

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.449 OF 2020

DISTRICT:- AURANGABAD

Yogesh s/o. Motiram Panchwatkar,
Age : 48 years, Occ. Service,
R/o. Flat No.9, Building No. I-4,
Kasliwal Tarangan, Mitmita,
Aurangabad.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai-32.
2. The Director General of Police,
Maharashtra, Shahid Bhagatsing Marg,
Colaba, Mumbai.
3. Additional Director General,
Criminal Investigation Department,
Maharashtra State HQ, Near Pune University,
Pashan Road, Pune-411 008.
4. The Additional Superintendent of Police
(Flying Squad) and Enquiry Officer,
Criminal Investigation Department,
Maharashtra State HQ, Near Pune University,
Pashan Road, Pune-411 008.
5. The Superintendent of Police,
Crime Investigation Department,
Sneh Nagar, Aurangabad.

... RESPONDENTS

APPEARANCE : Shri N.E.Deshmukh, Advocate for
the Applicant.
: Smt. Sanjivani Ghate, Presenting
Officer for the respondents.

**CORAM : JUSTICE SHRI P.R.BORA, MEMBER (J)
AND
SHRI BIJAY KUMAR, MEMBER (A)**

Decided on : 07-04-2022

**O R A L O R D E R
(PER: JUSTICE SHRI P. R. BORA)**

1. Heard Shri N.E.Deshmukh, learned Advocate for the applicant and Smt. Sanjivani Ghate, learned Presenting Officer for the respondents.
2. The applicant has preferred the present O.A. seeking directions against the respondents not to proceed with the departmental enquiry initiated against him till the criminal case bearing Special Case (ACB) No.14/2019 is decided by the Special Court. It is the contention of the applicant that the departmental enquiry has been initiated out of the same instance which has given rise for filing criminal case against the applicant and in the criminal case same charges have been framed against him as in the departmental enquiry. It is his further contention that the persons who are named as witnesses in the departmental enquiry are also the witnesses named in the criminal trial. According to the applicant if the departmental enquiry is conducted against him on the same set of facts and if the

same witnesses are examined in the departmental enquiry, the applicant may be compelled to disclose his defence which may adversely affect his right to defend the criminal case pending against him.

3. The learned Counsel has relied upon the judgments of the Hon'ble Apex Court in the case of **Delhi Cloth and General Mills Company Limited V/s. Kushal Bhan [AIR 1960 SC 806]** and another judgment in case of **Kusheshwar Dubey V/s. Bharat Coking Coal Limited [AIR 1988 SC 2118]** to substantiate his arguments. The learned Counsel read out the chargesheet issued to the applicant in the departmental enquiry and also read the chargesheet in the criminal case. Comparing the instance recorded in the criminal proceedings as well as the departmental enquiry, the learned Counsel submitted that similar charges are raised in both the departmental enquiry as well as in the criminal trial. Learned Counsel in the circumstances prayed for staying the departmental enquiry till the decision of the criminal case pending against the applicant.

4. Learned P.O. has resisted the contentions raised on behalf of the applicant. Learned P.O. submitted that since

the standard of evidence which may be required in proving charges in the departmental enquiry is different than criminal case against the accused, the departmental enquiry may not be stayed. Learned P.O. further submitted that in the departmental enquiry, the main focus is on the misconduct of the applicant which has lowered down the image of the department where the applicant is working and the dishonesty shown by him in discharging his duties, and hence it cannot be said that the departmental enquiry if proceeded further will have any adverse effect on the criminal proceedings. To buttress her case, learned P.O. relied upon the judgments of the Hon'ble Apex Court in the case of **Hindustan Petroleum Corpn. V/s. Sarvesh Berry [2005 (10) SCC 471]** and **Capt. M. Paul Anthony V/s. Bharat Gold Mines Ltd. [1999 AIR (SC) 1416]**. Learned PO in the circumstances prayed for dismissal of the O.A.

5. We have carefully considered the submissions advanced on behalf of the applicant as well as the respondents. We have perused the documents filed on record. It is not in dispute that C.R. No.27/2016 is registered at Police Station, Mandvi against the applicant for the offences u/s.193, 197, 198, 203, 213, 214, 218, 420, 419, 467, 468, 471, 120 (b), 34 IPC. The applicant

was arrested in the said case and was in custody for more than 48 hours. The criminal case has arisen out of an instance wherein it was alleged that the present applicant while dealing with the documents which were forwarded to him seeking his opinion, contacted the concerned persons and in connivance with the main accused in the criminal case, manipulated the original documents and submitted a false report. It is also an allegation in the criminal case that the accused frequently visited house of main accused in the said case and at the house of the said accused trained some persons for affixing matching signatures for manipulation of documents.

6. In the departmental enquiry, the following charges are framed against the applicant. We deem it appropriate to reproduce the said charges as they are in vernacular (p.b.p.52-53):

“बाब-१

तुम्ही श्री. योगेश मोतीराम पंचवटकर, स.शा.द.प., निलंबित, पोलीस अधीक्षक, गु.अ.वि., औरंगाबाद कार्यालय या आस्थापनेवर कार्यरत असताना पोलीस स्टेशन, मांडवी गु.र.नं २७/२०१६, कलम १९३, १९७, १९८, २०३, २१३, २१४, २१८, ४२०, ४१९, ४६७, ४६८, ४७१, १२०(ब), ३४ भा. द. वि. या फौजदारी गुन्ह्या प्रकरणात तुमची कसुरी निष्पन्न झाल्याने दि.०२.०६.२०१७ रोजी सदर गुन्ह्यात अटक करून अट्टेचाळीस तासांपेक्षा अधिक कालावधीकरिता

पोलीस कोठडीत स्थानबध्द करण्यात आल्याने अटक दिनांकापासून निलंबित करण्यात आले आहे. सदर गुन्ह्याचे स्थानिक तपास अधिकारी व यात निष्पन्न झालेले आरोपी सपोनि श्री. सोनसकर, आर्थिक गुन्हे विभाग, स्थागुशा नांदेड जिल्हा यांनी सदर गुन्ह्यात डमी उमेदवारांच्या मदतीने नोकरी मिळविल्याचा आरोप असलेल्या मुळ उमेदवारांचे दस्तऐवज तपासणी कामी दि. १२.०१.२०१७ रोजी शासकीय दस्तऐवज परीक्षक, गुन्हे अन्वेषण विभाग, औरंगाबाद येथे पाठविले होते. सदरचे प्रकरण तपासणी करून अभिप्राय देण्यातसाठी श्री पंचवटकर, स.शा.द.प., गु.अ.वि., औरंगाबाद यांचेकडे देण्यात आले होते. यातील मुख्य आरोपी प्रबोध राठोड, तसेच सपोनि सोनसकर, पोर्को/झेंपलवाड यांनी आरोपींच्या बाजुने एस्तऐवज तपासणी अभिप्राय मिळण्यासाठी मध्यस्थांच्या मार्फतीने आपली वेळोवेळी भेट घेवून, फोनद्वारे संपर्क केला. तुम्ही अर्थिक लाभापोटी आरोपींच्या बाजुने अभिप्राय देण्यासाठी तपासणी कामी आलेल्या दस्तऐवजामधील नमुना स्वाक्षरी फॉर्म (शासकीय दस्तऐवज) सोयीनुसार बदलले. स्वाक्ष—या जुळविण्यासाठी आरोपी प्रबोध राठोड व डमी उमेदवार बळीराम भातलोडे, सुलतान वारब्बा, सोमनाथ पारवे पाटील यांना जालना येथे तुमच्या राहत्या घरी बोलविले व नमुना स्वाक्ष—या घेतल्या तरी सुध्दा स्वाक्ष—या जुळत नसल्याने औरंगाबाद येथे एप्रिल २०१७ च्या पहिल्या आठवड्यात आरोपी प्रबोध राठोड यांचे फ्लॅट मध्ये तुम्ही कार्यशाळा आयोजित केली. तुम्ही सदर कार्यशाळेस मुळ उमेदवार, डमी उमेदवार यांना बोलावून त्यांना सहया कशा करायच्या म्हणजे त्या मुळ सहयांशी जुळतील यांचे प्रशिक्षण दिले. तसेच, तुम्ही आरोपींच्या बाजुने दि. ११.०४.२०१७ रोजी अभिप्राय दिला. या संबंधाने प्रबोध राठोड, झेंपलवाड यांचेशी मोबाईल फोनद्वारे संपर्क केला असल्याचे कॉल डिटेलवरून दिसून आले. या सर्व बाबी विचारात घेता तुम्हास सदर गुन्ह्यात अटक करण्यासाठी सबळ पुरावा उपलब्ध झाल्याने दि. ०२.०६.२०१७ रोजी अटक करून अट्टेचाळीस तासांपेक्षा अधिक असेल इतक्या कालावधीकरिता पोलीस कोठडीत स्थानबध्द करण्यात आले होते.

बाब—२

तुम्ही श्री. योगेश मोतीराम पंचवटकर, स.शा.द.प., निलंबित, दि. १२.०६.२०१७ पावेतो पोलीस कस्टडी रिमांड घेवून तपास करण्यात आलेला आहे. सदर कस्टडी मध्ये असतांना तापासा दरम्यान कोणत्याही प्रकारचे सहकार्य केले नसून माहिती लपविलेली आहे. त्यामुळे तुम्हास कायद्याचे भय वाटत नसल्याने इतर आरोपींना सहकार्य केले. तसेच तुम्ही सदर गुन्ह्यात शासकीय तपास यंत्रणेच्या संबंधीत असून अत्यंत गोपनीय ठिकाणी महाराष्ट्र पोलीस दलातील गुन्हे अन्वेषण विभाग अंतर्गत शासकीय दस्तऐवज परीक्षण विभागात सहाय्यक शासकीय दस्तऐवज परिक्षक म्हणून कार्यरत असतांना तुम्ही तुमच्या पदाचा दुरुपयोग करून अत्यंत महत्वाचे गोपनीय शासकीय दस्तऐवज विनापरवाना कार्यालया बाहेर घेऊन जाऊन आरोपीच्या बाजूने अभिप्राय देण्यासाठी तपासणी कामी आलेल्या दस्तऐवजामधील नमुना स्वाक्षरी फॉर्म सोईनुसार बदलून गोपनीयतेचा भंग केला आहे. भारतीय पुरावा कायदा कलम ४५ नुसार हस्ताक्षर तज्ञांचा दस्तऐवज परीक्षण अभिप्राय हा मा. न्यायालयात ग्राह्य धरला जातो व त्या आधारे न्यायनिर्णय दिला जातो. अशा परिस्थितीत शासकीय दस्तऐवज परीक्षक यांनी आपला अभिप्राय हा त्यांचे समोर आलेल्या दस्तऐवजांचे परीक्षण करून निष्पन्न तथ्यांनुसार एका निष्ठेने, कर्तव्याशी प्रमाणिक राहून देणे अपेक्षित आहे. मात्र तुम्ही आर्थिक लाभापोटी कर्तव्यात कसूरी करून अप्रमाणिकपणा केलेला आहे.

अशा प्रकारे तुम्ही श्री. योगेश मोतीराम पंचवटकर, स.शा.द.प., निलंबित, यांनी त्याच्या कर्तव्यात नितांत सचोटी व कर्तव्यपरायणता न ठेवता बेजबाबदारपणाचे व असंवेदनशील वर्तन केले असून आपले पदाचा गैरवापर करून गोपनीयतेचा भंग केल्याचे दिसून येत आहे. त्यामुळे महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ च्या नियम ३ चा भंग केला आहे.”

7. When the present matter was heard at the time of admission, a statement was made on behalf of the

respondents that the departmental enquiry will be restricted only to the extent of such aspects which have nexus with the reputation and credence of the office of the handwriting expert. It was also submitted that accordingly the chargesheet will be recast. However, as has been pointed out by the learned P.O. on the subsequent date, the officer concerned expressed inability to have any change or modification in the chargesheet already issued. In the circumstances, we have to proceed according to the material which is presently there on record. We have simultaneously read the charges in the departmental enquiry as well as in the criminal case. They are more or less same. It is further not in dispute that the same witnesses which are cited in the departmental enquiry are also named as witnesses in the criminal trial.

8. As we have noted hereinabove, the criminal action and the disciplinary proceedings are grounded upon the same set of facts. The evidence which may be required to prove the charges in the departmental enquiry and for proving the offences in the criminal case is common. Witnesses cited in the criminal case are the same witnesses named in the departmental enquiry.

9. We have carefully gone through the chargesheet in the criminal case and the charges framed in the departmental enquiry. We have no manner of doubt that the applicant will be required to open his defence while cross-examining the witnesses in the departmental enquiry which he may be taking while defending the criminal case filed against him. There is, therefore, substance in the submission made on behalf of the applicant that it would adversely affect the right of the applicant to defend the criminal case pending against him. Moreover, the criminal case has wide magnitude and it relates to the large scale manipulations alleged to be committed in the examinations conducted for the recruitment carried out to fill the posts in the Government department. It is alleged that in connivance with the present applicant, the main accused in the criminal case has got the handwriting reports manipulated. It reveals that the said racket used to make appear dummy candidates for such examinations by making large scale manipulations in the hall tickets, signatures on the said hall tickets and the photographs on the same etc. Against the present applicant, it is the specific allegation that when certain documents were referred to him for his expert opinion, by conspiring with

the accused persons, he indulged in manipulating the documents and also gave training to the candidates concerned so that their signatures would match with the signatures on the original documents. It is, thus, evident that the charges in the criminal case against the applicant are of grave nature and involve complicated questions of law and fact. In the circumstances, there appears substance in the contentions raised by the applicant in the present O.A. and the prayer made therein. We are, therefore, inclined to allow the present O.A.

10. Our attention was invited by the learned P.O. to the observations made by the Hon'ble Apex Court in the case of **Hindustan Petroleum Corpn. V/s. Sarvesh Berry** (cited supra) to submit that the respondents may be given liberty to start the departmental proceedings if the criminal case does not proceed or its disposal is being unduly delayed. In case of **Capt. M. Paul Anthony V/s. Bharat Gold Mines Ltd. [1999 AIR (SC) 1416]**, Hon'ble Supreme Court has noted that where there is delay in disposal of the criminal case, departmental proceedings can be proceeded with, so that the conclusion can be arrived at an early date. It is further observed that, if ultimately, the employee is found not guilty, his honour may be vindicated and in case he is

found guilty, the employer may get rid of him at the earliest. The submission made by the learned P.O. also, therefore, deserves consideration.

11. For the reasons stated above, the following order is passed:

O R D E R

(i) The departmental proceedings initiated against the applicant shall stand stayed till the decision of the criminal case pending against the applicant bearing Special Case No.14/2019.

(ii) It would, however, be open for the respondents to approach this Tribunal seeking permission to proceed with the departmental enquiry, in case, criminal case does not proceed or its disposal is unduly delayed.

(iii) O.A. stands disposed of accordingly with no order as to costs.

(BIJAY KUMAR)
MEMBER (A)

(JUSTICE P.R. BORA)
MEMBER (J)

Place : Aurangabad
Date : 7th April, 2022