MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 543/2015

Omprakash S/o Gangadhar Thakre,
Aged about 36 years, Occ. Service,
R/o Quarter No.3, Akola Jail,
Akola.

Applicant.

Versus

1) State of Maharashtra,
Department of Home Affairs,
Mantralaya, Mumbai-32
through its Secretary.

2) Inspector General of Prisons,
Maharashtra State, Old Central Building,
Second Floor, Pune-1.

3) D.I.G. Prisons (H.O.), Maharashtra
State, Old Central Building,
Second Floor, Pune-1.

4) D.I.G.- Police and Prison (Eastern
Region), Wardha Road, NEERI,
Nagpur.

5) Superintendent of Police,
Nagpur Central Prison, Wardha Road,
Opp. NEERI, Nagpur.

Respondents

Shri S.M. Khan, Advocate for the applicant.

Smt. M.A. Barabde, P.O. for the respondents.

Coram :- **Hon'ble Shri R.B. Malik, Member (J).**

Dated :- 16/02/2017.

ORAL ORDER -

The applicant a Jail Guard is aggrieved by an order of punishment in the Disciplinary Enquiry (DE) made by the Disciplinary Authority on 9-7-2013 which came to be confirmed in appeal on 2-6-2014 by the third respondent the DIG, Prisons (Head Quarter),Pune. The allegations were that he supplied money illegally, unauthorizedly and in breach of Jail discipline to hardened criminals.

2. I have perused the record and proceedings and heard Mr. S.M. Khan, the ld. Counsel for the applicant and Smt. M.A. Barabde, the ld. P.O. for the respondents.

3. The respondent no.1 is the State of Maharashtra in Home Department, the second respondent is Inspector General of Prisons, the third respondent as already mentioned above is the DIG, Prisons (Head Quarter), Pune, the fourth respondent is DIG Police and Prisons, Nagpur and fifth respondent is the Superintendent of Police, Nagpur Central Prisons.

4. The charge against the applicant was that on 11-2-2009 while on duty as Jail Guard he was supposed to supervise the meetings of the inmates with their relatives, the applicant without offering his search at the main gate and without in any manner making any entry in the record went to the place earmarked for the meeting of the inmates with their relatives. There he handed over currency notes

to the Watchman Shri Arun Gulab Raut and told him to give them to another Ashok Mathade. In the ultimate analysis those notes were handed over to three under trial prisoners. It was alleged that he committed misconduct as envisaged by the relevant provisions of the Maharashtra Civil Services (Disciplinary & Appeal) Rules, 1979 (hereinafter called "D&A Rules"). He also allegedly committed breach of Section 54 (1) of the Maharashtra Prisons Act,1894.

5. The D.E. commenced vide order dated 9-8-2010. The ld. P.O. has submitted two files which contained part of the said D.E. in the file from page nos. 25 to 28 of 7-7-2011. He was asked as to whether he pleaded guilty to the charge and the answer to the question no.3 was that he pleaded not guilty. The Enquiry Officer submitted his report on 19-5-2012. A show cause notice came to be issued to the applicant along with the report of the Enquiry Officer. The said Enquiry Officer was the Superintendent of Chandrapur Prisons. The perusal of the report from pages 44 onwards shows that earlier certain statements were recorded of those under trial prisoners to whom the money was allegedly paid by the applicant. Their names are Ashok Vishwanath Mathade, Arun Gulab Raut and Nilesh Mukundrao Dhoke and also Sanukhan Jamil Khan and Jivan Nilkanth Patil. The statement of the applicant was recorded earlier on 14-2-2009. In that particular statement the applicant stated that on

11-2-2009 his duty was in that particular place where the under trial prisoners met with their relatives. He in his own writing made that statement practically accepting the allegations against him as true. He concluded his statement by mentioning that he had committed mistake which may be excused and condoned. In the inquiry the Enquiry Officer in question no. 14 asked a pointed question as to whether that particular hand written statement was made by him. The applicant admitted the same. When called upon to explain the reason, he mentioned that it was done as per say of Shri Borase, Prison Officer, Grade-I. He was asked as to why the said Officer took that writing from him and his answer was that Shri Borase had thought (Marathi word being “watta”) and therefore he demanded that statement and the applicant gave it. He denied to have brought in the Prison the currency notes. He was pointedly asked in question no.18 as to whether in his earlier statement he had admitted guilt and asked for pardon. He accepted the same statement as correct by using the Marathi word “Barobar”. He further admitted that the said statement was written by him in his own hand.

6. Returning to the report of the Enquiry Officer it is mentioned in his report that under trial prisoners had been released and their presence could not be secured and therefore in the ultimate analysis the statement of the applicant which is in the nature of

admission or if one might say so confession and the circumstances were the reasons for holding the applicant guilty.

7. From the original file it would appear that on 7-7-2011 in his statement before the Enquiry Officer he was asked as to whether he wanted the assistance of next friend and if so he should identify him and give his address. He answered in the affirmative and mentioned that he would disclose his name lateron. In the 6th question he was asked if he wanted to examine defence witnesses. His answer was in the affirmative again and he added that he would submit the names of the witnesses later. He however did not want to produce any document. When he was asked as to whether he wanted to add anything more his reply was that he would rely on his statement on 25-8-2010. That statement is also there in the original file and also in the record of the O.A. He has mentioned therein that action against him could not be initiated by the Dy. Inspector General of Prisons. He repeated that he had not come to the prison on that day implying thereby that allegations against him were false. He also denied to have stealthily provided currency note to the Jail inmates.

8. In so far as the Enquiry Officer is concerned, he has based his findings as mentioned by me just now on the statement of admission by the applicant and on the basis of the circumstances. The issue as to whether the admission or confession in the DE is

receivable is a significant point because much would depend upon a finding thereon.

9. In **State of Mysore Vs. S.S. Makapur, AIR,1963 SCC, 375** it was held that the Tribunals exercising quasi-judicial functions are not courts and that they were not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. It was further held that unlike courts, the Tribunals can obtain all information material for the facts at issues from all sources and through all channels, without being fettered by rules and procedure, which govern proceedings in court. The only obligation on the Tribunal is that such information should be put to the party against whom it is to be used. Now as for as this aspect of the matter is concerned, no one can dispute the fact and even the applicant does not deny that he made such a statement. The reason with regard to the officer named above is something to be mentioned to be readily rejected because if everything depends upon a mere thought by the officer, I do not think the applicant would have kept quiet. There is no doubt an element of flip-flop, with the applicant sometime clearly admitting the facts and then turning around to deny them but then the most important point is that he could not give any plausible explanation as to why in the first place he should have been hauled up. There is not even a particle of material to suggest anything by

way of justification. No doubt some points were raised with regard to the steps having been taken or not taken against the others but then that can hardly be decisive because speaking by large and generally the case of the applicant has to be considered on its own facts. Unless it was established that the findings against the others, if the D.E. took place against them, would materially affect the case of the applicant that by itself will be no ground to reject the case against the applicant. Here I must repeat that there is no reason suggested as to why he was being singled down for this treatement. If that be so, then I am quite clearly of the opinion in the present set of facts that the statement made by the applicant before the Enquiry Officer practically admitting his guilt has to be accepted as held by the Hon'ble Supreme Court in **S.S. Makapur** case (*supra*). The context is equally significant. It so happens that in a criminal trial under the relevant procedural enactments namely Cr.P.C. and Evidence Act there are severe restrictions on using the statements made before the Police and even if the confession which is a relevant fact under section 164 of the Cr.P.C. is to be used, the making thereof in the light of the surrounding circumstances is with a lot of safeguards for the accused. Even otherwise by virtue of a combined reading of sections 161 & 162 of the Cr.P.C., the statements made before the Police are inadmissible. The Courts of criminal jurisdiction have to be within

these legal constraints. Those constraints are not present in the departmental inquiries and therefore an Enquiry Officer can safely act upon the statements even if in the nature of being inculpatory in nature as far as the delinquent was concerned.

10. Further in so far as the principles are concerned I myself had an occasion quite recently in this very bunch to deal therewith in an O.A. arising out of a disciplinary proceeding. That was in the matter of **O.A. 850/2010 (Dhananjay Gomaji Chavan Vs. State of Maharashtra and one Another and one other O.A.).** That common Judgment was rendered by me on 10-2-2017. The issue was the scope of this Tribunal's jurisdiction in the matter of judicial review of administrative action. In para 7 of my Judgment, I noted down for guidance a number of Judgments of the Hon'ble Supreme Court and Hon'ble Bombay High Court. In Paras-8,9,10,11 & 12 thereof I made the following observations.

"8. The principle that can be culled out from the above case law and some other rulings in the field can be summarised as below:-

(i) Jurisdiction of this Tribunal is of judicial reviews of administrative action and is not an appellate jurisdiction.

(ii) Mere possibility of the existence of view other than what commended to the authorities below will not be per se and ipso facto sufficient to adopt a different course of action, provided the findings of

the authorities below came true to reasonable person test.

(iii) The main concern of the Tribunal in exercise of jurisdiction of judicial view of administrative action is to make sure that the process by which the decision was reached was in keeping with the principles of natural justice. This process rather than conclusion itself will have to be scrutinized to make sure that the enquiry was in keeping with the principles of natural justice (audi alterem partem).

(iv) The Tribunal shall not just for the asking substitute its own views on facts to the view of the administrative authorities. Unless the said impugned view was such as to shock the conscience of the Tribunal and / or was completely unreasonable and such as no reasonable person in its place would reach such a conclusion.

9. The codified procedural law will not be applicable to the departmental proceedings. But still the Tribunal would ensure that the procedure adopted in the departmental enquiry was fair, just and reasonable and was not oppressive. The liberty to cross-examine the witnesses of the establishment must be given to the delinquent and at the same time in case he wanted either to examine himself or to examine any other witness or witnesses, he should have been given that opportunity.

10. The degree of proof necessary to arrive at a conclusion would be preponderance of probabilities and not the degree of proof required in the criminal trial of proof beyond reasonable doubt.

11. The strict procedural rules enshrined in the Code of Criminal Procedure, Code of Civil Procedure and the Evidence Act and any other

procedural law, if any, will not in terms apply, but again the process will have to be informed with the principles of natural justice, fair play and impartiality.

12. The same principle will be applicable in the matter of imposition of punishment. The Judicial Forum like this Tribunal will not just for the asking interfere with the punishment imposed by the authorities below, if the conclusions were proper and warranted and if the punishment was not shockingly disproportionate. The Tribunal cannot act only with a view that had it been there in the shoes of either disciplinary authority or the appellate authority may be the findings of guilt was not returned or even if it was so returned, the punishment would not have been such as has been handed out by the administrative authorities. The practical effectuation of these principles has to be manifested in the approach of the Tribunal in dealing with such matters".

11. The above then are the principles that should govern the decision of an O.A. as culled out in the above extract.

12. Examined on the above touchstone, I do not think the report of the Enquiry Officer suffers from any vitiating vice. Mr. S.M. Khan, ld. Counsel for the applicant who indeed did his very brilliant best to salvage the case of his client contended that a fair opportunity was not given to the applicant to defend himself. He was not given an opportunity to call his witnesses nor was he allowed to examine himself. He also invited my attention to the fact that the inmates of the Prison were not examined by the Enquiry Officer. Now, as to these arguments of the learned counsel for the applicant, I find that in

the first place the confession by itself can be a piece of a formidable material against the applicant. The applicant cannot carry the day merely by calling it as incorrect false etc. He has to reason out his very implication in this incident and that is quite simply because by the very nature of thing the need to maintain strict discipline in Jail can hardly be over emphasised and if those who have to guard it turned around to commit serious breach, then that is not something that can be glossed over or ignored. That being the state of affairs, I do not think that I should ignore what is there on record on the ground of what is not there.

13. But even otherwise the reasons given by the Enquiry Officer that he could not secure the presence of, the then under trial prisoners is not such a moon shine or laughable explanation. It is possible that the inmates post release may be difficult to be had. In the original file no doubt there is nothing to find with regard to the steps taken to secure their presence but then even in the matter of conduct of D.E. the strict rules of procedure that courts of criminal jurisdiction adopt are not applicable. That being the state of affairs in my opinion in the context to the present facts it may not be possible to throw away the case of the respondents for non examination by the Enquiry Officer of the inmates.

14. Now as far as the examination of the applicant and his so called witnesses the Enquiry Officer did ascertain from the applicant the fact as to whether he wanted to embark upon defence and he did say yes but then the inquiry proceeded. Thereafter also the applicant addressed various communications from time to time which exemplify the fact that he was quite conscious of his right and therefore should he be so disposed he could have at least placed on record the list of witnesses, addresses etc. which apparently he did not do exposing his case to the vulnerability. Here again the basic distinction between a criminal trial and D.E. needs to be borne in mind. There the burden is entirely on prosecution and the decree of proof is beyond reasonable doubt but also it is for the prosecution to tender all evidence oral as well as documentary. It is an obligation on the court of criminal jurisdiction to make sure that the witnesses were summoned and brought before the court. However there also if the accused wanted to examine witnesses he would have to take lead by using State machinery to secure their attendance. If that was so there in my view it was most essential for the applicant to establish that it was not just in his mind to examine witnesses but actually he should have taken steps to secure their presence and attendance. I would not therefore attach much significance at least in the present set of facts to this aspect of the matter. It is quite pertinent to note that there is not even

a particle of material to suggest that the Enquiry Officer showed any undue slant against the applicant during the inquiry. He has been quite objective and forthright in recording whatever was mentioned to him. I have already discussed the Judgment of the Hon'ble Supreme Court in **Makapur** (*supra*). This would become clear there from as well as from several others Judgments which I referred to in the **O.A. 850/2010 (Dhananjay Gomaji Chavan Vs. State of Maharashtra and one Another and one other O.A.),** and therefore I do not think that the so called absence of corroboration in this D.E. would be conclusive in any manner. The crux of the matter is that the report of the Enquiry Officer can safely be relied upon. This report was clearly accepted by the disciplinary authority being the respondent no.2, Inspector General of Prisons, Pune. His order is at Annex-A-1. He has imposed punishment of keeping the applicant on his basic pay for a period of five years from July,2013 to June,2018 and made it clear that after the expiry of that term the increments would be postponed and it would be an instance of cumulative effect. The perusal of the order of the disciplinary authority would show that he has examined carefully the report of the Enquiry Officer especially with regard to the confessional aspect of the matter. He has given the reasons as to why he would agree with the report of the Enquiry Officer and concluded that the applicant was driven by the lust for money while

indulging in doing what he did. In the first place the disciplinary authority was concurring with the Enquiry Officer but even then in my opinion he rendered a good order which is my view cannot be faulted on any count. In fact generally one does not come across such orders from the disciplinary authorities.

15. The appellate authority's order is also perused. The appellate authority is the third respondent hereto. She carefully noted the fact that the applicant was given all opportunities to defend himself. Although a certain general looking statement is made that no evidence was tendered but then it is also noted that efforts were made to secure the evidence. The appellate authority also agreed with the disciplinary authority and dismissed the appeal and the disciplinary authority had already agreed with the Enquiry Officer. I would commend the order of the appellate authority as well.

16. Smt. M.A. Barabde, ld. P.O. for the respondents relied upon the Judgment of **Channabasapa Basappa Happali Vs. State of Mysore AIR, 1972 SCC,32**. It was held therein, on those facts that if in a D.E. the facts were accepted which in the context amounted to admission such statements can be acted upon.

17. Shri S.M. Khan, ld. Counsel for the applicant relied upon **Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra AIR, 2013 SCC, 58.** It was held by Their Lordships that the cross

examination was an integral part and parcel of the principles of natural justice and therefore an opportunity to cross examine the witnesses must be given to the concerned party. Their Lordships held that this requirement is not just a statutory requirement but it is a part of the principles of natural justice. Now as principles it must have been found that I have borne this principle in mind and those principles were also culled out in the extract from my earlier Judgment in O.A.No. 850/2010. It must have become clear also that the present facts are such where the effect of the impugned orders are not diluted in any manner. In fact, application of the principles in **Ayub Khan's** case hereto, would result in fact to the conclusion in favour of upholding the impugned orders.

18. Shri S.M. Khan, ld. Counsel for the applicant relied upon **Nirmala J. Jhala Vs. State of Gujarat and Another, AIR,2013 SCC,1513** that authority was cited for the proposition that preliminary inquiry statements are the statements taken behind the back of the delinquent and therefore they should not be acted upon in so far as the regular departmental inquiry was concerned. As to this aspect of the matter I find that in **Nimala Jhala** (*supra*) which was a matter involving a judicial officer, the preliminary inquiry had its peculiar hue D.E. was held against the judicial officer and before that the statements therein were recorded which could not have been used in

the D.E. against the delinquent judicial officer. Now that point clearly is not the state of affairs herein. The whole thing must have become clear in view of the foregoing.

19. Shri S.M. Khan, ld. Counsel for the applicant relied upon **State of Gujarat Vs. Justice R. A. Mehta (Retd.), AIR,2013 SCC 693.** That case was cited in support of the contention of bias. I have already discussed herein above that the applicant has not been able to establish as to why he should have been singled out for being involved in the matter. In my opinion therefore in as much as there is not even a tittle of material to show bias one cannot first of all make a mere bald allegation and then try to elaborate upon it. One has to allege bias whether actual or legal in the pleadings and if denied which in all probabilities it will be, then to prove it to the extent the proof is necessary. I do not think that the factor of bias is present herein.

20. Lastly Shri S.M.Khan, ld. Counsel for the applicant referred me to **ESIS Corporation Vs. A.B. Tungare 2014 (5), Mh.L.J.,219**. Therein upon admission the Enquiry Officer had closed the inquiry and that in my view was the significant distinguishing feature. Here the absence of the evidence of the then inmates has been explained quite satisfactorily and therefore no fault could be

found with the Enquiry Officer for having closed the inquiry. But in any case material in the form of admission by the applicant was there.

21. In view of the foregoing, I hold that presiding over this Tribunal in exercising the jurisdiction of judicial review of administrative action I do not think it is possible for me to even intervene much less interfere and after the discussion which is my opinion is sufficiently detailed I have no hesitation in accepting the conclusions of the three authorities below. After all strict Jail administration is not something which is capable of being compromised and therefore even the punishment meted out is quite in order and by no stretch of imagination can it be said that it is disproportionate to the established delinquency far less it is shockingly disproportionate.

22. For the foregoing the O.A. stands hereby dismissed with no order as to costs.

23. The original file produced by the learned P.O. is hereby returned to her.

(R.B.Malik)
Member (J).

dnk.