

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 542 OF 2014

DIST. : AURANGABAD

Santosh s/o Kantrao Kulkarni,
Age. 44 years, Occu. Service,
(as Jail Guard),
R/o C/3, 8/2, N-11, T.V. Centre,
Dist. Aurangabad.

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APPLICANT

V E R S U S

1. The State of Maharashtra,
(through Secretary,
Home Department,
M.S., Mantralaya, - 32)
2. The Addl. Director General
& Inspector General of Prisons,
M.S., Pune - 01.
3. The Dy. Inspector General of
Prisons, Central Division,
Aurangabad.

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RESPONDENTS

APPEARANCE : Ms. Preeti R. Wankhade, learned Advocate
for the applicant.
: Shri N.U. Yadav, learned Presenting Officer
for respondents.

**CORAM : HON'BLE SHRI J. D. KULKARNI,
MEMBER (J)**

DATE :- 11.11.2016

J U D G M E N T

1. The applicant Shri Santosh Kantrao Kulkarni has entered the service of res. no. 1 in Home Department of Govt. of Maharashtra as a Jail Guard on 22.7.1992. Two memorandums of charges were served on the applicant and a Departmental Enquiry (for short D.E.) was initiated against the applicant and 11 others as per the orders dated 24.5.2006 and 12.3.2007. In the said D.E. the Enquiry Officer has submitted his report to res. no. 3 on 17.1.2007. In the meantime, the applicant was also prosecuted for the offences punishable U/ss 7, 12, 13 (1) (d) (ii) r/w 13 (2) of the Prevention of Corruption Act, 1988 before the learned Special Judge, Nasik. Ultimately the applicant was discharged from the said offences.

2. In the mean time, the res. no. 3 issued two orders on 20.3.2012 and vide first order punishment of stoppage of 2 increments of pay with permanent effect was passed against the applicant whereas vide second order the applicant's suspension period was treated as suspension only.

3. Being aggrieved by the order of punishment as aforesaid, the applicant preferred departmental appeal before the res. no. 2,

however, vide order dated 24.12.2012, the order of punishment was confirmed.

4. The applicant then filed revision to res. no. 1 against the order of confirmation of punishment in the D.E. The res. no. 1, however, rejected the revision application on 29.7.2013. The applicant then filed review application to res. no. 2 on 17.1.2014, but the res. no. 2 refused to entertain the review application vide communication dated 20.2.2014 and, therefore, the applicant was constrained to file this O.A.

5. In this O.A. the applicant is claiming that the aforesaid impugned two orders dated 20.3.2012 (Annex. A. 4 collectively) issued by the res. no. 3 and the order dated 24.12.2012 (Annex. A.5) issued by the res. no. 2 dismissing the appeal filed by the applicant and the order dated 29.7.2013 (Annex. A. 6 (ii)) issued by the res. no. 1 rejecting the revision application of the applicant be quashed and set aside. The applicant has further prayed for issuance of directions to the respondents to extend consequential benefits to which the applicant would be entitled to. It is further claimed that the suspension period of the applicant be treated as duty period.

6. The res. nos. 1 to 3 resisted the claim of the applicant. It is stated that the D.E. and criminal case are two different proceedings and in the D.E. full opportunity was given to the applicant to defend himself. Since the applicant was found guilty of the charges, his suspension period was treated as suspension period only. The respondents, therefore, justified the action taken against the applicant.

7. The applicant filed rejoinder on 23.6.2015 and submitted that, since the applicant has been discharged from the criminal trial, the D.E. should not have been proceeded further. It is stated that the Enquiry Officer has applied different scales for appreciating the evidence in respect of the applicant and other delinquents in the common D.E. The different punishments were imposed on different delinquents though they were alleged to be involved in the same alleged misconduct. The applicant has been dealt with firm hands, whereas other delinquents are shown leniency.

8. The respondents have filed short affidavit to deny the allegations of disparity.

9. Heard Ms. Preeti R. Wankhade, learned Advocate for the applicant and Shri N.U. Yadav, learned Presenting Officer for respondents. I have also perused the application, affidavit, affidavit-in-reply of the respondents, rejoinder affidavit filed by the applicant and short affidavit filed by the respondents as well as various documents placed on record by the respective parties.

10. The only material point to be considered in this O.A. is whether the imposed punishment on the applicant in the D.E. is legal and proper ?

11. It is admitted fact that on the allegation that the applicant has accepted consideration other than legal remuneration, a criminal case was filed against the applicant bearing Special Case no. 7/2008. In the said case the learned Special Judge, Nasik was pleased to discharge all the accused nos. 1 to 28 including the present applicant for the offences punishable U/ss 7, 12, 13 (1) (d) (ii) r/w 13 (2) of the Prevention of Corruption Act, 1988. This order has been passed on 15.3.2010. Thus, the fact remains that the applicant has been discharged from the charge of accepting bribe from Ex. Prisoner Shri Mehesh Gokuldas Tanna.

12. The first impugned order imposing punishment on the applicant is placed on record at paper book pages 54 to 56 (both pages inclusive). From the said order, it seems that, two charges were framed against the applicant in the D.E. and the said charges are as under :-

“दोषारोप क्रमांक १ :- श्री संतोष कांताराम कुलकर्णी, रक्षक हे नाशिकरोड मध्यवर्ती कारागृह येथे कार्यरत असतांना नाशिकरोड मध्यवर्ती कारागृहातून स्थानबध्द कायदयातून मुक्त झालेला बंदी महेश गोकुळदास तन्ना हा कारागृहात साबन तयार करण्याचा कारखाना सुरू करण्याचे खोटी सबब पुढे करून कारागृह परिसरात दिनांक ३१.५.२००५ रोजी कारागृहात साबन तयार करण्याचा कारखाना सुरू करण्याची खोटी सबब पुढे करून आला होता. आपली बदली इतर कारागृहाकडे झाली होती, तरीही सदरचा ईसम दिनांक ०४.०६.२००५ रोजी स्टार न्युज या वृत्त वाहिनीवर प्रसारीत झालेल्या रेड अलर्ट या कार्यक्रमात चित्रफिती व्दारे दाखविण्यात आलेले आहे. सबब श्री. संतोष कांताराम कुलकर्णी, यांचे कृत्य हे खात्यास न शोभणारे असून लाच स्विकारणे हा गंभीर स्वरूपाचा गुन्हा आहे, श्री कुलकर्णी यांनी आपल्या कर्तव्यात नितांत सचोटी राखली नाही व कर्तव्य पारायणता ठेवली नाही म्हणून महाराष्ट्र नागरी सेवा (वर्तणुक) नियम १९७९ चे नियम ३(१) मधील पोटनियम (एक)(दोन)(तीन) चे उलंघन केले आहे.

दोषारोप क्र. २(पुरवणी दोषारोप) :- श्री. संतोष कांताराम कुलगर्णी यांनी फ्रिज व टिव्ही अशी मालमत्ता केली. त्याबाबत प्राधिकरणाची परवानगी घेतली नाही ते वर्ग ३ चे कर्मचारी असून त्यांनी रू. ५०००/- पेक्षा जास्त रक्कमेची मालमत्ता खरेदी केली त्या बाबत शासनास कळविले नाही आणि मत्ता व दायित्व विवरणपत्र शासनास सादर केले नाही

म्हणून महाराष्ट्र नागरी सेवा (वर्तणुक) नियम १९७९ चे नियम १९ मधील तरतुदीचे उलंघन केले आहे.”

13. Perusal of the charge no. 1 shows that, there was some video recording, which was displayed on news channel viz. 'Star News' and in the said video recording the applicant was found accepting bribe. As already stated, the fact that the applicant was charged, for accepting bribe and was tried before the competent Special Judge and the learned Special Judge found the applicant not guilty.

14. So far as the charge no. 2 is concerned, it is stated that the applicant did not inform the competent authority about purchase of Freeze and Television and since the value of said goods purchased are more than Rs. 5,000/-, it was necessary on the part of the applicant to obtain permission of the higher authority. Even for the sake of argument it is accepted that the applicant did not obtain permission for purchase of that household articles i. e. Freeze and Television set, that may not be a grave misconduct of the applicant and for that misconduct an employee can be censured at the most. It is material to note that the department did not examine any witness to prove charges against the applicant.

15. The learned Advocate for the applicant submits that the Enquiry Officer has applied different yardsticks to appreciate the evidence in respect of different delinquents against whom a common enquiry was conducted.

16. Perusal of the impugned order dated 20.3.2012 shows that the Enquiry Officer has relied on the said video recording and came to the conclusion that from the same video recording, it seems that, the applicant was accepting either money or some paper from the Ex. Prisoner Shri Mehesh Gokuldas Tanna. It is observed that, though the validity of the said video recording was disputed, the applicant should not have accepted money / paper from that ex. Prisoner. It is not known as to what paper was accepted by the applicant. It seems that the Enquiry Officer has not considered the explanation tendered by the applicant for his alleged misconduct. In his explanation, the applicant has stated as under :-

“श्री. संतोष कांताराम कुलकर्णी यांचे स्पष्टीकरणे :- नाशिकरोड कारागृह येथे रक्षक पदावर दिनांक १.१२.१९९३ पासून कार्यरत असून दिनांक ३१.०५.२००५ रोजी रात्रपाळीस सायं. ५ ते सकाळी ८ पर्यंत ड्युटी सामान्य रूग्णालय, नाशिक येथे दाखल असलेले आरोपीवर पहारा देण्याची ड्युटी होती. दि. ३१.५.२००५ रोजी सामान्य रूग्णालय, नाशिक येथील सकाळी ०८.११ वा ड्युटी संपुन ०९.०० वा. गेटवर

आलो त्यावेळी माझी बदली औरंगाबाद मध्यवर्ती कारागृह येथे झाल्याचे कळाले त्यामुळे रेलिव्ह ऑर्डर घेण्यासाठी कार्यालयाकडे निघालो त्यावेळेस रस्त्यामध्ये एक व्यक्तीने थांबवुनं साबनाचा कारखाना सुरू करण्याकरीता साबणाचे प्रचारासाठी काढलेले जाहीररातीचे कागद देऊ लागला तो कागद वाचण्यास वेळ नसल्याने खिशात घातला. सदरच्या व्यक्तीकडून मी पैसे घेतले नाही कारण त्यानंतर लगेच कारागृहाचे मुख्य व्दारा मधुन कार्यालयात गेलो माझ्या खिशात पैसे असते ते मुख्यव्दारामधे घेण्यात आलेल्या झडती मधे दिसून आले असते. माझे जवळ झडती मधे पैसे मिळाल्याचा कोणताही लेखी अथवा तोंडी पुरावा गेट जेलरने नोंदविलेला नाही. नाशिकरोड मध्यवर्ती कारागृहात एमपीडीए खाली दाखल असतांनाचे काळात माझी ड्युटी त्याचेवर कधीच नव्हती. कारागृहातुन सुटलेला महेश तन्ना या गुन्हेगाराशी माझा कशाही प्रकारचा संबंध नसतांना वरिष्ठांकडून त्रास होण्याच्या दृष्टीने व बदनाम करण्याच्या दृष्टीने हे स्टिंग ऑपरेशन घडवुन आणले ज्यामुळे कारागृह प्रशासन बदनाम होईल. असे नमूद करून दोषारोप नाकबुल केलेला आहे.”

17. The learned Advocate for the applicant has invited my attention to the observations in respect of one Shri Balu Govind Palve, who was also a Jail Guard and delinquent in the enquiry. The Enquiry Officer appreciated the evidence as regards role of Shri Plave and his conclusions are totally contradictory and this can be seen from following relevant observations :-

“चौकशी अधिका—याचा अहवाल :- चौकशीत असे आढळून आले की, तसेच उक्त प्ररणात श्री. बाळू पालवे, अपचारी यांचेवर उक्त पघटेबाबत घटनेचा दिड वर्षे कालावधीनंतर पोलीस अधिक्षक अँन्टीकरण

ब्युरो, नाशिक रोड यांनी नाशिकरोड पोलीस स्टेशन येथे गृ.र. क्र. ३००१/२००७ अन्वये भ्रष्टाचार प्रतिबंध अधिनियम १९८८ चे कलम ७,१२,१३(१)(ड)(II) सह १३(२) प्रमाणे गुन्हा दाखल करण्यात आला होता. सदरील प्रकरणात श्री बाळू गोविंद पालवे यांना विद्यमान न्यायालयाचे दिनांक १५.३.२०१० चे न्यायनिर्णयानुसार निकाली काढून निर्दोष मुक्त केले आहे.

तसेच सदरील प्रकरणात कोणीही साक्षीदार नाही. पुरावा म्हणून कारागृहात एम पी.डी. या कायद्यात स्थानबध्दतेतून मुक्त झालेल्या एक कैद्याने चित्रीत केलेली चित्रफीत आहे. पुरावा म्हणून चित्रफितीमध्ये कायदेशीर वैधता संशयित आहे तसेच एकमेव पुरावा असलेली चित्रफितीचे अवलोकन केले असता चित्रफितीमध्ये श्री. बाळू गोविंद पालवे रक्षक हे दिसून येत नाही.

वरील सर्व परिस्थितीचा विचार केला असता श्री. बाळू गोविंद पालवे, रक्षक यांनी स्थानबध्द बंदी महेश गोकुळदास तन्नास कारागृह परिसरात मुक्त वापर करण्याची संधी दिली, पदाचा गैरवापर केला, रोख बक्षीस स्विकारून बेकायदेशीर लाभ मिळवला या पैकी कोणतेही दोषारोप सिध्द होत नाही असे माझे मत आहे.

या कार्यालयाचे निष्कर्ष : चौकशी अधिका—याने निष्कर्शाशी ह कार्यालय सहमत आहे. ”

Thus, it seems that on the same facts and circumstances the different scale has been applied to Shri Balu Govind Palve.

18. In the similar facts and circumstances one Shri Dayavan Kisan Kalbande, Jail Guard / co-delinquent has been exonerated

and the observations for his exoneration is that, video recording was doubtful and same cannot be accepted as evidence. It is not known as to why similar appreciation was not done in respect of the applicant herein.

19. Along with the rejoinder, the applicant has placed on record a copy of the order in respect of action taken against Shri Jeevan Iccharam Choudary, who was also a co-delinquent in the D.E,. In his case, for the similar allegations Shri Jeevan Iccharam Choudhary was censured and his suspension period was treated as a duty period.

20. From the aforesaid circumstances it will be clear that the Enquiry Officer seems to have appreciated the evidence in different manner and even the punishment imposed is also different in the same case for different delinquents. The findings of the Enquiry Officer that, the applicant has kept relation with ex. prisoner and accepted amount from him is proved partially, is perverse on the fact on record and also in view of the fact that the applicant has been discharged in the criminal case. The appellate authority also did not consider the submission of the applicant from time to time and has not appreciated the evidence with proper perspective. The appellate authority seems to have ignored

the fact that the applicant was discharged in a criminal case and in the similar circumstances different punishments have been awarded on different delinquents in the common enquiry. I am, therefore, satisfied that this is a fit case wherein interference by this Tribunal is necessary and, therefore, I pass following order :-

ORDER

The original application is allowed in terms of prayer clauses 13 (B), (C) and (D). There shall be no order as to costs.

MEMBER (J)