

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.130/2016.

Kisan Laxman Raut,
Aged about 65 yrs.,
Occ-Service,
R/o At & Post Ruhikhed, Tehsil-Motala,
District-Buldhana.

Applicant

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Dairy Development,
Mantralaya, Mumbai-440 032.
- 2) The Commissioner of Dairy Development (M.S.),
Administrative Building, Abdul Gaffar Marg,
Worli, Mumbai-400 018.
- 3) The Regional Dairy Development Officer,
Amravati.

Respondents

Shri S.N. Gaikwad, Ld. Counsel for the applicant.
Smt. M.A. Barabde, learned P.O. for the respondents.

Coram:- Hon'ble Shri Rajiv Agarwal,
Vice-Chairman (A) and
Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).

Per:-Vice-Chairman (J)

JUDGMENT

(Delivered on this 11th day of August 2017.)

Heard Shri S.N. Gaikwad, the learned counsel for the applicant and Smt. M.A. Barabde, the learned P.O. for the respondents.

2. The applicant Kisan Laxman Raut (now retired) was appointed as Milk Procurement Supervisor on 14.2.1981 and was posted at Nandura, District Buldhana. On 7.1.1993, a criminal case was lodged against the applicant in which he was arrested on 8.1.1993 and was immediately released on bail on 8.1.1993. However, he was kept under suspension by respondent No.3. Simultaneously, a departmental enquiry was also initiated by serving a chargesheet to the applicant on 24.8.1993. Total nine charges were levelled against the applicant for misappropriation of Government fund.

3. The applicant submitted his explanation in the departmental enquiry on 30.6.1994 and denied the charges. While departmental enquiry was pending, criminal trial against the applicant came to an end and in Regular Criminal Case Nos. 237/1994, 239/1994 and 240/1994, the applicant was convicted vide common judgment dated 15.2.2003 by the Judicial Magistrate, First Class (JMFC), Malkapur. The applicant was convicted for the offence punishable U/s 408 of the Indian Penal Code (I.P.C.) and was sentenced to suffer Rigorous Imprisonment (R.I.) for six months and to

pay a fine of Rs. 1,000/- in each case. In default, he was to suffer further R.I. for one month in each case.

4. In view of conviction as referred above, respondent No.3 was pleased to dismiss the applicant from service vide order dated 16.7.2003.

5. In the meantime, the applicant filed an appeal against the order of conviction before the Principal Sessions Judge, Buldhana. Three separate criminal appeals were filed bearing Nos. 30/2003, 31/2003 and 32/2003. The learned Principal Sessions Judge, Buldhana vide order dated 4.5.2011 was pleased to allow all the appeals and order of conviction and sentence passed by the Court of learned JMFC was quashed and set aside and the applicant was acquitted from all the cases.

6. It seems that on the basis of conviction in the criminal appeals, respondent No.3 i.e. Regional Dairy Development Officer, Amravati was pleased to pass the following order:-

अथवा अथवा पी. के. एल. रावुत, दुध संकलन पयवेक (मलंलत) शासकय दुध योजना, नांदुरा यांना याय दंडाधिकारय थम णी, मलकापूर यांचे यायालयावारे मीनल केस नंबर २३७/९४, २३९/९४ अंड २४०/९४ मये भारतीय दंड संहता खंड ४०८ व फौजदार दंड संहता २४८ (२) अवये फौजदार आरोपाखाल दोषी ठरवायात आलेले आहे.

याअथ दोषी ठरवण्यात आले आहे ते उक्त पी. के. एल. रावुत, यांचे वतन अशा प्रकारचे आहे व, यांना शासकिय सेवेमध्ये ठेऊन घेणे इष्ट नाह.

याअथ महाराष्ट्र नागरिक सेवा (शांत व अपील) नियम, १९७९ या नियम १३ (एक) वारे दान केल्या शतीचा वापर करून निवृत्तीवाक्य प्रकार यावारे उक्त पी. के. एल. रावुत, दुध संकलन पयघेक (मलंबत) शासकिय दुध योजना, नांदुरा यांना दिनांक १७.७.२००३ पासून सेवेतून बडतफ करत आहेत.”

7. The applicant preferred an appeal against the said order before the Commissioner of Dairy Development (M.S.), Mumbai (R.2). Respondent No.2, however, vide order dated 5.12.2015 was pleased to dismiss the appeal of the applicant and, therefore, this O.A. The applicant has claimed that both the impugned orders i.e. dated 16.7.2003 passed by respondent No.3 and dated 5.12.2015 passed by respondent No.2 are illegal and, therefore, the same be quashed and set aside and respondent No.3 be directed to grant continuity of service to the applicant and pay all full back wages from the date of dismissal till applicant's superannuation. At present the age of the applicant is 65 years.

8. The respondents have filed affidavit in reply. The respondents admitted that the applicant was earlier convicted and therefore, was dismissed. But it is stated that the applicant has not

been dismissed only because of conviction in criminal case, but also because he was found guilty in the departmental enquiry also. Due to inadvertent mistake on the part of respondent No.3, it remained to be mentioned in the dismissal order that the applicant was found guilty of charges in the departmental proceedings.

9. The learned counsel for the applicant submits that the order of dismissal of the applicant dated 16.7.2003 passed by respondent No.3 (it is already incorporated earlier) shows that the applicant was dismissed only because he was convicted. We have perused the said order and are satisfied that the only reason for dismissal of the applicant is that he was convicted for the offence punishable U/s 408 of I.P.C. in three criminal cases i.e. Criminal Case No. 237/1994, 238/1994 and 238/1994. Against this order of dismissal, the applicant has preferred an appeal before respondent No.2. The order passed by respondent No.2 in the appeal is at page Nos. 115 to 117 of the O.A. (both inclusive). In the order itself, the appellant authority has accepted the fact that the applicant was acquitted by the Principal Sessions Judge, Buldhana in Criminal Appeal Nos. 30, 31 and 32 of 2003 vide judgment and order dated 4.5.2011 and, therefore, the applicant has requested for reinstatement. The appellant authority, however, considered the fact that the

departmental enquiry was also initiated against the applicant and he was found guilty in the departmental enquiry and the Enquiry Officer recommended for his dismissal. Even accepting the fact that the applicant was found guilty in the departmental enquiry, there is nothing on record to show that, the report of the Enquiry Officer was acted upon by the competent authority. Mere service of notice or service of memo of enquiry to the applicant and calling upon him to explain as to why he should not be dismissed, will not be sufficient to pass the dismissal order. The impugned order under which the applicant has been dismissed passed by respondent No.3 on 16.7.2003 clearly shows that the applicant was dismissed only because he was convicted and there is no whisper even about pendency of the departmental enquiry against the applicant. The impugned order dated 16.7.2003, therefore, nowhere stated that the applicant was found guilty and was being dismissed also because he was found guilty in the departmental enquiry. In such circumstances, this extraneous material has been considered by the appellate authority which was not considered even by respondent No.3 while dismissing the applicant. Respondent No.2 ought to have considered the fact that he was dealing with the appeal against the order dated 16.7.2003 passed by respondent No.3 and, therefore, it was incumbent upon him only to consider whether the order passed by respondent No.3 dated

16.7.2003 was sustainable in the eyes of law or not. There was absolutely no reason for respondent No.2 to consider the facts regarding the departmental enquiry.

10. Had it been the fact that, respondent No.3 wanted to take action against the applicant on the basis of departmental enquiry, he should have issued a show cause notice to the applicant, calling upon him to explain as to why report and the recommendation of the Enquiry Officer shall not be accepted and in case of such acceptance, why the applicant shall not be punished. It seems that no action has been taken against the applicant till his retirement on the basis of departmental enquiry initiated against the applicant. As already stated, there is no whisper in the dismissal order dated 16.7.2003 as regards action to be taken in the departmental enquiry. Such mistake cannot be said to be inadvertent as pleaded by the respondents.

11. On a conspectus of discussion in foregoing paras, it will be thus crystal clear that vide impugned order dated 16.7.2003, the applicant has been dismissed only on the charge that he was convicted in criminal case. Since such conviction has been quashed and set aside and the applicant has been acquitted in all the three cases, no cause of action remained in force for dismissal of the applicant. Respondent No.2 as well as respondent No.3 ought to have

considered all these aspects. But the same has not been considered. Both the orders i.e. order dated 16.7.2003 passed by respondent No.3 and the order dated 5.12.2015 passed by respondent No.2 are, therefore, illegal and are required to be quashed and set aside. The learned P.O. submits that the respondents be allowed to take action against the applicant in the departmental enquiry. Hence, we pass the following order:-

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned orders i.e. order dated 16.7.2003 (Annexure-6) passed by respondent No.3 and the order dated 5.12.2015 (Annexure-11) passed by respondent No.2 stand quashed and set aside.
- (iii) Respondent No.3 is directed to grant continuity of service to the applicant with all consequential financial benefits, as if the applicant was not dismissed from service.
- (iv) Respondent No.3 is also directed to take a decision as regards suspension period of the applicant within a period of **two months** from the date of this order.
- (v) Respondent No.3 is further directed to release the pension and pensionery benefits to the applicant.

- (vi) All such action shall be taken within **three months** from the date of this order.
- (vii) Since the applicant has retired on superannuation, no action can be taken against him in the departmental enquiry, except as per the provisions of Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982, that too if the same is admissible under the rules.
- (viii) However, for the purpose, the respondents will have to consider whether the applicant was allowed to retire honourably and there was order regarding continuation of enquiry even after retirement, we do not find any reason to interfere in any such proposed action to be taken by the respondents in the O.A.
- (ix) No order as to costs.

(J.D.Kulkarni)
Vice-Chairman(J)

(Rajiv Agarwal)
Vice-Chairman (A)