

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 34 of 2014 (S.B.)

Murlidhar S/o Gulabrao Pawar,
Aged about 65 years, Occupation : Retired,
Resident of New Friends Society, VMV Road,
Amravati, District : Amravati.

Applicant.

Versus

- 1) State of Maharashtra
through its Principal Secretary,
Rural Development & Water Conservation Department,
Mantralaya, Mumbai-32.
- 2) The Divisional Commissioner,
Amravati Division, Amravati.
- 3) The Enquiry Officer cum Dy. Chief
Executive Officer ,Zilla Parishad,
Akola.
- 4) The Chief Executive Officer,
Zilla Parishad, Akola.

Respondents

Shri C.U. Deopujari, Advocate for the applicant.

Shri P.N. Warjurkar, P.O. for the respondent nos. 1 & 2.

Shri Amol Deshpande, Advocate for respondent nos. 3&4.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGMENT

(Delivered on this 18th day of January, 2018)

Heard Shri C.U. Deopujari, the learned counsel for the applicant and Shri P.N. Warjurkar, learned P.O. for the respondent nos. 1&2. None for respondent nos. 3 and 4.

2. The applicant has challenged, in this O.A., the order passed by respondent no.1 on 9/3/2009 in the departmental enquiry so also the order dated 11/10/2011 (Annex-A-3) passed by the Hon'ble Minister (Revenue), Maharashtra State in the appeal preferred before the Hon'ble Governor of Maharashtra against the order of punishment passed by respondent no.1. The appeal was rejected by the Hon'ble Governor through the Hon'ble Minister (Revenue) and the order of punishment passed in the departmental enquiry by respondent no.1 was maintained.

3. Vide impugned order dated 9/3/2009 the Government of Maharashtra was pleased to pass the following order :-

*^R; kvFkh] mDr Jh, e-th iokj ; kR; k l ok mi nkukru # -40]341@& %#i ; s pkGhl
gtkj rhu'ks, dpkGhl QDr½, o<h jDde ol ny dj. ; kph o l okfuorRr orukru njegk
5% brdh jDde dk; eLo#i h di kr dj. ; kpsvkn's k ; kDnkjsns ; kr ; r vkg's***

4. The applicant was under suspension during the pendency of the inquiry for the period from 3/6/1993 to 9/12/1993. The suspension period has been treated as suspension period only. The applicant has claimed that the said order of treating the suspension

period as such be also quashed and set aside. The impugned order passed in the appeal, i.e., dated 11/10/2011 was communicated to the applicant on 16/3/2012 and therefore the applicant has claimed that the said order confirming the punishment in the appeal be also quashed and set aside.

5. Admittedly a charge sheet was served on the applicant on 24/9/1993 as per Annex-A-6 in which 7 charges were framed against the applicant. The Inquiry Officer submitted his report in the departmental enquiry on 7/12/2000 and observed that 5 charges were proved totally, whereas, charge nos. 6&7 were proved partially. The said 7 charges were as under :-

1½ tokgj jkst xkj ; kst usvrxir Bcdnkjkl fu; eckg; dkeso fu; eckg; vxhe nsk

2½ i pk; r l ferh] ex#Gi hj ; Flu ns; kr vky; k vxheps l ek; kst u i pk; r l ferh] ex#Gi hj ; Flu u djrk i pk; r l ferh] efrztkij ; Flu dj .ks

3½ 'kkGk clakdkekdfjrk ykx.kk&; k l kfgR; kph fu; eckg; [kjsh dj .ks

4½ [kjsh dyy; k l kfgR; kp; k jdei \$kk tlnk jdeps' kskku dj .ks

5½ Bcdnkjkl fnysyh dkesi wkzd#u u ?krk 'kkl dhi; jdepk xfoji j dj .ks

6½ i pk; r l ferh] efrztkij ; Flhy t-jks ; kst ups i kp /kukns'k ns dsul rkuk #-30]840@& ps 'kks'ku dj .ks

*7½ vf/kdkj ul rkuk dfu" B vflk; ark i nkoj jkstnkjhoj fu; Prh dj .ks***

6. The learned counsel for the applicant submits that the applicant was not provided with the documents which were relied in the departmental enquiry and the applicant has given as many as 8

reminders for supply of the documents, but for no use and therefore principles of natural justice have not been followed. It is further stated that the witnesses were neither examined nor the applicant was allowed to cross examine the witnesses and therefore great injustice has been done on the applicant. It is further stated that the explanation on the final show cause notice was obtained from the applicant in 2001, but no action was taken till 2008. The learned counsel for the applicant also submits that the applicant got retired on superannuation during the pendency of the inquiry on 31/8/2006, but no order for continuation of departmental enquiry was passed nor the sanction from the Hon'ble Governor was taken for continuation of the inquiry and therefore on all these counts the inquiry is vitiated, since principles of nature justice have not been followed and the rules of departmental enquiry are not followed and therefore the impugned orders passed without giving opportunity to the applicant are required to be quashed and set aside. In the alternative it is stated by the learned counsel for the applicant that the punishment awarded in the departmental inquiry is harsh since there was tremendous delay in conduction of departmental enquiry. The learned P.O. however submits that considering the allegations against the applicant which are proved, lenient view has already been taken by the Government as only 5% pension has been deducted.

7. Shri P.N. Warjurkar, Id. P.O. however defended the action taken by the respondents. The learned P.O. submits that the documents were already supplied to the applicant and even the witnesses were examined. The applicant, however, refused to cross examine the witnesses. The learned P.O. further submits that since the inquiry was initiated prior to retirement of the applicant, no sanction for continuation of inquiry is required. It is further stated that the applicant has challenged the inquiry before the appellate authority, i.e., the Governor and the appeal has been rejected on merits. All the 7 charges have been proved against the applicant

8. It was directed to the respondents to produce on record the original record of the departmental enquiry, since it was contended that the documents were not supplied. The learned P.O. submits that the original record is not available, but he has placed on record the xerox copies of the proceedings in the departmental enquiry and the same are placed on record at Exh-X1.

9. The first ground of attack is non supply of documents. For this purpose, the learned counsel for the applicant has placed on record the copy of one letter dated 19/11/1999 written by the applicant to the Inquiry Officer. In the said letter, it is mentioned that 7 letters were already given alleging that the documents were not supplied. However there is no reference of such letters, it is simply stated that

the 7 letters were given. The details of such letters such as date on which it were given etc., has not been mentioned. The learned P.O. invited my attention to the fact that this so called letter (reminder) (A-14,P-90) is dated 19/11/1999. However the documents on record show that the inquiry was already over in the month of August. He has invited my attention to the document Exh-X1, i.e., papers of inquiry which are at P.B. page nos. 130 to 141 (both inclusive). These documents show as to what happened on every date during inquiry. It is material to note that from these documents, it is clear that the witnesses were examined by the department and the applicant was given opportunity to cross examine the witnesses, but the applicant refused to cross examine the witnesses stating that he does not want to cross examine the witnesses. In all these documents there is no whisper about non receipt of the so called documents. In such circumstances, the contention of the applicant that he did not receive the documents for which he was required to file 8 reminders cannot be accepted as genuine. The so called reminder has been filed on 19/11/1999, but there is nothing on record to show that such documents were ever received or acknowledged by the department or the Inquiry Officer. The applicant ought to have refused to cross examine the witnesses on the say that he did not receive the documents, but from the record it seems that the applicant's simply refuses to cross examine the witnesses saying that he does not want

to cross examine the witnesses. In such circumstances, the submission made by the applicant's counsel that no opportunity was given to the applicant cannot be accepted as a gospel truth.

10. In the explanation given to the show cause notice dated 18/8/2001 the applicant has tried to raise points that no documents were given to him, but he is silent as to which documents were not supplied and why he did not raise those points earlier. In the explanation it is admitted that the witnesses were examined.

11. From the inquiry report, it seems that the statement of 11 witnesses were recorded and out of these 11 witnesses one Shri V.N. Wankhade, BDO, Shri M.R. Joshi, Junior Accountant could not be examined since they died. Similarly, the witness Shri Milind Namdeo Khode and Shri V.R. Nathe, the contractors did not appear. It seems that rest of the witnesses were examined. If the applicant refuses to cross examine the witnesses, the Inquiry Officer cannot be blamed for the same.

12. I have perused the entire inquiry report as well as order passed by the competent authority imposing punishment and the order passed by the appellate authority. From the said documents, I do not find any substance in the allegation that no opportunity was given to the applicant. The only mitigating circumstances that seems to be favourable to the applicant is that the inquiry was completed in

the year 2001 and his explanation was obtained, but no action was taken against the applicant till 2008. The applicant was allowed to retire on superannuation in the meantime on 31/8/2006. However that might be the only reason as to why a lenient view has been taken against the applicant. The punishment imposed on the applicant shows that the amount of Rs.40,341/- has been directed to be recovered from the applicant from his gratuity as the said amount is towards the loss caused to the Government due to the misconduct of the applicant and only 5% of his pension amount has been deducted permanently. Therefore, it seems that the respondents have already taken lenient view against the applicant considering the allegations against the applicant which are proved. It seems that the applicant as a BDO of Panchayat Samiti, Murtizapur has sanctioned the work illegally without following the rules and regulations and has paid the amount in excess without following the due procedure. He was responsible for causing loss to the Government and all these aspects have been considered by the competent authority.

13. The learned counsel for the applicant placed reliance on the Judgment in the case of **Managing Director, Ecil, Hyderabad Vs. B. Karunakar reported in 1994 AIR (SC), 1074**, wherein it has been held that the delinquent will have the right to receive the report of the

enquiry officer notwithstanding the nature of punishment as to whether it was a major punishment of dismissal, removal or reduction in rank.

14. The learned counsel for the applicant also placed reliance on the Judgment reported in **2009 (2) Mh.L.J.,312 in the case of Ratnakar Bhagwanrao Mahajan Vs. District and Sessions Judge, Jalna & Ano.** In the said case it was held that initiation of departmental proceedings in the case of retired employee is subject to previous sanction of the State Government. It is stated that the departmental proceedings would commence from the date of issuance of regular show cause notice by the disciplinary authority. The learned counsel for the applicant submits that the department has not sought sanction from the Government for continuation of departmental enquiry against the applicant. The learned P.O. however has placed reliance on the Judgment in the case of **State of U.P. & Ors. Vs. R.C. Misra reported in (2007) 9 SCC,698.** In the said case it was held that the Governor's sanction is not required where departmental proceedings are initiated while the employee was in service and the proceedings continued after retirement. The learned P.O. also placed reliance on the Judgment reported in **(2007) 6 SCC, 694** in the case of **UCO Bank & Ano. Vs. Rajinder Lal Capoor.** In the said case it was held that continuation of departmental enquiry after retirement is permissible only in those cases where departmental enquiry has been

commenced during service, by issuing the charge sheet and not by issue of mere show cause notice.

15. In the present case the charge sheet was served on the applicant on 24/9/1993 and the witnesses were examined and the report of inquiry was submitted on 7/12/2000. The explanation of the applicant was called vide letter dated 23/7/2001 and the applicant submitted his explanation on 18/8/2001. However, the final order has been passed in the year 2008 and in the meantime the applicant got retired on superannuation on 31/08/2006. Thus, it is crystal that the departmental enquiry was already initiated against the applicant in the year 1993 and entire proceedings except passing of final order was completed during his service tenure. The sanction under section 27 of the Maharashtra Civil Services (Pension) Rules, 1982 is required only in case where the department wants to initiate departmental enquiry after retirement of the employee and therefore it cannot be said that the inquiry is vitiated in any manner. There is nothing on the record to show that the applicant did not receive the documents or he ever raised this issue before the stage filing statement of defence or examining of witnesses and therefore after the completion of the inquiry if the applicant makes vague statement that when he had given 7 reminders for supply of documents, such statement cannot be accepted as genuine.

16. On a conspectus of discussion in forgoing paras, I therefore do not find any merits in the O.A. The competent authority has relied upon the report of the Inquiry Officer. Witnesses were examined by the Inquiry Officer and in spite opportunity given to the applicant, he refused to cross examine the witnesses. The Inquiry Officer came to the conclusion that out of 7 charges, 5 were proved fully and 2 were proved partially. The said decision has been maintained by the Hon'ble Governor through the Hon'ble Minister. Considering the allegation against the applicant a very lenient view has been taken by the respondent authorities to deduct 5% of pension of the applicant. In such circumstances, I do not find any reason to interfere in the order passed by the competent authorities in the departmental enquiry against the applicant. Hence, the following order:-

ORDER

The O.A. stands dismissed with no order as to costs.

Dated :- 18 /01/2018.

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

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