

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.190/2013. (S.B.)

Abhay Purushottam Gawande,
Aged about 47 years,
R/o 225, Laxmi Apartment,
Nandanwan, Nagpur.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Finance Department (Accounts & Treasuries),
Mantralaya, Mumbai-32.
2. The Joint Director, Accounts and Treasury,
Lekha Kosh Bhavan, Civil Lines, Nagpur.
3. The Senior Treasury Officer,
Civil Lines, Nagpur.

Respondents.

Shri M.V. Mohokar, the learned counsel for the applicant.
Shri M.I. Khan, the Ld. P.O. for the respondents.

Coram:- Shri J.D. Kulkarni,
Vice-Chairman (J).

JUDGMENT

(Delivered on this 19th day of December 2017).

Heard Shri M.V. Mohokar, the learned counsel for
the applicant and Shri M.I. Khan, the learned P.O. for the respondents.

2. The applicant was working in Treasury office, Nagpur as a Clerk during the period of October 2004. On the allegations of irregularities while passing the bills, a show cause notice was issued to the applicant by respondent No.3 on 15.10.2004 and the applicant was kept under suspension vide order dated 19.10.2004. A chargesheet was also served on the applicant whereby the departmental enquiry was initiated. In the said departmental enquiry, a Special District Enquiry Officer submitted his report to respondent No.3 on 31.12.2005. The Enquiry Officer observed that the charges levelled against the applicant were not proved. However, vide order dated 23.10.2012, the Senior Treasury Officer, Nagpur was pleased to impose following punishment in the departmental enquiry against the applicant:-

श्री. अभय पु. गावंडे, काजठ क्लर्क (लेखालपक) यांचा दनांक १९.१०.२००४ ते २४.४.२०१२ पयसचा कलंबन कालावधी हा "कलंबन कालावधी" कडून काढून धरावा. कलंबन कालावधीत यांना कवाह भला दलेला आहे. यामये कोणताह बदल होणार नाह व या कालावधीमधील कोणताह सेवाकवृषीसाठ कषयक फायदा, वेतनवाढ, थकबाक इयाद लाभ कळणार नाहस.

3. Being aggrieved by the order of punishment in the departmental enquiry as aforesaid, the applicant preferred an appeal before the Joint Director, Accounts and Treasuries, Nagpur. In the said appeal, the Joint Director, Accounts and Treasuries, Nagpur was pleased to pass the order on 7.2.2013, whereby the applicant's appeal

was rejected. Being aggrieved by both these orders i.e. the order dated 23.10.2012 passed by Senior Treasury Officer, Nagpur (R.3) and the order dated 7.2.2013 passed by Joint Director, Accounts and Treasuries, Nagpur (R.2), the applicant has preferred this O.A. The applicant has requested that both these orders, whereby the applicant has been kept under suspension and his suspension has been treated as such, be quashed and set aside and the respondents be directed to pass appropriate order to treat the period of suspension as duty period with arrears of pay and allowances.

4. It seems that this Tribunal vide order dated 9.7.2014 was pleased to dismiss the O.A. having found no merits in it. The applicant thereafter filed review application No. 07/2014 and the said review application was allowed vide order dated 24.3.2015. The order passed in O.A. No. 97/2014 was recalled and the O.A. was restored and was again rejected by the same Presiding Officer vide order dated 13.4.2016. Being aggrieved by the said order of rejection of the O.A. dated 13.4.2016, the applicant preferred W.P. No. 2047/2017 before the Honble High Court at Nagpur Bench. The Honble High Court vide order dated 7.8.2017 in the said writ petition directed fresh hearing in the matter and the order dated 13.4.2016 in O.A. No. 190/2013 was set aside and the matter was remanded back to the file of this Tribunal for

fresh consideration. It was directed that the Tribunal shall admit and decide the O.A. afresh.

5. The applicant also amended the O.A., as during the pendency of the O.A., in the Criminal Case No. 163/2005 filed against the applicant, the applicant was acquitted. It seems that the respondent authority forwarded the disputed signatures of the applicant to the handwriting expert for his opinion and the handwriting expert submitted its report / opinion on 31.7.2005 and a specific finding was given by the Enquiry Officer that unless and until criminal case is decided, no further action could be initiated against the applicant. The handwriting expert also opined that the disputed signatures are not of the applicant. The learned counsel for the applicant submits that the Enquiry Report was submitted in the departmental enquiry by the Enquiry Officer on 2.9.2005. In the said report, the Enquiry Officer observed as under:-

“एकंदर स ंकरण वाद ंत-याय ंवठ असंयामुळे संया ंथित आरुप ं. १ ते ६ पूणसः संथ हुत नहु ंयायालयीन ंकरणाचे ंकालानंतरच ंणश घेयात यावा. अपचार ंी. अभय पु. गावंडे, क. ल ं कोषागार कायालय, नागपूर यांचे ंवध दोषारुप ं. १ ते ६ पूणसः संथ हुत नहु”

7. In spite of the fact that the Enquiry Officer came to the conclusion that no charge has been proved against the applicant, the competent authority, instead of accepting the report of the Enquiry

Officer, directed the Enquiry Officer to re-submit its report and accordingly the Enquiry Officer re-submitted its report on 31.12.2005. It is material to note that, in that report the Enquiry Officer came to the conclusion that none of the charges were fully proved. The competent authority, therefore, ought to have accepted the report of the Enquiry Officer and should have exonerated the applicant from all the charges. As already stated, the applicant was acquitted in the criminal case and not only that the opinion of the handwriting expert also clearly shows that the so-called signatures were not done by the applicant and, therefore, the applicant ought to have been exonerated and the applicant's suspension period should have been treated as duty period. However, to the surprise of the applicant, the Senior Treasury Officer, Nagpur (R.3) passed the impugned order dated 23.10.2012. In the said impugned order, it has been admitted that the applicant has been acquitted of the criminal charge and the Enquiry Officer came to the conclusion that all the six charges against the applicant were not fully proved. The relevant observations of the Senior Treasury Officer, Nagpur in the impugned order are as under:-

“पी. अभय पु. गावंडे यांना न्यायालयाने जर नदख मुक्त केले असले तर नवभागीय चौकशी अधिकार यांचे चौकशी अहवालात दोषारोप बाब १ ते ६ पूर्णतः स्पष्ट होत नाहीत असा अहवाल दिला असला तर सदरहू आरोप अंशतः स्पष्ट होतात असा निष्कर्ष निघत असण्यामुळे यांचा दि. १९.१०.२००४ ते २४.४.२०१२ पर्यंतचा

जलंबन कालावधी ज्ञयामत करयाचे अनुषंगाने या कायालयाचे गोपनीय पत्र . कोष/शा २/काव-१६१/१४६३/२०१२ द. ४.५.२०१२ अणवे या कायालयाकडून ज्ञयत वेले या धारणेशी संचालनालयाकडून संदभय पत्र . ५ द. ११.९.२०१२ अणवे सहमती दशाज्यात आयामुळे, मी ज्ञयुती अधिकार वरुठ कोषागार अधिकार नागपूर मला ज्ञात ज्ञाले या अधिकाराचा वापर कन जलंबन कालावधी ज्ञयामत करयाचे पुढलमाणे आदेश देत आहे.”

8. The learned counsel for the applicant submits that the Senior Treasury Officer, Nagpur did not consider the report of the Enquiry Officer with a proper perspective and came to the negative conclusion that since the Enquiry Officer came to the conclusion that the charges are not fully proved, it means that they are partly proved. It is stated that such observations are illegal.

9. The learned counsel for the applicant submits that had it been the fact that the Enquiry Officer came to the conclusion that the findings of the Enquiry Officer are not proper, it was open for the competent appointing authority / dismissing authority to record its own reasons for not accepting the findings of the Enquiry Officer. It should have recorded its own findings and should have served show cause notice to the applicant, calling upon him to explain as to why the report of the Enquiry Officer shall not be accepted and the departmental enquiry shall not be initiated against the applicant. Instead of issuing any such show cause notice, the competent authority i.e. the Sr. Treasury Officer, Nagpur directly imposed punishment on the applicant.

The learned counsel for the applicant has placed reliance in the case of **Yoginath D. Bagde V/s State of Maharashtra and another reported in 1999 SC (L&J)-1385.** In the said case, it has been held by the Honble Apex Court that, the disciplinary authority before forming its own findings has to convey the charged employee its tentative reasons for disagreeing with the findings of the Enquiry Officer.+ It was further held that right to hearing is to be read into statutory rules. Admittedly in this case, the Enquiry Officer first came to the conclusion that the charges were not proved fully.

10. The Enquiry Officer was directed to again record his findings and again same findings were recorded by the Enquiry Officer. In such circumstances, it was obligatory on the part of the respondents / appointing authority / disciplinary authority to record its own findings for not accepting the reasons recorded by the Enquiry Officer and that the show cause notice ought to have been given to the applicant for not accepting such Enquiry Report and calling applicant's explanation as to why the findings recorded by the appellate authority / disciplinary authority shall not be accepted and in case of such non acceptance, why punishment shall not be imposed on the applicant ? In such circumstances, the order passed by the disciplinary authority on 23.10.2012 is not legal, since no show cause notice was issued to the applicant.

11. The learned counsel for the applicant submits that in the impugned order of punishment, multiple punishments have been inflicted upon the applicant. The impugned order shows that the period from 19.10.2004 to 24.4.2012 which was suspension period has been treated as suspension as such. It was further stated that the amount paid during the period of suspension was not to change and further it was held that the applicant will not be entitled to any benefit as regards pension, increments or arrears etc during that period. The learned counsel for the applicant, therefore, submits that the multiple punishment cannot be imposed to the applicant as stated above. The said argument, however, cannot be accepted for the simple reason that the main punishment is about treating the suspension period as suspension period only and the subsequent order regarding suspension allowance, grant of increment and arrears are the consequences of treating such period as suspension period and, therefore, cannot be said to be multiple of punishment.

12. The applicant has filed an appeal against the order passed by the Senior Treasury Officer, Nagpur before the appellate authority i.e. the Joint Director, Accounts and Treasuries, Nagpur. The Joint Director, Accounts and Treasuries, Nagpur rejected the appeal merely mentioning that the points made out in the appeal are not legal. It is further stated that the J.M.F.C. Court, Nagpur in its order dated

13.3.2012 has acquitted the applicant by giving benefit of doubt. The points raised in the appeal memo are, however, not considered by the appellate authority. As already stated, the competent authority has not issued a show cause notice to the applicant mentioning as to why it does not agree with the findings given by the Enquiry Officer nor it has mentioned the reasons for not agreeing with the Enquiry Officer or not recorded its own reasons and this aspect has not been considered by the appellate authority also.

13. I have perused the judgment delivered by the learned JMFC, Nagpur in a criminal case filed against the applicant. The learned JMFC, Nagpur has observed that the prosecution, inspite of sufficient chances given to it, could not produce strong evidence against the applicant so as to prove his guilt. It was further held that the handwriting expert did not appear before the Court for giving evidence. The applicant cannot be held responsible for this. Even though, the learned JMFC, Nagpur has observed that it could have been proved that the pay orders were signed by the applicant and the handwriting expert would have been examined, but for that purpose, the applicant cannot be held responsible. Perusal of the opinion given by the handwriting expert, a copy of which is at page 46 (C), makes it clear that the Assistant State Examiner of Documents, Nagpur was unable to express any definite opinion and on the contrary, stated

that the red encircled signatures marked as Exh. Q A-10 to 12 are not written by the writer who wrote Exhibit marked A-1 to A-6. The Enquiry Officer referred to the fact that the handwriting expert has not examined the handwriting expert and so far as the guilt of the applicant in criminal case is concerned, it was observed by the Enquiry Officer that the allegations against the applicant cannot be held proved and a decision in this regard can be taken only after the judgment of the Court in criminal trial. In such circumstances, it cannot be said that the applicant was acquitted only on the basis of benefit of doubt.

14. The learned counsel for the applicant submits that during the pendency of enquiry, the applicant himself accepted the guilt and, therefore, he cannot now say that he has not committed any wrong. He has referred to Annexure R-1, a copy of which is at page No.61, it is dated 18.10.2004. It seems that the applicant has given explanation to some letter dated 15.10.2004 and in the said explanation, he has stated that he has committed mistake in respect of 10 pay bills and he was repenting for the same. He has further stated that he cannot say as to how he has committed such mistake. The exact words in the letter are as under :-

“मी आपका कडे येऊन दि. ६.१०.२००४ रोजी या १० देयकाबद्दल झालेल्या चुकलीची मला कबुल दिली होती. माझ्या हातून घडलेल्या या चुकलेबद्दल मला पश्चात्ताप होत आहे. तसेच हे कृत्य करताना मला अशी पूर्बुद्धी का झाली हे अजूनही कळत नाही”

It is material to note that this explanation seems to be vague about the exact mistake alleged to have been committed by the applicant. From the allegations in the criminal case, it seems that the applicant was charged with the offence punishable U/s 420, 468 and 471 of the Indian Penal Code , which means cheating, falsification of documents and forging of documents (making forged signatures) etc.. Such grave allegations cannot said to be admitted merely on the basis of so-called admission given by the applicant as Per Annexure R-1. It is material to note that the applicant has faced the departmental enquiry, submitted his defence and also cross-examined the witnesses and, therefore, it cannot be said that he admitted the guilt as claimed by the learned P.O.

15. The learned P.O. also placed reliance on the judgment reported in **2003 (4) Mh.L.J. 606 in case of Vasant Krishnaji Kambale V/s State of Maharashtra and another.** In the said case, it was held by the High Court of Judicature at Bombay thus:-

%6. In our opinion, therefore, acquittal of the petitioner by a Criminal Court, did not *ipso facto* entitle him to the benefits of salary under Rule 72. What was required to be seen was whether in the opinion of the competent authority, the action of suspension of the petitioner was **%wholly unjustified**±. In other words, a negative test has to be applied for holding the person

to be entitled to all benefits of period of suspension and that period should be treated as if the delinquent was on duty.

7. In the facts and circumstances, though a criminal case was instituted against the petitioner, and he was acquitted by the Court, keeping in mind the admission in responses to the show cause notice that the allegations were true, if an order was passed, it cannot be said that such an order could not have been made by the authority or suspension was wholly unjustified.

16. It is material to note that, in this particular case, the competent authority has not even referred to the so-called admission given by the applicant during the departmental enquiry. It is only stated that, though the applicant was acquitted in the criminal case, the departmental enquiry can be initiated, since he was acquitted with benefit of doubt and since the Enquiry Officer found that the charges were not fully proved, which means that they are partially proved. Thus, on the presumption and assumption, the impugned order has been passed and not on the basis of so-called admission given by the applicant.

17. As already discussed in foregoing paras, the competent authority has not given any reason as to how the applicant accepted guilt before the Enquiry Officer and whatever reason given

for this, is not satisfactory or even can be said to be a reason at all. The competent authority has also not recorded its own findings for disagreeing with the findings of the Enquiry Officer nor issued any show cause notice to the applicant, calling upon him to explain as to why the said findings shall not be accepted. Thus, no opportunity was given to the applicant to submit his defence before the competent authority. As already stated, the reasons for treating the suspension period as suspension only also are not convincing. When the competent criminal court has acquitted the applicant, there was no reason for the competent authority to ignore the said judgment of acquittal and to come to conclusions other than drawn by the competent court. Considering all these aspects, I am satisfied that the impugned order dated 23.10.2012 passed by the Senior Treasury Officer, Nagpur and consequent order in appeal against the said order passed by the Joint Director, Accounts and Treasuries, Nagpur dated 7.2.2013 is not legal and proper. Hence, I proceed to pass the following order:-

ORDER

- (i) The O.A. is allowed.
- (ii) The order dated 23.10.2012 passed by the Senior Treasury Officer, Nagpur (Annexure A-2) and the order dated 7.2.2013 passed by Joint

Director, Accounts and Treasuries, Nagpur (Annexure A-1), both, stands quashed and set aside.

- (iii) The respondents are directed to pass appropriate order to treat the applicant's period of suspension as duty period and also regarding arrears of pay and allowances to be paid to the applicant accordingly.
- (iv) No order as to costs.

Dt. 19.12.2017.

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

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