

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 839 OF 2012 (S.B.)

Vijay Narayan Bharti,
Aged : 50 years, Occupation – Service,
R/o Ashiyad Colony, Shegaon Road,
At Post VMV, Amravati,
Distt. Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Higher & Technical Education,
Mantralaya, Mumbai-32.
- 2) Director (Training),
Vocational Education & Training,
3, Mahapalika Marg,
Mumbai-400 001.
- 3) Joint Director,
Vocational Education and Training,
Regional Officer, Morshi Road,
Amravati.
- 4) Shri V.M.Sonone, Enquiry Officer,
Retired Police Inspector,
Through the office of Joint Director
Vocational Education and Training,
Regional Officer, Morshi Road,
Amravati.

Respondents

Shri N.R.Saboo, the Id. Adv. for the applicant.

Shri V.A.Kulkarni, the Id. P.O. for the respondent nos. 1 to 3.

None for respondent no. 4.

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

JUDGMENT

(Delivered on this 22nd day of January, 2018)

Heard Shri N.R.Saboo, the learned counsel for the applicant and Shri V.A.Kulkarni, the learned P.O. for the respondent nos. 1 to 3. None for respondent no. 4.

2. The applicant was working at I.T.I., Mozari as Craft Instructor (Draughtsman Mechanic). The chargesheet was served on him on 16/03/2009 as regards incident of the year 2009 while he was working in I.T.I., Amravati. On the said chargesheet, a departmental enquiry was held. The Joint Director, Vocational Education and Training, Regional Office, Amravati was pleased to pass an order of dismissing the applicant from 30/07/2010. Against the said order of punishment; the applicant filed an appeal before the Director (Training), Vocational Education, Mumbai i.e. respondent no. 2. The respondent no. 2, in the said appeal vide order dated 11/07/2012 was pleased to modify the order of punishment and passed the following order:-

ORDER:-

The order no. Kra, Aa(3)/ Astha/ ViChauA/ BhoWaKa/2010/292 dated 29th July, 2010 passed by Joint Director, Regional Office, Amravati is modified and a penalty of withholding of three (3) increments with permanent effect is imposed on the appellant, Shri Vijay Narain Bharati.

Being aggrieved by the order passed by respondent no. 3 in the departmental enquiry vide order dated 29/07/2010 (Annexure-A-9) and also against the order passed by respondent no. 2 in the appeal against said order on 11/07/2012, the applicant has filed this O.A.

3. The Id. counsel for the applicant submits that the applicant was not supplied the documents and only one witness was examined to prove charge no. 1 and he also did not state anything. The rules of conduction for departmental enquiry were not followed. The charge against the applicant was that he attended the private classes during the office hours, but both the authorities did not consider the fact that the timing for such classes was in between 5:30 p.m. to 9:30 p.m. and not during office hours. The appellate authorities as well as the enquiry officer also did not consider these facts. In short, it is the case of the applicant that the principles of natural justice have not been followed and no proper opportunity has been given to the applicant to defend himself.

4. The respondent no. 3 justified the action taken against the applicant. It is denied that sufficient opportunity was given to the applicant. On the contrary, it is stated that even in the appeal, hearing was taken on 30/11/2010, 01/12/2010, 05/01/2011, but in view of the order passed by the Hon'ble Maharashtra Administrative Tribunal,

Nagpur on 13/09/2011, re-hearing was ordered in the appeal and the applicant was re-heard.

5. It is stated by the respondents that the applicant has accepted the recovery of Rs. 960/- from him for which; written objection was submitted and, therefore, the charge no. 1 has been proved. However, the applicant has not been punished for this mis-conduct. Since the said amount was recovered from the salary of the applicant, the applicant was called upon to explain as to why the amount shall not be deducted, but he did not submit any explanation. It is stated that the timing of the course of "Interior Decoration & Designing". He was attending in between 7:00 am to 9:00 am (Theory) and 9:30 am to 11:30 am (Practical) and for the second course "Auto Cad", the timing were 12:30 pm to 2:30 pm (Theory) and 2:30 pm to 5:30 pm (Practical). Both the courses were job oriented courses and the applicant has not obtained permission to join such courses. The organisation for which the applicant was working i.e. Manjula Shaikshanik, Sanskrutik vs Krida Academy, Amravati was not a charitable organisation and before joining such organisation, the applicant has not claimed permission. The respondents also justified the charges framed against the applicant.

6. From perusal of the report of Enquiry Officer, it seems that four charges were framed against the applicant and these charges are thus:-

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7. From the enquiry report, it seems that the department has examined following witnesses such as :-

- (a) Shri S.S.Bahad:-Vice Principal, I.T.I., Amravati.
- (b) Shri S.V.Rathod:- District Vocational Education and Training Officer, Yavatmal.
- (c) Shri A.M.Deshpande:- Principal, I.T.I., Buldhana.
- (d) Shri S.V.Indurnikar, District Vocational Education and Training Officer, Amravati.
- (e) Shri B.S.Sangle, Vice Principal, I.T.I., Amravati.
- (f) Shri D.V.Adau, Principal, I.T.I., Amravati.
- (g) Shri P.V.Khandve, Craft Instructor, I.T.I., Amravati.
- (h) Shri P.B.Chobitkar, Assistant Storekeeper, I.T.I, Amravati.
- (i) Shri M.B.Bobde, A.V.T.S., Amravati.
- (j) Shri H.V.Thakre, Registrar, Amravati.
- (k) Shri H.R.Gude, Chairman, Maharashtra State, I.T.I., Union.
- (l) Shri K.E.Adsad, Secretary, Maharashtra State, I.T.I., Union.
- (m) Shri S.D.Kongre, H.O.D, Maharashtra State, I.T.I., Union.

(n) Shri B.W.Kale, Editor.

8. The enquiry officer has considered their evidence and submitted his report of departmental enquiry of the charges which have been proved fully against the applicant. The said enquiry report is at (Annexure-A-8) from P.B., Pg. No. 79 to 100 (both inclusive). It is a quite exhaustive report and from the said report, it seems that the witnesses examined by the defence were crossed examined by the applicant and there is nothing on the record to show that documents were not supplied to the applicant, as alleged. The enquiry officer also appreciated the evidence of the witnesses and I do not find any perversity in the same.

9. The order passed by the appellate authority in the appeal filed by the applicant is placed on record at P.B., Pg. No. 182 to 186 (both inclusive). The appellate authority has considered the points on the charges levelled against the applicant and has given his findings on it. The appellate authority came to the conclusion that there is no evidence to prove that the L.C.D. Projector was taken out of the premises of I.T.I and was put on rent by the applicant, as alleged and that the applicant had kept the said equipment without use. The appellate authorities also claimed that the penalty imposed on the applicant by the appointing authority was disproportionate and, therefore, modified the order. It is material to note that during pendency of the appeal before respondent no. 2 against the order passed by the respondent no. 3, the applicant

approached this Tribunal by filing O.A. 439/2011 and this Tribunal vide order dated 13/09/2011 was pleased to direct, hearing in the appeal and respondent no. 2 was directed to grant an opportunity of hearing to the applicant. Accordingly, the applicant has filed some documents and he was given full opportunity by the appellate authority and the appellate authority has already come to the conclusion that order of dismissal was disproportionate and, therefore, modified the order passed by the respondent no. 3 and has reduced the punishment of dismissal into stoppage of three increments with permanent effect. Perusal of the order passed by respondent no. 3, in the departmental enquiry as well as the order passed by respondent no. 2 in the appeal shows that both the authorities have considered the evidence and documents on record and I do not find any perversity in the appreciation of the evidence. By filing rejoinder, the applicant tried to justify that the timing of the courses which he attended, was not overlapping the office hours. However, the documents on record that the timing were not as stated by the applicant. The Id. counsel for the applicant invited my attention to one certificate issued by Manjula Shaikshanik, Sanskrutik vs Krida Academy, Amravati at Pg. no.18 & 19 (both inclusive), wherein it is stated that the timings of the institution was changed on the request of Shri Vijay Narayan Bharti i.e. applicant. It is highly improbable that the timing can be changed only for applicant. Even for argument sake, it is accepted that such timing

were not during the office hours, the fact remains the same that the applicant has not opted any permission for attaining such classes and even otherwise the remaining charges against the applicant have been proved. The appellate authority has considered all the mitigating circumstances and, therefore, reduced the punishment from dismissal to withhold of three increments permanently. It, therefore, cannot be said that the appellate authority has not applied his mind. I, therefore, do not find any illegality in the conduction of trial in departmental enquiry and in my opinion full opportunity was given to the applicant to defend the enquiry. I do not find any perversity in the appreciation of the evidence and considering of all these aspects. I find no fault in the order passed by appellate authority i.e. respondent no. 2 on 11/07/2012 (Annexure-A-19). In the result, there is no merits in the O.A. Hence the following order :-

ORDER

1. O.A. stands dismissed.
2. No order as to costs.

Dated :-22/01/2018

aps

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