

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 133 of 2019 (S.B.)

Naresh Narayanrao Deshpande,
Aged about 62 years, Occ. Retired,
R/o Plot No.182, Surendra Nagar, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Principal Secretary,
Public Works Department, Mantralaya, Mumbai-32.
- 2) The Chief Engineer,
Public Works Region, Nagpur Region, Nagpur.
- 3) The Superintending Engineer (Vigilance),
Vigilance and Quality Control Circle,
Public Works Division, Nagpur.

Respondents.

Shri A.S. Deshpande, Advocate for the applicant.

Shri M.I. Khan, learned P.O. for the respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 13/12/2022.

JUDGMENT

Heard Shri A.S. Deshpande, learned counsel for the applicant and Shri M.I. Khan, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The applicant was working as Executive Engineer in the year 2007-2008. The applicant was working in the Integrated Unit,

Public Works Division, Nagpur from November, 2006 to 2009. It was alleged that some forged documents / tenders were issued and the work of construction was given to unemployed engineers. The Department issued the charge sheet to the applicant on 29/10/2011. Three charges were levelled against the applicant as under –

(1) That the applicant during his tenure from 03/11/2006 to 09/06/2009 working as Executive Engineer and while allotting the work to the unemployed engineers, made the forged documents of proposed 10 works.

(2) That the said 10 works was not published on the official website of the department and executed contract with 9 unemployed engineers and thus committed illegal act.

(3) That the applicant by making the forged documents executed the contract of works.

3. The applicant had given the explanation to the charges levelled against him. Inquiry was conducted by respondents. Inquiry Officer was appointed and the department examined four witnesses namely (i) Shri C.B. Ghugale (ii) Shri M.V. Joshi (iii) Shri G.G. Devtare and (iv) Shri S.D. Devtare. The Inquiry Officer submitted report stating that the applicant has not committed any misconduct, whereas, one employee namely Shri Raut has committed misconduct. The respondents have not considered the inquiry report properly and wrongly passed the punishment order for deducting 10% amount from

the pension amount. The applicant preferred appeal before the 1st appellate authority. It was rejected. Thereafter, the applicant moved the appeal before the Government of Maharashtra. That appeal was also rejected. Thereafter, the applicant moved the application for Review. It is also rejected. Before this O.A., the applicant had filed one O.A. No.138/2018. This Tribunal disposed of the O.A. because it was withdrawn with observation that “ the applicant will be at liberty to approach this Tribunal, if the review petition is not decided within six months from the date of the order.” After decision of the O.A., the review petition of the applicant came to be rejected and informed the applicant on 05/10/2018 that there is no any new ground in the review petition and therefore it was rejected. Hence, the present O.A. is filed by the applicant for direction to the respondents to release all the pensionary benefits including the deducted 10% pension.

4. The O.A. is strongly opposed by the respondents. It is submitted that the applicant has committed misconduct and therefore proper punishment is imposed against him. Against the punishment order, 1st appeal and 2nd appeal came to be rejected. The review petition filed by the applicant was also rejected by the Government of Maharashtra. Hence, the O.A. is liable to be dismissed.

5. Heard Shri A.S. Deshpande, learned counsel for the applicant. He has pointed out the inquiry proceeding. He has pointed

out the findings recorded by the Inquiry Officer. As per the findings recorded by the Inquiry Officer, the applicant had not committed any misconduct. On the other hand, one Shri Raut who was the Clerk in the office of the applicant, has committed misconduct by not pointing out the mistakes to the applicant. In the findings, it is specifically stated by the Inquiry Officer as under –

“अभिप्राय -

वरील सर्व साक्ष, उलटतपासणी व उपलब्ध दस्तावेजाच्या आधारे हे स्पष्ट होते की, सदर प्रकरणात विभागीय कार्यालयास प्राप्त १६ बनावटी काम वाटप आदेशावर शासनाच्या विहित पध्दतीने आवक न करता तसेच सदर बाब वरिष्ठाच्या निदर्शनास न आणता करारनाम्या बाबतची कार्यवाही निविदा लिपीकामार्फत करण्यात आली. त्यांनी सदर बाब कार्यकारी अभियंता यांचे निदर्शनास आणून आवक कार्यालयाकडे विहित पध्दतीने आवक क्रमांक देण्यास सदर आदेश हस्तांतरीत करणे अपेक्षित होते. त्यामुळे श्री.ना.गु.राउत, निविदा लिपीक यांनी कार्यालयीन पध्दतीचा अवलंब न करता १६ योग्य चाकोरीतून प्राप्त न झालेले बनावट काम वाटप आदेश थेट स्विकारण्यास तसेच हे आदेश शासनाच्या विहित पध्दतीने आवक न करून घेण्यास तसेच उपरोक्त अनियमितता वरिष्ठाच्या निदर्शनास आणली नाही ही बाब खरी आहे असे माझे मत आहे. ”

6. In the concluding para, the Inquiry Officer has specifically stated as under –

“श्री. राउत, निविदा लिपीक यांनी त्यांनी विभागीय कार्यालयात बदलीने रुजू होण्याच्या दिनांका अगोदरच्या तारखेत स्वतःच्या हस्ताक्षरात वरिष्ठ अधिकारी यांनी सांगितल्या मुळे क्रमांक १७४१/निविदा दिनांक १/६/२००७ हे पत्र लिहिले अशी बाजू त्यांनी मांडलेली असून वरिष्ठ अधिकारी यांनी सांगितलेली नियमबाह्य कृती त्यांचे निदर्शनास न आणता सदर कृती घडवून आणण्यास साहाय्य केले असे माझे मत आहे. त्यामुळे श्री.ना.गू. राउत यांनी कार्यालयीन कार्यपध्दतीचा अवलंब न केल्यामुळे महाराष्ट्र नागरी सेवा वर्तणूक नियम १९७९ मधील नियम ३ (१)एक व ३ (१) (दोन)यांचे उल्लंघन केल्याचे स्पष्ट होते. ”

7. In the findings, the Inquiry Officer has not stated anything against the applicant. On the other hand, the Clerk Shri Raut who was working in the office of the applicant, committed misconduct.

8. The learned counsel for applicant Shri A.S. Deshpande has submitted that no action is taken against Shri Raut, but the punishment is awarded to the applicant.

9. Heard learned P.O. Shri M.I. Khan. He has strongly objected the O.A. He has pointed out the Judgment in the case of **Darshan Singh s/o Sh. Ganga Singh Vs. Union of India & Ors.2016 SCC online, CAT 230** and submitted that this Tribunal cannot seat as an appellate forum and cannot substitute the punishment or decide the punishment. He has also pointed out the Judgment of in the case of **State of Andhra Pradesh & Ors. Vs. Chitra Venkata Rao (1975) 2 SCC,557.**

10. There is no dispute about the recording of findings by this Tribunal, but it is clear that the findings recorded by the Inquiry Officer show that there is nothing in the inquiry against the applicant. Eventhough, the applicant is punished by the respondents.

11. The person who has committed misconduct namely Shri Raut was not given any punishment. Hence, the punishment of deducting 10% pension appears to be not legal and proper, but in view of the Judgment of Hon'ble Supreme court, this Tribunal cannot interfere with the decision of disciplinary authority in inquiry

proceedings, unless the applicant able to show that there is a procedural lapse.

12. The learned counsel for applicant has pointed out the Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 (in short "Pension Rules"). The Hon'ble Bombay High Court in the case of **Chairman / Secretary of Institute of Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal & Ano. Vs. Bhujigonda B. Patil, 2003 (5) Bom. C.R.,197** has held that the proceedings are continued after retirement with the intention to take appropriate decision in relation to the payment of pension must be made known to the employee immediately after he attains the age of superannuation. In the absence thereof, the disciplinary proceedings continued for imposing punishment without reference to the intention to deal with the issue of payment of pension alone cannot be considered as the proceedings within the meaning of said expression under Rule 27 of the Pension Rules.

13. The applicant was not informed about the continuation of the departmental inquiry after his retirement. As per the Rule 27 of the Pension Rules, it is mandatory to inform the retired employee about continuation of the departmental enquiry proceeding. The applicant was retired on 30/06/2013 and in the inquiry punishment order was passed in the year 2015. Nothing on record to show that the applicant

was informed about the continuation of departmental enquiry proceeding.

14. The Central Administrative Tribunal, Chandigarh Bench has held in the case of **Darshan Singh s/o Sh. Ganga Singh Vs. Union of India & Ors.** that the court cannot interfere with the decision of the disciplinary authority in the inquiry proceeding, unless the applicant able to show that there is a procedural lapse in concluding the departmental proceeding -----

15. In view of the Judgment of the Hon'ble Bombay High Court in the case of **Chairman / Secretary of Institute of Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal & Ano. Vs. Bhujgonda B. Patil**, the proceeding cannot be continued without intimation to the retired employee as per the Rule 27 of the Pension Rules. If the inquiry is continued after the retirement without any intimation to the retired employee, then it is a procedural lapse. Hence, the cited decision in the case **Darshan Singh s/o Sh. Ganga Singh Vs. Union of India & Ors.** is not applicable. The Rule 27 of the Pension Rules clearly shows that the departmental inquiry cannot be continued after retirement. If it is continued, then it should be intimated to the retired employee about the continuation of the departmental inquiry.

16. It appears that the respondents have wrongly imposed the punishment of stoppage of 10% pension. Inquiry report submitted by the Inquiry Officer clearly shows that the person who was held guilty namely Shri Raut, was not punished. The report clearly shows that the applicant was not at fault, but mischief was done by Shri Raut. It was not considered by the respondents and wrongly punished the applicant without his fault. Hence, the following order is passed

ORDER

(i) The O.A. is allowed.

(ii) The impugned orders dated 30/05/2015 and dated 29/11/2016 passed by respondent no.1 are hereby quashed and set aside.

(iii) The respondents are directed to pay all the pensionary benefits to the applicant within a period of four months from the date of this order.

(iv) No order as to costs.

Dated :- 13/12/2022.

dnk.

(Justice M.G. Giratkar)
Vice Chairman.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 13/12/2022.

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