

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO 943 OF 2016**

DISTRICT : MUMBAI

Dr C.G Gaikwad)
Retd as Assistant Director of Health)
Services, [Malaria & Filaria],)
Having office at Pune.)
R/o: 22, E/48, Sector-12,)
Ajinkyatara CHS, Kharghar,)
Navi Mumbai.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Principal Secretary,)
Public Health Department,)
Mantralaya, Mumbai 400 032.)

2. The Hon'ble Minister for)
Water Supply and Sanitation,)
Government of Maharashtra,)
Mantralaya, Mumbai 400 032.)...**Respondents**

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

Shri A.J Chougule, learned Presenting Officer for the Respondents.

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

DATE : **27.02.2023**

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. In this Original Application, the applicant challenges the order dated 28.9.2015 and also the order of the Appellate Authority, Respondent no. 2, dated 5.7.2016, thereby saddling the punishment of reduction of 25% per month from pension payable to the applicant permanently.

2. Learned counsel for the applicant has submitted that in Charge no. 1, no specific mention of breach of sub-rule 3 of the M.C.S (Conduct) Rules, 1979 is mentioned. Charge no. 2- Dr Ulhas Vasave was given the posting as permanent Medical Officer in St. Georges' Hospital, Mumbai by order dated 13.7.2009. However, the applicant did not allow him to join on the said post. The charge was proved. Charge no. 3. Applicant did not allow Dr Surekha Chabuksawar, Medical Officer, PHC, Dahagaon, Dist- Thane to joint at Government Hospital, Old Custom House, Mumbai. The said charge was not proved.

3. Learned counsel has submitted that the applicant retired on 31.5.2013. All the incidence has taken place in the year 2009. There is no discussion or reasoning by the disciplinary authority and it lacks application of mind while passing the order. The order of the Enquiry Officer is a cryptic order and the order of the Appellate Authority is also cryptic and it is not consistent with the appeal memo. The impugned order was passed after the retirement of the applicant. Rule 27(2) of the Maharashtra Civil Services (Pension) Rules, 1982 is not followed. Learned counsel for the applicant submits that there is no pecuniary loss to the Government. Secondly there is no finding that the applicant is

found guilty of grave charges. Learned counsel submitted that the pension can be withheld if the charges are grave and that the punishment imposed is excessively high and disproportionate. Learned counsel for the applicant further submitted that this Tribunal has given directions on 18.4.2013 in O.A 213/2013 to complete the departmental enquiry within four months. However, the enquiry was completed after a period of 1 ½ years. Charge sheet was issued on 16.11.2011 and the impugned order was passed on 28.9.2015 and the Appellate order was passed on 5.7.2016.

4. Learned counsel relied on the reply given by the applicant to the Memo. The enquiry was going on from 2.5.2012 to 2.5.2014 and he has cooperated with the enquiry. The applicant has raised objection that during the enquiry two Presenting Officers were changed and the enquiry report which was submitted earlier was not accepted but the Enquiry Officer was asked to submit another report and this is the breach of the procedure. Earlier there was enquiry conducted in the year 2009. Apart from the departmental enquiry conducted in the year 2009, Committee of four persons inquired into the alleged act of 2009. In that applicant was charged and the report was submitted 1.9.2009. Again, for the same charge the present D.E was initiated. Learned counsel further submitted that Dr Kavita Tilwani and Dr Kotwal were also to be held responsible in all these charges as it was a team work. Learned counsel submits that the applicant was not heard and the evidence of Dr Nitin Patil was not recorded despite of sufficient evidence and applicant was held guilty. Learned counsel submitted that the Respondents wanted to plug the loop holes. Learned counsel submitted that the disagreement notice given by the disciplinary authority to the applicant expressing dissent with the Enquiry Officer's report. No opportunity was given to the applicant

regarding earlier report of 2009. Learned counsel submitted that the report dated 1.9.2009 was considered by the Disciplinary Authority. Learned counsel submits that as per Annexure-4, 39 documents were supplied to the applicant. In these 39 documents there is no reference of the report of Dr Rekha Davar dated 1.9.2009. Learned counsel has submitted that second show cause notice was given to the applicant. In the second show cause notice dated 18.4.2015 no reasoning is given by the competent authority. However, punishment of reduction of 25% in pension with permanent effect was imposed on the applicant. Thereafter, applicant filed reply to the second cause notice on 14.5.2015. Thereafter the Respondent-State imposed the impugned punishment dated 28.9.2015. Learned counsel submits that the applicant by letter dated 18.5.2013 has requested the Enquiry Officer to furnish copies of the relevant documents and the evidence for the purpose of his defence. Learned counsel for the applicant referred to the reply given by Shri B.L More, Presenting Officer on 31.5.2013. It was informed that the documents which are mentioned in Annexure-4 of the charge sheet that they are supplied and the letter discloses the pages of documents, i.e., from 1 to 325. Mr More has further stated in the said letter that documents at point no. 1, relate to charge no. 1 are not available and so the applicant was required to procure those documents at the Government level.

5. Learned counsel has submitted that the post of Medical Officer was abolished on 1.3.2009. Dr Chabukswar was relieved from the earlier post on 11.6.2009. Dr Sheetal Sankhe, Medical Officer was already posted on the abolished post and in her place Dr Chabukswar was posted. The applicant wrote to the Deputy Director, stating that the post is already abolished on 1.3.2009. Later on both the Doctors were posted in different places. Dr.

Chabukswar was issued order on 12.6.2009 and she joined on 15.6.2009.

6. Per Contra, learned P.O pointed out from the record that on 18.7.2014 the Desk Officer has written letter to the Enquiry Officer and in that he has mentioned the reference of the documents at pages 9 to 15 received by the applicant which includes the enquiry report dated 1.9.2009 of Dr Rekha Davar. First witness was examined on 24.2.2014. Dr K.J Deshmane. Dr Rekha Davar was examined on 24.2.2014. Dr Konvilkar was examined on 24.2.2014. Dr Ulhas Vasave was examined on 24.2.2014. The say of the applicant was taken on 26.6.2014. On 27.6.2014 witness examined. Learned P.O to our query informed on the basis of instructions from Mr Govind Bhise, Desk Officer, Public Health Department, Mantralaya, Mumbai that the department is not having any acknowledgment as to when the report of Dr Rekha Davar dated 1.9.2009 was served on the applicant. Learned P.O Mr Chougule informed that the applicant wrote letter dated 20.6.2009 and 6.8.2009. First letter was addressed to the Director, Medical Education instead of addressing the same to Public Health Dept. However, reminder letter was addressed to the Deputy Director on 6.8.2009.

7. The report of Enquiry Officer is dated 22.7.2014. The applicant – Delinquent Officer has submitted written submissions on 18.7.2014 and it is informed that along with this written submissions the applicant has enclosed the report of Dr Rekha Davar and other supporting documents. Learned P.O has argued that the order of holding him guilty for all the charges and punishment is legal, well founded and should not be disturbed.

8. On perusal of the written submissions it is found that the applicant has specifically mentioned that he didn't receive the report of Dr Rekha Davar of June or Sept 2009. The notice showing the disagreement dated 28.10.2014 by Deputy Secretary, R.S Jadhav has mentioned that the Enquiry Officer did not consider the report of Dr Rekha Davar dated 1.9.2009 or 1.6.2009. To that the applicant has given written statement on 14.11.2018, and in that he has mentioned about the said documents at Sr No. 5 and in the internal page 3 of his submission has specifically mentioned that he was not given the report deliberately of Dr Rekha Davar and it was against the principles of natural justice.

9. Regarding the second charge that Dr. Ulhas Vasave was posted as temporary Medical Officer in St Georges' Hospital, pursuant to G.R dated 23.7.2009, whereby policy decision was taken to absorb all such Medical Officer as a one-time measure and all these Medical Officers who are in Group-A were permanently absorbed. Dr Vasave was already working as Medical Officer on ad hoc basis. However, the applicant informed that his service was not satisfactory. On 6.8.2009 Dr Ulhas Vasave was relieved as he was junior most and this was communicated by the applicant by letter dated 7.8.2009. Thereafter again by letter dated 17.8.2009. Learned counsel submits that till 24.7.2009 the applicant has not received the order from the Government about regularization. Dr Vasave was not allowed to join as regular Medical Officer. Applicant sent communication to the Director on 7.8.2009 and 17.8.2009 that Dr Vasave cannot be allowed to join. The applicant made reference to the Deputy Director stating that there are lot of complaints against Dr Vasave and he should be posted elsewhere. Thereafter Dr Vasave made complaint to the Director, Public Health Dept, stating that the applicant refused to allow him to join. He also submitted complaint to Mantralaya on

20.8.2009 and 1.9.2009. The applicant did not allow Dr Vasave to join on the said regular post as there was issue of seniority as three other Medical Officers who were senior to Dr Vasave were working in St. Georges' Hospital. So the applicant made back reference to the Deputy Director, Health Services, Thane Circle. The higher authorities did not respond and therefore the applicant did not allow Dr Vasave to join as Medical Officer at St. Georges' Hospital. We do not find any misconduct or any material to hold him guilty under second charge.

10. In the case of appointment of Dr Surekha Chabuksawar on 15.9.2009 as temporary Medical Officer, Government Hospital, Old Custom House, Mumbai. The said order was not obeyed by the applicant. The applicant submitted that at that time the post was abolished and therefore it was not possible to allow her to join as it would have created financial problem in view of the salary to be paid to her.

11. On the basis of the documents which are placed before us and on perusal of the record, charges of imputation and the annexures, served on the applicant-Delinquent Officer, it is admitted fact that the description of the preliminary enquiry report of Dr Rekha Dawar, was not supplied to the applicant. Moreover, the learned counsel for the applicant has taken us to the cross examination of witness of Dr Rekha Davar. Dr Rekha Davar, in her Examination in- Chief has stated about her report. The applicant has cross-examined the witness and in the short cross examination he has made it clear that the report of the Committee headed by Dr Rekha Davar was not furnished to him.

12. Learned P.O has submitted that the said report was subsequently furnished to the applicant when the Disciplinary

Authority express disagreement with the findings of the Enquiry Officer. Learned P.O made further submissions that the applicant has made reference to that report in his reply dated 14.11.2014. These submissions of learned P.O cannot be appreciated to justify the action of the Disciplinary Authority, mainly on the ground that if at all any document is relied by the Disciplinary Authority or Enquiry Officer, the said document should have been supplied to the applicant-Delinquent Officer ideally along with the statement of imputations. If it is not supplied along with that, it is to be supplied before the witness is put in the box and by latest if the concerned witness is in the box, but yet to be cross examined, the said document has to be furnished to the applicant-Delinquent Officer. This procedure is based on the principles of natural justice and hence required to be followed. A person should know what charge he is facing and what is the basis of that particular charge. Unless the person is made aware of the charge and the basis of it, the person is unable to meet the charges. It is a matter of giving fair opportunity to the person facing the charges. Moreover, the Disciplinary Authority in its order dated 28.10.2014 disagreed with findings of the Enquiry Officer and has specifically stated in the beginning that the Enquiry Officer has not taken into account the report dated 1.9.2009 submitted by Dr. Rekha Davar. The applicant-Delinquent Officer has submitted his reply on 14.11.2014 denying the charges and the conclusion of the Disciplinary Authority. The applicant has mentioned about non-availability of the report of the Committee headed by Dr Rekha Davar. He ha also mentioned about the joint responsibility of the team when the female patient was admitted and treated in the hospital.

13. Thus, on this ground and further in the disagreement report the Disciplinary Authority has not considered as pointed out by

the learned counsel for the applicant, the evidence of Dr. Deshmane. Under such circumstances, we are of the view that the Disciplinary Authority and the Enquiry Officer has not followed the proper procedure in conducting the enquiry and holding the applicant guilty of the charges levelled against him.

14. In view of the above, we pass the following order:-

- (a) The Original Application is allowed.
- (b) The impugned order dated 28.9.2015 passed by Respondent no. 1 is hereby quashed and set aside.
- (c) The applicant should be granted to all consequential service benefits which are payable to him as per rules.
- (d) The said order should be complied within four months from the date of this order.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 27.02.2023
Dictation taken by : A.K. Nair.