

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.676/2014.

(S.B.)

Mohd. Afzal Mohd. Musa Sheikh,
Aged about 66 years,
Occ- Retired Assistant Superintendent-cum-
Store Keeper and Cashier,
R/o Yogiraj Colony, Gaulkhed Road,
Shegaon, Distt. Buldhana.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Public Health,
Mantralaya, Mumbai-32.
2. The Director of Health Services,
(M.S.), Mumbai.

Respondents.

Shri Sheikh Majid, 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 22nd day of January 2018).

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

2. The applicant Mohd. Afzal Mohd. Musa Sheikh, was working as Assistant Superintendent-cum-Store Keeper in Laxmibai

Deshmukh Government General Hospital, Murtizapur, District Akola and got retired on superannuation on 31.1.2006. On Dr. K.S. Sharma was Medical Superintendent at that time under whom, the applicant was working.

3. A memorandum of charge was served to the applicant and Dr. K.S. Sharma on 29.1.2005 whereby allegations were made against the applicant and Dr. K.S. Sharma. In all five charges were framed against the applicant which were as under:-

(a) The applicant while working as a Cashier-cum-Store Keeper at Laxmibai Deshmukh Government General Hospital, Murtizapur during 1.4.2003 to 31.3.2004 effected purchase of medicine and equipment worth Rs. 3,82,600/- from the personal ledger account and he in collusion with the Medical Superintendent paid excess amount of Rs. 1,66,548/- and thereby committed serious irregularities which amount to grave and serious misconduct on the part of the applicant.

(b) The applicant purchases miscellaneous articles from national consumer federation, Akola and made payment of Rs. 7,02,662/- from the regular grants but willful omission on his part to verify local market rates and compare the purchase rates with local market rates resulted in excess payment of Rs. 5,23,180/- to the supplier.

(c) The applicant purchased the consumer food items from national consumer federation, Akola and made payment of Rs. 7,02,662/- from the regular grants but willfully omitted to verify from the local market the rates of items which has resulted excess payment of Rs. 5,23,180/- to the supplier.

(d) The applicant made unnecessary, unfruitful purchase of items and equipment of Rs. 4,97,943/- even though there was no requirement of the said items, equipments in immediate near future and consequently the said items and equipments remained unutilized.

(e) The applicant did not deposit the amount of Rs. 4,81,621/- withdrawn from personal ledger account in the treasury and kept the said amount as cash thereby committed financial illegalities.+

4. After due enquiry, the Enquiry Officer submitted his report on 30.9.2008 and on the basis of the said report, the first show cause notice was issued to the applicant on 29.3.2012. The applicant submitted his defence. But the same was not accepted and the second show cause notice was issued on 30.7.2012 and ultimately the impugned order dated 4.7.2013 was passed by the Govt. of Maharashtra whereby following decision was taken :-

निर्णय :- महाराष्ट्र नागरी सेवा(शिस्त व अपील) नियम १९७९ मधील नियम ६ अन्वये प्रदान केलेल्या शक्तीचा वापर करून श्री. एम.ए.शेख, तत्कालीन रोखपाल तथा भांडारपाल, सामान्य रुग्णालय, मुर्तिजापूर हे त्यांच्याविरुद्धच्या विभागीय चौकशीमध्ये दोषी आढळून आले असल्याने महाराष्ट्र नागरी सेवा (निवृत्ती वेतन) नियम १९८२ मधील नियम २७ अनुसार त्यांच्या सेवानिवृत्ती वेतनातून कायमस्वरूपी २५ टक्के तसेच शासनाच्या आर्थिक नुकसानीच्या वसुलीसाठी कायमस्वरूपी २५ टक्के अशी एकूण ५० टक्के कायमस्वरूपी कपात त्यांच्या सेवानिवृत्ती वेतनातून करण्याची शिक्षा देण्यात येत आहे. %०

5. Being aggrieved by the aforesaid decision in the departmental enquiry, this O.A. is filed. Reply affidavit has been filed on behalf of the respondents and preliminary objection has been taken to the effect that the O.A. is not tenable, since the applicant has not exhausted alternative remedy to prefer an appeal as per the provisions of Rule 18 of the M.C.S.(Discipline and Appeal) Rules, 1979.

6. As regards merits of the enquiry, it is stated that fair, full and reasonable opportunity has been given to the applicant to defend himself. The Enquiry Officer has recorded the evidence of witnesses in the departmental enquiry and the applicant was allowed to cross-examine the witnesses. A joint enquiry was held against the applicant and the Medical Superintendent Dr. Sharma and both were found guilty and the Enquiry Officer has come to the conclusion that Dr. Sharma and the applicant, in collusion with each other have committed misconduct as alleged against them and, therefore, looking to the gravity and seriousness of charges and misconduct proved, punishment has been imposed on the applicant. It is stated by the

learned P.O. that in the departmental enquiry against Dr. Sharma (one of the delinquent in a joint enquiry with the applicant), Dr. Sharma has been dismissed from service.

7. Shri Sheikh Majid, the learned counsel for the applicant submits that findings given by the Enquiry Officer in this case are perverse and in facts on record and it is a case of no evidence. There is absolutely no oral or documentary evidence against the applicant. It is stated that the Enquiry Officer has come to a wrong conclusion that the applicant has purchased the goods on enhanced rates than the prevailing in the market. But such findings are hypothetical and are based on assumptions and surmises. It is stated that no monetary loss has been caused to the Government by the applicant and, therefore, recovery and deduction of 50% pension is illegal. The learned counsel for the applicant further submits that the applicant was just acting under the direction of Dr. Sharma, Medical Superintendent and he was having no authority to take any substantive action in the matter and that the applicant has issued cheques only as per the directions of Dr. Sharma, Medical Superintendent. In short, the applicant is trying to shift the burden on Dr. Sharma, Medical Superintendent by making a statement that the applicant was just acting under the guidance of Dr. Sharma, Medical Superintendent.

8. The learned P.O. submitted that Dr. Sharma, Medical Superintendent has already been dismissed from service in the joint enquiry. The order passed against Dr. Sharma, Medical Superintendent has been kept on record and the same is at page Nos. 89 to 92 (both inclusive) Exh.X for identification. In the said order also, charges levelled against the applicant and Dr. Sharma, Medical Superintendent seem to be the same and it is alleged that Dr. Sharma as Medical Superintendent and the applicant as Store Keeper-cum-Accountant, were in collusion with each other committing misconduct as alleged against them.

9. So far as the objection taken by the learned P.O. about maintainability of the O.A., the learned counsel for the applicant has relied on the judgment reported in **State of Maharashtra V/s Subhash Dhondiram Mane reported in 2015 (4) Mh.L.J. 791 and (1992) 21 Administrative Tribunals Cases page 358 decided by the Central Administrative Tribunal, Chandigarh in case of Ved Prakash V/s Union of India and others.** In the latter case, it was observed that the objection regarding exhaustion of alternative remedy, cannot be entertained after the application has been admitted. In the former case reported in **2015 (4) Mh.L.J. 791**, the Hon'ble High Court of Judicature at Bombay has held that the Tribunal can entertain the application without relegating the applicant to alternative remedy in

exercising on its jurisdiction. Application has been filed in the year 2014 and is heard on merits and, therefore, in such circumstances, no purpose will be served to direct the applicant to exhaust alternative remedy of appeal at this juncture and, therefore, objection regarding tenability of the application on this ground, has no force. In view of this, application is being disposed of on merits.

10. In response to the argument of the learned counsel for the applicant that the Enquiry Officer has not appreciated the evidence with a proper perspective, the learned P.O. has placed reliance on the judgment reported in **(2015) 2 SCC-610 in case of Union of India and others V/s P. Gunasekaran.** In the said case, scope of interference has been discussed and it has been held that the interference with disciplinary proceedings is permissible only in case of perversity. In view of this, it is necessary for the applicant to show that there is no evidence against him or that appreciation of evidence is perverse.

11. The learned P.O. also placed reliance on the judgment reported in **(2013) 12 SCC 372 in case of Lucknow Kshetriya Gramin Bank and another V/s Rajendra Singh and (2009) 18 SCC 310 in case of State of Uttar Pradesh and another V/s Manmohan Nath Sinha and another.** In the latter case, it was held that the judicial review cannot be directed against the decision,

but has to confine to the decision making process. It was further held that the Court does not sit in judgment on merits of the decision and it is not open to the High Court to re-appreciate and re-appraise the evidence laid before the Enquiry Officer and examine findings recorded by the Enquiry Officer as the Court of Appeal and to reach its only conclusion.

12. In view of the aforesaid legal aspects, it is necessary to see as to whether it is a case of ~~no~~ evidence as stated by the learned counsel for the applicant and / or whether there is perversity in the appreciation of evidence.

13. The learned counsel for the applicant has invited my attention to the fact that in all nine witnesses were examined by the department and out of these nine witnesses, seven witnesses have given no evidence against the applicant. Perusal of the evidence placed on record shows that seven witnesses were even cross-examined by the applicant, since they have stated nothing incriminating against the applicant. However, the evidence of the witness Shri Kulkarni is material and this witness i.e. Shri J.G. Kulkarni is the Accounts Officer in the office of Joint Director of Medical Services, Pune. Shri Kulkarni has performed the audit of Laxmibai Deshmukh Government General Hospital, Murtizapur. Admittedly, during the said audit, illegalities have been noticed. This witness has

stated as regards each and every charge framed against the applicant and Dr. Sharma. It is specifically stated by this witness that Dr. Sharma and the applicant were responsible for a loss caused to the Government as well as illegalities and irregularities in purchasing goods and both of them were responsible for the loss caused to the Government. This witness has stated in his evidence that the applicant and Dr. Sharma have paid the amount of Rs. 1,66,547/- in excess for purchase as per charge No.1 and have also purchased the goods which were not necessary as per charge No.2 on the proposal made by the applicant. It is also stated that the applicant and Dr. Sharma were responsible for causing loss to the tune of Rs.5,23,180/- for purchasing articles as per charge No.2. Similarly, they have not verified the rates from the market and purchased goods for excess value, as stated in charge Nos. 2 and 3. In the evidence, the witness Shri Kulkarni has specifically states as under:-

वरील बाब क्र. १ ते ५ करीता तात्का. भांडारपाल श्री. एम.ए.शेख हे भांडारपाल तथा रोखपाल म्हणून कार्यरत होते वरील बाब क्र. १ ते ५ मध्ये झालेली वित्तीय अनियमितता करीता ते सुध्दा जबाबदार आहेत. कारण खरेदी प्रस्तावित करतांना शासनाने ठरवून दिलेले नियम व शासकीय आदेश हे कार्यालय प्रमुख समोर ठेवून नियमा प्रमाणे कार्यवाही करण्यांस वैद्यकीय अधिक्षक यांना सुचविणे आवश्यक होते परंतु त्यांनी तसे केले नाही. त्या करीता वरील बाब क्रं १ ते ५ प्रमाणे शासकीय नुकसानीत व वित्तीय अनियमिततेस जबाबदार आहेत. शा.नि.१२.१२.०२ हा एक्सी पी १० नुसार आहे. %

14. This witness was cross-examined at length and, therefore, full opportunity was given to the applicant. The learned counsel for the applicant submits that in the departmental enquiry, no documents were placed on record to show that whatever goods purchased by the applicant and Dr. Sharma were of exorbitant value than the market value. The Tribunal is not expected to go into that aspect, since the Enquiry Officer has appreciated the evidence of witnesses and documents on record and came to the conclusion in this regard and I do not find that the conclusion drawn by the Enquiry Officer in any manner are perverse.

15. The Enquiry Officer has appreciated evidence of Shri Kulkarni with a proper perspective and the said evidence is corroborated by the documentary evidence placed on record, as observed by the Enquiry Officer. There is nothing on record to show that the documents were not supplied to the applicant to cross-examine the witnesses. Considering this aspect, I do not find any reason to interfere in the report of the Enquiry Officer which has been accepted by the competent authority. Hence, the following order:-

ORDER

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

Dt. 22.1.2018.

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

pdg