

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 594 OF 2015

DISTRICT : RATNAGIRI

Shri Mahadev Vasudeo Gawas,)
Working as Hawaldar, attached to)
Ratnagiri Special Prison, Jail Road,)
Ratnagiri. R/o: Subhedar Chawl,)
Room no. 12, Dist-Ratnagiri.)...**Applicant**

Versus

1. The Special Inspector General of)
Police [Prison],)
South Division, Byculla,)
Mumbai 400 008.)
2. The Additional Director General of)
Police and Inspector General of)
Prisons, [M.S], Pune,)
Having office at Old Central Bldg,)
Pune - 1.)...**Respondents**

Shri B.A Bandiwadekar, learned advocate for the Applicant.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

**CORAM : Justice Mridula Bhatkar (Chairperson)
Mrs Medha Gadgil (Member) (A)**

DATE : 14.06.2022

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. The applicant who was working as Havaldar in Ratnagiri Prison Jail Road, Ratnagiri has challenged the order dated 20.9.2014 reverting him from the post of Havaldar to the post of Jail Guard for the period of 3 years. He prays that the order dated 20.2.2015 passed by the Appellate Authority, Respondent no. 2, be quashed and set aside and he further prays for grant of consequential service benefits.

2. Brief facts of the case are as under:-

The applicant was attached to Kalyan District Prison, Thane as Havaldar in January-February, 2013. One Prisoner Ashokkumar Jaiswal lodged in Kalyan District Prison, Thane was found talking on his Mobile with co-accused, who was on bail. The duty Havaldar, Mr P.R Nikam confiscated the said Mobile phone and took search of the said Barrack. He found in the search Mobile, battery with sim cards. The investigation was conducted by the authority and it was found that the applicant has accepted the said Mobile phone from friend of under trial prisoner Vasu Vadhvani one Dilip Mengani, who was lodged in Kalyan District Prison. For this illegal transaction, the applicant has accepted bribe of Rs. 30,000/- on 17.1.2013. On 20.1.2013 he was assigned night duty and he was supposed to report for duty at 1.30 pm. However, instead he attended duty at 3.30 pm when the day Guard has left the Prison and has handed over the said mobile phone at night on 20.1.2013 to Dilip Mengani. Other under trial

Prisoner Mr Mahesh Patil, who was lodged in the same barrack has witnessed the applicant handing over the said phone to Mr Mengani. Mengani started giving cell phone to other under trial Prisoners by accepting some money from them. It is alleged that while on duty Hawaldar Nikam on 2.2.2013, seized mobile phone from the accused Mr Jaiswal from Room no.10. The authority took decision to initiate departmental enquiry against the applicant and issued charge sheet under Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 on 13.6.2013. In the enquiry the applicant was held guilty and the Enquiry Officer submitted his report on 19.3.2014. Thereafter, show cause notice was issued to the applicant on 1.8.2014 calling upon him as to why his suspension period should not be treated as such and why he should not be reverted from the post of Hawaldar to that of Jail Guard for a period of 3 years. The Respondent no. 1 thereafter passed the impugned order dated 20.9.2014. The applicant preferred appeal against the said order on 6.10.2014. However, it was dismissed by Respondent no. 2, on 20.2.2015.

3. Respondent no. 1, filed affidavit in reply dated 7.12.2015 through Shri Bharat Mahadev Bhosale, working as Superintendent, Mumbai Central Prison, Mumbai, thereby refuting all the allegations and contentions raised by the applicant. The affidavit in rejoinder was filed by the applicant on 5.1.2016 and responding to that, sur-rejoinder dated 10.8.2021 was filed by Respondent no. 1, through Shri Bharat Mahadev Bhosale, working as Superintendent in the office of the Superintendent, Kalyan District Prison, Kalyan.

4. Learned Advocate has submitted that the Departmental Enquiry was illegally initiated and suffers from procedural flaws. He mainly read over the evidence of the witnesses recorded by the

enquiry officer. The delinquent Officer i.e. the Applicant was represented by his friend who cross examined all the witnesses. Learned Advocate has submitted that in the Examination-in-Chief no witness has stated that the cell phone was handed over by the Applicant to Dilip Mengani. There is no evidence to prove that the applicant has accepted the bribe of Rs.30,000/- for handing over his cell phone from Mr. Wadhvani to Mengani. Similarly, the witness Mr. P.K Nikam and other jail guards have stated that at the time of entry in the jail personal search is taken of all the guards and on 2nd February 2013, no objectionable object was found in the personal search of the applicant. Thus how and when the cell phone was used by the other accused Mr. Ashok Kumar Jaiswal is not proved and not answered by the Respondent in D.E. The Enquiry Officer has without any basis arrived at the conclusion of the guilt against the Applicant.

5. Learned Advocate for the Applicant pointed out the statements of some of the witnesses which were recorded prior to the D.E. conducted by the Officer. These statements were recorded behind the back of the applicant and therefore the applicant has no opportunity to question the incriminating contents in the statements of those witnesses and when the witnesses at the time of cross examination in D.E. has answered in favour of the applicant then that incriminating portion in the D.E. has no value. He heavily relied on the relevant question and answers in the cross examination of the witnesses. He relied on the question and answer of No.16 and 17 in the examination-in-chief of Mr. Kundalik Ramdas Nikam where the question was asked about threats given by the Applicant to witness Mr. Dilip Mengani. He stated that he did not have knowledge. In the cross examination of witness Mr. Arvind Maruti Shinde, Constable the Answer given to Question No.5 was in favour of the Applicant in respect of his

personal search of Mengani on 02.02.2013. No incriminating article was found on the person of Mr. Mengani. Learned Advocate referred to the evidence of cross examination of Mr. Mahesh Patil where he has stated that he is not the witness of Applicant handing over cell phone to under trial prisoner, Mengani, but it was hearsay. Learned Advocate further pointed out answer given by witness Mr. Dilip Jamtmal Mengani, that his statement made on 09.04.2013 was under the pressure of Under Trial Prisoner, Mr. Jaiswal. He has denied that the Applicant, Mr. Gawas has handed over the cell phone to him during the Examination-in-Chief. In the cross examination of Mr. Mengani, he has stated that he got cell phone from Under Trial Prisoner Mr. Ashok Lingate and it was necessary for the jail authority to examine Mr. Ashok Lingate as Mr. Mengani has explained how he received the cell phone.

6. He referred and relied on the relevant admissions given by the witness B.D. Agavane in the cross examination wherein he admitted that he and one Bhagkar took personal search during the period from 15.01.2013 to 02.02.2013 of Under Trial Prisoner, Dilip Mengani and Mr. Ashok Kumar Sagar and cell phone was not found with them. Learned Advocate pointed out evidence of cross examination of R.H. Bhagkar and he pointed out that the witnesses also collaborated on this point to Jailor Agavane. Learned Advocate relied on the deposition of UTP, Mr. Ashish alias Ajya Ghadigaonkar where he has stated in the chief that he had no knowledge that the cell phone found with Jaiswal was of Mengani. He refused that the Applicant, Mr. Gawas went and met Mengani in ward No.3. He argued that while assessing the order of the Enquiry Officer dated 20.09.2014 he found that the entire discussion was biased and was pre-determined to hold the Applicant guilty. The findings are unfair. The reasoning is not correct, especially findings that this cell phone though was not

found in the personal search of the Applicant other different ways are always explored to take mobile in the prison, is a very general remark and the authority has erroneously applied this logic in the case of Applicant.

7. Learned Advocate further argued that the order of Appellate Authority passed by the Additional I.G. is illegal and without proper reasoning. The same reasoning of the enquiry officer is adopted by the Appellate Authority and the order is only repetition and based on surmises. The Appellate Authority has committed the mistake in accepting the statement of Mr. Mahesh Patil that he saw Mr. Mengani handing over cell phone to Mr. Jaiswal. Learned Advocate has submitted that on this ground these two orders should be set aside.

8. Learned counsel submitted that the suspension period mentioned in the main order was uncalled for. It was a separate proceeding as per Sub Rule (5) of Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Services and Payment during Suspension, Dismissal and Removal) Rules, 1981, as no notice was served on him.

9. Learned counsel Mr Bandiwadekar has submitted that sub rule 8(20) of the Maharashtra Civil Service (Discipline & Appeal) Rules, 1979, is not followed by the Enquiry Officer as required. He submitted that it was obligatory on the part of the Enquiry Officer to summarize the evidence which is sated by the witnesses during the departmental enquiry against the delinquent officer. In the present case, no such questions were asked and the applicant was not made aware of the incriminating evidence.

10. In support of his submissions, learned counsel for the applicant relied on the following judgements:-

(a) MASUOOD ALAM KHAN-PATHAN Vs. STATE OF MAHARASHTRA & ORS. 2009 (5) Mh.L.J 68.

(b) STATE OF MAHARASHTRA & ORS Vs. WASUDEO MADHUKARRAO PANDE, 2021 (5) Mh.L.J 364.

11. Learned C.P.O in order to meet the objections raised by the learned counsel for the applicant regarding Rule 8(20) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, relied on the following judgments:-

(i) Judgment of the Division Bench of the Hon'ble Bombay High Court dated 26th September, 2018, in the case of Shri B.M Mittal Vs. Union of India & Ors, W.P 865/2005

(ii) Judgment of the Hon'ble Supreme Court in SUNIL KUMAR BANERJEE Vs. STATE OF WEST BENGAL & ORS, (1980) 3 SCC 304.

12. Learned C.P.O submitted that though the compliance under Rule 8(20) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 is mandatory on the part of the Enquiry Officer, it is necessary for the delinquent officer to show prejudice caused to him, if the procedure under the said rule is not complied with. She submitted that in the present case, the Enquiry Officer has put questions to that effect and a separate record is maintained by the Enquiry Officer. The contentions raised by the applicant that he was not aware of the evidence against him which has come on record before the Enquiry Officer is false. The applicant in fact has dealt with all the evidence and the charges in the enquiry in his written statement submitted by him to the Enquiry Officer. Moreover, he did not raise these objections at any stage of the enquiry till today before the Enquiry Officer, but before this Tribunal. Learned C.P.O submitted that the Respondents have proved the case of misconduct against the applicant and the order of punishment passed by the Respondent no. 1 and the order in

appeal passed by Respondent no. 2 are legal considering the entire evidence of the witnesses adduced before the Tribunal.

13. We have considered the entire enquiry report placed before us and the submissions of Mr Bandiwadekar, especially on the evidence of the witnesses. Considering their evidence, circumstances, sequence and the manner in which cell phone was found, we are of the view that the evidence tendered before the Enquiry Officer is sufficient to hold him guilty by the Enquiry Officer. Certain facts can be connected with logical inference based on the deposition of the witnesses and the facts of the case. The main challenge raised by the learned counsel for the applicant on a procedural lacuna is proper compliance of Rule 8(20) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. Hence the rule is reproduced below:-

“The inquiring authority may, after the Government servant closes his case and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him”.

Hence, we need to address it by referring the four cases relied by both the learned counsel.

14. After hearing learned counsel for the applicant, we are of the view that this is the main important point highlighted is a procedural flaw in the enquiry under sub rule (20) Rule 8. We have gone through both the judgments of the Bombay High Court, wherein relief was granted on the basis of procedure/non-compliance of Rule 8(20) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. In the case of Wasudeo and also in the earlier judgment in Masuood’s case (in which the Chairperson herself was one of the Judges of the Division Bench of

the Hon'ble Bombay High Court), the Division Benches have taken a view that sub-rule 20 of Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, is similar to Section 313 of Criminal Procedure Code, which is based on the principles of natural justice, i.e. audi alteram partem, that is giving opportunity of audience to the delinquent officer. It is a matter of fairness to inform the accused or the delinquent officer that this is the evidence against him stated by the witnesses during the examination in chief and he has to be given opportunity to explain the circumstances.

15. We do take note of the fact that the learned C.P.O has rightly submitted that the Enquiry Officers conducting the inquiries in most of the cases are not the Law Graduates. They do not know what are the legal implications or what is meant by principles of natural justice. It is, therefore, too much to expect from them to summarize the incriminating circumstances to the delinquent officer. She submitted that in the present case sub rule 8(20) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 is followed and a general question is put whether the applicant want to say anything more in his defence. The delinquent officer has answered that he would like to put everything in the written statement.

16. Sub rule 8(20) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 & section 313 of CrPC, as the words and terms used are similar as adopted mutatis mutandis. The word "generally" which is mentioned in sub rule 8(20) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, is also present in section 313 of CrPC. However, sub rule 8(20) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 cannot be read and interpreted with the same spirit which is

applicable while implementing Section 313 of CrPC. One of the Members of the Bench of the Tribunal is always from the administration who helps to point out the practical administrative issues, facts and procedure to be followed, difficulties faced in the administration so that hyper-technical view or pedantic approach in the administration of justice can be avoided to achieve the golden mean of administration and justice.

17. In both the judgments **MASUOOD ALAM & WASUDEO (supra)**, it is held that the said rule is worded akin to Section 313 of Cr.PC. In both the cases the view is taken that the departmental enquiry itself is exposed to nullity in view of infraction of sub rule 8(20). In the case of **MASUOOD (supra)**, it was held that the punishment inflicted was disproportionate to the alleged misconduct and so it was interfered with. In the case of **WASUDEO (supra)**, it was held that it is a procedural safeguard of fairness and the delinquent employee must be made aware of the circumstances in the evidence against him. It is necessary for the Enquiry Officer to show the substantial compliance of sub-rule 20 of Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. The Writ Petition filed by the State was dismissed.

18. It is to be noted that the case of **MASUOOD (supra)**, was not shown to the Division Bench in the case of **WASUDEO (supra)**. So it was not referred to. Similarly in the judgment of **Shri B.M Mittal Vs. Union of India & Ors, W.P 865/2005**, the Division Bench of the Hon'ble Bombay High Court was not made aware of the earlier judgment in the case of **MASUOOD**. Similarly the order of the Division Bench in the case of Shri B.M Mittal, W.P 865/2005 (supra) was not placed before the Division Bench while deciding the case of **WASUDEO (supra)**. It is interesting to note that in the case of Shri Mittal, the Division Bench of the Hon'ble Bombay High

Court has relied on the judgment in the case of **SUNIL KUMAR BAJERJEE Vs. STATE OF WEST BENGAL & ORS, (1980) 3 SCC 304**, and it was not made available to the Division Bench in the case of **MASUOOD (supra) & WASUDEO (supra)**. Though the view taken by the Division Bench in the case of **MASUOOD (supra) & WASUDEO (supra)** is same which is in favour of the delinquent officer and thereby expressing that strict compliance of Rule 8(20) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 is mandatory, the ratio laid down in the judgment of the Hon'ble Supreme Court in **SUNIL KUMAR BANERJEE's** case is more explanatory and the same was adopted by the Division Bench of the Bombay High Court in the case of **Shri B.M MITTAL**.

19. Under the principles of stare decisis, we are bound on the judgment of **SUNIL KUMAR** (supra). In the said case the appellant Sunil Kumar was the member of the Indian Administrative Service, against whom the enquiry was held under Rule 8 of the All India Services Disciplinary Rules, 1969. He was held guilty and the punishment imposed on him was reduction in the pay scale. Against the order of the Division Bench of the Hon'ble High Court, who dismissed the appeal filed by the appellant, the Hon'ble Supreme Court dealt with the issue of following the procedural rule of 8(19) of the All India Services Disciplinary Rules, 1969. The said rule is identical to Rule 8(20) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 which is reproduced below:-

“The inquiring authority may, after the Government servant loses his case and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.”

It was held that the said Rule is akin to Section 313 of the Cr.PC. The Hon'ble Supreme Court has held that unless a prejudice is shown by the delinquent officer due to non-compliance of Rule 8(19) of the All India Services Disciplinary Rules, 1969, it cannot be said that there is a miscarriage of justice. The Hon'ble Supreme Court held that if there is a failure to comply with the requirement of Rule 8(19) of the said Rules, then it does not vitiate the enquiry unless the delinquent officer is able to establish prejudice. The Hon'ble Supreme Court in the said case held that the appellant was fully aware of the allegations against him and dealt with the allegations in the written defence and the view was taken that the Disciplinary Authority has not committed any serious or material irregularity. The decision of the Hon'ble Supreme Court in the case of **SUNIL KUMAR** is very enlightening and takes the law further especially when the departmental enquiry is conducted not by the Judicial Officer but by the Administrative Officer who may not be necessarily graduate in law or may not be having a legal knowledge or knowledge of legal implications in respect of observance of the procedure.

20. In the present case, it is not that the Enquiry Officer did not put questions under Rule 8(20) of the Rules to the delinquent officer after recording the evidence of the witnesses. After completion of evidence of all the witnesses the Enquiry Officer on a separate sheet has recorded the statement of the delinquent officer and those two separate sheets are produced before us. The Enquiry Officer has asked him whether he heard the evidence which was recorded by him. He was asked as to whether he wanted to say anything more in respect of the said evidence. It is true that he did not cull out the evidence against the applicant and he asked him last question as to whether the delinquent officer wanted to say anything about the evidence. He answered that he

would say about his evidence in his written statement. He did not answer that he did not understand what he wanted to say. It is to be noted that the applicant did not raise this point when he filed the first appeal. His statement was recorded 29.3.2014 and the applicant has signed below it. The said statement is reproduced below:-

अपचारी श्री महादेव वासुदेव गवस, हवालदार यांचे विरुद्धचे चौकशीतील दुसरा जबाब.

मी महादेव वासुदेव गवस समक्ष विचारले वरून सांगतो की,

प्रश्न क्र.०१ :- तुम्हांस विरुद्धचालू असलेल्या विभागीय चौकशीमध्ये सरकारी साक्षीदाराचे उलट तपासणी घेताना पुर्ण सवलती मिळाल्या आहे काय

उत्तर :- होय

प्रश्न क्रमांक ०२ :- तुम्हांस सरकारी साक्षीदाराचे जबाब व पुराव्याबाबत हजर केलेल्या कागदपत्राच्या नकला मिळाल्या आहेत काय

उत्तर :- होय

प्रश्न क्रमांक ०३ :- तुम्हांस बचावाचे साक्षीदार दयावयाचे आहेत काय

उत्तर :- होय

प्रश्न क्रमांक ०४ :- तुम्हांस बचावाचे दृष्टीने काही कागदपत्रे सादर करावयाची आहेत काय
उत्तर अंतिम निवेदन सादर करतेवेळी बचावाचे पुरावे व कागदपत्रे सादर करण्यात येईल.

प्रश्न क्रमांक ०४ :- तुम्हांस आणखी काही सांगावयाचे आहे काय ?

उत्तर :- अंतिम निवेदन सादर करतेवेळी सादर करण्यात येईल

वरिल जबाब मी वाचून पाहिला तो माझे सांगणे प्रमाणे बरोबर आहे.

समक्ष

Sd/-
अपचारी यांची सही

Sd/-

चौकशी अधिकारी यांची सही, नांव हुददा

अपचारी श्री महादेव वासुदेव गवस, हवालदार यांचे विरुद्धचे चौकशीतील अखेरचा जबाब.

मी महादेव वासुदेव गवस समक्ष विचारले वरून सांगतो की,

प्रश्न क्र.०१ :- तुम्हांस बचावाचे साक्षीदार तपासण्यांसाठी संपुर्ण सवलती मिळाल्या आहेत काय
उत्तर :- होय

प्रश्न क्रमांक ०२ :- तुम्हांस विभागीय चौकशी मध्ये घेतलेल्या जबाबाच्या व कागदपत्रांच्या नकला मिळाल्या आहेत काय

उत्तर :- होय

प्रश्न क्रमांक ०३ :- तुम्हांस तुमचे विरुद्ध चालू असलेल्या विभागीय चौकशी मध्ये संपूर्ण सवलती मिळाल्या आहेत काय ?

उत्तर :- होय

प्रश्न क्रमांक ०४ :- तुम्हांस आणखी काही सांगावयाचे आहे काय ?

उत्तर :- अंतिम निवेदन सादर करतेवेळी सादर करण्यात येईल

वरिल जबाब मी वाचून पाहिला तो माझे सांगणे प्रमाणे बरोबर आहे.

समक्ष

Sd/-
अपचारी यांची सही

Sd/-
चौकशी अधिकारी यांची सही, नांव हुददा

The applicant submitted his written statement on 8.5.2014 as per the charge he has analyzed the evidence of each and every witness in writing as per the two charges which were faced by him.

21. We also rely on para 27 of the judgment of the Hon'ble Bombay High Court in the case of Shri S.B Mittal, (supra) which refers to decision of the Hon'ble Supreme Court in the case of **SUNIL KUMAR (supra)**, as under:-

“27. We are similarly of the view that failure to comply with the requirements of rule 8(19) of the 1969 rules does not vitiate the enquiry unless the delinquent officer is able to establish prejudice. In this case the learned single judge of the High Court as well as the learned Judges of the Division Bench found that the appellant was in no way prejudiced by the failure to observe the requirement of Rule 8(19). The appellant cross-examined the witnesses himself, submitted his defence in writing in great detail and argued the case

himself at all stages. The appellant was fully aware to the allegations against him and dealt with all aspects of the allegation in his written defence. We do not think that he was in the least prejudiced by the failure of the Enquiry Officer to question him in accordance with rule 8(19).” (emphasis placed).

We, further refer to para 30 of the judgment in **S.B Mittal’s** case which is reproduced below:-

“30. The Constitution Bench of the Apex Court in Managing Director, ECIL, Vs. B. Karunakar (1993) 4 SCC 727 has held that the theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of denial to him of the report, has to be considered on facts and circumstances of each case. Where therefore, even after furnish of the inquiry report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and get all consequential benefits. This would amount to rewarding dishonest and the guilty and thus to stretching the concept of the natural justice to illogical and exasperating limits. This amounts to an unnatural expansion of natural justice which in itself antithetical to justice.” (emphasis placed).

22. According to the learned counsel for the applicant Lingte and Vasu Wadhvani are the necessary witnesses. However, the submission of non-examination of these two witnesses is not tenable. It is a settled position that the State who were prosecuting

the delinquent officer have collected information in a preliminary confidential enquiry that applicant has taken mobile in the Jail and it was handed over by him to Mengani. Jaiswal was caught red handed when he was using it and the fact that he was found talking on cell phone in the Jail is established. Jaiswal has disclosed the name of Mengani. So Mengani was made witness and not Lingate. He also did not deny the possession of the cell phone, but he said that he got the cell phone from Mr Lingte. Taking name of Mr Lingte is a obvious lie in the mouth of Mengani. Nodoubt, though it was a false statement, ultimately, the evidence of the witness is required to be analyzed, assessed and the evidence should stand to the reason and if found true is to be accepted. The standard of proof in the criminal trial is beyond reasonable doubt, but in the departmental enquiry, it is based on general principles of natural justice and the common man's logic of finding the truth. Even in the criminal trials the prosecution is not required to prove the case beyond all the doubts but reasonable doubt. After going through the final written statement of the applicant, we are satisfied that the applicant was aware of the incriminating evidence against him and he has answered to those situations. We are, therefore, of the view that no prejudice is caused to the applicant only because the incriminating facts were not culled out by the deposition of witnesses and put to him. The facts are proved on the basis of circumstantial evidence. The Enquiry Officer in the present case has analyzed and drew inference on the basis of available statements so also the deposition of the witnesses and certain facts, which were unfolded before him.

23. Under such circumstances, we are of the view that there is no flaw in the enquiry conducted by the Enquiry Officer and no prejudice is caused to the applicant. We are of the view that report

of the Enquiry Officer is not based on speculation or surmises, but it a very reasonable logical finding of holding the applicant guilty.

24. In view of the above, we find no merit in the Original Application and the same stands dismissed.

**Sd/-
(Medha Gadgil)
Member (A)**

**Sd/-
(Mridula Bhatkar, J.)
Chairperson**

**Place : Mumbai
Date : 14.06.2022
Dictation taken by : A.K. Nair.**

D:\Anil Nair\Judgments\01.06.2022\O.A 594.15, Reversion order challenged, Chairperson and Member, A.doc