MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION No. 522/2015 (S.B.)

Balasaheb Shriramji Raibole,
Aged about 45 years, Occ. Service,
R/o Mahatma Phule Colony,
Near Benoda Bye-pass Road,
Amravati, District Amravati.

Applicant.

Versus

1) State of Maharashtra,
through its Hon'ble Minister
Gopinath Pankja Munde,
Rural Development and Irrigation Department,
Bandhkam Bhavan, 25 Marzban Road,
Fort, Mumbai.

2) Divisional Commissioner,
Amravati Division, Amravati.

3) Chief Executive Officer,
Zilla Parishad, Amravati.

4) Assistant Commissioner (Enquiry),
Sudhir S. Walke,
Office of Divisional Commissioner, Amravati
Dist. Amravati.

Respondents.

Shri M.V. Mohokar, Advocate for the applicant.

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

S/Shri M.A. & S.M. Sable, Advocates for respondent no.3.

Megha Munshi, Advocate for respondent no.4.

Coram :- **Hon'ble Shri Anand Karanjkar,**
Member (J).

JUDGMENT

(Delivered on this 29th day of April,2019)

Heard Shri M.V. Mohokar, learned counsel for the applicant, Shri P.N. Warjurkar, learned P.O. for respondent nos. 1 & 2 and Megha Munshi, learned counsel for respondent no.4. None for respondent no.3.

2. The applicant is challenging the impugned order dated 18/01/2013 passed by the Divisional Commissioner, Amravati thereby directing to recover amount Rs.52,990/- from the applicant and withholding one increment for one year without causing its effect on future increments. The facts in brief are as under –

3. The applicant was promoted as Child Development Project Officer and he was posted at Dharni w.e.f. 25/10/2007. In pursuance of the order the applicant joined his duty as Child Development Project Officer, Dharni. It was case of the department that pro-vitamin syrup bottles were received by the Child Development Project Officer, Dharni on 12/06/2007. Though the applicant resumed duty, he did not take any care to issue directions to his subordinates for distribution and disbursement of the pro-vitamin bottles. Ultimately, 12,112 bottles which were lying at one Center were expired. It was also charge against the applicant that 21,712 bottles were stored at

Sadrabadi Anganwadi Center, out of which 9,600 bottles were distributed to various Centers, but remaining bottles were lying there and no immediate steps were taken by the applicant in this regard. It was also alleged that the Incharge of Sadrabadi Anganwadi Center Smt. Hande was negligent and she had thrown the bottles after the expiry date without giving any information to the applicant and the applicant also did not take care to verify the stock, he did not issue immediate direction to Smt. Hande for distribution of the bottles and ultimately loss was caused to the Government. On the basis of this charge sheet, reply was submitted by the applicant vide Annex-A-12 and he denied the charges. Opportunity was given to the applicant to engage next friend in the inquiry, evidence was recorded in the inquiry, opportunity to cross examine the witnesses was given to the applicant, opportunity was given to the applicant to lead evidence and thereafter the Inquiry Officer submitted his report to the Disciplinary Authority and thereafter the Disciplinary Authority issued show cause notice to the applicant why proposed punishment shall not be awarded i.e. the recovery of Rs.53,034/- and why his one increment will not be withheld for one year. The applicant gave reply to the show cause notice.

4. The Disciplinary Authority thereafter passed order dated 18/01/2013 and awarded the punishment. The applicant preferred the

departmental appeal, it was heard and it was dismissed by the Appellate Authority.

5. The impugned punishment is challenged by the applicant mainly on the ground that he resumed his duty on 25/10/2007, his predecessor did not take any steps to distribute the bottles and immediately after joining the applicant issued directions time to time and directed the concerned Incharge of Salebardi Khaprabadi Anganwadi to distribute the bottles, but she was negligent. The news was published that as per the direction of the Sarpanch and Police Patil, Smt Hande who was Incharge of Sadrabadi Anganwadi Center had thrown the bottles and therefore she was responsible for the loss. It is grievance of the applicant that report of the Inquiry Officer was not given to him and opportunity of hearing was not given to him by the Disciplinary Authority before agreeing with the conclusions drawn by the Inquiry Officer and consequently there is a legal lacuna in the departmental inquiry. It is submission of the applicant that the order passed by the Disciplinary Authority and the report of the Inquiry Officer are not based on evidence, excellent performance of the applicant was not considered. There was direction by the Inspector, FDA to stop the distribution of the syrup bottles and to call back the syrup bottles which were distributed. It is submitted that due to non

consideration of this evidence material prejudice is caused to the applicant and consequently the impugned order be set aside.

6. In present case it appears that opportunity was given to the applicant to submit reply to the charge sheet, permission was granted to him to engage next friend in his defence, the applicant was permitted to cross examine the witnesses and also given opportunity to read evidence. The applicant was heard by the Inquiry Officer, defence statement was also submitted by him and thereafter the Inquiry Officer submitted report to the Disciplinary Authority.

7. The legal position is very much settled that the jurisdiction of the Tribunal or the Court is very much limited when the action of the Disciplinary Authority is challenged. The Tribunal has jurisdiction to interfere in the matter only when there is absolutely no evidence in support of the findings recorded by the Inquiry Officer or findings recorded by the Inquiry Officer are contrary to law or are perverse. The legal position is also settled that the Tribunal has no jurisdiction to re-appreciate the evidence and substitute own finding in place of findings recorded by the Inquiry Officer and the Disciplinary Authority.

8. In view of the legal position, I would like to examine the present matter. In this case it is not possible to say that principles of natural justice are violated by the Inquiry Officer or the Disciplinary

Authority while conducting the departmental inquiry. The learned counsel for the applicant submitted that as copy of the Inquiry Report was not served on him and opportunity of hearing was not given to him by the Disciplinary Authority, therefore, there is a legal lacuna which goes to the root of the matter. The learned counsel for the applicant is placing reliance on the Judgment in case of **Managing Director, ECIL, Hydrabad & Ors. Vs. B. Karunakar & Ors (1993) 4 SCC,727.** It is submitted that in para-30 of the Judgment the Hon'ble Apex Court has held as under –

" (30) Hence the incidental questions raised above may be answered as follows –

(i) Since the denial of the report of the enquiry officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject. "

9. It is submitted that whenever, the service rules contemplates then and when a Inquiry Officer is not the Disciplinary Authority the delinquent employee will have the right to receive the Inquiry Officer's report notwithstanding the nature of the punishment. It is also submitted the right to make representation to the Disciplinary

Authority against the findings recorded in the inquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right. On the basis of this law, submission is made that the inquiry is vitiated as this opportunity of hearing was not given to the applicant. It is contention of the applicant that the Disciplinary Authority directly issued the show cause notice why punishment should not be awarded, but before agreeing with the view of the Inquiry Officer, opportunity of hearing was not given to the applicant and therefore there is a legal fallacy and punishment awarded is illegal. In this regard, I would like to point out the observations made by the Hon'ble Apex Court in para-31 of the Judgment which is as under –

"(31) Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/ Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/ Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/ Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should

avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law."

10. The crux of para-31 is that only when a Court or Tribunal finds that the furnishing of the inquiry report would have made a difference in the final result, only in that case the order of punishment be set aside by issuing suitable direction.

11. Though it is vehemently argued that the report of the Inquiry Officer was not served on the applicant before the view was formed by the Disciplinary Authority, but it is nowhere demonstrated what prejudice is caused to the applicant. It seems that when applicant preferred the appeal before the departmental authority, the applicant was aware about the report of the Inquiry Officer, there is no specific allegation in the O.A. as to what prejudice is caused to the applicant. It was necessary for the applicant to show that had report of the Inquiry Officer was served on him, there would be different result in the matter. In the present case after going through the facts and circumstances of the case it appears that the applicant joined at Dharni on 25/10/2007 as Child Development Project Officer. Naturally it was duty of the applicant to examine the stock in his office and also to examine the medicines which were lying in various Anganwadi Centers, to see the expiry date and whether they were distributed or not distributed. It was contention of the applicant that on 03/11/2007, 07/11/2007, 11/01/2008 and 25/02/2008 he visited to Sadrabadi Anganwadi Center. The Inquiry Officers also observed that on these

dates the applicant visited to Sadrabadi Anganwadi Center as it was mentioned in the tour diary of the applicant, but it is pertinent to note that no specific directions were given by the applicant to the In charge of Sadrabadi Anganwadi Center for immediately distributing the 12,000 and above syrup bottles which were lying. This fact shows that from 25-8-2008 till 3-11-2008 the applicant did not visit Sadrabadi center. The applicant's duty was that he should have taken into account what was the expiry date of the drugs and to take urgent steps for distributing of the syrup bottles before the expiry dates. The applicant did not pay heed for which purpose and object the syrup bottles were supplied by the Government to the Anganwadi Center, the drug was for the protection of the children in the locality, but no heed was paid by the applicant. It is important to note that for the first time in the meeting which was held 07/01/2008, direction was given to Sadrabadi Anganwadi Center for distributing the drugs i.e. syrup bottles. It was also mentioned that the Incharge of the Center would be held responsible. Smt. Hande who was Incharge of Titamba Center. It is pertinent to note that after 07/01/2008 the applicant never made inquiry whether his directions were complied or not, he did not contact Sadrabadi Center or made inquiry whether the pro-vitamin syrup bottles were distributed as directed in meeting on 07/01/2008. As a matter of fact emphasis is given by the Inquiry Officer and the

Disciplinary Authority on this behavior of the applicant. The applicant was working on a responsible post and child welfare was the object of the department and project. The project was working for the development of the child and therefore it was paramount duty of the applicant to be cautious about the distribution of the drugs to the various centers for the benefit of the child, but the applicant acted negligently and he did not pay any heed.

12. The applicant is intending to take advantage of inspection report which at Annex-A-8. It is contention of the applicant that on 12/02/2008 one Shri A.B. Mandlekar, Inspector, FDA, Amravati inspected the stock and he issued directions to stop distribution of the bottles and if distributed, the said drugs be called back. It is important to note that on 25/10/2011 the applicant submitted his defence statement before the Inquiry Officer. In his defence statement the applicant has given reference of letter dated 12/02/2008 which was written by the Inspector of FDA, but in the same letter it is also mentioned by the applicant that thereafter the FDA, Amravati issued letter dated 01/04/2008 and directed to supply and administer pro-vitamin syrup as before. It is pertinent to note that even after receiving this letter dated 01/04/2008 no action was taken by the applicant to verify whether the drugs bottles were distributed or not and on the basis of this evidence the learned Inquiry Officer held that the

applicant was unable to control his subordinate and the applicant was negligent while acting as Child Development Project Officer. It appears that the expiry date of the drug was May 2008, therefore, after receiving the letter dt/ 1-4-2008 from FDA there was time to issue immediate direction to distribute the drug, but it was not done. After perusing the evidence on record and even the stand of the applicant before the Inquiry Officer, I am compelled to say that the inference drawn by the Inquiry Officer and the Disciplinary Authority is based on the evidence. As the findings recorded by the Inquiry Officer and the Disciplinary Authority are based on evidence, therefore, it is not possible to re-appreciate the evidence and to arrive at other conclusion.

13. I have already discussed the law laid down by the Hon'ble Apex Court in para-31 of the Judgment on which reliance is placed by the applicant, as it is nowhere shown by the applicant what and how prejudice is caused to him due to non supply of the Inquiry Officer's report before the Disciplinary Authority acted on it, consequently, there is no scope for the interference in the matter. As no prejudice is caused to the applicant, therefore, there is not point to remand the matter to the disciplinary authority and as the findings of the Inquiry Officer are based on evidence, therefore, interference in not permissible. The punishment awarded by the disciplinary authority is

proportionate. In view of the above discussion it is not possible to accept submission of the applicant that the inquiry is vitiated.

14. In the result, I hold that there is no substance in the application. Hence, the following order :-

ORDER

The application stands dismissed. No order as to costs.

Dated :- 29/04/2019.

(A.D. Karanjkar)
Member (J).

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