

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.209 OF 2004

DISTRICT:- NANDED

Shaikh Abdul s/o. Khaja Miyan,
Age : 42 years, Occ. Nil,
R/o. At post Wadehuri, Tq. Loha,
District Nanded.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through Presenting Officer,
MAT, Aurangabad.
2. The Director of Sports and Youth Services,
Pune.
3. The Deputy Director of Sports and Youth Services,
Aurangabad.
4. The Commanding Officer,
52 Maharashtra Battalion,
NCC, Nanded.

... RESPONDENTS

APPEARANCE : Shri Ajay Deshpande, Advocate for
the Applicant.
: Shri M.S.Mahajan, Chief Presenting
Officer for the respondents.

**CORAM : JUSTICE SHRI P.R.BORA, MEMBER (J)
AND
SHRI BIJAY KUMAR, MEMBER (A)**

Decided on : 03-03-2022

O R D E R**(PER: HON'BLE JUSTICE SHRI P. R. BORA)**

1. Heard Shri Ajay Deshpande learned Advocate for the Applicant and Shri M.S.Mahajan learned Chief Presenting Officer for the respondents.

2. There is a checkered history to the present litigation. The applicant has filed O.A. in the year 2004 challenging the order of his termination dated 22-06-1994. The applicant was in the employment of respondent no.3 as a Peon. On allegations of misappropriation of the funds, departmental enquiry was alleged to be conducted against him. In the said enquiry, the applicant was held guilty and was terminated from services vide order dated 22-06-1994. Against the said order of termination departmental appeal was preferred by the applicant. Since the appeal was not decided by the appellate authority till the year 2004, the applicant filed the O.A. before this Tribunal challenging his order of termination passed by the disciplinary authority.

3. Record shows that during the pendency of the present application, appellate authority decided the departmental appeal thereby rejecting the same. Accordingly, the

necessary amendments were carried out by the applicant. By amending the O.A., the applicant sought quashment of the order passed by the appellate authority alongwith his original order of termination. The O.A. was contested by the respondents. The Tribunal vide order passed on 15-03-2011 dismissed the O.A. and confirmed the order of termination as well as the order passed by the appellate authority. Against the said order, the applicant preferred Writ Petition No.9490/2011 before the Hon'ble High Court. In the said Writ Petition, the applicant sought to place on record some new documentary evidence. The Hon'ble High Court after considering the submissions advanced by the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondents and more particularly in view of the new documentary evidence sought to be brought by the applicant quashed and set aside the order dated 15-03-2011 passed by the Tribunal and remanded matter back to the Tribunal with certain directions.

4. After the remand of the said matter, the arguments were heard by then Bench of this Tribunal in light of the new facts and the new documents subsequently brought on record by the applicant. The Tribunal vide its order dated

28-11-2013 allowed the O.A. in terms of prayer clause 9-B and 9-C. The Tribunal, thus, directed reinstatement of the applicant with continuity of service and with full back wages from 22-06-1994.

5. Respondents challenged the said order by filing Writ Petition No.208/2015 before the Aurangabad Bench of the Hon'ble Bombay High Court. The Hon'ble High Court vide order dated 2nd May, 2017 again remanded the matter to the Tribunal with direction to decide the O.A. afresh in terms of order dated 22-06-2012 in Writ Petition No.9490/2011.

6. Vide order dated 22-06-2012 passed in Writ Petition No.9490/2011, the Division Bench had restored the O.A.No.209/2004 to the file of the Tribunal by the quashing and setting aside the order dated 15-03-2011 passed by the Tribunal with direction that the petitioner shall move appropriate application before the Tribunal seeking leave to produce additional documents and if the Tribunal is satisfied it shall permit to file such document on record and thereafter, after extending opportunities to the parties, the Tribunal shall consider impact of those documents on Departmental Enquiry.

7. In view of the observations made and directions given by the Hon'ble High Court in the order dated 22-06-2012 and after remand of the matter by the Hon'ble High Court, the applicant on 12th March, 2013 filed M.A.No.95/2013 seeking permission to incorporate necessary pleadings alongwith the documents marked as Exhibit-A and Exhibit-B. Exhibit-A was the copy of the letter dated 29-04-1994 whereas the document at Exhibit-B was the alleged Mafinama allegedly executed by the respondent no.4, namely, Shri V.K.Sharma, the then Commanding Officer of the 52 Maharashtra Battalion of the NCC, Nanded. Copy of the said M.A. and order passed therein, however, was not noticed with the present proceedings. Learned Counsel for the applicant was, therefore, directed to place copy of the said application on record with the documents annexed thereto. Accordingly, the learned Counsel produced on record copy of the said application alongwith documents annexed thereto. The order passed in the said M.A., is however, not placed on record. The order which is placed on record is an order passed in M.A.No.130/2013 passed on 18-03-2013. Learned Advocate Deshpande expressed his inability to place on record the said order being not traceable. Learned Counsel,

however, pointed out that the said application was allowed and accordingly amendment was carried out in the O.A. Learned Counsel further submitted that the affidavit in reply dated 08-10-2013 filed on behalf of respondent nos.2 and 3 to the amended portion of the O.A. if is perused, it can be reasonably inferred that the then Bench of the Tribunal had allowed the present applicant to file on record said documents and accordingly they were filed.

8. Reply dated 08-10-2013 is on record at paper book page 81 to 90. We have carefully perused the same. As submitted by the learned Counsel for the applicant, it can be reasonably inferred from the contents of the said reply that the said documents were permitted to be filed on record and were accordingly filed.

9. In the argument advanced by him, the entire thrust of the learned Counsel for the applicant was on the fact that though two documents, first, the copy of the application allegedly submitted by the applicant before the Enquiry Officer on 29-04-1994, and the other, the alleged mafinama executed by the Commanding Officer Shri V.K.Sharma on 10-05-1994, were placed on record in the Writ Petition No.9490/2011 and thus the respondents had become

aware of the said two documents, they did not produce on record any explanation in regard to the said documents and also have not denied the said documents till date despite availing several opportunities. Learned Counsel further submitted that the aforesaid two documents are sufficient to prove that the applicant was compelled and coerced to put his signature on the alleged confessional statement acknowledging and accepting the guilt. The learned Counsel further submitted that the Enquiry Officer without applying his mind that the delinquent who on the earlier date has pleaded not guilty to the charges framed against him how was giving statement admitting his guilt on the immediate next date. The learned Counsel further submitted that even otherwise merely on the statement allegedly given by the applicant admitting his guilt, the Enquiry Officer should not have held him guilty without examining the other witnesses and without scrutinizing the documents placed on record in order to prove charge of misappropriation against the applicant.

10. Learned Counsel further submitted that, if the manner in which the enquiry is stated to have been completed and its report submitted, cannot be held to be an enquiry under the eyes of law and hence cannot be

depended upon for holding the applicant guilty of the charges leveled in the said enquiry. Learned Counsel further submitted that if the enquiry report is closely scrutinized, it reveals that the Enquiry Officer has not even gone through the documents existing on record so as to get satisfied that there was material against the applicant showing his involvement in misappropriation of the funds as alleged in the chargesheet.

11. The learned Counsel further submitted that the application dated 29-04-1994 was certainly within the knowledge of the Enquiry Officer. Learned Counsel pointed out that the respondents may have contended in their affidavit in reply dated 08-10-2013 that no such application is noticed in the enquiry proceedings, the copy of the said application bears the signature of the Enquiry Officer at the bottom portion evidencing that the said application was submitted before the Enquiry Officer. Learned Counsel further submitted that the said signature on the application dated 29-04-1994 can be compared with the admitted signature of the Enquiry Officer.

12. Learned Counsel further submitted that the applicant has filed on record the affidavits of the persons in whose

presence Shri V.K.Sharma, then Commanding Officer has executed the written mafinama on 10-05-1994. The learned Counsel pointed out that ,the names of the persons in whose presence the said mafinama is executed, are recorded in the said written mafinama. Learned Counsel submitted that the applicant has thus beyond any doubt proved that he was compelled to give his statement before the Enquiry Officer admitting the guilt. For all above reasons, the learned Counsel prayed for allowing the O.A. by setting aside the order of dismissal and to order reinstatement of the applicant with all consequential benefits.

13. The learned CPO vehemently opposed the submissions advanced on behalf of the applicant. Learned CPO submitted that the statement of admitting the guilt was not given by the applicant for the first time on 10-05-1994 but at least on 3 previous occasions. Learned CPO submitted that all the statements are placed on record and were before the Enquiry Officer. Learned CPO further submitted that it is nowhere the case of the applicant that the statement earlier given by him was given under duress or coercion. In the circumstances, according to the learned CPO, the applicant has been rightly held guilty for the

charges leveled against him. Learned CPO further submitted that in the affidavit in reply dated 08-10-2013 filed by respondent nos.2 & 3 to the amendment made by the applicant dated 17-07-2013, the respondents have disputed the genuineness of the two documents filed by the applicant before the Hon'ble High Court in Writ Petition No.9490/2011. The learned CPO submitted that the said documents have also been denied by the respondents. The learned CPO submitted that the letter dated 29-04-1994 allegedly submitted by the applicant before the Enquiry Officer is not finding place with the enquiry papers. According to the learned CPO, the said document is a concocted document. Learned CPO further submitted that in the departmental appeal filed by the applicant he had nowhere even whispered about filing of such application before the Enquiry Officer. Learned CPO further submitted that even in the O.A. filed, there was no reference of these two documents.

14. It was further contended by the learned CPO that it is unconscionable that the documents of such importance were not within the knowledge of the applicant when he preferred the departmental appeal and thereafter filed the O.A. before this Tribunal. Learned CPO further submitted

that on 10-05-1994, the applicant voluntarily admitted his guilt and accordingly his statement was recorded. Learned CPO further submitted that since the applicant admitted both the charges leveled against him there was no propriety in continuing the enquiry thereafter and to examine the witnesses as were cited as witnesses. Learned CPO pointed out that below the statement dated 10-05-1994 recorded of the applicant before the Enquiry Officer an endorsement is specifically made that the statement was recorded as per the narration of the applicant and the same has been admitted by the applicant. In the circumstances, according to him the applicant is estopped from taking any contrary plea. Learned CPO, therefore, prayed for dismissing the O.A.

15. When the present O.A. was first decided by this Tribunal vide order dated 15-03-2011, admittedly, neither the alleged application dated 29-04-1994 nor the alleged mafinama dated 10-05-1994 were there on record. However, in the O.A. contention was raised by the applicant that prior to 10-05-1994, he was detained for 2 days and was pressurized to give the confessional statement before the Enquiry Officer by inducing him with a promise of leniency. This Tribunal had, however, rejected the plea so

raised by the applicant by observing that the applicant did not bring on record any corroborative evidence to establish that any inducement had been offered to him. It was also observed by the Tribunal that there was no supporting evidence for the allegation of detention of the applicant for 2 days prior to the date of recording of his confessional statement. Referring to and relying upon Rule 8(5)(a) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 the Tribunal had observed that where all the charges are admitted by the delinquent, the disciplinary authority can record its finding after taking into account such evidence in the manner laid down under Rule 9 of the MCS (D & A) Rules, 1979. In view of the aforesaid provision, the Tribunal had approved the stand taken by the respondents that they were within their rights to impose punishment of dismissal after the show cause notice without examining any more witnesses.

16. Significantly, to the finding recorded by the Tribunal as aforesaid, there was a rider provided mentioning that "if the admission is voluntarily made by the delinquent". In the next paragraph, therefore, the Tribunal discussed the said aspect and recorded finding that when there are series of admissions given by the applicant starting from 06-01-

1994 till 31-01-1994 read with the confessional statement given by the applicant on 10-05-1994 and having regard to the reply dated 06-06-1994 given by the applicant to the show cause notice about imposition of punishment on him, it was difficult to believe that none of the statements of the applicant was voluntary and all were induced by promises of leniency. For the aforesaid reasons, the Tribunal had dismissed the O.A.

17. After the matter was remanded by the Hon'ble High Court, the O.A. was second time decided by this Tribunal and the order was passed on 28-11-2013. No doubt, when the O.A. came to be second time decided by this Tribunal, both the documents i.e. alleged application dated 29-04-1994 and alleged mafinama dated 10-05-1994 were there on record. It appears that the Bench which second time decided the present O.A. vide order dated 28-11-2013 has presumed that the application dated 29-04-1994, a copy of which for the first time was placed on record by the applicant in the Writ Petition No.9490/2011 before the Hon'ble High Court was in fact produced by the applicant before the Enquiry Officer during the course of enquiry proceeding. From the further discussion made by the Tribunal, it appears that the then Bench was convinced

with the contention of the applicant that the applicant was forced to plead guilty before the Enquiry Officer on 10-05-1994. It further appears that the then Tribunal has held the alleged mafinama dated 10-05-1994 to have been executed by Shri V.K.Sharma, the then Commanding Officer admitting that he had assaulted the applicant as well as his mother to make him plead guilty before the Enquiry Officer. The then Tribunal on the basis of the findings recorded by it as mentioned hereinabove, ultimately held that the departmental enquiry initiated against the applicant was a complete farce. It is further recorded that the acquittal of the applicant in the criminal case on the same charges was the another factor in support of the applicant to set aside the order of dismissal passed against him.

18. The Hon'ble High Court in Writ Petition No.208/2015 decided on 02-05-2017 has observed that the Tribunal which decided the O.A. vide order dated 28-11-2013 could not have rendered the finding of fact based on the new documents which were never before the Enquiry Officer in the first instance. The Hon'ble High Court has further observed that the Tribunal was not justified therefore in interfering with the enquiry proceeding based on the

documents which were never before the Enquiry Officer during the course of the disciplinary proceedings.

19. In the background of the aforesaid two conflicting judgments delivered by this Tribunal and the two judgments delivered by the Hon'ble High Court in the Writ Petitions referred hereinabove, we have to decide the present O.A. keeping in view the observations made by the Hon'ble High Court in the order passed in the earlier Writ Petition as well as in the subsequent Writ Petition.

20. Out of two documents, the alleged mafinama dated 10-05-1994 could not have been a part of the enquiry proceedings since as per the case of the applicant himself the said document was got executed by the villagers of Village Wadepuri at the time when then Commanding Officer Shri V.K.Sharma had come to his village on 10-05-1994 to reach him there after recording of his statement before the Enquiry Officer, whereafter enquiry proceedings were closed. It is not the case of the applicant that he produced the said documents before the Enquiry Officer at any time after 10-05-1994. Even when he filed the O.A., the said document was not filed by him before the Tribunal. It is the case of the applicant that after the decision of the

O.A. when he visited his Village Wadepuri, the villagers provided him the said document. It is, thus, evident that while writing the report of enquiry holding the applicant guilty, the document of the alleged mafinama was not before the Enquiry Officer.

21. According to the submissions made by the learned Counsel for the applicant, the another document i.e. application allegedly submitted by the applicant before the Enquiry Officer on 29-04-1994 was within the knowledge of the Enquiry Officer. It was, therefore, his further contention that in light of the complaint or allegation made in the said application, the Enquiry Officer should not have held him guilty only on the basis of his so-called confessional statement allegedly given by him on 10-05-1994.

22. As against it, it is the contention of the respondents that no such application was ever filed by the applicant before the Enquiry Officer. Papers of enquiry which are placed on record for our perusal do not contain any such application. The applicant is however firm on his contention that the said application was tendered by him before the Enquiry Officer and the Enquiry Officer has put

his signature at the bottom of the application by making an endorsement as "received". It is the further contention of the applicant that if the alleged admitted signatures of the Enquiry Officer are tallied with the signature as is appearing in the application dated 29-04-1994 even with the bare eyes, both the signatures appear quite same.

23. The question arises why such an important document was not filed by the applicant along with the O.A. which was filed by him in the year 2004. A mere statement that the said document was traced later on after the first decision rendered by the Tribunal on 15-03-2011, is not enough. Even if it is accepted that the document was not traceable at the relevant time, it is not understood as to why in the O.A. nothing is mentioned by the applicant that on the very first day of enquiry he had brought to the notice of the Enquiry Officer that he has been pressurized to give confessional statement admitting the charges leveled against him. It cannot be accepted that such an important fact would have been missed while raising contentions in the O.A. against the order of dismissal. Secondly, the enquiry papers reveal that on 29-04-1994, the Enquiry Officer has recorded the preliminary statement of the applicant and the applicant has in his statement pleaded

not guilty and had prayed for time to engage a next friend to defend him in the said enquiry. The said statement is duly signed by the applicant. In the rojnama dated 29-04-1994, there is mention of the said preliminary statement recorded of the applicant. Rojnama, however, does not contain any fact about any application submitted by the applicant before the Enquiry Officer. Below the said rojnama, the applicant also has put his signature. It is further significant to note that below the rojnama of 29-04-1994, on the same page below the rojnama of 29-04-1994 rojnama of 10-05-1994 is recorded and below the same also there is signature of the applicant. But the applicant did not seem to have raised any objection that the fact of his filing application has not been recorded in the rojnama of 29-04-1994. Even in the preliminary statement recorded by the Enquiry Officer, the applicant could have reiterated the facts, mentioned in the application dated 29-04-1994.

24. Now, only one aspect has remained to be considered which has been argued by the learned Counsel for the applicant that the signature of the Enquiry Officer appearing at the bottom of the application dated 29-04-1994 is sufficient to prove the genuineness of the said

document and the contention of the applicant that such an application was presented by him before the Enquiry Officer. The signature allegedly of the Enquiry Officer below the application dated 29-04-1994 if compared with admitted signature of the Enquiry Officer available on record, broadly resembles with it. In the circumstances, inspite of infirmities on part of the applicant in making inordinate delay in bringing on record the said document, it cannot be kept out of consideration. However, that will be considered only as a corroborative evidence if we find that other available evidence on record supports the plea raised by the applicant that he was pressurized to give his confessional statement before the Enquiry Officer on 10-05-1994.

25. It is evident from the report of the Enquiry Officer that charges against the applicant are held to have been proved only on the basis of confessional statement given by the applicant and except that there is no other substantive evidence on record. In the departmental enquiry, following persons were named as witnesses:

- (1) Lieutenant Colonel V.K.Sharma, Commanding Officer

- (2) Shri Ahmed Khan, Accounts Clerk,
- (3) Shri A.S.Nawale, Senior Clerk,
- (4) Shri V.G.Bansode, Junior Clerk,
- (5) Shri B.H.Dhepe, Junior Clerk, and,
- (6) Shri Ahmed Shaikh.

26. Previous statements of these witnesses are part of the documents annexed to the chargesheet. We have gone through the said statements. None of the said witnesses has stated any incriminating fact against the applicant except Lieutenant Colonel Shri V.K.Sharma. Even in the statement of said Shri Sharma, facts which he has stated are all hearsay. Thus, none of the witnesses seem to have any personal knowledge or first-hand information about the accusations made against the applicant of misappropriation, fraud or forgery. It is thus evident that had the applicant not given alleged confessional statement, possibility was least of the charges getting proved on the basis of the statements of the witnesses, even if the said witnesses would have as it is reiterated the said facts before the Enquiry Officer.

27. In the aforesaid background, a careful scrutiny is required of the fact whether the confessional statement

given by the applicant before the Enquiry Officer was voluntarily given by him or he was compelled to give such statement.

28. The Enquiry Officer in his report has mentioned that on 10-05-1994 the applicant gave statement before him admitting the charges leveled against him. In premise of the fact that on the immediate preceding date, the applicant had pleaded not guilty and had sought time for naming his next friend to defend him in the said enquiry, in our opinion, it was incumbent on the part of the Enquiry Officer to verify and ascertain from the applicant whether he had voluntarily become ready to give his confessional statement admitting the charges leveled against him or otherwise. Further, the Enquiry Officer was bound to explain and give an understanding to the applicant about the consequences of giving such confessional statement by him before recording his statement. The Enquiry Officer has not carried out such exercise.

29. Further, on the basis of the confessional statement alone, the Enquiry Officer should not have recorded the conclusion holding the applicant guilty of the charges leveled against him of fraud, forgery and misappropriation,

in absence of any such document before him. It was incumbent on his part to seek some corroboration, more particularly, in the form of documents, to the facts deposed by the applicant in his confessional statement.

30. It is further revealed that the alleged confessional statement given on 10-05-1994 pertains to only charge no.2. In said statement there is absolutely no reference as about the first charge. No doubt, there are earlier two statements allegedly given by the applicant which pertain to the first charge. However, the fact remains that before the Enquiry Officer, the applicant had not admitted the first charge leveled against him. There is nothing on record to show that the Enquiry Officer has brought to the notice of the applicant his previous statements pertaining to first charge and that the said statements were accepted by the applicant to have been voluntarily given by him. In the circumstances, on what basis the Enquiry Officer has recorded the conclusion that both the charges stand proved against the applicant is undisclosed. It is apparent that the Enquiry Officer has recorded the said conclusion without ascertaining the facts on record.

31. If the statement allegedly given by the applicant before the Enquiry Officer on 10-05-1994 is perused, it can be easily gathered that it was not possible for the applicant alone to carry out the acts as are said to be involved in and it apparently reveals that more persons may be involved. It further appears unconscionable that the Treasury Officer could not detect the alleged forged signatures of the Drawing and Disbursing Officer, allegedly made by the applicant on the pay bill presented in the Treasury. Surprisingly, the persons from whose accounts the amounts were allegedly misappropriated were not cited as witnesses in the departmental enquiry neither their statements, if any, previously recorded, were on record. These aspects should not have been gone unnoticed by the Enquiry Officer while reaching to the conclusion and holding the applicant guilty for charge no.2 leveled against him.

32. It is the matter of record that, against the order passed by the disciplinary authority, the applicant had preferred departmental appeal to the Director, Sports and Youth Services, Pune on 27-07-1994 i.e. within few days after the order of termination was passed by the disciplinary authority. We have carefully perused the

contents and objections raised in the appeal. In the memo of appeal, the applicant had specifically stated that he was detained in the office of respondent no.4 i.e. 52, Battalion, NCC, Nanded from 08-05-1994 to 10-05-1994 and on 10-05-1994, he was taken in the office Jeep to the Enquiry Officer and there he was made to sign the statement which was already written. It is further stated that the statement was confessional in nature and the appellant was forced and pressurized to sign the same. It is thus, significant that at the very first available opportunity the applicant has ventilated his grievance that the confessional statement alleged to be given by him, on the basis of which the disciplinary authority has held him guilty of the charges leveled against him, was obtained under pressure and was not voluntarily given by him. We reiterate that, the disciplinary authority held the applicant guilty and passed the order of dismissal on 22-06-1994 and the applicant filed the departmental appeal against the said order on 27-07-1994 i.e. within the period of about one month and in the said appeal, specifically alleged how he was coerced for giving confessional statement. Had he raised the said objection after long lapse of time, it could have been certainly said that the plea so taken by him may be

afterthought. Unfortunately, the appellate authority did not decide the said appeal for about 10 years and when decided it, did not consider any of the objections raised in the said appeal and without making any discussion or assigning any reason, in a most cryptic manner dismissed the said appeal. Had the said appeal been decided promptly and the appellate authority would have been judicious in deciding the said appeal, the allegations made by the applicant in the said appeal that the confessional statement was obtained under pressure and was not voluntarily given by him would not have gone unnoticed.

33. In the present O.A. in paragraph 9, the applicant has specifically pleaded that on 08-05-1994, the applicant was called in the office of respondent no.4 and was detained by the respondent no.4 from 08-05-1994 to 10-05-1994 and on 10-05-1994 he was taken to the Enquiry Officer in the official Jeep. In the same paragraph, it is further averred that the confessional statement was already prepared and applicant was made to sign the said statement. In light of the averments in the paragraph 13 of the O.A., it is significant to see the reply filed on behalf of respondents on affidavit on 04-08-2004. Paragraph 7 of the affidavit in reply deals with the averments raised in paragraph 9 of the

O.A. In the said paragraph and even in the entire affidavit in reply, the respondents have nowhere denied or disputed the allegations of the applicant that he was detained by the respondent no.4 in his office from 08-05-1994 to 10-05-1994. Further, there is no specific denial of the allegations that the confessional statement was already prepared and the applicant was made to sign the said statement. The facts stated by the applicant in the O.A. that he was detained by the respondent no.4 in his office from 08-05-1994 to 10-05-1994 and further that the confessional statement was already prepared and he was forced to sign the same have thus gone unchallenged.

34. When for the first time, the O.A. was heard and decided by this Tribunal, perhaps the aforesaid facts were not highlighted before the Tribunal. The argument on behalf of the respondents that even before 10-05-1994, the applicant had confessed his guilt and has given the statements in that regard and hence the allegation of the applicant that he was pressurized to give confessional statement on 10-05-1994, has not impressed us. In so far as the statement recorded on 10-05-1994 is concerned, the specific allegations are made by the applicant that prior to recording of the said statement, he was in custody of the

respondent no.4 and was detained in his office. It is his further contention that he was taken by respondent no.4 in his official Jeep in the office of the Enquiry Officer on 10-05-1994 and was forced to put his signature below the document which was kept prepared in the said office. As we have noted hereinabove, there is no specific reply to the aforesaid allegations by the respondents.

35 Having regard to the specific objections raised by the applicant, firstly, in the memo of appeal filed before the departmental appellate authority and nextly in the present O.A., that the alleged confessional statement was obtained by him under coercion, it is difficult to agree with the contentions raised on behalf of the respondents that on 10-05-1994, the applicant voluntarily gave his confessional statement and hence was held guilty of the charges leveled against him.

36. There is one more circumstance which favours the case of the applicant. The applicant has placed on record a copy of the judgment in RCC No.378/1999 and 379/1999 delivered by the Chief Judicial Magistrate, Nanded (CJM for short) on 09-10-2003. In the said criminal case, the applicant was prosecuted for offences under section 409,

420, 467, 468 & 471 of the Indian Penal Code. The charges in the said criminal case were pertaining to the same incidents on the basis of which departmental enquiry was initiated against the applicant. The criminal court has acquitted the applicant of all the charges framed against him.

37. Our attention was invited by the learned Counsel for the applicant towards paragraph 32 of the judgment delivered by the criminal court wherein the said court has observed that “the accused is entitled to clear cut acquittal”. In paragraph 28 of the judgment the learned CJM has recorded that “there is absolutely no evidence on cheating and dishonest intention”. It is further observed that “there is no evidence of inducement or collecting of money of misappropriation”. In paragraph 29 again the criminal court has observed that “relying on the evidence discussed supra there is absolutely no evidence on the point of forgery and none of the alleged forged GPF bills, cheques are before this court”. Criminal court has in the said paragraph has reiterated that “there is absolutely no evidence on the point of committing forgery”. In paragraph 31 of the judgment, the court has observed that “the prosecution has utterly failed to prove that the accused

prepared fraudulent and dishonest GPF bills and used them as genuine knowing that they are forged”.

38. The confessional statement on the basis of which the applicant was held guilty and subjected to punishment of dismissal from service, whether was voluntarily given by the applicant or he was pressurized and coerced to give such statement is the moot question, which falls for our consideration in the present matter. As noted earlier, within a period of 1 month and few days the applicant preferred the departmental appeal challenging the punishment of dismissal inflicted upon him. In the said appeal the applicant has specifically averred that he was compelled to give his confessional statement. The applicant has further provided the details as to how prior to 10-05-1994 he was detained in the office of the respondent no.4 and the further fact that the said Officer only took him to the Enquiry Officer where he was pressurized to put his signature on the document, which was already kept prepared. Thus, at the very first available opportunity, the applicant has raised such objection. Unfortunately, the appellate authority did not decide the said appeal promptly and when he decided it, has not dealt with any of such objections.

39. It has to be further stated that in the O.A. also similar averments are taken by the applicant, which we have referred hereinabove. As noted earlier, the allegations so made by the applicant have not been specifically denied or disputed. In the circumstances, it is difficult to out-rightly reject the contention of the applicant that he was pressurized to give his said confessional statement. As we have noted hereinabove, the confessional statement was the only evidence for holding the applicant guilty by the Enquiry Officer, and there was absolutely no other evidence before the Enquiry Officer to corroborate the facts allegedly stated by the applicant in the alleged confessional statement. Thus, if the confessional statement is kept out of consideration there remains no evidence against the applicant.

40. It is true that, if the delinquent admits the charge or charges leveled against him, no further evidence may be required to be adduced. But, it does not mean that no evidence shall be in existence in the papers of the departmental enquiry, more particularly, when the charges against the delinquent are of forgery, fraud, cheating etc. The procedure prescribed for conduction of departmental

enquiry envisages that when chargesheet is issued against the delinquent, the entire material on the basis of which the charge is framed against the said delinquent needs to be appended with the statement of allegations. It cannot be anticipated that the applicant would plead guilty or would give his confessional statement. As such, while issuing the chargesheet to the delinquent, the employer has to provide along with the statement of charge all the relevant documents, as well as, the list of witnesses on the strength of which the charge is intended to be proved. In the present matter we have discussed earlier that except the statements recorded of few witnesses in the preliminary enquiry, no other document is attached with the statement of allegations. We reiterate that in the statements of the said witnesses, none of them have stated any incriminating fact against the applicant. In the circumstances, even if the enquiry would have been conducted and all those witnesses would have been examined in the said enquiry, no incriminating material against the applicant was likely to come on record. It is thus evident that had the applicant not given alleged confessional statement the charges against the applicant would not have been proved. In the present matter, as we have discussed earlier, except the

statements recorded of witnesses in the preliminary enquiry, no other document is noticed in the departmental enquiry papers, on the basis of which the respondents could have proved the charges leveled against the applicant, had the applicant not given the alleged confessional statement.

41. We find substance in the arguments advanced on behalf of the applicant that since it was impossible for the disciplinary authority to prove the charges leveled against the applicant, the superior officer of the applicant chose the way of pressurizing the applicant for giving his confessional statement. From the documents on record, it does not appear that before recording his said statement the Enquiry Officer had verified from the applicant whether he was, in fact, at his own and voluntarily giving such confessional statement. Further, nothing is there on record evidencing that any understanding was given by the Enquiry Officer to the applicant about the consequences of his giving confessional statement. Moreover, the said statement pertains only to the second charge and nothing is even whispered about the first charge. In spite of that the Enquiry Officer has held that the applicant admitted both the charges leveled against him.

42. The facts and circumstances elaborated by us hereinabove, if considered cumulatively, irresistibly lead to the conclusion that the alleged confessional statement was not voluntarily given by the applicant. In the circumstances, the decision of the Enquiry Officer holding the applicant guilty solely on the basis of said confessional statement has to be set aside and consequently punishment of dismissal from service inflicted by the disciplinary authority also cannot be sustained and deserves to be set aside.

43. Now, the next question which falls for our consideration is, to what relief the applicant is entitled ?

44. Setting aside the order of dismissal is ordinarily followed by the relief of reinstatement in service with all consequential benefits. In the instant case, however, it may be improper and unjust to grant such relief for the reasons discussed hereafter. First that, the applicant has committed inordinate delay in approaching the Tribunal. The applicant should not have waited for the decision in the departmental appeal beyond the reasonable period. Even

otherwise, the applicant filed the O.A. without receiving any decision in the said departmental appeal. This could have been done much earlier by the applicant. When the appeal was not decided in the reasonable period, the applicant was expected to file the O.A. within the prescribed period of limitation as provided under section 21(1)(b) of the Administrative Tribunals Act, 1985. The subsequent conduct of the applicant also leads to an inference that he was not diligent in prosecuting his case.

45. Admittedly, the period of 28 years has lapsed after dismissal of the applicant from the services. In the O.A., the applicant has not raised any firm plea that during the entire said period he was jobless and did not have any means of livelihood. In absence of any such pleading as well as the evidence from the side of the applicant, it can be reasonably inferred that in the meanwhile, the applicant was gainfully employed. In the circumstances, we are not inclined to grant back wages to the applicant of the entire said period wherein he has not worked, though the relief of reinstatement deserves to be granted in favour of the applicant. For the reasons stated above, the following order is passed:

ORDER

- (i) The order of dismissal dated 22-06-1994 passed by respondent no.3 is quashed and set aside.
- (ii) Respondent no.2 to 4 are directed to reinstate the applicant on the post on which he was working at the time of his dismissal with continuity of service, however, without any back wages.
- (iii) O.A. stands allowed in the aforesaid terms.

**(BIJAY KUMAR)
MEMBER (A)**

**(P.R.BORA)
MEMBER (J)**

**Place : Aurangabad
Date : 03-03-2022.**