

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 538 OF 2015

DIST. : JALGAON

Smt. Vandana Shantaram Mahajan,
Age. 44 years, Occu. Service,
Presently posted as Clerk with the
Office of Dy. Suptd. Of Land Record,
Sakri, Tq. Sakri, Dist. Jalgaon.

Permanently residing at Dattaq
Chaitnya Nagar, Pachora Road,
Near Satav Classes, Jamner,
Tq. Jamner, Dist. Jalgaon.

-- APPLICANT

VERSUS

1. The State of Maharashtra,
Through Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai . 32.
2. The Dy. Director of Land Record,
Nashik Region, Nashik.
3. The Superintendent of Land Record,
Dhule, Dist. Dhule.
4. The Dy. Superintendent of Land Record,
Sakri, Tq. Sakri, Dist. Jalgaon.
5. The Dy. Superintendent of Land Record,
Jamner, Tq. Jamner, Dist. Jalgaon.

(copies for the respondents to be served
On Presenting Officer, M.A.T. Mumbai,
Bench at Aurangabad)

-- RESPONDENTS

APPEARANCE : Shri Bhausahab S. Deshmukh, learned Advocate for the Applicant.
: Smt. Sanjivani Deshmukh Ghate, learned Presenting Officer for the Respondents.

CORAM : Hon'ble Shri J.D. Kulkarni, Member (J)

J U D G M E N T

{Delivered on 29th day of November, 2016}

1. The applicant Smt. Vandana Shantaram Mahajan was appointed as a Peon in the office of res. nos. 2 to 5 in the year 1987 i. e. vide appointment order dated 12.6.1987 and she came to be promoted as a Clerk vide order dated 10.1.1992.

2. During the period from 1996 to 2000, the applicant performed her duties in the office of Taluka Inspector of Land Records at Jamner. Somebody sent a letter to the office of Superintendent of Land Record, Jalgaon and brought into the notice huge irregularities and illegalities committed by some personnel in the office of res. no. 5 including the applicant by submitting false, bogus and fabricated bills. In pursuance of the said complaint, an inspection was carried out through the Superintendent of Land Records and he noticed some irregularities and illegalities. He, therefore, submitted report to the res. no. 2. A criminal complaint was also filed against S/shri Suresh P. Lanke, B.G. Likhar, S.J. Mulay, who were holding the post of T.I.L.R. at Jamner during the

period from 1996 to 2000 and Smt. S.R. Pathak and present applicant. It is alleged that all of them have misappropriate total amount of Rs. 12,73,701/-.

3. It seems that on the basis of the investigation against the applicant and other 4 other officers, a criminal case came to be filed in the Court of learned Chief Judicial Magistrate, Jalgaon bearing no. 686/2002.

4. From the admitted facts, it seems that, learned C.J.M. vide judgment and order dated 31.8.2006 was pleased to acquit the applicant for the 409, 218 r/w 34 of I.P.C. Admittedly, against the said order of acquittal, the State Govt. has filed appeal before the higher forum and in the appeal the case was remanded back for trial to the learned C.J.M., Jalgaon.

5. The learned C.J.M., Jalgaon vide judgment and order dated 4.8.2012 was again pleased to acquit the applicant for the offences U/s 409, 218 r/w 34 of I.P.C. The applicant was kept under suspension.

6. The applicant on 29.4.2013 filed representation to the Deputy Director of Land Records, Nashik Region, Nashik and requested that since she has been acquitted in the criminal case, no departmental proceedings shall be continued against her. However, the respondents

have initiated departmental enquiry against the applicant and in the said D.E. on 7.11.2014 following order was passed:-

“आदेश

१. श्रीमती महाजन यांना दरमहा देय होणारे वेतन व भत्ते यामधून समान हप्त्यात रक्कम रूपये ९,६८,८७९/- या रक्कमेची वसुली करणेत यावी.

२. श्रीमती महाजन यांचा शिक्षा अंमल प्रलंबित रूपये ९,६८,८७९/- या अपहारीत रक्कमेची संपुर्ण वसुली होईपावेतो सुरु राहिल.

३. भविष्यात कोणत्याही कारणास्तव उपरोक्त दरमहाची वसुली करण्यास अडथळा निर्माण झाल्यास अशा प्रकारे जी रक्कम वसुल करणेची प्रलंबित राहिल ती रक्कम श्रीमती महाजन यांचे सेवानिवृत्तीच्या देय होणा-या उपदान / सेवानिवृत्त वेतनातुन वसुल करण्यात यावी.

४. कोणत्याही कारणास्तव श्रीमती महाजन यांचे निलंबन झाल्यास विभागीय चौकशी नियम पुस्तिका चौथी आवृत्ती १९९१ मधील २.८ नुसार सदरची वसुली देय होणा-या निलंबन निर्वाह भत्यातुन करण्यात यावी.

श्रीमती महाजन यांनी सदर आदेश मिळालेबाबत पोच दयावी.”

7. The applicant then filed appeal against the said order passed in the D.E. by the Deputy Director of Land Records, Nashik before the appellate authority i. e. the Settlement Commissioner and Director of Land Records, M.S., Pune. The appellate authority on 13.5.2015 was

pleased to dismiss the appeal filed by the applicant and confirmed the order passed by the Dy. Director of Land Records on 7.11.2014. Being aggrieved by both the orders, the applicant has filed the present O.A. The applicant is claiming that the order dated 7.11.2014 passed by the Deputy Director of Land Records, Nashik in the D.E. and the order passed by the Settlement Commissioner & Director of Land Records, Pune in the appeal filed by the applicant on 13.5.2015 be quashed and set aside.

8. The Res. nos. 1 & 2 have resisted the claim of the applicant by filing affidavit in reply, which has been sworn in by Shri Hiralal Shankar More, Deputy Director of Land Records, Nashik Region, Nashik. The res. nos. 3 & 4 have also filed affidavit in reply, which has been sworn in by one Shri Paresh Vasant Gandhlikar, Deputy Superintendent of Land Records, Sakri, Dist. Dhule. The res. no. 5 has filed separate affidavit in reply, which has been sworn in by Shri Ganesh Waman Gaikwad, Deputy Superintendent of Land Records, Bodvad and holder of additional charge of the post of Deputy Superintendent of Land Records, Jamner, Dist. Jalgaon. The sum and substance of all the affidavit in replies show that the respondents are justifying the order passed against the applicant in the departmental proceedings. It is stated that the D.E. was initiated in which sufficient opportunities were given to the applicant and the D.E. was duly conducted fairly. It is

submitted that the Enquiry Officer has submitted a report on 20.3.2013 after issuing show cause notice to the applicant, the order of punishment came to be passed.

9. It seems from the affidavit in reply filed by the respective respondents that, in the said departmental enquiry in all 5 personnel including the applicant were involved, however, before initiation of D.E. 4 delinquents got retired and it was not possible to initiate a D.E. against those delinquents, who got retired, since the allegations pertain to the period 4 years back of their retirement and, therefore, the D.E. was initiated against the present applicant only. The respondents stated that, there is nothing wrong in initiating D.E. against the present applicant only.

10. Heard Shri Bhausahab S. Deshmukh, learned Advocate for the Applicant and Smt. Sanjivani Deshmukh Ghate, learned Presenting Officer for the Respondents. I have perused the affidavit, affidavit in replies filed by the respective respondents and various documents placed on record.

11. From the facts already discussed hereinabove, it is clear that the applicant along with other employees was tried in the criminal offence before the learned C.J.M., Jalgaon and the learned C.J.M. firstly vide

order dated 31.8.2006 and thereafter vide order dated 4.8.2012 (on remand) was pleased to acquit all persons in the R.C.S. no. 686/2012. The applicant was one of the accused in the said case and, therefore, it is clear that the criminal case against the present applicant has been ended in her acquittal.

12. There is nothing on the record to show that the said judgement has been quashed and set aside by any appellate forum. The D.E. was initiated against the applicant vide memorandum dated 12.9.2011, which was served on the applicant on 26.9.2011. The second order of acquittal was passed on 4.8.2012 by the learned C.J.M. and prior to that the applicant was acquitted on 31.8.2006 by the said Court. In such circumstances, it will be clear that the trial against the accused including the applicant was pending when memorandum of charge was served on the applicant on 26.9.2011. The learned Advocate for the applicant submits that the charges in the criminal trial and those in the D.E. are similar and, therefore, the respondents ought to have stop the D.E. and the applicant has also filed representation to that effect, but the respondents continued the enquiry and passed the impugned order of punishment.

13. The only material point to be considered in this case is whether the impugned order of punishment in the D.E. passed by the res. no. 2

the Deputy Director of Land Records, Nashik Region, Nashik on 7.11.2014 and confirmed by the appellate authority on 13.5.2015 is legal and proper ?

14. Before appreciating the order of punishment, it is material to note that the applicant alone was prosecuted in the D.E. on the ground that all other concerned Officers got retired on superannuation and that the D.E. against them was not permissible under rule 27 of M.C.S. (Pension) Rules, 1982. From the facts, it is clear that for the so called misappropriation alleged against all the 5 persons, they were jointly and severally responsible. These 5 persons include one S/shri Sharad Ramdas Pathak, Suresh Pralhad Lanke, Sudhakar Jagannath Muley, Bhimrao Ganpatrao Likhari and the present applicant Smt. Vandana Shantaram Mahajan. All the 4 accused other than applicant, in the criminal trial, were holding the higher posts. The applicant was working as a Clerk. It seems that the accused Shri Suresh Lanke was working as T.I.L.R. at Jamner during the period from 4.7.1997 to 30.11.1998, from 18.1.1999 till 13.10.1999 and from 14.12.1999 till 31.1.2000. Shri Bhimrao Ganpatrao Likhari was working as a T.R.L.R. during the period from 1.12.1998 to 17.1.1999 and again from 1.4.2000 till 30.4.2000. Shri Sudhakar Jagannath Muley was working as a T.I.L.R. from 14.10.1999 to 13.12.1999 and again from 1.2.2000 till 31.3.2000 and from 1.5.2000 till 31.5.2000. During the period from 1.7.1997 till

30.6.2000 accused Shri Sharad Ramdas Pathak was working as a Assistant at the head office of T.I.L.R., Jamner. The present applicant was working as Clerk in the office of T.I.L.R., Jamner from 8.1.1996 till 30.6.2000.

15. It is alleged that, on inspection, it was noticed that total 39 bills were sanctioned by the Sub Treasury Officer, Jamner and the amounts against the said bills were debited in the name of T.I.L.R., Jamner, but the entries of the said bills were not taken in the bill register and the cash book. It was further noticed that though some bills were sanctioned by the Sub Treasury Officer, Jamner, the whole amount against the said bills was not paid to the concerned employees and only part amount was paid and the remaining amount was misappropriated. The total amount of misappropriation was Rs. 12,73,707/- out of which the present applicant, who was accused no. 1 in the criminal trial, has deposited an amount of Rs. 3,04,828/- and, therefore, it was alleged that the total amount of misappropriation by her is of Rs. 9,68,879/-. It is material to note that all the officers, who were senior in grade to the applicant, have been allowed to get free, since no D.E. was initiated against them and they have been acquitted in the criminal trial and according to the learned Advocate for the applicant, the applicant has been made a scapegoat.

16. The learned Advocate for the applicant submits that the charges levelled in the D.E. and the charges those are framed in the criminal trial are same and, therefore, the very initiation of the D.E. during the pendency of criminal trial and its continuation after acquittal of the applicant and other accused persons is illegal. It is, therefore, necessary to see as to whether the charges in the criminal trial and the D.E. are same.

17. The charges in the D.E. against the applicant have been described in the enquiry report at paper book pages 68 & 69 and the same are as under :-

“दोषारोप - एक

श्रीमती वंदना शांताराम महाजन, कनिष्ठ लिपीक, (निलंबित) तालुका निरीक्षक भूमि अभिलेख, जामनेर यांचे कार्यालयात दिनांक ८.१.१९९६ ते ३०.६.२००० पावेतो कनिष्ठ लिपीक या पदावर काम करीत असतांना त्यांनी खालीलप्रमाणे गैरकृत्य / गैरवर्तणुक करून शासकीय रक्कमेचा मोठ्या प्रमाणावर अपहार केला आहे. यावरून आपण आपले पदाचे कामात नितांत सचोटी व कर्तव्य परायणता ठेवलेली नाही व अशोभनीय वर्तन केले आहे. सबब त्यांनी महाराष्ट्र नागरी सेवा (वर्तणुक) नियम, १९७९ चे नियम ३ (१) (एक) व (दोन) (तीन) चा भंग केला आहे. त्यांनी केलेल्या गैरकृत्याच्या बाबी पुढीलप्रमाणे.

१. देयक नोंदवही, टोकन नोंदवहीची पाने फाडून त्याच देयक नोंदवहीच्या नोंदीवर कापून चिकटविली आहेत.

२. बनावट रक्कमांची आणि बनावट नावांची देयके तयार करून देयक नोंदवहीत व टोकन नोंदवहीत नोंदवून कार्यालय प्रमुखांच्या फसवयूकीने शासकीय रक्कमेचा अपहार केला आहे.
३. कनिष्ठ लिपीकांचा शासकीय रक्कम कोषागारातून आणण्याचा संबंध नसतांना प्रत्येकवेळी मुख्यालय सहाय्यक यांच्या नकळत जावून देयकांच्या रक्कमा कोषागारातून आणल्या आहेत.
४. मासिक खर्च पत्रके तयार करताना प्रत्यक्ष कोषागारात सादर करून आणलेल्या रक्कमा व जमाखर्च नांदवहीत घेतलेल्या रक्कमा यांचा मेळ न घेता खर्च पत्रक कार्यालय प्रमुखांचे स्वाक्षरीने सादर केले आहे.
५. जे कर्मचारी आस्थापनेवर काम करीत नाहीत अशा कर्मचा-यांची / व्यक्तींची नावे देयकात दाखल करून बनावट रक्कमा देयके कोषागारातून मंजूर करून घेवून शासकीय रक्कम परस्पर आणून अपहार केला आहे.
६. कनिष्ठ लिपीक या पदास अशोभनीय कृत्य करून कर्तव्यपराणता राखली नाही.
७. फौजदारी कार्यवाहीस पात्र ठरले असून गुन्हेगार म्हणून चौकशी करणेत येत आहे.”

18. From the charges it is clear that the allegations against the applicant apart from irregularities committed by the applicant are that, she has committed misappropriation of huge amount, created false and

fabricated documents etc. etc. Though exact amount of misappropriation is not mentioned in the charge sheet, it has been held that the applicant has misappropriated an amount of Rs. 9,68,879/- considering the fact that she has already deposited an amount of Rs. 3,04,828/-. Thus, the applicant has been held responsible for total amount of misappropriation. In such circumstances, it will be necessary to see as to what were the charges against the applicant in the criminal trial.

19. The points framed in the findings recorded in criminal trial are as under :-

%	<u>POINTS</u>	<u>FINDINGS</u>
(1)	Does prosecution prove that, accused Nos. 1 to 5 were entrusted with valuable cash amount Rs. 12,73,707/- during the period from 01.02.1998 till 31.05.2000 ?	...Negative
(2)	Does prosecution prove that, accused Nos. 1 to 5 in furtherance of their common Intention, committed criminal breach of trust by misappropriating above stated amount for their wrongful gain ?”	...Negative.
(3)	Does prosecution prove that, accused Nos. 1 to 5, in furtherance of their common intention, prepared false record of bills and GPF advance, knowingly that said bills are false and Incorrect, and with intention to cause loss to the government money ?	...Negative

(4) What order ?**...Accused are acquitted**

20. I have perused the judgment and the order passed by the learned C.J.M. in R.C.S. no. 686/2002. It is material to note that in the said case the allegation against the applicant along with 4 others was that, all the accused were entrusted with valuable cash of Rs. 12,73,707/- from 1.2.1998 till 31.5.2000 and that they have in furtherance of their common intention, committed criminal breach of trust and misappropriated above stated amount for their wrongful gain. It was also alleged that all the accused including the present applicant in furtherance of their common intention, prepared false record of bills and G.P.F. advance, knowingly that said bills were false and incorrect, and with intention to cause loss to the Government. All these points are answered in ~~NEGATIVE~~ and all accused including the applicant are acquitted.

21. I have also perused the order passed by the disciplinary authority, who imposed initial punishment on the applicant as well as the order passed by the appellate authority. It seems that the disciplinary authority has relied upon the statement given by the applicant during the D.E. on 31.5.2000, whereby she has admitted the misappropriation and has deposited an amount Rs. 3,04,828/-. However, only on the

basis of such so called admission, the applicant should not have been punished.

22. The learned Advocate for the applicant submits that the applicant was assured that, no case will be filed against her and accepting such assurances, she has deposited the amount of Rs. 3,04,828/-. It is material to note that the applicant being a Clerk cannot be said to be responsible alone for so called misappropriation. She must be working under the various T.I.L.Rs., who were superior officers and officers responsible for disbursement of the bill amounts. It is difficult to digest that the applicant alone has done this alleged misappropriation, considering her post of Clerk. It is material to note that, though as many as 5 Officers were found responsible for the alleged misappropriation of Rs. 12,73,707/-, the competent authority has held the applicant alone responsible for the entire misappropriation and it is only because other officers responsible for the entire misappropriation got retired and no D.E. can be initiated against them. Such approach by the competent authority cannot be accepted to be legal and proper. As seems from the report of the Enquiry Officer, it is clear that the Enquiry Officer was knowing full well that the applicant alone was not responsible.

23. The Enquiry Officer also considered the judgment delivered by the competent criminal Court and stated that the applicant was

acquitted for want of evidence and that does not mean that she was not responsible. Such observations cannot be accepted.

24. In the criminal trial, it has already been held that neither the applicant nor other accused were guilty for misappropriation or fabrication of record and, therefore, the observations of the Enquiry Officer that the applicant alone was responsible, should not have been accepted by the appellate authority.

25. Perusal of the judgment in the criminal case no. 686/2002 and the proceedings of the D.E. clearly show that the allegations in both the proceedings were same and were based on the similar set of circumstances. The witness in the criminal trial as well as D.E. were also same and the documents on which the department relied in the D.E. are also same. It is material to note that, no witness has been examined in the D.E. and the competent authority has placed reliance only on some documents including the alleged statement given by the applicant on 31.5.2000. Much importance has been given to the fact that the amount of Rs. 3,04,828/- was deposited by the applicant and this was held to be a prima-facie evidence of her guilt.

26. In the representation submitted by the applicant on 4.8.2012 (Annex. A.2), the applicant has stated that, she never admitted the

alleged misappropriation and that she has given statement under the pressure of the superiors and that she was forced to write such statement. In my opinion, the Enquiry Officer as well as the disciplinary authority, who imposed punishment on the applicant did not consider the evidence against the applicant. From the impugned order, it seems that, no witness was examined in the D.E. Considering the fact that similar allegations in the criminal case have been dealt with by the competent Court, the competent authority ought not to have ignored the judgment of acquittal and in any case it is surprising as to how the applicant can be held responsible for the entire misappropriation of amount of Rs. 12,73,707/- ignoring the illegalities committed by other accused persons in the criminal case against whom the D.E. was not initiated on the ground that they have been retired on superannuation.

27. The disciplinary authority i. e. the Deputy Director of Land Records, Nashik Region, Nashik in his order of punishment in the D.E. has observed that on 31.5.2000 the applicant has referred to a statement in admission, in which she has stated as under :-

“दि. ३१.५.२००० रोजी दिलेल्या जबाबत अपहार केल्याचे कबुल असलेमुळेच अपचारी यांनी रू. १२,७३,६०६/- या अपहारीत रकमेपैकी दि. ३१.५.२००० रोजी रक्कम रूपये १) २८,५९९/- २) ४८,६७३/- ३) ७१,५४४/- ४) १,५६,०१२/- असे एकूण रक्कम रूपये ३,०४,८२८/- (अक्षरी रक्कम रूपये तीन लाख चार हजार आठशे

अठठावीस मात्र) एवढी रक्कम स्वतःचे स्वाक्षरीने चलनाने शासकीय खजिन्यात भरणा केली आहे. त्यामुळे श्रीमती महाजन यांनी अपहार केल्याची बाब प्रथमदर्शनीच निदर्शनास येत आहे.....”

28. Even if such admission is accepted, though not proved, the applicant could have been held responsible for Rs. 3,04,828/-. However, the applicant has been held responsible for entire amount of misappropriation i. e. Rs. 12,73,707/- and considering the fact that she has deposited an amount of Rs. 3,04,828/-, she has been directed to deposit the remaining amount of Rs. 9,68,879/-. The possibility that, the applicant must have given alleged statement of admission under pressure of the superior officers and also because she was assured that no action will be taken against her, if she gives such admission statement, cannot be ruled out.

29. As already stated, the competent criminal Court has already came to the conclusion that the applicant is not guilty either for misappropriation or for alleged fabrication of record and, therefore, in such circumstances, the conclusion drawn by both the Competent Authorities about the guilt of the applicant on the same set of facts cannot be accepted as legal.

30. In view of the discussion in foregoing paragraphs, I pass following order :-

ORDER

- (i) The O.A. no. 538/2015 is allowed in terms of prayer clause 7 (B).
- (ii) Consequently the impugned order passed by the appellate authority on 13.5.2015 confirming the order passed by res. no. 2 dated 7.11.2014 are quashed and set aside.
- (iii) The applicant stands exonerated from the D.E.

There shall be no order as to costs.

MEMBER (J)