MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 793 OF 2018
(Subject – Minor Punishment/Suspension Period/Suspension Allowance)

DISTRICT : AURANGABAD

Shri Siddarath s/o Ratan Divekar,)
Age : 56 years, Occu. : Service,)
R/o N-9, M/2 CIDCO,)
Dnyaneshwar Nagar, Aurangabad.)

.. APPLICANT

V E R S U S

1) **The Principal Secretary,**)
VIIth Floor, Marathi Language)
Department, Mantralaya,)
Mumbai -32.)

2) **The Director of Languages,**)
5th Floor, Administrative Building,)
Government Colony, Near)
Dr. Babasaheb Ambedkar Garden,)
Bandra (East), Mumbai- 400 051.)

.. RESPONDENTS

APPEARANCE : Shri V.B. Wagh, Advocate for the Applicant.

: Shri N.U. Yadav, Presenting Officer for the Respondents.

CORAM : B.P. PATIL, VICE CHAIRMAN.

RESERVED ON : 19.07.2019.

PRONOUNCED ON : 24.07.2019.

O R D E R

1. The applicant has challenged the order dated 19.05.2017 passed by the respondent No. 1 in the appeal and

upholding the order passed by the respondent No. 2 in the D.E. and the order dated 30.01.2014 passed by the respondent No. 2 punishing him in the D.E. by filing the present Original Application.

2. The applicant was appointed as Peon Class-IV by the order dated 02.11.1992. In the year 1995, he was promoted.

3. On 03.04.2004 offence punishable under section 320, 409, 468, 465, 120-B of the Indian Penal Code has been registered against him and others at City Chowk Police Station, Aurangabad. On the basis of crime registered against him, he was placed under suspension vide the order date dated 06.05.2004. On 22.03.2011, he was reinstated in service.

4. A criminal case bearing RCC No. 1355 of 2004 has been registered against him in the Court of Judicial Magistrate First Class, Aurangabad. After full-fledged trial, he was acquitted from the said charges out of 25 accused. On 14.01.2005, the respondents issued memorandum of charge and initiated the departmental enquiry against him. The enquiry was conducted by the Enquiry Officer and the applicant was held guilty particularly in respect of charges leveled against him. Thereafter, the respondent No. 2 the disciplinary authority imposed

punishment on him on 30.01.2014 and stopped one increment for the period of one year and also directed that the difference on account of stoppage of increment are not payable to him. The period of his suspension commencing from 01.05.2004 to 22.03.2001 has been treated as suspension period and during the said period, he is entitled for suspension allowance. The applicant has challenged the said order by preferring an appeal before the respondent No. 2 on 21.09.2015. The respondent No. 1 had not considered the grounds raised by him in the appeal. Not only this, but the respondent No. 1 has not considered the fact that the Criminal Court has acquitted the applicant. The respondent No. 1 has upheld the order passed by the respondent No. 2 in the appeal and also directed that the applicant is entitled to get 80% subsistence allowances during the suspension period. The applicant has filed the present Original Application dissatisfied with the orders passed by the respondent Nos. 1 and 2.

5. It is contention of the applicant that the respondents had not considered the fact that he has been acquitted from the criminal charges leveled against him and he cannot be charged again for the same charges in the D.E. and therefore, the impugned orders issued by the respondents are illegal. It is his

contention that the respondent No. 1 is illegally passed the order reducing the subsistence allowances and therefore, he has prayed to quash and set aside the impugned orders by allowing the present Original Application.

6. The respondent Nos. 1 and 2 have filed their affidavit in reply and resisted the contentions of the applicant. They have not disputed the fact that the applicant is serving as a Peon. It is their contention that the City Police Station, Aurangabad received a secret information that some malpractice was being done by the employees of the Board and the candidates who had appeared for the examination and they were tempering with the record of examination. On the basis of information received to him, the Police conducted the raid and that time they found that the applicant and other accused had prepared new answer sheets from the remaining accused to enable them to pass the test. The record has been found in their possession. Therefore, charge sheet has been filed against the applicant and others for the offences punishable under section 120(B), 409, 420, 465, 471 of IPC read with Section 248(1) of Cr. P.C. On the basis of charge sheet, a criminal case bearing Regular Criminal Case No. 1355/2014 has been registered against the applicant and others in the Court of Judicial Magistrate First Class, Aurangabad.

Learned judge decided the said case on 18.02.2011 and convicted all the accused except the applicant. It is their contention that as per the provisions of Manual of Departmental Enquiry, the departmental proceeding can be initiated along with the Criminal Case against the Government employee. The criminal case deals with the charges leveled against the accused person. The departmental enquiry has been conducted as regards negligence or misconduct on the part of the Government servant. Therefore, the acquittal from the criminal charges has no bearing on the D.E. and therefore, the D.E. is proceeded further. In the D.E., the applicant was held guilty of the charges leveled against him and therefore, they have punished him accordingly. It is their contention that the disciplinary authority is the competent authority to take decision independently regarding breach of discipline, suspension period and the allowances to be paid to the Government employee during the suspension period and accordingly, they took the decision in the matter. It is their contention that proper opportunity of hearing was given to the applicant in the Departmental Enquiry and in the Appeal and thereafter, the decisions had been taken. There is no illegality in the impugned orders and therefore, they supported the impugned orders and prayed to dismiss the present Original Application.

7. I have heard Shri V.B. Wagh, learned Advocate for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondents. I have perused the documents placed on record by both the parties.

8. Admittedly, the applicant is serving as peon with the respondent No. 2. There is no dispute about the fact that on secret information received to the City Police Station, Aurangabad, a raid has been conducted and the applicant and others had been arrested and a crime has been registered against the applicant and other accused for the offences punishable under section 320, 409, 468, 465, 120-B of IPC. Admittedly, a criminal case bearing R.C.C. No. 1355 of 2004 has been registered against the applicant and others in the Court of Judicial Magistrate First Class, Aurangabad. Admittedly, after full-fledge trial, the case ended in the conviction of the accused except the applicant. Admittedly, the charge sheet has been issued to the applicant for his misconduct and the D.E. has been initiated against him. Admittedly, the D.E. has been conducted by the Enquiry Officer and the applicant was found guilty for the charges leveled against him and therefore, the respondent No. 2 the disciplinary authority has passed the order dated 30.01.2014 and stopped his one increment for one year. The applicant

preferred an appeal against the said decision before the respondent No. 1. The respondent No. 1 has decided the said appeal on 19.05.2017 and dismissed the appeal and upheld the decision given by the respondent No. 2 and also held that the applicant is entitled to get 80% of pay during the suspension period.

9. Learned Advocate for the applicant has submitted that the applicant has been charged for same charges leveled in the Criminal Court, but the learned JMFC had acquitted from charges by the judgment dated 18.02.2018 in RCC No. 1355 of 2004. The Criminal Court has acquitted the applicant from the charges leveled against him and therefore, the applicant cannot be charged for the same charges in the D.E. But the D.E. has been proceeded further and the applicant was held guilty of the charges. Therefore, the impugned order imposing the punishment on the applicant is not legal one. He has argued that the enquiry officer has not considered the fact that the applicant has been acquitted in the criminal case. The enquiry officer ought to have exonerated him from the charges leveled against him, since he has been acquitted from the criminal charges. He has submitted that no role has been attributed to the applicant in malpractices in the examination and his conduct

does not amount to misconduct. But the enquiry officer has not considered the said aspect and consequently, the respondent No. 2 passed the order imposing punishment on the applicant.

10. Learned Advocate for the applicant has further submitted that the respondent No. 1 has also not considered the grounds raised by the applicant in the appeal and the respondent No. 1 has wrongly decided the appeal upholding the decision of the respondent No. 2 and therefore, he approached this Tribunal and prayed to quash and set aside both the orders issued by the respondent Nos. 1 and 2 by filing the present Original Application.

11. Learned Advocate for the applicant has placed reliance on the judgment delivered by the Supreme Court of India in case of ***M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Ors.*** in ***C.A. No. 1906 of 1999*** reported in ***AIR 1999 SC 1416.***

12. Learned Presenting Officer has submitted that the applicant was acquitted of the criminal charges, but the charges against him in the disciplinary inquiry are different. In the inquiry he was charged of the misconduct and he was guilty of the charges and consequently, he was punished. He has submitted that standard of proof for proving the charges leveled

in criminal case and D.E. are different. The applicant was acquitted in the criminal case, as there was no sufficient evidence to prove the charge against him. But in the D.E. there is sufficient material to arrive at the conclusion about the applicant's behavior, about his misconduct and indiscipline and accordingly, he was held guilty and punished by the Disciplinary Authority. He has submitted that there is no illegality in the orders passed by the respondent Nos. 1 and 2 and therefore, they supported the same.

13. I have gone through the report of enquiry officer, which shows that the applicant was charged of the misconduct and during the enquiry, the enquiry officer held that there was sufficient evidence to prove the charges leveled against him and therefore, he had held him guilty of the misconduct. On the basis of the report of the enquiry officer, the respondent No. 2 issued show cause notice to the applicant. After receiving the reply of the applicant and after considering the same, the respondents have passed the impugned order dated 30.01.2014 and held the applicant guilty of the misconduct and punished him accordingly and stopped his one increment for one year. The respondent No. 1 while deciding the appeal preferred by the applicant had considered the grounds raised by the applicant

and after recording the reasons, upheld the order of the respondent No. 2 dated 30.01.2014 and also directed that the applicant is entitled to get 80% of pay during the period of suspension. Both the respondents had considered the evidence recorded in the enquiry.

14. On perusal of the report of the enquiry officer, it reveals that in the enquiry, the applicant was found in possession of bunch of answer sheets and the seal of bunch had been found broken and 19 answer sheets were missing. The said act on the part of the applicant amounts misconduct and therefore, he held him guilty of the charges leveled against him. The enquiry officer recorded the findings on the basis of the evidence adduced before him. There is no illegality in the findings recorded by the enquiry officer. On the basis of said evidence, the respondent No. 2 imposed the punishment on the applicant considering the seriousness of the charges. The respondent No. 1 upheld the decision of the respondent No. 2 by recording the reasons. There is no illegality in the impugned order dated 30.01.2014 passed by the respondent No. 2 and the order dated 19.05.2017 passed by the respondent No. 1 in the appeal. Considering the nature of the charges, gravity of the charges and the role attributed to the applicant, the punishment

imposed on the applicant is proportionate and therefore, in my view, no interference is called for in the impugned orders.

15. I have gone through the decision referred by the learned Advocate for the applicant. I have no dispute regarding the settled legal principles laid down therein. But considering the facts in the present case, the principles laid down in the above cited decision are not much useful to the applicant and therefore, the same is not attracted in the instant case.

16. Considering the above said discussion, in my view, the impugned orders had been issued by the respondent Nos. 1 and 2 considering the evidence in the D.E. There is no illegality in the impugned orders and therefore, no interference is called for in it. There is no merit in the present O.A. Consequently, the O.A. deserves to be dismissed.

17. In view of the discussions in the foregoing paragraphs, the Original Application is dismissed with no order as to costs.

PLACE : AURANGABAD. **(B.P. PATIL)**
DATE : 24.07.2019. **VICE CHAIRMAN**

KPB S.B. O.A. No. 793 of 2018 BPP 2019 Minor Punishment