MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH, NAGPUR
ORIGINAL APPLICATION No. 1048/2021 (D.B.)

Samual Anthony James,
Aged 61 years, Occ. Nil,
R/o Chakradhar Complex,
Pil Colony, Malkapur, Akola,
Dist. Akola.

Applicant.

Versus

1) The State of Maharashtra,
Through its Additional Chief Secretary,
Home Department, Mantralaya, Mumbai-32.

2) The Director General of Police,
Having its office Near Regal Theater,
Kolaba, Mumbai.

3) The Superintendent of Police,
Akola, Tq. and Dist. Akola.

Respondents.

Shri S.P.Palshikar, ld. Advocate for the applicant.

Shri AM.Ghogre, ld. P.O. for respondents.

Coram :- **Shri Shree Bhagwan, Vice-Chairman and**
Shri M.A.Lovekar, Member (J).

Date of Reserving for Judgment : 08th July, 2022.

Date of Pronouncement of Judgment : 14th July, 2022.

JUDGMENT

Per : Member (J).

(Delivered on this 14th day of July, 2022)

Heard Shri S.P.Palshikar, learned counsel for the applicant and Shri A.M.Ghogre, learned P.O. for the respondents.

2. In this original application orders dated 29.01.2013 and 18.02.2016 (A-7 and A-9) passed by the disciplinary authority and the appellate authority, respectively dismissing the applicant, are impugned.

3. Case of the applicant is as follows. When the applicant was attached to Kallar, Daryapur, Amravati (Rural) P.S. as Police Inspector, Crime No. 148/2007 was registered against him (and 3 ors.) under Sections 386, 387 r/w 34, I.P.C.. By order dated 19.07.2008 (A-1) he was placed under suspension. This order was revoked by order dated 05.11.2009 (A-2). In the meantime, with covering letter dated 11.09.2009 (A-3) he was served with a chargesheet. By this covering letter itself enquiry officer was also appointed. The enquiry officer submitted report dated 30.06.2011 (A-4) concluding therein that charges 3 and 8 were proved against the applicant. The disciplinary authority then issued a show cause notice dated 25.08.2018 (A-5) to the applicant stating therein that charges 1, 2 & 5 were also proved in addition charges 3 and 8 against him and why punishment of dismissal be not imposed. The applicant gave reply dated 19.10.2012 (A-6) to this show cause notice. However, by order dated 29.01.2013 (A-7) the disciplinary authority imposed punishment of dismissal on the applicant. The applicant preferred appeal (A-8) before the competent authority

who, by order dated 18.02.2016 (A-9), dismissed the appeal. By order dated 31.05.2016 (A-10) Assistant Session Judge, Achalpur convicted the applicant in Session Case No. 120/2012 arising out of Crime No. 148/2007 mentioned above. However, in appeal, the Additional Session Judge, Achalpur set aside the conviction of the applicant and acquitted him by Judgment and order dated 20.08.2021 (A-11). After his acquittal in appeal the applicant has approached this Tribunal within limitation.

4. According to the applicant, for following reasons the impugned orders cannot be sustained:-

1. The chargesheet was accompanied by an order appointing enquiry officer (A-3). This clearly showed that the disciplinary authority was biased and it had already made up its mind. Question of appointing enquiry officer would have arisen only after receipt of reply to the chargesheet from the delinquent, and on finding that said reply was not enough to drop the proposed enquiry.

2. The enquiry officer had suggested that the proposed enquiry by kept in abeyance since criminal case against the applicant was pending. This suggestion, which was based on circular dated 26.06.2006, was disregarded by the disciplinary authority.

3. The disciplinary authority, while issuing the show cause notice (A-5) disagreed with the enquiry officer and held that in

addition to charges 3 and 8, charges 1, 2 & 5 were also proved. However, no reasons were recorded therefor, either in show cause notice (A-5) or in the impugned order of dismissal (A-7). From this it can be inferred that the disciplinary authority had already made up its mind to impose punishment.

4. The appellate authority, while dismissing the appeal vide order dated 18.02.2016 (A-9) recorded no cogent reasons nor did it consider any of the grounds raised by the applicant.

5. In view of acquittal of the applicant in appeal, order of dismissal passed in D.E. cannot be sustained.

5. Reply of respondent no. 3 is at pages 233 to 239. It is a matter of record that crime no. 148/2007 was registered against the applicant, he was arrested, placed under suspension, bailed out, served with a chargesheet and then his suspension was revoked. According to the respondent no. 3, information regarding career of the applicant (A-R-1) was forwarded to respondent no. 1 and it showed that his career was anything but unblemished. We have perused A-R-1. It supports aforesaid pleading of respondent no. 3.

6. Reply of respondent no. 2 is at pages 244 to 248. According to the respondent no. 2, departmental and criminal proceedings are distinct and hence contention of the applicant that order of his dismissal

should be quashed and set aside because of his acquittal in criminal case deserves outright rejection.

7. In support of ground no. 1 raised by him which we have set out above along with other grounds raised by him, the applicant has relied on the following observations in **State of Punjab Vs. V.K.Khanna and Ors. – AIR 2001 SC 343** –

> "*The High Court while delving into the issue went into the factum of announcement of the Chief Minister in regard to appointment of an Inquiry Officer to substantiate the frame of mind of the authorities and thus depicting bias - What bias means has already been dealt with by us earlier in this judgment, as such it does not require any further dilation but the factum of announcement has been taken note of as an illustration to a mindset viz.: the inquiry shall proceed irrespective of the reply- Is it an indication of a free and fair attitude towards the concerned officer? The answer cannot possibly be in the affirmative. It is well settled in Service Jurisprudence that the concerned authority has to apply its mind upon receipt of reply to the charge-sheet or show-cause as the case may be, as to whether a further inquiry is called for. In the event upon deliberations and due considerations it is in the affirmative - the inquiry follows but not otherwise and*

it is this part of Service Jurisprudence on which reliance was placed by Mr. Subramaniam and on that score, strongly criticised the conduct of the respondents here and accused them of being biased. We do find some justification in such a criticism upon consideration of the materials on record."

By relying on these observations it was submitted by Shri S.P.Palshikar, ld. Counsel for the applicant that in the instant case the disciplinary authority, along with chargesheet, served on the applicant the order whereunder enquiry officer was appointed, enquiry officer ought to have been appointed not before reply to the chargesheet was called and received from the applicant followed by the conclusion that notwithstanding contents of reply it was desirable to go ahead with the enquiry, and from such haste the only conclusion that can be drawn is that the disciplinary authority was biased.

In reply, ld. P.O. Shri Ghogre submitted that the factual background set out in para 21 of the Judgment which led to observations in para 34 (quoted above) must also be taken into account. Para 21 of the Judgement contains the following factual background –

"*Soon after the issuance of the charge-sheet however, the Press reported a statement of the Chief Minister on 27th April, 1997 that a Judge of the High Court would look into the*

charges against Shri V.K. Khanna - this statement has been ascribed to be malafide by Mr. Subramaniam by reason of the fact that even prior to the expiry of the period pertaining to the submission of reply to the chargesheet, this announcement was effected that a Judge of the High Court would look into the charges against the respondent No. 1 - Mr. Subramaniam contended that the statement depicts malice and vendetta and the frame of mind so as to humiliate the former Chief Secretary. The time had not expired for assessment of the situation as to whether there is any misconduct involved - if any credence is to be attached to the Press report, we are afraid Mr. Subramaniam's comment might find some justification."

In para 34 there is reference to observations made earlier in the Judgement about what "Bias" means. These observations which lay down the test are in para 8 of the Judgement. The observations are as follows –

"*The test, therefore, is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn there from. In the event, however, the conclusion is otherwise that*

there is existing a real danger of bias administrative action cannot be sustained. If on the other hand allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefor would not arise."

Aforequoted observations in para no. 8 deal with two distinct scenarios –

1. Mere apprehension of bias;
2. Real dangers of bias.

In the former case conclusion of bias cannot be drawn but in the latter case such conclusion has to be drawn. The Supreme Court, in the case before it, concluded that there were circumstances showing biased approach of the authority. In the instant case there are no attendant circumstances to conclude that contemporaneous appointment of enquiry officer and issuance of chargesheet was actuated by bias or malice. For these reasons the aforesaid ruling will not help the applicant.

8. So far as ground no. 2 raised by the applicant is concerned, it may be stated that there was nothing wrong/ irregular in proceeding with the enquiry when criminal case was pending. It is not the case of the applicant that he wanted deferment of departmental enquiry till decision of criminal case. Record shows that after the disciplinary authority

passed order of dismissal of the applicant on 29.01.2013 (A-7) the respondents department had issued a communication dated 04.03.2014 to the applicant that because of pendency of criminal case hearing and decision in departmental appeal preferred by the applicant against order dated 29.01.2013 would be kept in abeyance. The applicant, being aggrieved by this communication, filed O.A. No. 277/2014 before this Bench. It was decided on 02.07.2014. This Bench held that the proceeding before the (departmental) appellate authority was completely independent of the criminal prosecution and hence the appellate authority had to adjudicate upon the appeal on the basis of material placed on record. The appellate authority accordingly proceeded to decide the appeal by order dated 18.02.2016 (A-9). The order dated 02.07.2014 passed by this Bench in O.A. No. 277/2014 is placed on record by respondent no. 2. It is at pages 249 to 253.

9. Ground no. 3 raised by the applicant pertains to the charges which were held to have been proved by the enquiry officer and the disciplinary authority. The enquiry officer held charges 3 and 8 to have been proved. These charges read as under:-

> "३. खल्लार पो.स्टे. अप नं. ७०/०६ मधील मयत आरोपी श्रीकृष्ण विठ्ठलराव निर्गुळे याने दिनांक १६/०१/२००७ रोजी पोलिस अधीक्षक, अमरावती ग्रा यांना पाठविलेले पत्र हस्ताक्षर तज्ञांकडून तपासले असता सदरचे हस्ताक्षर मृतकाचे आहे हे सिध्द झाले आहे.

८. दिनांक १६/०१/२००७ रोजी सकाळी ओएसआय बबन बनं ६६३ याचे दफतर निरीक्षण केले त्यावेळेस सुध्दा काही सुचना दिलेल्या नाहीत."

The disciplinary authority appears to have proceeded on a footing that charge no. 5 was also held to have been proved by the enquiry officer. In show cause notice (A-5) in para no. 4 the disciplinary authority stated –

"४. चौकशी अधिकारी यांनी त्यांच्या समारोप अहवालामध्ये निष्कर्ष नोंदविले आहेत की, पोनि जेम्स यांच्याविरूध्द १२ दोषारोपापैकी दोषारोप क्रमांक ३, ५, ८ सिध्द होत आहेत. सपोउपनि ढगे यांच्याविरूध्द ५ दोषारोपापैकी दोषारोप क्र. २, ४ सिध्द होत आहेत. पोहवा खंदारे यांच्याविरूध्द ५ दोषारोपापैकी कोणताही दोषारोप सिध्द होत नाही. सेवानिवृत्त पोउपनि वानखडे यांच्याविरूध्द एकूण ५ दोषारोपापैकी दोषारोप कं ३, ६, ७ सिध्द होत आहेत."

This was an error on the part of the disciplinary authority. In all probability it was committed inadvertently. Charge no. 5 reads:-

"५. आपण सहा. पोनि जेम्स, ठाणेदार खल्लार दिनांक ३१/१२/२००६ रोजी सकाळी ०९.१० वा. रजेवरून परत आल्यावर दिनांक ०१/०१/२००७ पर्यंत पोस्टे ला दाखल झालेल्या गुन्हयाबाबत आढावा घेतलेला नाही. दाखल झालेल्या गुन्हयाचे केस डाय-या व कागदपत्र पाहिले नाही व कोणत्याच प्रकारचे तपासी अंमलदार यांना सुचना दिलेल्या नाही. पोस्टेचे कामात व गुन्हयाचे तपासात निष्काळजीपणा केलेला आहे."

In show cause notice (A-5), in para no. 5, the disciplinary authority stated –

"चौकशी अधिकारी यांनी नोंदविलेल्या निष्कर्षाशी सक्षम प्राधिकारी म्हणून मी सहमत नाही कारण, मृतक श्रीकृष्ण निर्गुळे यांनी दिनांक १६/०१/२००७ रोजी पोलिस अधिक्षक, अमरावती ग्रामीण यांना पाठविलेल्या अर्जामध्ये खल्लार पोस्टे चे प्रभारी अधिकारी पोनि जेम्स असल्याने व अर्जात पोउपनि वानखडे यांचे नाव असल्याने सदर दस्तऐवजावरून पोनि जेम्स व पोउपनि वानखडे यांच्यावरील दोषारोप क्रं. १ सिध्द होत आहे. मृतकाचा मुलगा श्री प्रदिप श्रीकृष्ण निर्गुळे, दादाराव ढाकुलकर, श्रीमती शोभा निर्गुळे, श्रीमती सुमित्रा वानखडे, श्रीमती बिर्जुला भटकर यांनी दिलेल्या जबाबवरून पोनि जेम्स व पोउपनि वानखडे यांनी आरोपी श्रीकृष्ण निर्गुळे याचेकडे रू. २०,०००/- ची मागणी केली, परंतु सदरची रक्कम देउ शकत नाही म्हणून श्रीकृष्ण निर्गुळे यांनी आत्महत्या केली असल्याचे स्पष्ट होते. त्यामुळे पोनि जेम्स व पोउपनि वानखडे यांच्यावर ठेवण्यात आलेला दोषारोप क्रमांक २ सुध्दा सिध्द होत आहे. यावरून पोनि. जेम्स यांच्यावरील १२ दोषारोपापैकी दोषारोप क्रमांक १, २, ३, ५ व ८ सिध्द होत आहेत."

It was submitted by Advocate Shri S.P.Palshikar that the disciplinary authority clearly erred by holding that charge no. 5 was held to have been proved by the enquiry officer and this could be the reason as to why no reasons were recorded by him with regard to said charge. This submission is supported by record. Further submission of Advocate Shri Palshikar is that this error would vitiate the enquiry. We find no merit in this submission. We have already reproduced charge no. 5. It may also be mentioned that the applicant was given an opportunity to refute the same, along with the other charges, by giving reply to the show cause notice (A-5).

10. It was further submitted by Advocate Shri Palshikar that the disciplinary authority, contrary to what was concluded by the enquiry officer, held charges 1 & 2 also to have been proved but while doing so failed to give an opportunity to the applicant refute the same. Charges 1 & 2 read as under :-

> "१. खल्लार पो.स्टे. अप नं. ७०/०६ मधील मयत आरोपी श्रीकृष्ण विठ्ठलराव निर्गुळे याने विष प्राशन करण्यापुर्वी दिनांक १६/०१/२००७ रोजी पोलिस अधीक्षक, अमरावती ग्रा यांना रजिस्टर पोस्टाने पत्र पाठवून कळविळे की, पोनि, जेम्स व पोउपनि, वानखडे यांनी आरोपीच्या नात्याखाली भरपूर त्रास दिला व रु. २०,०००/- मागीतले.
>
> २. खल्लार पो.स्टे. अप नं. ७०/०६ मधील मयत आरोपी श्रीकृष्ण विठ्ठलराव निर्गुळे हा पैसे देवू शकत नाही म्हणून त्याने विष प्राशन करून आत्महत्या केले आहे."

11. We have quoted para no. 5 of show cause notice (A-5). In this para the disciplinary authority only tentatively concluded that charges 1, 2, 3, 5 & 8 were proved against the applicant. So far as this aspect of the matter is concerned, reliance is placed by the applicant on para 54 in **Yoginath D. Bagde Vs. State of Maharashtra, AIR 1999 Supreme Court 3734.** Observations in para 54 are as under:-

> "*In the instant case, we have scrutinised the reasons of the Disciplinary Committee and have found that it had taken its final decision without giving an opportunity of hearing to the appellant at the stage at which it proposed to differ with the findings of the Enquiry Officer. We have also found that the*

complainant's story with regard to the place at which the demand was allegedly made by the appellant was inconsistent. We have also noticed that the trap laid by the A.C.B., Nagpur against the appellant had failed and was held by the Enquiry Officer to be a farce and not having been laid with the permission of the Chief Justice. We have also noticed that there was absolute non- consideration of the statements of defence witnesses, namely, Dr. Naranje and Mr. Bapat, advocate, by the Disciplinary Committee. This factor in itself was sufficient to vitiate the findings recorded by that Committee contrary to the findings of the Enquiry Officer."

In para 33 of this Judgment the Court observed:-

"*A delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more*

necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This

right being a constitutional right of the employee cannot be taken away by any legislative enactment or Service Rule including Rules made under Article 309 of the Constitution." (emphasis supplied).

In the instant case the disciplinary authority tentatively held charges 1, 2, 3, 5 & 8 to have been proved against the applicant while issuing show cause notice (A-5). The applicant gave reply (A-6) to it and thereafter the disciplinary authority proceeded to pass the order (A-7) imposing punishment of dismissal. In this order the disciplinary authority held:-

"५. अपचारी पोनि जेम्स यांनी केलेला खुलासा समाधानकारक वाटत नाही कारण, मृतक श्रीकृष्ण निर्गुळे यांनी दिनांक १६/०१/२००७ रोजी पोलीस अधीक्षक, अमरावती ग्रामीण यांना पाठविलेल्या अर्जामध्ये खल्लार पोस्टे चे प्रभारी अधिकारी पोनि जेम्स असल्याने व अर्जात पोउपनि वानखडे यांचे नाव असल्याने सदर दस्तऐवजावरुन पोनि जेम्स व पोउपनि वानखडे यांच्यावरील दोषारोप क्रमांक १ सिध्द होत आहे. मृतकाचा मुलगा श्री प्रदिप श्रीकृष्ण निर्गुळे, दादाराव ढाकुलकर, श्रीमती शोभा निर्गुळे, श्रीमती सुमित्रा वानखडे, श्रीमती बिर्जुला भटकर यांनी दिलेल्या जबाबवरुन पोनि जेम्स व पोउपनि वानखडे यांनी आरोपी श्रीकृष्ण निर्गुळे याचेकडे रू. २०,०००/- ची मागणी केली, परंतु सदरची रक्कम देउ शकत नाही म्हणून श्रीकृष्ण निर्गुळे यांनी आत्महत्या केली असल्याचे स्पष्ट होते. त्यामुळे पोनि जेम्स व पोउपनि वानखडे यांच्यावर ठेवण्यात आलेला दोषारोप क्रमांक २ सिध्द होत आहे. मयत आरोपी श्रीकृष्ण निर्गुळे यांनी दिनांक १६.०१.२००७ रोजी पोलीस अधीक्षक, अमरावती ग्रा. यांना पाठविलेले पत्र हस्ताक्षर तज्ञांकडून तपासले असता ते मयत आरोपी श्रीकृष्ण निर्गुळे यांचेच असल्याचे निष्पन्न झाल्याने दोषारोप क्रमांक ३ सिध्द होतो. अपचारी यांनी त्यांच्या अंतिम जबाबात पोस्टे ला सकाळी घेण्यात आलेल्या गणणेवर योग्य त्या सर्व सुचना देण्यात आल्या व कागदपत्रे सुध्दा तपासण्यात आले. प्रकरणाचा कालावधी बघता लिखीत सुचना देणे गरजेचे

नव्हते हे म्हणणे समर्थनिय नाही. यावारून दोषारोप क्रमांक ५ सिध्द होतो. दिनांक ०६/०१/२००७ रोजी पोनि, जेम्स यांनी सपोउपनि क्रमांक ६६३ बबन ढगे यांचे दप्तर निरीक्षण केले त्यावेळेस लेखी सुचना दिल्या नाहीत हे निष्पन्न झाले असल्याने दोषारोप क्रमांक ८ सिध्द होतो.

६. पोनि सॅम्युअल ॲन्थोनी जेम्स यांना कारणे दाखवा नोटिस मध्ये केलेली शिक्षा ही गंभीर स्वरूपाची असल्याने त्यांना दिनांक १६/०१/२०१२ रोजी मा. पोमसं यांच्या समक्ष वैयक्तिक मुलाखतीसाठी बोलाविण्यात आले होते. वैयक्तिक सुनावणी दरम्यान त्यांनी मान्य केले की, त्यांना विभागीय चौकशी दरम्यान बचावाच्या सर्व संधी व सवलती देण्यात आल्या होत्या. मयत श्रीकृष्ण निर्गुळे हे अपचारी यांना पैसे देण्यास असमर्थ असल्याने त्यांनी आत्महत्या केली आहे. अपचारी यांच्या वर्तनामुळे एका गरीब माणसाला त्याचा जीव गमवावा लागला आहे. सदरचे प्रकरण हे अत्यंत गंभीर स्वरूपाचे असल्याने, त्यामुळे पोलीस दलाची प्रतिमा मलीन झाली आहे. पोनि सॅम्युअल ॲन्थोनी जेम्स यांनी कर्तव्यात अत्यंत बेशिस्त व बेजबाबदारपणाचे वर्तन केले असून त्यांचेवरील दोषारोप क्रमांक १, २, ३, ५ व ८ हे निर्विवादपणे सिध्द झाले असल्याने त्यांना कारणे दाखवा नोटिस मध्ये प्रस्तावित करण्यात आलेली शिक्षा, त्यांच्या कसुरीच्या मानाने योग्यच असून त्यात कोणताही बदली करण्याची मला आवश्यकता वाटत नाही. म्हणून मी मुंबई पोलीस अधिनियम १९५१ मधील नियम क्रमांक २५ (२) अन्वये मला प्रदान असलेल्या अधिकाराचा वापर करून पुढील प्रमाणे आदेश देत आहे.

आदेश

मी संजीव दयाल, पोलीस महासंचालक, महाराष्ट्र राज्य, मुंबई या द्धारे पोनि सॅम्युअल ॲन्थोनी जेम्स यांना कारणे दाखवा नोटिस मध्ये प्रस्तावित केलेली '**शासन सेवेतून बडतर्फ करणे**' ही शिक्षा अंतिम आदेशात कायम करीत आहे.

२. सदर शिक्षेने अपचारी व्यथित होत असतील तर हे आदेश मिळाल्या दिनांकापासून ६० दिवसांचे आत ते शासनास अपील करू शकतात."

These details show that by issuing show cause notice (A-5) adequate opportunity was given to the applicant to refute the

conclusions tentatively arrived at by the disciplinary authority. The applicant gave detailed reply (A-6). After considering said reply the disciplinary authority passed the order of dismissal (A-7).

For all these reasons the ruling in the case of **Yoginath D. Bagde Vs. State of Maharashtra (supra)** will not help the applicant.

12. We have quoted above relevant portion of order passed by the disciplinary authority (A-7). These details will suffice to reject contention of the applicant that the disciplinary authority didn't record proper/ cogent reason while imposing punishment.

The latter part of ground no. 4 relates to the order (A-9) passed by the appellate authority. The appellate authority held :-

"**निष्कर्ष-**

स्दर प्रकरणी अपिलार्थी यांची बाजु ऐकुन घेण्यात आली. तसेच, उपलब्ध कागदपत्रांची तपासणी करण्यात आली. अपिलार्थी श्री सॅम्युअल जेम्स यांनी सादर केलेला खुलासा समाधानकारक वाटत नाही. मृत व्यक्तीने दिनांक ०६/०१/२००७ रोजी पाठविलेल्या अर्जामध्ये श्री जेम्स यांनी भरपूर त्रास दिल्याचे व रुपये २०,०००/- मागितल्याचा उल्लेख आहे. सदर पत्रातील हस्ताक्षर मृत व्यक्ती यांचेच असल्याचे निष्पन्न झाले आहे. तसेच अपिलार्थी हे रजेवरून परत आल्यावर पोलीस स्टेशनला दाखल झालेल्या गुन्हयाबाबत आढावा घेतला नाही. दाखल झालेल्या गुन्हयाचे केस डाय-या व कागदपत्रे पाहिले नाही व कोणत्याच प्रकारच्य सुचना तपासी अंमलदार यांना दिलेल्या नाहीत. अपिलार्थी यांचेविरुध्द दोषारोप क्रमांक १, २, ३, ५ व ८ हे विभागीय चौकशीमध्ये निर्विवादपणे सिध्द झाल्याचे दिसून येते.

अपिलार्थी श्री. सॅम्युअल ॲन्थोनी जेम्स, बडतर्फ पोलीस निरीक्षक, अकोला जिल्हा पोलीस दल यांना शिस्तभंग प्राधिकारी तथा अपर पोलीस महासंचालक, महाराष्ट्र राज्य, मुंबई यांनी दिलेली

शिक्षा कसुरीच्या मानाने योग्य असून ती कायम करण्याचा निर्णय मा. राज्यमंत्री, गृह (ग्रामीण) यांनी दिलेला आहे. सदर निर्णयास अनुसरून संबंधितानी आवश्यक ती कार्यवाही करावी."

The appellate authority did consider the case and found that the contentions raised by the applicant lacked merit and proceeded to maintain the order passed by the disciplinary authority. We find that the order passed by the appellate authority is not cryptic as submitted on behalf of the applicant. For these reasons ground no. 4 raised by the applicant also fails.

13. Ground no. 5 raised by the applicant relates to effect of acquittal of the applicant in criminal case. It is a matter of record that:-

A. Crime No. 148/2007 was registered against the applicant on 04.04.2008.

B. On 19.07.2008 he was placed under suspension.

C. On 11.09.2009 he was served with the chargesheet.

D. On 05.11.2009 his suspension was revoked.

E. On 30.06.2011 the enquiry officer submitted his report to the disciplinary authority.

F. On 29.08.2012 the disciplinary authority issued a show cause notice to the applicant.

G. On 29.01.2013 the disciplinary authority imposed punishment of dismissal (A-7).

H. By communication dated 04.03.2014 the applicant was informed that because of pendency of criminal case hearing of his departmental appeal against the order of dismissal would be kept in abeyance.

I. Being aggrieved by communication dated 04.03.2014 the applicant filed O.A. No. 277/2014 and this Bench, while allowing the O.A., directed the appellate authority to decide the departmental appeal notwithstanding pendency of criminal case.

J. On 18.02.2016 appellate authority maintained the punishment of dismissal (A-9).

K. By order dated 31.05.2016 (A-10) Assistant Session Judge, Achalpur convicted the applicant.

L. By order dated 20.08.2021 (A-11) Additional Session Judge, Achalpur acquitted the applicant by setting aside his conviction.

These details will show how the departmental and criminal proceedings progressed.

14. According to Advocate Shri Palshikar dismissal order passed against the applicant deserves to be set aside because of acquittal of the applicant in criminal case. This submission cannot be accepted in view of settled legal position that departmental and criminal proceedings are distinct and they may go on simultaneously and independently of each other. In **Ashoo Surendranath Tewari Vs. Deputy Superintendent of**

Police, EOW, CBI and Another (2020) 9 SCC 636 which is placed on record by the applicant, it is held *interalia* that standard of proof in departmental proceedings and criminal prosecution varies in the former it is "preponderance of probability" and in the latter it is "beyond reasonable doubt". This legal position in fact goes against contention of the applicant that because of acquittal in criminal case order of dismissal passed against him in departmental enquiry should be set aside.

15. The applicant has placed on record copy of order dated 09.12.2021 passed by S.P., Amravati (Rural) reinstating A.S.I., Baban Dhage. He was one of the co-delinquents in the departmental enquiry which culminated in order of dismissal of the applicant. Advocate Shri S.P.Palshikar submitted that the applicant who, too, was dismissed should be reinstated by applying principle of parity. In reply, it was submitted by P.O. Shri Ghogre that case of A.S.I., Baban Dhage and the applicant do not stand on par and hence question of extending benefit of parity would not arise. It was pointed out that the applicant was dismissed as per order passed by the disciplinary authority, this order was maintained by the appellate authority and carried into effect whereas A.S.I. Baban Dhage was not dismissed in the departmental enquiry but on being convicted by criminal court and his reinstatement was ordered when in appeal he was acquitted. These facts are not

disputed by the applicant. Therefore, question of extending benefit of parity to the applicant would not arise.

16. P.O. Shri Ghogre has relied on the following rulings to contend that this Tribunal, in exercise of clearly circumscribed power of Judicial review, cannot upset findings of fact recorded and endorsed by the authorities since it is their exclusive domain and especially in the light of the fact that these findings are based on evidence on record-

1. **Union of India & Ors. Vs. Sitaram Mishra & Another, (2019) 20 SCC 588.**

2. **Pravin Kumar Vs. Union of India, (2020) 9 SCC 471**.

3. **State of Bihar & Ors. Vs. Phulpari Kumari, (2020) 2 SCC 130.**

4. **State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya, 2011 (4) Mh.L.J..**

According to P.O. Shri Ghogre this, clearly, is not a case of "No evidence". The aforequoted rulings reiterate the following legal position laid down in **B.C.Chaturvedi Vs. Union of India (1995) 6 SCC 749**:-

" *Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily*

correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal

may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

17. In this case orders dated 29.01.2013 (A-7) and 18.02.2016 (A-9) are impugned whereunder punishment of dismissal was imposed and upheld. Instant O.A. was filed on 22.11.2021. So far as question of limitation is concerned, it was submitted by Advocate Shri Palshikar that the O.A. was filed well within the limitation of one year from date of order of acquittal i.e. 20.08.2021 passed in appeal. Ld. P.O., on the other hand, has contended that the O.A. ought to have been filed within one year from the date on which appeal filed by the applicant challenging his dismissal was dismissed on 28.02.2016 by the appellate authority and hence, this O.A. is clearly barred by limitation. To support this submission reliance is placed by P.O. on **Sharif Masih Vs. Punjab and Haryana High Court (2007) 15 SCC 753.** In this case the Apex Court rejected the contention that date of acquittal in a criminal case would furnish the cause of action and would be the starting point of limitation for assailing order (of dismissal) passed in departmental enquiry. This being the legal position contention of the applicant that this O.A. is filed within limitation cannot be accepted.

18. For the reasons discussed hereinabove we hold that the application fails on merits as well as on the ground of limitation. It is accordingly dismissed with no order as to costs.

(Shri M.A.Lovekar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 14/07/2022.

APS

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 14/07/2022.

Uploaded on : 15/07/2022