

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI, BENCH NAGPUR**

ORIGINAL APPLICATION NO. 592 OF 2016

DISTRICT : NAGPUR

Shri Diwakar s/o Marotrao Bhutekar,)
Aged about 67 years,)
Retd Government servant,)
R/o : Plot no. 8, Mire Layout,)
Nandanwan Road, Sakkardara,)
Nagpur.)...**Applicant**

VERSUS

1. State of Maharashtra,)
Through its Principal Secretary,)
Public Health Department,)
Mantralaya, Mumbai 400 032.)
2. The Director of Health Services)
St. Georges' Hospital Compound,)
Arogya Bhavan, M.S,)
Mumbai .)..**Respondents**

Shri D.M Kakani, learned Advocate for the Applicant.

Shri P.N Wajurkar, learned Presenting Officer for the Respondents.

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CORAM : **Shri Rajiv Agarwal (Vice-Chairman) (A)**
Shri J.D Kulkarni (Vice-Chairman) (J)

DATE : 25 .04.2017

PER : **Shri Rajiv Agarwal (Vice-Chairman) (A)**

ORDER

1. Heard Shri D.M Kakani, learned Advocate for the Applicant and Shri P.N Wajurkar, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the Memorandum dated 3.10.2015 as well as charge sheet dated 20.3.2006 issued by the Respondent no. 1. The Applicant is also seeking pensionary benefits from the date of his superannuation, which is 30.11.2007.

3. Learned Counsel for the Applicant argued that the Applicant had been treated unfairly by the Respondents in an earlier Departmental Enquiry, in which the Applicant was placed under suspension w.e.f 24.12.1998. He was reinstated in service after the Applicant filed O.A no 74/2001 before this Tribunal and this Tribunal ordered his reinstatement by order dated 10.7.2001. The Applicant was ultimately exonerated of all charges in the D.E which was started on 18.8.1999

and in which he was suspended on 24.12.1998, by order dated 7.11.2007. The Applicant had to suffer almost for 9 years. Learned Counsel for the Applicant stated that the Applicant retired on superannuation on 30.11.2007. On 20.3.2006, a memorandum was issued to the Applicant, which included a charge sheet. It was alleged that the Applicant in collusion with Dr P.N Khedkiar has purchased goods worth Rs. 6,89,057/- from the Personal Ledger Account and caused a loss of Rs. 2,91,342/- to the Government. Learned Counsel for the Applicant stated that Personal Ledger Account is maintained by the Civil Surgeon, who is the Drawing and Disbursing Authority of the said account. Dr. Khedidar has admitted in the Departmental Enquiry (D.E) before the Enquiry Officer that he was the Drawing and Disbursing Officer for PLA Account and the Applicant had played no role in the matter. The Enquiry Officer has held in his report dated 30.4.2007 that the charges no 1 & 2 were not proved against the Applicant and charge no. 3 was held to be proved partly. The charge no. 3 is regarding payments made in cash. This is just an irregularity but the charges of causing loss to the Government were held to be not proved. The Applicant was given a Memorandum dated 26.6.2009 to give his say on the report of Enquiry Officer. The Applicant submitted his say. The Respondent no. 1 did not take any action for more than 6 years and has given a final notice dated 3.10.2015 asking the Applicant to show cause as to why

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his pension may not be cut by 25% and why a sum of Rs.1,46,767/- should not be recovered from him. Learned Counsel for the Applicant argued that this Memorandum dated 3.10.2015 is illegal. If the Respondent no. 1 did not agree with the findings of the Enquiry Officer, the show cause notice to the Applicant should have mentioned the tentative reasons for the same. He relied on the judgment of Hon'ble Supreme Court in the case of **YOGINATH D. BAGADE Vs. STATE OF MAHARASHTRA & ANOTHER 1999 SCC (L & S) 1385.**

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant has challenged Memorandum dated 3.10.2015 and the charge sheet dated 20.3.2006. However, the Applicant was fully involved in withdrawing money from PLA of Civil Surgeon, Wardha, as he was the Administrative Officer. Inadmissible items were purchased without the approval of Deputy Director of Health Services, Nagpur. He is, therefore, fully liable to reimburse the Government for loss caused by him and punishment has been rightly imposed upon him.

5. We must express our dissatisfaction with the affidavit in reply filed on behalf of the Respondents on 14.2.2017. It is filed by the Chief Administrative Officer in the office of the Deputy Director of Health Services,

Nagpur. In fact, the action against the Applicant is being taken by the Respondent no. 1, i.e. the Secretary to the Government in Public Health Department and he should have filed the reply. It is seen that the Departmental Enquiry was started against the Applicant and others by Memorandum dated 20.3.2006 (Annexure A-10). There were three charges against the Applicant. Shri M.V Kande, was appointed as Enquiry Officer (E.O) who submitted his report on 30.4.2009 (Annexure A-13, page 86 of the Paper Book). In the report, E.O has held as follows:-

Charge no. 1	:	Not proved (page 145)
Charge no. 2	:	Not proved (page 147)
Charge no. 3	:	‘सदर दोषारोपात अनुज्ञेय नसलेल्या बाबींवर खर्च केल्याची बाब नमूद केलेली आहे. मात्र दोषारोप क. १ व २ मध्ये सदर बाब सिध्द झालेली नाही. मात्र रोखीने प्रदान करण्याची बाब ही सिध्द होते.

त्या अनुषंगाने सदर दोषारोप अपचारी अधिकारी श्री. भुतेकर यांच्यावर अंशता सिध्द होती.’’
(page no.148-149).

It is clear that the Applicant had retired on 30.11.2007 and the Enquiry Officer had submitted his report on 30.4.2009 after his retirement. The Applicant can be punished only if the charge against him was of grave misconduct or negligence under Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982. However, payment of bills by cash, cannot be said to be a grave misconduct. It is at the most an irregularity and

obviously no loss is caused to the Government, if bills are paid by cash (and not by cheque).

6. The other issue is the action on the report of the Enquiry Officer taken by the Respondent no. 1. Under Rule 9(2) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, if the Disciplinary Authority does not agree with the findings of the Enquiry Officer, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement with the findings of the Inquiring Authority are required to be sent to the Government servant. In YOGINATH BAGDE's case (supra), the Hon. Supreme Court has held that:-

“Difficulties have arisen in all those cases in which the enquiring authority has recorded a positive finding that the charges were not established and the delinquent officer was recommended to be exonerated, but the disciplinary authority disagreed with those findings and recorded its own finding that charges were established and delinquent officer was liable to be punished. The difficulty relates to the question of giving an opportunity of hearing to the delinquent officer at that stage.”

Hon'ble Supreme Court held that an opportunity of being heard has to be given in such a case. In the present case, the Respondent no. 1 simply forwarded the report of Enquiry Officer by Memorandum dated 26.6.2009, This clearly implies that the Disciplinary Authority has

accepted the findings of the Enquiry Officer. If the findings were not accepted, there would have been a mention of that fact in the Memorandum dated 26.6.2009. As the Applicant had retired on 30.11.2007 and Memorandum was issued to him on 26.6.2009, he would be justified in thinking that the Respondent no. 1 had accepted the report of the Enquiry Officer. As the charge no. 3 was partly proved, it would have been difficult to punish the Applicant under Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982. However, the Respondent no. 1 did not take any action for 6 years and on 3.10.2015 (Annexure A-15, page 241) issued another memorandum to the Applicant. It is mentioned that:-

“ चौकशीमध्ये अधिका-यांनी श्री. दि.मा. भुतेकर यांच्यावरील दोषारोप सिध्द होत असल्याचा निष्कर्ष काढला आहे.”


It has to be again presumed that the Disciplinary Authority had accepted the findings on each of the charges against the Applicant, as there is no mention about any disagreement with the findings of the Enquiry Officer. In this memorandum also it is implicit that the Respondent no. 1 has accepted that the Enquiry Officer has held that charges no 1 & 2 are not proved against the Applicant. As such, the Applicant cannot be held guilty of causing any loss to the Government and question of recovering loss of Rs. 1,46,767/- from his pension does not arise. Only charge partly proved against the

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Applicant is that he was responsible for making cash payments. This is not a grave misconduct, but an irregularity and cannot be said to have caused any loss to the Government. No punishment under Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 can be imposed on the Applicant on this charge.

7. The Respondents were expected to discuss the issues in their affidavit in reply. However, they have reiterated the charges against the Applicant which were not proved in the D.E against him, as per the findings of the Enquiry Officer. The Disciplinary Authority has not disagreed with the findings of the Enquiry Officer in Memorandum dated 26.6.2009 and 3.10.2015.

8. Considering the aforesaid facts and circumstances of the case, we hold that Memorandum dated 3.10.2015 is not sustainable as regards the proposed punishment and it is quashed and set aside. As in Memorandum dated 26.6.2009 there was no disagreement with the findings of the Enquiry Officer, the Respondents are bound to act in accordance with that. After 9 years, the Respondents are not allowed to reopen this issue, whether the disciplinary authority agrees or disagrees with the findings of the Enquiry Officer. Based on the findings of the Enquiry Officer, not disagreed till today by the Disciplinary Authority, no punishment can be imposed upon the Applicant.



9. This Original Application is allowed accordingly. The Respondents are directed to release all the pensionary dues of the Applicant including full pension from 1.12.2007 within a period of three months from the date of this order. There will be no order as to costs.

sd/-

**J.D KULKARNI
(VICE-CHAIRMAN) (J)**

sd/-

**RAJIV AGARWAL
(VICE-CHAIRMAN)(A)**

Date : .04.2017

Place : Nagpur

Dictation taken by : A.K Nair

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