MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 555 OF 2014

DISTRICT : DHULE

Sudhir Anantrao Sathe,)
Age : 58 years, Occu. : Govt. Service)
(Dismissed from service))
R/o : Plot No. 27, Chaitanya Colony, Dondaicha,)
Tq. Sindkheda, Dist. Dhule 425408.)
.. **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)

2. **The Secretary**,)
Health Department, Mantralaya, Mumbai.)

3. **The Director of Health Services**,)
Arogya Bhavan, St. George Hospital)
Premises, Near CST Station, Mumbai.)

4. **The Deputy Director**,)
Health Services, Trimbak Road, Nashik.)
.. **RESPONDENTS**

APPEARANCE : Shri J.B. Choudhary, Advocate for the Applicant.

: Shri S.K. Shirse, P.O. for the Respondent Authorities.

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

Reserved on : 18.04.2023

Pronounced on : 20.06.2023

O R D E R

(Per : Shri Bijay Kumar, Member (A))

1. This Original Application has been filed by one Shri Sudhir Anantrao Sathe on 29.09.2014 invoking provisions of Section 19 of the Maharashtra Administrative Tribunals Act, 1985, being aggrieved by the rejection of appeal by the appellate authority vide order his order dated 04.12.2013, which was filed against the order of dismissal of the applicant passed by respondent No. 2 dated 07.09.2007.

2. The facts of the matter may be summed up as follows :-

(a) Two separate Departmental Enquiries had been initiated against the applicant, each under rule 8 of MCS (Discipline & Appeal) Rules, 1979, (in short, MCS (D&A) Rules), at two different points of time. The first Departmental Enquiry was ordered as per memorandum of charges dated 12.02.1999 in respect of applicant's alleged misconduct while working as Medical Superintendent, Rural Hospital, Sindkhed, District Dhule. The four charges in respect of the aforesaid first Departmental Enquiry comprised of not paying visit to village- Varpada, Taluka Sindkhed upon outbreak of Gastro during period from 30.08.1997 to 31.05.1998 for planning and execution of

response plan, non-reporting of outbreak of Gastro and information regarding persons who died due to Gastro, remaining on unauthorized absence from head quarter during the period of outbreak of Gastro and not providing ambulance for patients during the aforesaid outbreak of Gastro even after receiving demand from the concerned Sarpanch. Enquiry officer was appointed in respect of the first Departmental Enquiry vide order dated 15.07.1999 who submitted enquiry report to respondent no. 1 on 16.03.2001, who reported that all the four charges against the present applicant were proved, enquiry report was served on the applicant vide memorandum dated 11.07.2001 and the applicant submitted his response on 24.09.2001. Maharashtra Public Service Commission (in short, *MPSC*) was consulted which had concurred with the proposed punishment of dismissal from service which was communicated by MPSC vide letter dated 06.09.2007.

(b) In the meantime, the applicant was first transferred on administrative ground to Navapur and thereafter he was transferred on his own request as medical superintendent at Rural Hospital, Ranala, District- Nandurbar in the month of June 2002. By that time he had additional charge

of District Civil Surgeon, Nandurbar also. While working as medical superintendent at Rural Hospital, Ranana, District- Nandurbar, second Departmental Enquiry was initiated against him on the basis of memorandum of charges dated 21.07.2003 in respect of alleged misconduct. Accordingly, the applicant was served with another memorandum of charges dated 21.07.2003 issued by respondent No. 1 for instituting Departmental Enquiry under rule 8 of the MCS (D&A) Rules. Three charges were levelled against the applicant gist of which is as follows :-

(i) While working as Medical Superintendent, Rural Hospital, Ranala and holding additional charge of District Civil Surgeon, Nandurbar, the applicant had gone to a private hospital named as Shanti Hospital, run by one Dr. Mahendra Jain and performed family planning operation by laparoscopic surgery method on one Smt. Sangita Lotan Patil on 08.12.2002. Thus, the applicant had violated Rule No. 5.42 of Maharashtra Civil Medical Code, Part-1. Further, for conducting above surgery in the said private hospital situated in the area of jurisdiction of District Civil Surgeon, Dhule district, the applicant travelled out of his own area of jurisdiction of district Nandubar without permission from competent authority which amounts to misconduct under rule 3 of MCS (Conduct) Rules, 1979.

(ii) The applicant was not competent to administer anesthesia however, he did so in the above mentioned case of Smt. Sangita Lotan Patil admitted in a private hospital of Dhule district namely, Shanti Hospital, Dhule; thereby, violated rule 3 of MCS (Conduct) Rules , 1979.

(iii) Before performing the surgery in aforesaid case, sterilization of Operation Theater and medical equipment by autoclaving was not done properly. As a result, the patient died in the operation theater which too, amounts to violation of rule 3 of MCS (Conduct) Rules, 1979.

(c) Departmental Enquiry Officer was appointed in respect of the second enquiry vide order dated 04.11.2003. The Departmental Enquiry Officer submitted his final report on 28.10.2004 concluding that all the three charges against the present applicant were proved. The applicant was served with the enquiry report on 31.12.2004. Applicant submitted his say to on 18.01.2005. MPSC was consulted which communicated its concurrence with enquiry report and proposed penalty of dismissal of the present applicant from service vide letter dated 06.09.2007

(d) Based on the aforesaid two Departmental Enquiries, order of dismissal of the present applicant was passed by

respondent No. 1 vide a speaking order dated 07.09.2007 exercising powers vested in him under Rule 6 of MCS (Discipline & Appeal) Rules, 1979.

(e) Appeal was filed on 26.10.2007 by the present applicant against the punishment order dated 07.09.2007 before HIs Excellency the Governor of the State. His Excellency the Government of the State had delegated the powers to decide the appeal to the Minister (School Education) Government of Maharashtra, who decided the appeal and passed order dated 04.12.2013 confirming the punishment order passed by the disciplinary authority vide order dated 07.09.2007.

(f) The applicant has further contended that on similar charges two criminal cases had been filed before the respective learned Judicial Magistrate, F.C. as per following details :-

(i) The first criminal case No. STCC No. 1071/ 1999 was filed in the court of learned JMFC Sindkheda against the applicant for offence punishable under I.P.C. sections 269. In this Criminal Case order dated 21.05.2007 was passed by learned JMFC, Sindkheda by which the present applicant was convicted with 3 months' Rigorous imprisonment and

fine of Rs. 5000/- vide order dated 21.05.2007. However, the applicant had been acquitted in appeal by learned Additional Sessions Judge, vide his order dated 04.11.2009.

(ii) The second criminal case was filed at Dondaicha, bearing case No. LCT No. 1382/2003 u/s 176 IPC read with Section 34 IPC in which order dated 31.08.2007 was passed by the learned JMFC Diondaicha acquitting the present applicant.

3. Relief Prayed for- The applicant has sought relief in terms of para 12 of this O.A. which is reproduced verbatim for ready reference :-

"(12) RELIEF SOUGHT:

THE APPLICANT, THEREFORE, PRAYS THAT:

(A) This Original Application may kindly be allowed.

(B) The impugned order in appeal dated 04.12.20133, rejecting the appeal of the applicant against the order of dismissal dated 07.09.2007 may kindly be quashed and set aside.

(B) The order of dismissal, dated 07.09.2007, passed by respondent no. 2 may kindly be quashed and set aside and the applicant be reinstated in service with full back wages and continuity of service and all other consequential benefits.

(C) Any other suitable and equitable order which this Hon'ble Court may deem fit and proper, may kindly be granted.

4. **INTERIM RELIEF PRAYED FOR**: Though interim relief for staying the effect of punishment order dated 07.09.2007 and order passed in appeal dated 04.12.2013 were prayed for in terms of para 13 of the O.A., the same was not granted.

5. **Main Grounds for Seeking Relief as prayed for :–**

(a) The applicant has contended in para (7) (II) of the present O.A. that the first enquiry in the present matter had been commenced after lapse of two years period which is contrary to rule No. 3.19 of the Departmental Enquiry Rules, 1991. Even the first enquiry was initiated after two years from date of proposing the same on 12.02.1999 which is illegal and bad in law. Therefore, punishment order of dismissal dated 07.09.2007 and order in appeal dated 04.12.2013, both are illegal.

(b) The applicant has further contended in para (7) III) of the O.A. that the Departmental Enquiries had not been completed within a period of six months from the date of receipt of the order, as directed by this Tribunal in O.A. No. 1228/2005, dated 24.04.2006, a copy of which is appended with the present O.A. and marked as Annexure A-4. However, the Departmental Enquiry was not completed within six months' period. The applicant further submits that as subsistence allowance had not been paid to him by respondents regularly therefore, the Departmental Enquiries have been vitiated on that ground only and therefore, on the basis of such inquiry, imposing

punishment of dismissal is illegal and the said action of the respondents is against the law laid down by Hon'ble Apex Court and hence, liable to be quashed and set aside.

(c) The applicant has also claimed in para (7) (IV) read with para (6) 14) of the present O.A. that - on 31.08.2007, the respondent No. 2 issued the show cause notice to the applicant stating that the applicant is convicted by the Judicial Magistrate and why the applicant should not be dismissed from services as per MCS (Discipline and Appeal) Rules, 1978, rule 13, the said notice dated 31.08.2007 was received by the applicant on 04.09.2007 and directed the applicant to submit the reply /explanation giving 15 days' time. However, order of punishment of dismissal from service was passed before 15 days' time vide order dated 07.09.2007.

(d) The applicant has also contended that the Departmental Enquiry officer did not evaluate evidences properly. Moreover, provisions of Rule 9 (2) of MCS (Discipline & Appeal) Rules, 1979 had not been followed as in the memorandum as there is no mention of the punishment proposed to be inflected by the respondent and whether the respondent had accepted the enquiry report.

(e) The applicant has further contended that he was not heard on point of proposed punishment. Even the appellate authority did not consider the contentions of the appellant made in memo of appeal.

(f) The applicant has also contended that the charges in Departmental Enquiries initiated in respect of alleged misconduct, which allegedly took place while the applicant was working at Sindkheda or at Ranala. Criminal proceedings were initiated on the basis of same charges and acquittal orders were issued by respective Courts based on the basis of the same evidences based on which the charges in Departmental Enquiring had been reported to have been proved. Therefore, the punishment orders passed by respondents deserve to be quashed and set aside.

6. **Pleadings-** Affidavit in reply was filed on behalf of respondents on 17.04.2015. Affidavit in rejoinder on behalf of applicant was filed on 13.08.2015. Copies of affidavits in reply and affidavit in rejoinder were taken on record and a copy thereof was also served on the other sides. With consent of the two sides, the matter was fixed for final hearing on 17.07.2018 which took place on 18.04.2023 after COVID -2019 and upon availability of Division Bench. Thereafter the matter was reserved for orders. The respondents have contested that the charges against the present applicant (delinquent in Departmental Enquiry) were of serious nature, the Departmental Enquiries and criminal proceedings were on different charges and the enquiries had been conducted as per prescribed procedure, therefore, the

present O.A. deserves to be dismissed. In the rejoinder affidavit, the applicant has re-invoked the longer time span taken by respondents in passing order of punishment from the date of completion of enquiry and submission of enquiry report along with the present applicant's say on the enquiry report. Moreover, the applicant has contended that he being a M.B.B.S. doctor, he was qualified to administer anesthesia to the patient as per ruling given by Hon'ble Karnataka High Court in Shri Krishna Prasad Vs. the State of Karnataka (ACJ 393 1989). The applicant has also reiterated other grounds for seeking relief with addition that in the matter covered by the second Departmental Enquiry the husband of the diseased patient admitted before Consumer Forum that the death of his wife was due to heart attack. This statement was made by the husband of the diseased patient after the applicant was acquitted in criminal case filed by him u/s 304 of IPC read with Section 34 of IPC.

7. Analysis of facts and grounds for seeking relief as per prayer clauses- From the facts on record and oral submissions made, following critical issues emerge for analysis and drawing conclusions.

(A) ISSUE No. 1- *Whether the charges in the two Departmental Enquiries and corresponding Criminal Cases*

were the same and acquittal of the applicant in both the criminal cases was based on same evidence as relied upon by the Departmental Enquiry Officer?

Analysis – (a) The applicant, for reasons best known to him, has not submitted copies of charges framed against him in the criminal proceedings. Even a copy of conviction order passed by learned JMFC Sindkheda in STCC No. 1071/1999 dated 21.05.2007 (referred to by the applicant) has not been submitted. Thus, ready reference to the same cannot be made in order to decide merit of applicants claim in this regard. However, a copy of the judgment dated 04.11.2009 passed by the learned Additional Sessions Judge, Dhule in Criminal Appeal No. 42/2007 arising out of the judgment and order dated 21.05.2007 passed in STCC No. 1071/1999 by the learned JMFC Sindkheda, is appended and marked as Annexure A-5 with the present O.A.

(b) On referring to content of Para 8 and 9 of the said judgment passed by learned Additional Sessions Judge, which sum up the findings of the Additional Sessions Judge is quoted below for ready reference :-

> *"8) The learned trial court has held the appellant guilty mainly because he did not provide ambulance and did not remain in Head Quarters. To constitute an offence under section 269 of Indian Penal Code, mainly the prosecution has to prove:*
>
> 1. *That the disease in question is (a) infectious and (b) dangerous to life;*
>
> 2. *That the accused did an act which was likely to spread infection thereof;*

3. *That such act was unlawful or negligent;*

4. *That the accused knew, or had reasons to believe, that such act of his was likely to spread the infection of such disease.*

In the instant case what is alleged by the prosecution is that accused did not provide ambulance and did not remain at headquarters. The act of non-providing ambulance was not of such a nature as was likely to spread infection of the disease. Dr. Kulkarni (P.W. 1) in his cross-examination has stated that the epidemic of diarrhea occurred due to contaminated water supply. Thus root cause of diarrhea was contaminated water and not the act of non-providing of ambulance. It is true that there is sufficient evidence to show that the appellant was not at headquarters at the relevant time, but for that act of negligence, he is liable for disciplinary action and cannot be held guilty for the offence under section 209 of the Indian Penal Code.**(Emphasis supplied)**

9) As stated above, the trial court has held the appellant guilty because he did not provide ambulance for bringing patients. It has been concluded that the act of non-providing of ambulance was not of such a nature as was likely to spread infection of disease. The trial court, without considering this legal aspect, has erroneously held the appellant guilty for the offence under section 269 of Indian Penal Code. The judgment and order passed by the trial court in not legal and proper and deserves to be set aside by allowing this appeal. Hence the Order.

O r d e r.

The appeal is allowed.

The order of the trial court is set aside. The accused-appellant is acquitted for the offence punishable under section 269 of the Indian Penal Code.

The fine amount, if paid, be refunded to accused-appellant after appeal period is over.

The appellant is on bail. His bail bond stands cancelled."

(c) Charges framed against the present applicant in another criminal case filed against the present applicant bearing case No. SCT No. 1382/2003 and list of witnesses have not been submitted by the applicant. However, a copy

of acquittal order dated 31.08.2007 has been submitted along with written notes of arguments on behalf of the applicant. On perusal of the judgment it is clear that the charges in criminal proceedings relate to type and dose of anesthesia, carrying out sensitivity test of anesthesia on the patient and so on which are totally different from the charges in the second Departmental Enquiry.

CONCLUSION:- From above analysis, in our considered opinion, the charges based on which departmental proceedings had been completed and the charges in criminal proceedings are mutually exclusive, therefore, the contention of the present applicant that the punishment inflicted upon him in the departmental proceedings deserves to be quashed and set aside is devoid of merit.

(B) ISSUE No. 2: The applicant has also claimed in para (7) (IV) read with para (6) 14) of the present O.A. that- on 31.08.2007, the respondent No. 2 issued the show cause notice to the applicant stating that the applicant is convicted by the Judicial Magistrate and why the applicant should not be dismissed from services as per MCS (Discipline and Appeal) Rules, 1978, rule 13, the said notice dated 31.08.2007 was received by the applicant on 04.09.2007 and directed the applicant to submit the reply /explanation giving 15 days' time. However, order of punishment of dismissal from service was passed before 15 days' time vide order dated 07.09.2007.

ANALYSIS- It is noticed that the punishment was not inflicted on the applicant in the present O.A. based on conviction in criminal case. Therefore, the show cause referred to above is not relevant in the present context.

CONCLUSION: It is, therefore, inferred that there is no merit in the contention of the applicant in the present O.A. that he punishment order passed based on findings in Departmental Enquiry are vitiated as the applicant was not given 15 days' time to respond to the show cause notice which related to dismissal in view of conviction in criminal proceedings by JMFC Dhule; the two proceedings being mutually exclusive.

(C) ISSUE No. 3- *Whether not giving opportunity to the applicant (delinquent in DE proceedings) to offer his say on point of punishment in Department Enquiry is fatal in nature on validity / legality of the Departmental Enquiry.*

ANALYSIS- First of all, the competent authority had decided to provide opportunity to the present applicant to be heard on findings of Departmental Enquiry which shows that the competent authority had accepted the said enquiry report. Further, on perusal of rule 9 (4) of MCS (D &A) Rules, 1979, it is evident that giving opportunity to the delinquent employee to be heard on point of punishment proposed to be inflicted is not required. In the instant two matters, MPSC has been duly consulted before passing orders of punishments.

CONCLUSION: In our considered opinion, there is no merit in contention of the applicant that the departmental enquiry is vitiated as he was not given hearing on the point of proposed punishment.

(D) ISSUE NO. 4 *Whether delay in completing Departmental Enquiry counted from the date of issue of show cause notice / memorandum of charges vitiates the enquiry?*

Analysis*:* the applicant has contended that he was served with a show cause notice in the form of a memorandum before ordering Departmental Enquiry against him. Thereafter, there was a delay of a period more than the one prescribed in clause 3.19 of the Departmental Enquiry Manual, 1991 which has vitiated the Departmental Enquiry. However, it is seen that this Tribunal had granted more time than the one prescribed in the said manual for completing the Departmental Enquiry. Therefore, it is evident that the Departmental Enquiry Manual, 1991 is in the form of guidelines / statement good practices and do not have over-ruling effect on the provisions of relevant Rules.

CONCLUSION- In our considered opinion, there is no merit in this contention of the applicant as elaborated in ISSUE No. 4.

(E) ISSUE No. 5:- *Whether the order passed by the appellate authority suffers from any infirmity?*

Analysis:- It is noticed that the appellate authority has passed a speaking order covering all the relevant points raised by the present applicant (appellant in DE matters).

CONCLUSION: There is no merit in contention of the applicant that the order passed by appellate authority is illegal is devoid of merit. It is viewed with seriousness that the applicant who was working as Medical Superintendent at Rural Hospital, was so callous and negligent towards his duties to the society, especially economically weaker section of it, who normally visit Public Health Service Centers. Despite of that, the applicant has made effort by suppression or distraction of facts, to get rid of punishment inflected after a properly drawn Departmental Enquiry.

8. ORDER: Based on facts on record and analysis of all the facts before us, the following order is being passed :-

O R D E R

(A) The Original Application No. 555 of 2014 is dismissed for being devoid of merit.

(B) No order as to costs.

MEMBER (A) **MEMBER (J)**