MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 140 OF 2016

DIST. : PARBHANI

Shri Dnyanoba s/o Kondibarao Ovhal,
Age. 66 years, Occ. Retired Tahsildar,
R/o Sarnath Colony, Dhar Road, Parbhani,
Dist. Parbhani. -- APPLICANT.

V E R S U S

1. The State of Maharashtra,
   Through its Secretary,
   Revenue and Forest Department,
   Mantralaya, Mumbai -32.

2. The Divisional Commissioner,
   Aurangabad Division,
   Aurangabad.

3. The Collector, Latur.

4. The Tahsildar, Vasmath,
   Tq. Vasmath, Dist. Hingoli.

5. The Accountant General – II,
   Civil Lane, Nagpur.

6. The Collector, Hingoli. -- RESPONDENTS

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

: Smt. Sanjivani Deshmukh Ghate, learned Presenting Officer for the Respondents.

CORAM : Hon'ble Shri Rajiv Agarwal, Vice Chairman
A N D
Hon'Ble Shri J.D. Kulkarni, Member (J)

DATE : 20.10.2016

JUDGMENT

{PER : HON'BLE SHRI J.D. KULKARNI, MEMBER (J)}

1. The applicant, Shri Dnyanoba Kondibarao Ovhal, is now aged about 67 years and he has retired on superannuation as a Tahsildar, Chakur, Dist. Latur on 30.9.2008. Before his retirement, a memorandum of charge was served on him on 11.7.2008 i.e. just about 2 months prior to his retirement. In all three charges were framed against the applicant, which pertains to period from 1.4.2001 to 2.4.2005 while he was working on the post of Tahsildar at Wasmat. Admittedly, the departmental enquiry (for short D.E.) was conducted in this regard and the enquiry report was submitted by the Enquiry Officer to the competent disciplinary authority. The Enquiry Officer submitted his report to the res. no. 2, Divisional Commissioner, Aurangabad, and the res. no. 2 came to the conclusion that none of the charge against the applicant was proved and, therefore, the applicant was entitled to be exonerated.

2. The res. no. 2, the Divisional Commissioner, Aurangabad forwarded the enquiry report to the Additional Chief Secretary, Revenue & Forest Department, Mantralaya, Mumbai on 4.3.2011 and submitted that since the applicant was already retired and

since charges were not proved, necessary decision in the matter be taken.

3. However, to the surprise of the applicant, the Govt. of Maharashtra issued the impugned order dated 10.3.2015 and directed that fresh enquiry shall be conducted against the applicant. The said impugned order is at paper book page 22 and the same reads as under :-

"महोदय,

उपरोक्त विषयावरील संदर्भाधीन पत्रान्वये श्री. ओव्हळ, यांचेवर ठेवण्यात आलेल्या दोषारोप क्रं. १ व ३ संदर्भात, उपलब्ध असलेल्या अभिलेख्यांची पहाणी केली असता मूळ संचिका आढळून येत नाही, असा अहवाल तहसिलदार, वसमत यांनी सादर केला असल्याचे उपरोक्त पत्रात नमूद केलेले आहे. सदर प्रकरणाची नस्ती गहाळ झाल्याप्रकरणी संबंधित कर्मचारी यांच्याविरुध्द केलेल्या कारवाईचा सद्यस्थितीविषयक अहवाल तसेच, याप्रकरणी, पुढील कार्यवाही करण्याकरीता नस्तीची पुर्नबांधणी करणे शक्य आहे किंवा कसे याबाबतचा अहवाल शासनास सादर करण्याबाबत संदर्भाधिन पत्रान्वये कळविण्यात आले होते.

२. उपरोक्त वस्तूस्थितीत, संबंधित वरीष्ठ अधिकारी यांना उपलब्ध अभिलेखासह दिनांक २५.०२.२०१५ रोजी मा. प्रधान सचिव (महसूल) यांच्या दालनात सुनावणी झाली. सुनावणी दरम्यान मा. प्रधान सचिव यांनी, ज्या विषयाच्या संचिका उपलब्ध झालेल्या नाहीत, त्याबाबत नियमांच्या अनुषंगाने नव्याने चौकशी करावी व सादरकर्ता अधिकारी यांनी त्याबाबत शासनाची बाजू मांडवी. तसेच सदर आदेशाचे अवलोकन करून त्यात नेमकी

कोणती अनियमितता झााली आहे, याबाबत तोंडी तसेच लेखी युक्तीवाद मूळ नसती अवलोकन न करता मांडावेत, तसेच ज्या प्रकरणी परवानगी देण्यात आली आहे, ही बाब कार्यालयीन अभिलेखावरून सदर परवानगी देण्याचे अधिकार तपासून चौकशी अधिकारी यांच्यासमोर सादर करावे, असे निर्देश दिले.

मा. प्रधान सचिव यांनी दिलेल्या उक्त निर्देशाच्या अनुषंगाने स्वयंस्पष्ट अभिप्राय तात्काळ शासनास सादर करावेत, ही विनंती."

4. According to the applicant, the impugned order of fresh enquiry is bad in law and it is not known as to under what provisions of M.C.S. (Discipline & Appeal) Rules, 1979 (for short referred to as the Discipline & Appeal Rules, 1979), fresh departmental enquiry has been ordered. The impugned order does not state anything as regards the rule 9 of the Discipline & Appeal Rules, 1979. The applicant has already retired on superannuation and, therefore, no fresh enquiry can be conducted against him except under rule 27 of the M.C.S. (Pension) Rules, 1982 (for short referred to as Pension Rules, 1982). Even an enquiry under rule 27 of Pension Rules, 1982 is also not permissible in the present case, since the said enquiry will be violative of sub rule 2 (b) (ii) of rule 27 of the Pension Rules, 1982. The enquiry pertains to the period for the period from 1.4.2001 to 2.4.2005 i. e. more than 4 years prior to

applicant's retirement and, therefore, the applicant has claimed that the impugned order dated 10.3.2015 shall be quashed and set aside.

5. The respondent nos. 1 & 2 have filed affidavit in reply and submitted that since the report of the Enquiry Officer was unacceptable, de-novo enquiry was initiated as earlier enquiry was conducted in a manner contrary to the rules and was opposed to the principles of natural justice. It is further stated that, as per provision embodied in Chapter 7, Para 7.3 of the Manual of Departmental Enquiry 4th Edition 1991, de-novo enquiry is permissible, if there are serious irregularities in conducting the enquiry.

6. We have heard Shri V.B. Wagh, learned Advocate for the applicant and Smt. Sanjivani Deshmukh Ghate, learned Presenting Officer for the respondents. We have perused the affidavit, affidavit in reply and various documents placed on record.

7. The only point to be considered in this O.A. is whether the impugned order dated 10.3.2015 issued by the res. no. 1 directing fresh enquiry against the applicant is legal and proper?

8. Perusal of the impugned order shows that there was meeting of the concerned Officers in the chamber of the Principal Secretary (Revenue) and in the said meeting it was noticed that the documents were not made available before the Enquiry Officer and, therefore, it was decided to make fresh enquiry. It seems that the respondents have invented a novel way to initiate the D.E. afresh as per its whims without considering the legal provisions as regards initiation of the D.E.

9. Admittedly, in this case the Enquiry Officer was not the competent authority to dismiss the applicant and, therefore, the enquiry report was submitted to the competent authority for taking necessary action as seems from the report, which is at paper book page 40 to 59 (both pages inclusive). On perusal of such report, it seems that the Divisional Commissioner, Aurangabad wrote a letter to the Additional Chief Secretary (Revenue) on 4.3.2011. The said letter is at paper book pages 60 to 63. In the said letter it was specifically mentioned that the Enquiry Officer found that the charges against the applicant were not proved. It was also brought to the notice of the competent authority i. e. the Govt. that the applicant has already retired on superannuation and, therefore, the Govt. was to pass necessary orders considering the enquiry report.

10. The learned Advocate for the applicant has invited our attention to rule 9 of the Discipline & Appeal Rules, 1979, which states about action to be taken on the enquiry report. The rule 9 reads 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 enquiring 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 inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the 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) (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 Commissioner, the record of the inquiry shall be forwarded by the disciplinary authority to the Commissioner 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 enquiry 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."

11. The entire rule 9 states as to what action to be taken and procedure to be followed on the enquiry report. The question is as to what procedure to be followed when the disciplinary authority does not agree with the findings given by the Enquiry Officer. This issue has been dealt by Hon'ble Supreme Court in the case of **YOGINATH D. BAGDE VS. STATE OF MAHARASHTRA & ANOTHER {AIR 1999 SC 3754}**, wherein

the Hon'ble Supreme Court has observed in para nos. 28 & 29 as under :-

> "28. In view of the provisions contained in the statutory Rule extracted above, it is open to the Disciplinary Authority either to agree with the findings recorded by the Inquiring Authority or disagree with those findings. If it does not agree with the findings of the Inquiring Authority, it may record its own findings. Where the Inquiring Authority has found the delinquent officer guilty of the charges framed against him and the Disciplinary Authority agrees with those findings, there would arise no difficulty. So also, if the Inquiring Authority has held the charges proved, but the Disciplinary Authority disagrees and records a finding that the charges were not established, there would arise no difficulty. Difficulties have arisen in all those cases in which the Inquiring Authority has recorded a positive finding that the charges were not established and the delinquent officer was recommended to be exonerated, but the Disciplinary Authority disagreed with those findings and recorded its own findings that the charges were established and the delinquent officer was liable to be punished. This difficulty relates to the question of giving an opportunity of hearing to the delinquent officer at that stage. Such an opportunity may either be provided specifically by the Rules made under Article 309 of the Constitution

or the Disciplinary Authority may, of its own, provide such an opportunity. Where the Rules are in this regard silent and the Disciplinary Authority also does not give an opportunity of hearing to the delinquent officer and records findings, different from those of the Inquiring Authority that the charges were established, "an opportunity of hearing" may have to be read into the Rule by which the procedure for dealing with the Inquiring Authority's report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be `not guilty' by the Inquiring Authority, is found `guilty' without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of "not guilty" has already been recorded.

29. We have already extracted Rule 9(2) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 which enables the Disciplinary Authority to disagree with the findings of the Inquiring Authority on any article of charge. The only requirement is that it shall record its reasoning for such disagreement. The Rule does not specifically provide that before recording its own findings, the Disciplinary Authority will give an opportunity of hearing to a delinquent officer. But the requirement of "hearing" in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that

> before Disciplinary Authority finally disagrees with the findings of the Inquiring Authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the Inquiring Authority do not suffer from any error and that there was no occasion to take a different view. The Disciplinary Authority, at the same time, has to communicate to the delinquent officer the "TENTATIVE" reasons for disagreeing with the findings of the Inquiring Authority so that the delinquent officer may further indicate that the reasons on the basis of which the Disciplinary Authority proposes to disagree with the findings recorded by the Inquiring Authority are not germane and the finding of "not guilty" already recorded by the Inquiring Authority was not liable to be interfered with."

12. In the present case the competent authority has not recorded the reasons for disagreement with the findings given by the Enquiry Officer. The Enquiry Officer has already came to the conclusion that none of the charges against the applicant were proved and, therefore, he recommended exoneration of the applicant from all the charges. In such circumstances, the only way out left to the disciplinary authority was to record his findings for not agreeing with the report of the Enquiry Officer and thereafter issue fresh show cause mentioning therein the

reasons for not agreeing with enquiry report, to the applicant and call his reply thereto. The respondents have not done so and simply directed de-novo trial only under imprison that the relevant record was not produced before the Enquiry Officer in the earlier enquiry. Such action on the part of the respondents is totally illegal and novel to the rules of departmental enquiry.

13. The learned Advocate for the applicant submits that the competent authority has not taken into consideration the fact that no new enquiry can be conducted against the applicant, since he has already retired on superannuation long back. The learned Advocate for the applicant submits that such proceeding can be initiated only under rule 27 of the Pension Rules, 1982 and even rule 27 is not applicable in the case of the applicant because the charges against him are not within 4 years from the date of retirement of the applicant. The relevant provisions applicable to this case under rule 27 of the Pension Rules, 1982 is as under :-

> "**27. Right of Government to withhold or withdraw pension.**
>
> (1) -- -- --
> -- -- --
>
> (2)(a) -- -- --
> -- -- --

(2)(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, -

(i) -- -- --

(ii) shall not be in respect of any event which took place more than four years before such institution, and"

14. We have perused the charges framed against the applicant in the D.E., which was conducted against him earlier and which is now ordered to be conducted de-novo enquiry. The said charges are as under :-

"परिशिष्ठ - १

श्री. डी.के.ओव्हळ, तत्कालीन तहसीलदार वसमत सध्या तहसीलदार चाकूर, जि. लातूर यांचे विरूध्द ठेवण्यांत आलेल्या दोषारोपाची यादी.

.....

श्री. डी.के.ओव्हळ हे दिनांक १.४.२००१ ते २.४.२००५ या कालावधीत तहसीलदार वसमत म्हणून कार्यरत अवसतांना त्यांनी खालील प्रमाणे अनियमितता / गैरवर्तन केलेले आहे.

१. श्री. पांडूरंग पुंजाजी गायकवाड रा. वसमत यांचे स.न. २११/क्रं-१/क्षेत्र ४ एकर ०३ गुंठे जमीनीवर कुळ असल्याबाबत चुकीचे निर्णय देऊन अधिकाराचा गैरवापर केला.

२. श्री. डी. के. ओव्हळ तत्कालीन तहसीलदार वसमत यांनी पदाचा गैरवापर करून मौ. पिंपळा चौरे येथील कुळ कायदया अंतर्गत चुकीचा निर्णय देऊन अनियमितता केली आहे.

३. नगर परिषद हद्दीत असलेल्या जमीनीचे अकृषीक परवानगी देण्याचे अधिकार नसतांना हद्दीतील जमिनीचे अकृषीक परवानगी देऊन अनियमितता केली आहे.

वरिल प्रमाणे श्री. डी.के.ओव्हळ यांनी त्यांचे कर्तव्यात नितांत सचोटी व कर्तव्य परायणता राखली नाही. आणि महसूल अधिका-यास अशोभनीय ठरेल अशी जाणीवपुर्वक कृती करून महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ चे नियम ३ (१) चा भंग केला आहे."

15. From the aforesaid charges it is clear that the charges pertained to the period from 1.4.2001 but exact period is vague. As already stated, the applicant has retired on superannuation on 30.9.2008. Thus, the charges on which de-novo enquiry is to be conducted is not within 4 years from the date of his superannuation and, therefore, fresh enquiry under rule 27 is not permissible against the applicant.

16. We have also perused the contents of charges framed against the applicant. It is not known as to exactly on what date the applicant gave wrong decision. Even if such decision was wrong, it was the decision, which can be said to be quasi judicial

and cannot be assailed in D.E. and that too after more than 7 years after his retirement.

17. Considering all these aspects as referred above, we are satisfied that the impugned order dated 10.3.2015 passed by the res. no. 1 is absolutely illegal and, therefore, is required to be quashed and set aside. Hence, we pass following order :-

O R D E R

(i) The O.A. is allowed in terms of prayer clause (B).

(ii) The respondents are directed to issue forthwith 'no due and no enquiry' certificate in applicant's favour after verifying his record and shall forward the proposal for revision of his pension as per 6th Pay Commission and to take steps to release his retiral benefits, G.I.S., D.C.R.G., Gratuity etc. forthwith.

(iii) The above exercise shall be completed by the respondents within a period of 3 months from the date of this order.

MEMBER (J) **VICE CHAIRMAN**