary Committee. This factor in*

itself was sufficient to vitiate the findings recorded by that Committee contrary to the findings of the Enquiry Officer.”

10. Learned Presenting Officer representing the respondents opposed the submissions and case law cited on behalf of the applicant as above.

11. Upon perusal of the case law of **Yoginath D. Bagde** (cited supra) it is evident that the enquiry report of the said case was considered under Rule 9 (2) and (2-A) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. In the case in hand, in fact the respondent No. 2 i.e. the Commissioner-cum-Director, Directorate of Municipal Administration, Mumbai, disciplinary authority considered the enquiry report under Rule 9(1) of the said Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and has not invoked further Rule 9 (2) and (2-A) either agreeing or disagreeing with the findings for reasons. In fact, in impugned order / communication dated 24.04.2019 (Annexure-G), the disciplinary authority has given reason that four more relevant witnesses, who ought to have been examined were not examined and as such, they were required to be examined and directed accordingly. That amounts to remittance of a case to the enquiry officer under Rule 9(1) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979.

In view of the same, facts of the present case being different, in our humble opinion, ratio laid down in the case of **Yoginath D. Bagde** (cited supra) is not applicable.

12. For foregoing reasons, we find no merit in the Original Application and it is liable to be dismissed being devoid of merits. The impugned order / communication dated 24.04.2019 (Annexure-G) is legal and proper. Hence, we proceed to pass the following order :-

ORDER

- (A) The Original Application is dismissed with no order as to costs.
- (B) Interim relief granted on 03.05.2019 is hereby vacated.

MEMBER (A)

MEMBER (J)

Later on :-

Learned Advocate for the applicant seeks extension of interim relief granted in the present Original Application vide order dated 03.05.2019 in terms of para No. 9, which is as follows :-

“9. The respondent No. 2 is directed to refrain from acting on the basis of report, if any, received from Enquiry Officer pursuant to the impugned order till further order.”

Learned Advocate for the applicant submits that the applicant intends to challenge the order of dismissal passed in the present O.A. No. 402/2019 today.

In the interest of justice, interim relief is extended by two weeks.

MEMBER (A)

MEMBER (J)

Kpb/D.B. O.A. No. 402/2019 VDD & BK 2023 DE