

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 164/2021 (D.B.)

Pavan S/o Pradeeprao Motewar,
Aged about 35 years, Occ. Dismissed Employee -
Tribal Development Department,
R/o 88, Jawahar Nagar, Waghapur Road,
Post Lohara, Dist. Yavatmal.

Applicant.

Versus

- 1) The Chief Secretary,
Department of Tribal Development,
State of Maharashtra,
Mantralaya, Mumbai-32.
- 2) The Tribal Development Commissioner,
Aadiwasi Vikas Bhavan,
First Floor, Old Agra Road,
Nashik-422 002.
- 3) The Additional Commissioner,
Department of Tribal Development,
Near New Police Commissionerate,
Behind T.B. Hospital, Amravati.
- 4) The Project Officer,
Integrated Tribal Development Project,
At Pandarkawada,
Dist. Yavatmal-445 302.

Respondents

Shri S.M.Khan, Id. Advocate for the applicant.

Shri A.P.Potnis, Id. P.O. for the respondents.

**Coram :- Hon'ble Shri Shree Bhagwan, Vice-Chairman &
Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.**

JUDGMENT**(Per:-Vice Chairman)**

Heard Shri S.M.Khan, learned counsel for the applicant and Shri A.P.Potnis, learned P.O. for the Respondents.

2. The applicant was working as Superintendent (Tribal Development Department, Kadamb, Dist. Yavatmal). One Ms. Siddhi Mohta, deputed as a Consultant on the Project of Ashram School Renovation Program, Pandarkawada, had made a complaint on 30.04.2019 alleging that applicant has sent few objectionable message on whatsapp. On the basis of the complaint of Ms. Siddhi Mohta, applicant was suspended. Chargesheet was issued to the applicant, the applicant replied to the said chargesheet and stated that he had no any bad intention, he had sent message of 'Good Morning' only. Therefore, he admitted his guilt that he had sent message but those messages was not objectionable. Only on the basis of admission in a single sitting i.e. on 24.01.2020, the Enquiry Officer submitted report stating that the charges are proved because of the admission of the applicant.

3. The appointing authority i.e. The Additional Commissioner, Tribal Development, Amravati i.e. Respondent no. 3 has dismissed the applicant on 01.07.2020 relying on the report of the Enquiry Officer holding that the applicant has sent objectionable message. Hence, applicant approached to this Tribunal for following reliefs.

4. The respondents have filed their reply and submitted that the applicant had admitted his guilt and, therefore, further evidence was not required. Hence, the Enquiry Officer submitted enquiry report stating that charges of misbehaviour i.e. sending objectionable message is proved.

5. Relying on the report, the dismissal order was passed by The Additional Commissioner, Tribal Development, Amravati i.e. Respondent no. 3 on 01.07.2020.

6. Heard Shri S.M.Khan, he has pointed out explanation given by the applicant which is at PP. 31 to 32. Ld. Counsel for the applicant submits that it is not shown on record what objectionable message was sent by the applicant to the complainant on Whatsapp.

7. The Id. Counsel for the applicant further submits that after receiving chargesheet, the applicant had given his explanation on 21.05.2019. The said explanation shows that applicant has sent messages of 'Good Morning', there was no any bad intention on the part of the applicant. There was no any objectionable message therefore applicant has admitted before Enquiry Officer on 24.01.2020 stating that he has sent 'Good Morning' message and there was no any bad intention on his part and it was not a objectionable message. Enquiry Officer recorded his findings stating that applicant has sent objectionable

message but what objectionable message had been sent is not recorded by the Enquiry Officer.

8. Applicant is punished by the respondent no. 3 by relying on the Enquiry Report. From perusal of the Enquiry Report and dismissal order dated 24.07.2020 (A-1, Pg. No. 16), do not show that what was the objectionable message sent by the applicant.

9. On the other hand it appears that applicant had given his explanation that he had sent 'Good Morning' message and it is not an objectionable message. Respondent no. 3 has imposed very harsh punishment i.e. removal from service. This type of harsh punishment should not be imposed. Hence, the punishment is shockingly disproportionate.

10. Hon'ble Supreme Court in the case of **B.C.Chaturvedi Vs. Union of India and Ors.** has held in para no. 5 as under:-

"5. No doubt, while exercising power under Article 226 of the Constitution, the High Courts have to bear in mind the restraints inherent in exercising power of judicial review. It is because of this that substitution of High Court's view regarding appropriate punishment is not permissible. But for this constraint, I would have thought that the law makers do desire application of judicial mind to the question of even proportionality of

punishment/penalty. I have said so because the Industrial Disputes Act, 1947 was amended to insert section 11A in it to confer this power even on a Labour Court/Industrial Tribunal. It may be that this power was conferred on these adjudicating authorities because of the prevalence of unfair labour practice or victimisation by the management. Even so, the power under section 11A is available to be exercised, even if there be no victimisation or taking recourse to unfair labour practice. In this background, I do not think if we would be justified in giving much weight to the decision of the employer on the question of appropriate punishment in service matters relating to Government employees or employees of the public corporations. I have said so because if need for maintenance of office discipline be the reason of our adopting a strict attitude qua the public servants, discipline has to be maintained in the industrial sector also. The availability of appeal etc. to public servants does not make a real difference, as the appellate/revisional authority is known to have taken a different view on the question of sentence only rarely. I would, therefore, think that but for the self-imposed limitation while exercising power under Article 226 of the Constitution, there is

no inherent reason to disallow application of judicial mind to the question of proportionately of punishment/penalty. But then, while seized with this question as a writ court interference is permissible only when the punishment/penalty is shockingly disproportionate.”

The applicant had only sent message of ‘Good Morning’. It is not an objectionable message and only on that ground the applicant was dismissed from service. The punishment is shockingly disproportionate and, therefore, punishment of dismissal is liable to be quashed and set aside.

11. From the perusal of copy of Chargesheet and Enquiry Report it appears that there is nothing to show what was objectionable messages sent by the applicant. Hence, the punishment imposed by the respondent no. 3 is illegal and improper. Hence, O.A. is disposed of with following order:-

O R D E R

- A. The impugned order of punishment is hereby quashed and set aside.
- B. Respondents are directed to reinstate the applicant on the same post **within three months from the date of receipt of this order.**

C. No order as to costs.

(M.G.Giratkar)
Vice Chairman

aps

Dated – 25/01/2023

(Shree Bhagwan)
Vice Chairman

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 Vice Chairman
& Hon'ble Vice Chairman.

Judgment signed : 25/01/2023.

on and pronounced on

Uploaded on : 27/01/2023.