***MAHARASHTRA ADMINISTRATIVE* TRIBUNAL,**

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.677/2014. (S.B.)

Dhanraj Tulshiramji Khaparde,
Aged about 60 years,
Occ-Retired Dy. Controller,
R/o Matruchhaya, Swami Colony,
105, Near Akarnagar,
Katol Road, Nagpur-13. **Applicant.**

-Versus-.

1. The State of Maharashtra,
Through its Secretary,
Department of Food, Civil Supplies and
Consumer Projection, Mantralaya Extension,
Madam Cama Road, Hutatma Rajguru Square, Mumbai-32.

2. The Controller of Legal Metrology,
(M.S.), Near Manora MLA Hostel,
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 6th day of October 2017).

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 has challenged the impugned order of punishment dated 28.5.2013 passed by respondent No.1. By the said order, action has been taken as per the provisions of Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 and an amount upto 10% has been deducted for a period of three years from the pension of the applicant. According to the applicant, the said order is illegal, arbitrary and no principle of natural justice has been followed and, therefore, it is required to be quashed and set aside.

3. From the admitted facts on record, it seems that the applicant while being on duty as Deputy Collector, visited the petrol pump run by one Sunder Automobiles Limited, Seoni (Akola) for inspection on 16.6.2004. The Inspectors of the visiting team found that 20 ml. petrol was supplied less for every five litres to the consumers. The applicant, therefore, prepared seizure memo and receipt. However, he received telephonic call from his superior officer i.e. the Collector, Nagpur as well as the Minister that no harsh action shall be taken against petrol pump owners. There was no other alternative for the applicant but to restrain himself from taking any action. This all has happened on 16.6.2004 as already stated.

4. On 5.8.2008, a chargesheet was issued against the applicant for departmental enquiry for breach of Section 31 (3) of the Standard of Weight and Measurement (Enforcement) Act, 1985 and for

misconduct under Rule 3 of the Maharashtra Civil Services (Conduct) Rules, 1979. In the said memo, three charges were levelled against the applicant.

5. The applicant submitted his explanation on 28.8.2008. Enquiry Officer was also appointed and the Enquiry Officer submitted his report to the Government on 19.4.2010 and held that none of the three charges were proved against the applicant and the applicant was required to be exonerated.

6. Respondent No.1, however, disagreed with the findings given by the Enquiry Officer and issued a memo calling upon the applicant to submit his explanation holding that the charge Nos. 1 to 3 were proved. Such a notice was issued on 2.5.2011. The applicant submitted his explanation on 7.6.2011 and submitted his case. The applicant again received another show cause notice on 10.7.2011 from respondent No.1 as per the provisions of Rule 27 of the Pension Rules, 1982 as to why recovery of 10% amount shall not be made for a period of three years from his pension. Without considering the explanation given by the applicant, impugned order has been passed.

7. Respondent No.2 has tried to justify the action taken against the applicant and submitted that the applicant should have taken action of seizure and ought to have taken action under Rule

31 (3) of the Standard of Weight and Measurement (Enforcement) Act, 1985.

8. The applicant filed rejoinder and submitted that, the seizure memo was prepared by him. But it was cancelled as per the telephonic instructions of the Hon'ble Minister and the Controller i.e. the immediate superior of the applicant. There was no reason for obtaining *post facto* sanction for cancellation. It is also stated in the application itself that, though incident is of the year 2004, enquiry was initiated against the applicant in 2008, as the applicant challenged the order of his transfer before the competent authority and that it was not liked by the competent authority and, therefore, there was tremendous delay in conducting enquiry. It is stated that the findings given by respondent No.1 disagreeing with the Enquiry Officer are also not proper.

9. I have perused the Enquiry Report against the applicant which is alleged to be submitted after due enquiry done by the department. It seems that the Enquiry Officer Shri P.S. Lakhotiya who was retired Executive Engineer / Enquiry Officer submitted his report of enquiry against the applicant on 19.4.2010. The charges against the applicant were as under:-

दोषारोप बाब .१:-

ी ध.तु. खापड तकालम उपमयंक, वै.मा.शा., अमरावती वभाग येथे दनांक १६.२.२००० ते ३०.१०.२००६ या कालावधीत कायरत असतांना दनांक १६.६.२००४ रोजी मे. सुंदर ऑटोमोबाईस, ा.ल शवणी, अकोला येथे पेोल पंप तपासणीसाठ गेले असता यांनी सदर पंप आथापनेतील एक डीझेल पंप ५ लटरमागे २० मी. ल माल कमी देत असयाचे आढळयाव न जत पावती . ६४१३६० द. १६.६.२००४ अवये सदरल पेोल पंप सील केला. यानंतर लगेचच याच दवशी ी. खापरडे यांनी सदर जत पावती रद केल ी. खापरडे यांचे कृय वजने व मापे मानके (अंमलबजावणी) अधमयम १९८५ चे कलम ३१ (३) चा भंग करणारे आहे.

दोषारोप बाब .२:

पूवत कालावधी मये उत कायालयाम ये काम करत असतांना मे. सुंदर ऑटोमोबाईस, ा.ल शवणी, अकोला यांया नावाने बनवलेया द. १६.६.२००४ या जत पावतीवर तकालम मयंक व माननीय मंी महोदय यांया नावाचा गैरवापर केयाचे दसून येते. सदर बाब म.ना. से. (वतणूक) मयम १९७९ मधील मयम ३ चा भंग करणार आहे.

दोषारोप बाब .३:

पूवत कालावधी म ये आग उत कायालयाम ये काम करत असतांना मे. सुंदर ऑटोमोबाईस, ा.ल शवणी, अकोला यांया वध मयमानुसार करयात आलेल कायवाह र केयाने यांनी आपया कतयात कसूर केयाचे आढळून आलेले आहे. यांचे सदर कृय यांया पदास अशोभनीय असून ते म.ना. से. (वतणूक) मयम १९७९ मधील मयम ३ चा भंग करणार आहे."

and the conclusions drawn by the Enquiry Officer are as under:-

अपचार यांनी वजन व मापे ((अंमलबजावणी) अधमयम १९८५ मधील तरतुदमुसार करयात आलेल कायवाह वरठांकडून ात मदश / सूचनेनुसार केलेल असयाचे सा तुन पुढे आलेले आहे. पराणामी अपचार यांनी वतःचे अधकारात जत पावती रद केल नसयाचे देखील सादरकता अधकार यांनी य त केलेले अभमत

पाहता अपचार यांनी आपले कतयात कसूर क न वतणूक नयमाचा भंग केला ह बाब स ध होत नाह ”

10. From the aforesaid findings, it is clear that none of the charges against the applicant has been held proved and, therefore, in ordinary course if the report was accepted, the applicant was entitled for exoneration.

11. The competent authority i.e. respondent No.1, however, seems to have not accepted findings of the Enquiry Officer and drawn its own conclusion before coming to the conclusion to deduct 10% of the pension amount of the applicant for a period of three years, respondent No.1 has issued a show cause notice dated 20.5.2017. It is at page 34 and 35 of the O.A. (both inclusive). As regards charge No.1 as above, respondent No.1 came to the conclusion that the act on the part of the applicant was in contravention of the provisions of Section 31 (3) of the Standard of Weights and Measurement (Enforcement) Act, 1985. The reason for disagreement on the conclusion of this charge by the Enquiry Officer as given by respondent No.3 is as under:-

दोषारोप बाब .१ बाबत वभागाचे ता पुरते न कष

चौकशी अ धकार यांनी मांडलेले न कष हे मूळ दोषारोपाशी वसंगत आहे. अपचार ी. खापड यांचेवर सदर कृय वाजणे व मापे मानके (अंमलबजावणी) अ ध नयम, १९८५ या कलम ३१ (३) चा भंग करणारे आहे असे सु प ट दोषारोप

बजाव□यात आले असून □या अनुषंगाने आ□ध□नयमातील तरतूद व □यास अनुस□न अपे□□त असले□या कायद्याहा□स □वसंगात कायद्याह□ कर□यात आल□ □क□वा कसे □ह बाब चौकशीतून □प□ट होणे गरजेचे आहे. तथा□प चौकशी आ□धका□यांनी □□तुत □करणी आ□ध□नयमातील तरतूदं□या भंग कर□यात आला □क□वा कसे □ह बाब □वचारात न घेता अ□य गो□ट□□या आधारे दोषारोप □न□श्चादपणे □स□द होत नाह□ असे □न□कष□काढले आहेत."

12. As regards other charges, it is mentioned that if 15 ml. petrol is supplied less in 5 litres of petrol, then it is an offence and crime was required to be registered as per the provisions of Section 39 (2) of the Act, 1985 and if the seizure is to be cancelled, permission of higher authority is necessary. Similarly, in case of charge No.3, it is stated that the applicant has not obtained consent of higher authority for cancelling the seizure and thereby utilized the powers of the superior on his own. The exact reason for not arriving at the findings on charge Nos. 2 and 3 are as under:-

"**<u>दोषारोप बाब □ .२ बाबत □वभागाचे ता□पुरते □न□कष□</u>**

व□तुतः वजने व मापे मानके (साधारण) □नयम १९८७ मधील तरतुद□मुसार □न□र□ णा□या वेळी ५ □लटर मापात □□य असलेले तुट / □ुट□ १५ मी. ल□ एवढ□ □मा□णत असतांना ५ □लटर मापात २० मी. ल□ एवढ□ तुट आढळ□याने वजने व मापे मानके (अंमलबजावणी) आ□ध□नयम १९८५ मधील कलम ३९ (२) □या तरतुद□मुसार गु□हा नो□द□वणे आव□यक आहे. जर□ उप□नय□□का□या नेतृ□वाखाल□ पथकाने तयार केलेल □ ज□त पावती अपु□या पूरा□याअभावी अथवा काह□ □ुट□मुळे खटला दोषपूण□अस□याचे जाण□व□यास कलम ३९ (२) खाल□ केलेल □ कारवाई र□द करतांना प□र□प□क १७ □या प□र□छेद XVii नुसार ती र□द कर□याची कारणमीमांसा नमूद क□न मु□यालयाकड्न मागद्दशन घे□याची आव□यकता होती. तसेच प□र□प□क १८ मधील कलम ८ चे संर□ण उपनीय□□काना लागू नस□याने दोषारोपात नमूद □ी खापड□ यांचे सदर कृ□य वजने व

मापे मानके (अंमलबजावणी) अ□ध□नयम १९८५ मधील कलम ३९ (२) चा भंग करणारे ठरते. सबब □यांचेवर□न हा दोषारोप □स□द होतो.

"**दोषारोप बाब □ .३ बाबत □वभागाचे ता□पुरते □न□कष□:-**

वग□१ □या व□र□ठ पदावर कायर□त अ□धका□याने □नयमानुसार कर□यात येत असलेल□ कायव□ाह□ र□द करतांना □या□यापे□ा व□र□ठ असले□या □नय□□क वैधमापन शा□□ यांना असले□या अ□धकाराचा वापर क□न कायव□ाह□ र□द कर□याचे अ□धकार वापरले □ह बाब □यांना □यां□या कत□य व अ□धकाराची संपूण□तः जाणीव नस□याचे □ोतक असून □यांनी म.ना.से. (वत□णूक) □नयम १९७९ □या □नयम ३ चा भंग केला अस□याने सदर दोषारोपात ते दोषी ठरतात."

13. I have perused the charge framed against the applicant. It is material to note that, the imputations of charge are not on record. But in any case, charge does not state any details as to what action should have been taken by the applicant and what action should have been taken in particular. The breach of provisions, as observed by respondent No.1 and the subsequent action specifically to be taken by the applicant are not mentioned in the imputation of charge. It is material to note that the Enquiry Officer has observed that the applicant has sealed the petrol pump and has also issued a receipt in that regard. However, on the very day, he cancelled that receipt. It is material to note that on the receipt which was cancelled by the applicant, it has been specifically mentioned that the same was being cancelled on the instructions of the Hon'ble Minister Shri Suresh Dada Jain. The respondents have placed on record xerox copy of the

receipt which was cancelled by the applicant, it is at Exh. R.1 and there is clear endorsement to that effect made by the applicant.

14. The applicant has, time and again explained his reason as to why he was required to cancel the seizure receipt and right from the beginning, he has stated that he was required to cancel that receipt on account of telephonic message from the then Minister Shri Suresh Dada Jain. This aspect has not been considered by the respondent No.1.

15. The Enquiry Officer, however, properly observed that it was difficult to prove that the Hon'ble Minister has contacted the applicant telephonically. The Enquiry Officer also observed that it is difficult to prove that the superior authority has brought pressure on the applicant. There can be no concrete proof in this regard and, therefore, the action on the part of the applicant by meeting the said thing while cancelling the receipt itself shows that it was his instant action immediately after the seizure. At that time, he was not knowing that any departmental action will be taken against him. In my opinion, respondent No.1 has not considered this aspect of the enquiry.

16. Had it been the fact that the applicant cancelled the seizure of petrol pump on its own without influence of the Minister or the superior authority, there was no reason as to why no immediate departmental action was taken against the applicant and why

respondent No.1 required four years to take action against the applicant, that too after his retirement. In my opinion, no employee of the grade of the applicant will dare to mention while cancelling the receipt that he was cancelling it on account of telephonic message from the superior officer or the Hon'ble Minister unless he was forced to do so. Considering all these aspects, I am satisfied that respondent No.1 has not considered the explanation submitted by the applicant with a proper perspective. As against this, the Enquiry Officer has rightly come to the conclusion that the department has failed to prove the charges against the applicant and, therefore, he be exonerated. Possibility that the action against the applicant might have been taken due to political influence or because there was paper publication of the matter in which the then Minister seems to have been involved, cannot be ruled out.

17. In view of the discussion in foregoing paras, I am, therefore, satisfied that the impugned order deducting 10% amount from the salary of the applicant from his pension for three years vide order dated 28.5.2013 cannot be said to be legal and proper and without bias. Hence, I proceed to pass the following order:-

ORDER

(i) The O.A. is allowed.

(ii) The impugned order dated 28.5.2013, directing recovery of 10% amount from the pension of the applicant for three years is quashed and set aside.

(iii) The respondents are directed to refund the amount, if deducted from the pension of the applicant under this order.

(iv) Such refund shall be made within a period of three months for the date of this order.

(v) No order as to costs.

Dated:- 6th October 2017.

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

pdg