MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 739/2016

Dr. Ajay Konduji Jumle,
Aged about 61 years, Occ-Retired,
R/o Plot No.8, Abhiyanta Colony,
Chandrapur. **Applicant.**

Versus

1) The State of Maharashtra,
Through its Addl. Chief Secretary,
Public Health Department,
Mantralaya, Mumbai-400 032. **Respondents**

Shri S.P. Palshikar, Ld. counsel for the applicant.
Shri V.A. Kulkarni, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri Shree Bhagwan, Vice-Chairman
and

Hon'ble Shri M.A. Lovekar, Member (J).

Dated: - 15th February, 2022.

ORDER **PER:-MEMBER (JUDICIAL)**

Heard Shri S.P. Palshikar, learned counsel for the applicant and Shri V.A. Kulkarni, the Ld. P.O. for the respondents.

2. In this O.A., order dated 21.7.2016 (Annexure A-1) passed by the Appellate Authority in appeal preferred by the applicant imposing punishment of deduction of 50% amount from his monthly pension permanently, is impugned. In the said appeal, the applicant had challenged the order of his dismissal dated 21.6.2013

passed by the Disciplinary Authority on conclusion of departmental enquiry against him.

3. Facts leading to this O.A. are as follows:-

In the year 2003-2004, the applicant was working as Resident Medical Officer at Civil Hospital, Chandrapur. Additional charge of Administrative Officer was given to him. Purchases of Rs. 65,25,640/- were made for the hospital. It was alleged that these purchases were not made as per certain guidelines contained in various G.Rs and five prescribed norms. Towards payment to suppliers, the applicant signed Cheques of Rs. 53,93,040/- and paid Rs. 11,32,600/- in cash. It was further alleged that the applicant had not ascertained whether the aforesaid G.Rs and prescribed norms were followed. It was also alleged that he did not check the material said to have been received for the hospital. It was alleged that the applicant had joined hands with the co-delinquents while committing these acts. Regarding these purchases and payment, allegations were also levelled against Dr. Anekar, Civil Surgeon, Cashier Shri Duryodhan and Godown Keeper Shri Motghare. Further allegation was levelled against the applicant that he had committed financial irregularity by failing to deposit in Treasury an amount of Rs. 8,82,476/- collected by way of hospital fees, and

spending the same for miscellaneous expenses in breach of Finance Rules of 1959.

4. Since departmental enquiry was contemplated, the applicant was placed under suspension by order dated 6.5.2004. Charge-sheet was served on him on 1.6.2005. The Enquiry Officer submitted his report on 16.2.2009 (part of this report which concerns the applicant is at Annexure A-2 and A-3). The Enquiry Officer concluded that both the charges levelled against the applicant were partially proved. The Disciplinary Authority concurred with this finding. On 21.1.2011, he issued a show cause notice to the applicant as to why punishment of removal from service be not imposed on him. The applicant submitted his reply on 30.1.2012. All the while, the applicant was kept under suspension. By filing O.A. No. 213/2011 in this Tribunal, the applicant challenged his prolonged suspension. By order dated 13.2.2012 (Annexure A-4), this Tribunal quashed and set aside the order of suspension of the applicant.

The applicant would have retired on superannuation on 30.6.2013. However, by order dated 21.6.2013, services of the applicant were terminated by way of punishment. He challenged the order dated 21.6.2013 by filing an appeal (Annexure A-5) on 27.6.2013 before His Excellency the Governor of Maharashtra.

The appeal remained undecided. Therefore, the applicant filed O.A. No. 52/2014 in this Tribunal. It was disposed of.

By communication dated 1.4.2015, the applicant was asked to remain present before the Hon'ble Minister of Housing, Mining and Labour / Appellate Authority. Before the Appellate Authority, the applicant submitted written notes of argument (Annexure A-6). The appeal was heard on 6.4.2015. It was decided on 21.7.2016 by passing the impugned order whereunder the Appellate Authority modified punishment of dismissal imposed by the Disciplinary Authority and imposed instead punishment of deduction of 50% amount from monthly pension of the applicant on a permanent basis. Hence, this application.

5. Reply of respondent No.1 is at pages 53 to 58. To resist this O.A., respondent No.1 has set up a case as follows in paras 3, 4 and 5 of reply.

> "**3**. At the outset, it is submitted that the applicant while posted as Resident Medical Officer (Clinical) at General Hospital, Chandrapur, he was holding additional charge of Administrative Officer in the year 2003-2004. The applicant was holding the charge of Civil Surgeon from 17.1.2004 to 8.3.2004. It is further submitted that in the year 2003-2004, purchase of Rs. 65,25,640/- only was effected form the Personal Ledger Account (PLA) of General Hospital, Chandrapur in total

violation of mandatory rules and relevant norms. Grant of Rs. 47,20,000/- was available for the financial year 2003-2004 for the purpose of incurring administrative expenditure for the General Hospital, Chandrapur. In spite of this fact, in absence of any demand, unessential purchase of Rs. 65,25,640/- only was effected from the Personal Ledger Account. The applicant who was holding the charge of Civil Surgeon, willingly, deliberately and with malafide intention, omitted to adhere the rules and norms laid down, while purchasing from Personal Ledger Account. The applicant, without verifying the availability of regular financial grant, made a payment of Rs. 53,93,040/- only by cheque and also paid Rs. 11,32,600/- only in cash to the concerned firm blatantly violating the Rule 193 (4) of the Maharashtra Treasury Rules as well as the G.Rs. dated 6.11.1999, 31.7.2000, 12.12.2002, 24.4.2002, 2.1.1992 and 16.7.1993. The applicant also did not verify the actual receipt and delivery of the purchased material and effected the purchase in conspiracy with Shri Motghare and Shri Duryodhan and thereby cheated the Government.

4. The applicant was holding the charge of Administrative Officer in the year 2003-2004 and being the Drawing and Disbursing Officer, he was duty bound to deposit the amount of Rs. 8,82,476/- received by him towards medical charges, the Government Treasury within a period of two days, in accordance of Rs. 8(1) of Bombay Financial Rules, 1959. But the applicant

willingly, deliberately and with malafide intention conspired with the Civil Surgeon, omitted to deposit the said amount in Government Treasury. The applicant hands-in-glove with the Civil Surgeon, illegally spent the said amount for sundry expenditure.

5. Since the applicant was holding the charge of Civil Surgeon, he was duty bound to ensure the adherence of rules and norms while making such payment from Personal Ledger Account. As the applicant intentionally, deliberately and with malafide motive omitted to do so and as a result, committed serious misconduct. Therefore, he was put under suspension vide order dated 6.5.2004 and departmental enquiry was initiated against him under Rule 8 of M.C.S. (Discipline and Appeal) Rules, 1979 vide chargesheet dated 1.6.2005."

6. Further case of the respondents is that, conclusion drawn by Enquiry Officer that charges against the applicant were partially proved, were based on proper appreciation of material on record, the Disciplinary Authority was fully justified in concurring with the same, the Appellate Authority, after considering entire material on record, took a lenient view and imposed lesser punishment of deduction of 50% amount from monthly pension of the applicant on a permanent basis as compared with the punishment of dismissal imposed by Disciplinary Authority, and considering gravity of

charges proved against the applicant, there is no scope to interfere with the impugned order.

7. The respondents further pointed out that criminal case U/ss 420, 409, 468, 471, 477(a), 120(B) r/w Section of the Indian Penal Code is still pending against the applicant and co-delinquent in the Court of Chief Judicial Magistrate, Chandrapur.

8. We have gone through the record. A joint enquiry was held against the applicant and remaining three delinquents.

9. Against the applicant, following two charges were framed:-

> "**अपचारी अधिकारी डॉ. श्री. जुमडे**:-
>
> **दोषारोप क्र.1-**
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> अपचारी अधिकारी डॉ. श्री. जुमडे हे निवासी वैद्यकीय अधिकारी, सामान्य रुग्णालय चंद्रपुर येथे सन २००३-२००४ मध्ये काम करीत असताना त्यांचेकडे प्रशासकीय अधिकारी या पदाचा अतिरिक्त प्रभार देण्यात आला होता. जिल्हा सामान्य रुग्णालय चंद्रपुर करिता स्वीय-प्रपंची खात्यातून रु. ६५,२५,६४०/- एवढ्या रकमेची खरेदी करण्यात आली. तथापि सदर खरेदी शासन निर्णय दिनांक ६।११।१९९९, ३१.७.२०००, १२.१२.२००२, २४.४.२००२, २.१.१९९२ व १६.७.१९९३ मध्ये नमूद केलेल्या तरतुदी नुसार व विहित केलेल्या पंचसूत्रीनुसार केलेली नाही. डॉ. श्री. जुमडे यांनी याबाबतची खात्री केलेली नाही. तसेच प्राप्त झालेल्या सामुग्रीची शाहनीशा केलेली नाही व धनाकर्षाद्वारे रु. ५३,९३,०४०/- अदा केली व रु. ११,३२,६००/-ची अदायगी रोखीने केली. सादर व्यवहार त्यांनी डॉ. श्री. अनेकर, श्री मोटघरे व दुर्योधन यांचेशी संगनमताने केला असून शासनाची फसवणूक केली आहे.
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> **दोषारोप क्र.2**–
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> अपचारी अधिकारी डॉ. श्री. जुमडे यांचेकडे सन २००३ ते २००४ मध्ये जिल्हा सामान्य रुग्णालय चंद्रपुर येथे प्रशासकीय अधिकारी या पदाचा

अतिरिक्त प्रभार देण्यात आला होता. सन २००३ ते २००४ मध्ये रुग्णालयीन शुल्काची रक्कम रु. ८,८२,४७६/- प्राप्त झाली होती. सादर रक्कम वित्तीय नियम 1959 अन्वये दोन दिवसाचे आत कोषागारात जमा करणे अनिवार्य आहे. तथापि अपचारी अधिकारी डॉ. श्री. जुमडे यांनी सादर रक्कम कोषागारात जमा न करता नियमबाह्य रित्या किरकोळ खर्चासाठी वापरली व वित्तीय अनियमितता केली, हा व्यवहार त्यांनी जिल्हा शल्य चिकित्सक तथा कर्मचारी यांचे संगनमताने केला आहे."

10. The Enquiry Officer dealt with both these charges. Relevant part of the report of Enquiry Officer so far as charge No.1 against the applicant is concerned, is as follows:-

"या प्रकरणात पोतदार सरकारी साक्षदार तत्कालीन सहायक संचालक आरोग्य सेवा, मुंबई यांची साक्षी महत्वाची असून त्यांचे साक्षीत त्यांनी श्री. अणेकर यांनी शासन निर्णय क्र. २.१.१९९२, १६.७.१९९३ मधील तरतुदीचे पालन न करता खरेदी करण्यात आली आहे त्यामुळे ५५,५५,५०६/- इतक्या रुपयाचे शासनाचे नुकसान झाले आहे असे सांगितले आहे. तथापि त्यांच्या साक्षीत त्यांनी श्री. जुमडे यांनी जी रक्कम काढली ती शासनाचे आदेश असल्यामुळे रक्कम काढण्यात गैर नाही. तसेच श्री. जुमडे यांचेकडे त्यावेळी निवासी वैद्यकीय अधिकारी, प्रशासकीय अधिकारी व जिल्हा शल्य चिकित्सक या तिन्ही पदाचा प्रभार होता त्यामुळे अशा परिस्थितीत चुका होण्याची शक्यता असते असे पुढे सांगितले आहे. श्री. पोतदार यांच्या साक्षीत सरकारी साक्षीदार श्री. घायगुडे यांनी दुजोरा दिला असून त्यांनी पुढे त्यांच्या साक्षीत पुरवठादारास रक्कम अदा करण्यापूर्वि मालाचा पुरवठा झाला आहे किवा नाही याबाबत खात्री करणे आवश्यक होते असे सांगीतलेले आहे. उर्वरित सरकारी साक्षीदार यांनी या दोषारोपाबाबत कोणतेही भाष्य केलेले नाही.

श्री. जुमडे यांचे पूर्वीचे जिल्हा शल्य चिकित्सक श्री. अणेकर यांनी खरेदीची प्रक्रिया पूर्ण केली असून लेखा परीक्षण चमूने त्यांचे अहवालात नमूद केल्याप्रमाणे श्री. जुमडे यांना सुरुवातीपासून ते पुरवठा होईपर्यन्त अनभिज्ञ ठेवण्यात आले होते. देयकवर श्री. अनेकर यांच्या सह्या असून त्यांनी ते देयके मंजूर केलेले आहे त्यामुळे खरेदी प्रक्रियेत श्री. जुमडे यांना दोषी ठरणे योग्य ठरत नाही. त्यामुळे दोषारोपाची ही बाब त्यांच्याविरुद्ध सिद्ध होत नाही. मात्र त्यांनी ११,३२,६००/- एवढी रक्कम मे. अल्फा महिला गृह उद्योग सहकारी संस्था खामगाव यांना रोखीने अदा केली आहे त्यामुळे त्यांची ही त्रुटि महाराष्ट्र

कोषागार नियम १९३ (४) च्या तरतुदीचे उल्लंघन ठरते त्यामुळे ते याबाबिकरता जबाबदार ठरतात. (Emphasis supplied)

So far as charge No.2 against the applicant is concerned, relevant part of the report of Enquiry Officer reads thus:-

"सदर प्रकरणात श्री. पोतदार, तत्कालीन सहाय्यक संचालक, आरोग्य सेवा, मुंबई यांची साक्षी महत्वाची असून त्यांनी त्यांचे साक्षीत डॉ. जुमडे यांनी स्वीयप्रपंजी लेख्यातील ८,८२,४७६/- ही रक्कम शासकीय नियमांनुसार कोषागारात जमा न करता परस्पर किरकोळ खर्चासाठी वापरली. सरकारी साक्षदर श्री. घायगुडे यांची साक्ष श्री. पोतदार यांच्या साक्षीशी पूरक असून त्यांच्या साक्षीत त्यांनी पुढे त्यांचेवर डॉ. जुमडे यांनी केलेला खर्च ही वित्तीय अनियमितता असल्याचे सांगितले आहे. अपचारि अधिकारी यांनी त्यांचे साक्षीत स्वीयप्रपंजी खात्यात जमा करण्याची जबाबदारी रोखपाल यांची आहे. त्यामुळे सादर दोषारोप लावणे अयोग्य नाही असे त्यांच्या साक्षीत सांगीतलेले असून रुग्णालयाकरिता नियमित निधि उपलब्ध नसल्यामुळे आकस्मिक बाबीकरिता खर्च करणे आवश्यक असल्यामुळे अशा तऱ्हेचा खर्च जिल्हा शल्य चिकित्सक यांच्या अनुमतीने करण्यात आलेला आहे. तसेच वाहन दुरुस्तीवरील रु. २७,७८६/- हा खर्च 1 वर्षावरील असतांना उपसंचालक आरोग्य सेवा, नागपुर यांची परवानगी न घेता खर्च करण्यात आला आहे याचे कारण चंद्रपुर जिल्हा हा नक्षलग्रस्त असून त्या जिल्यात रुग्णवाहिका 24 तास सज्ज ठेवाव्या लागतात व त्यामुळे हा खर्च जिल्हा शल्य चिकित्सक यांच्या निर्देशानुसार करण्यात आल्याचे त्यांचे साक्षीत पुढे सांगितले आहे.

प्रकरणातील कागदपत्र तथा साक्षी पुराव्याचे अवलोकन केले असता ही बाब स्पष्ट आहे की, रुग्णालयीन शुल्कापोटी जमा झालेली रक्कम 8,82,476/- ही रक्कम स्वीयप्रपंजी लेख्यात जमा न करता ती परस्पर किरकोळ खर्चासाठी वापरण्यात आलेली आहे. तसेच यातील रक्कम रु. 27,786/- इतक्या रकमेची देयके एका वर्षावरील असतांना उपसंचालक, आरोग्य सेवा, नागपुर यांची परवानगी न घेता खर्च करण्यात आलेला आहे. सदर रकमेची देयके ही तत्कालीन जिल्हा शल्य चिकित्सक श्री. अणेकर यांच्या सहिने मंजूर झालेली आहे व त्यांच्याच अनुमतीने सदर रक्कम संबंधीतास अदा करण्यात आलेली आहे. प्रशासकीय अधिकारी या नात्याने अपचारि अधिकारी यांनी ही जबाबदारी त्यांची नसून ही रोखपाल यांची आहे असे त्यांच्या साक्षीत विशद केले आहे परंतु ही बाब मान्य करता येण्यासारखी नाही. रुग्णालयीन व्यवस्थापणाकरिता निधि उपलब्ध नसल्यामुळे ही रक्कम खर्च करण्यात आली आहे असाही सुद्धा मुद्दा उपस्थित करण्यात आला आहे या बाबीवर खर्च करण्यासाठी उपसंचालक

आरोग्य सेवा नागपुर यांची मंजूरी घेणे आवश्यक होते व ही बाब जर निकडीची होती तर जिल्हा शल्य चिकित्सक किवा प्रशासकीय अधीकारी (प्रभारी जिल्हा शल्य चिकित्सक डॉ. जुमडे) यांनी ही बाब उपसंचालक आरोग्य सेवा नागपुर यांचे निदर्शनास आणून तात्काळ कार्यवाही करता आली असती परंतु तसे करण्यात आले नाही. नियमित निधि प्राप्त झाल्यानंतर ही रक्कम स्वीयप्रपंजी लेखयात जमा करण्यात आली आहे, परंतु ती नियमांनुसार दोन दिवसाच्या आत स्वीयप्रपंजी लेखयात जमा करण्यात आली नाही ही वस्तुस्थिती आहे. अर्थात रक्कम अदा करताना डॉ. जुमडे यांनी सादर अदायगी ही तत्कालीन जिल्हा शल्य चिकित्सक यांचे अनुमतीने केल्याचे सांगितले आहे व त्यांनी त्या देयकास मंजूरी दिलेली होती.

वरील विश्लेषण लक्षात घेता सदर दोषारोप अपचारि अधिकारी डॉ. जुमडे यांचेवर अंशतः सिद्ध होतो." (Emphasis supplied)

11. It was argued by Advocate Shri S.P. Palshikar that both these charges framed against the applicant were held to be "partly / partially proved", such finding would be neither here nor there and the Enquiry Officer ought to have recorded one of these two findings viz. "proved" or "not proved". There is no merit in this submission. Both the charges framed against the applicant comprised more than one detail. In his report, the Enquiry Officer specified what was proved and what was not proved so far as both these charges were concerned.

12. It was further argued by Advocate Shri S.P. Palshikar that the Appellate Authority did not consider detailed notes of argument filed by the applicant and proceeded to mechanically accept findings recorded by the Enquiry Officer and endorsed by the Disciplinary Authority. Order passed by the Appellate Authority in

fact shows that while deciding the appeal, all relevant aspects were considered.

13. According to Advocate Shri S.P. Palshikar, punishment imposed by the Appellate Authority was grossly disproportionate considering the nature of charges held to have been proved against the applicant and, therefore, the impugned order cannot be sustained. In reply, it was submitted by Ld. P.O. that by no stretch of imagination, punishment awarded by the Appellate Authority can be said to be grossly disproportionate and hence, interference by this Tribunal would be unwarranted.

14. Advocate Shri S.P. Palshikar, in support of his submission regarding punishment imposed by the Appellate Authority being grossly disproportionate, relied on Rule 27 of M.C.S. (Pension) Rules, 1982. Relevant part of Rule 27 reads as under:-

"**27. Right of Government to withhold or withdraw pension.**

(1) Government may, by order in writing withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and also order the recovery from such pension, the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including

service rendered upon re-employment after retirement :

Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview :

Provided further that the where a part of pension is withheld or withdrawn , the amount of remaining pension shall not be reduced below the minimum fixed by the Government."

(2) xxx

(3) xxx

(4) xxx

(5) xxx

(6) xxx

To further support this submission, reliance was also placed on the judgment delivered by this Tribunal on 15.5.2017 in O.A. No.140/2015. In this case, this Tribunal observed as under:-

> "However, the question is whether any pecuniary loss has been caused to the Government or not. As per Rule 27 (1) of the Pension Rules, as cited supra, the recovery from pension can be for whole or part of any pecuniary loss caused to the Government and, therefore, it is necessary to first consider as to whether there was pecuniary loss to the Government and if it was there, what was the exact loss caused and only that loss can be recovered."

15. On behalf of the applicant, reliance was also placed on ***"D.V. Kapoor V/s Union of India and others, AIR 1990 SC 1923."*** In this case, *inter alia*, Rule 9 of Civil Services (Pension) Rules, 1972 was considered. It was held—

> **Rule 9 (1) of the Rules provides thus—**
>
> "The President reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement.
>
> Provided that the Union Public Service Commission shall be consulted before any final orders are passed.
>
> Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees sixty per mensem.
>
> Therefore, it is clear that the President reserves to himself the right to withhold or withdraw the whole pension or a part thereof whether permanently or for a specified period. The President also is empowered to order recovery from a pensioner of the whole or part of any pecuniary loss caused to the Government, if in any,

proceeding in the departmental enquiry or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement."

It was further held—

"**6.** As seen the exercise of the power by the President is hedged with a condition precedent that a finding should be recorded either in departmental enquiry or judicial proceedings that the pensioner committed grave misconduct or negligence in the discharge of his duty while in office, subject of the charge. In the absence of such a finding, the President is without authority of law to impose penalty of withholding pension as a measure of punishment either in whole or in part permanently or for a specified period, or to order recovery of the pecuniary loss in whole or in part from the pension of the employee, subject to minimum of Rs. 60/-.

7. Rule 9 of the Rules empowers the President only to withhold or withdraw pension permanently or for a specified period in whole or in part or to order recovery of pecuniary loss caused to the State in whole or in part subject to minimum. The employee's right to pension is a statutory right. The measure of deprivation, therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right to assistance at the evening of his life as assured

> under Article 41 of the Constitution. The impugned order discloses that the President withheld on permanent basis the payment of gratuity in addition to pension. The right to gratuity is also a statutory right. The appellant was not charged with nor was given an opportunity that his gratuity would be withheld as a measure of punishment. No provision of law has been brought to our notice under which, the President is empowered to withhold gratuity as well, after his retirement as a measure of punishment. Therefore, the order to withhold the gratuity as a measure of penalty is obviously illegal and is devoid of jurisdiction."

16. It was submitted by Advocate Shri S.P. Palshikar that Rule 9 (1) of Civil Services (Pension) Rules, 1972 is in *pari materia* with Rule 27 (1) of M.C.S. (Pension) Rules, 1982 and hence ruling of the Hon'ble Supreme Court will squarely apply. According to Advocate Shri S.P. Palshikar, conjoint reading of Rule 27 (1) of M.C.S. (Pension) Rules, 1982 and ruling in the case of ***D.V. Kapoor*** (supra) will unmistakably lead to the conclusion that the impugned order whereunder 50% pension amount was directed to be deducted permanently, cannot be sustained.

17. Regarding finding on charge No.1 against the applicant, the Enquiry Officer held that the applicant could not be held guilty of anything concerned with the process of purchases since said

process was completed by Civil Surgeon Dr. Anekar, he, the applicant was kept in dark about it since beginning as was noted by the Audit Team, and all purchase bills were signed and sanctioned by Dr. Anekar. According to the Enquiry Officer, part of charge No.1 which was held to be proved against the applicant was that payments of Rs.11,32,600/- were made in contravention of Rule 193 (4) of Maharashtra Treasury Rules. It may be reiterated that remaining part of the charge was held to be not proved.

18. So far as charge No.2 is concerned, the Enquiry Officer held that it was a fact that fees received (from patients) were not deposited in the P.L.A. account within the stipulated period of two days. However, the Enquiry Officer accepted the defence of the applicant that for spending this amount on miscellaneous items, permission of Civil Surgeon Dr. Anekar was taken and Dr. Anekar had sanctioned the bills which were paid in cash. According to the Enquiry Officer, for making such expenditure, sanction from Deputy Director of Health Services ought to have been obtained and at any rate, it ought to have been brought to the notice of Deputy Director of Health Services.

19. So far as scope of judicial review by this Tribunal is concerned, reliance may be placed on ***B.C. Charturvedi V/s Union of India and others, AIR 1996 SC 484.*** In this case, it is held—

12. "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 eye of the Court. When an inquiry is conducted on charges of a 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 were complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold enquiry 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 on its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at the 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 enquiry 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.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary enquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court / Tribunal. In ***Union of India V/s H.C. Goel (1964) 4 SCR 718 : (AIR 1964 SC 364), this Court held at page 728 (of SCR): (at p. 369 of AIR)***, that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a *writ of certiorari* could be issued.

18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. The are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court / Tribunal, while exercising the power of judicial review, cannot normally substitute its own

conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court / Tribunal, it would appropriately mould the relief, either directing the disciplinary / appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

20. Source of power to direct deduction either in full or in part, for a specified period or on a permanent basis as a measure of punishment, is to be found in Rule 27 of M.C.S. (Pension) Rules, 1982 which is quoted above. This Rule lays down two conditions which should precede invocation of power to impose such punishment. These conditions are—

(1) Quantification / assessment of pecuniary loss caused to the Government and,

(2) Finding of proven grave misconduct or negligence.

The reason for stipulating these conditions precedent is clear i.e. measure of deprivation must be correlative to or commensurate with gravity of the proven misconduct or negligence.

21. We have reproduced relevant portion of report of Enquiry Officer wherein he has dealt with the charges framed against the applicant. Findings recorded by him are based on evidence. The Appellate Authority, too, considered the evidence and concluded—

> "तथापि या संदर्भात सदर नस्तीचे अवलोकन केले असता रु. ६७ लक्ष इतकी रक्कम खर्च करण्याबाबतचा प्रस्ताव जिल्हा शल्य चिकित्सक, चंद्रपुर यांनी शासनास विहित मार्गाने सादर न करता थेट सादर करण्यात आल्याचे भासविण्यात आले. तसेच सदर प्रस्तावास शासनाने मंजूरी दिल्याचेही भासविण्यात आले. प्रत्यक्षात असा कोणताही प्रस्ताव शासनास प्राप्त झाला नाही किवा अशी कोणतीही मंजूरी शासनाकडून देण्यात आलेली नाही. या संदर्भात श्री. भ.ब. महाले, अवर सचिव यांनी सदर पत्रावरील सही त्यांची नसल्याचा खुलासा दिनांक २०.११.२००३ च्या पत्रान्वये केला आहे.
>
> डॉ. जुमळे यांनी अपील अर्जामध्ये असे नमूद केले आहे की, त्यांनी कोणतीही खरेदी प्रक्रिया केलेली नसून प्रत्यक्षात खरेदी व्यवहार त्यांच्या पूर्वीच्या जिल्हा शल्य चिकित्सकांनी केला असून त्यांनी खरेदीच्या रक्कमा अदा करण्याची कार्यवाही केल्याने खरेदी प्रक्रियेबाबत त्यांच्या सह आपचाऱ्यांनी त्यांना कोणतीही कल्पना दिलेली नव्हती.
>
> या संदर्भात स्पष्ट करण्यात येते की, स्वीय प्रपंजी खात्यातून नियम्बाहय खरेदी करणे व रकमा अदा करण्याची कार्यवाही जिल्हा शल्य चिकित्सक, कनिष्ट लिपिक तथा भांडारपाल व वरिष्ठ लिपिक तथा रोखपाल यांच्या संगनमताने करण्यात आली आहे असा दोषारोप असल्याने प्रस्तुत प्रकरणी सर्वच अपचारि जबाबदार आहेत".

In the operative part of the order, the Appellate Authority held—

> "डॉ. अजय कोंडूजी जुमळे, निवासी वैद्यकीय अधिकारी (चिकित्सक), सामान्य रुग्णालय, चंद्रपुर यांच्याविरुद्ध चौकशी अधिकारी यांनी उपलब्ध पुराव्याच्या आधारे यथोछितरित्या मूल्यमापन करून अपचाऱ्याचा बचाव

ग्राह्य धरून दोन्हीही दोषारोप अंशतः सिद्ध होत असल्याचा निष्कर्ष चौकशी अधिकारी यांनी काढला आहे. डॉ. जुमळे यांच्या निवेदनावरून खरेदीच्या प्रक्रियेमध्ये त्यांचा सहभाग नसून त्यांनी खरेदीची देयके अदा करतांना रोख स्वरुपात रक्कम अदा करण्याची अनियमितता केली असल्याचे स्पष्ट होते. डॉ. जुमळे यांच्याकडे प्रशासकीय अधिकारी तसेच जिल्हा शल्य चिकित्सक पदाचा अतिरिक्त कार्यभार होता. त्यामुळे अतिरिक्त कार्यभाराच्या काळात संपूर्ण खरेदी प्रक्रिया त्यांनी राबविली नसल्याचे शिस्तभंग विषयक प्राधिकाऱ्यांनी दिनांक 21.6.2013 च्या आदेशान्वये दिलेली बड्तर्फीची शिक्षा रद्द करून त्यांच्या सेवे निवृत्ती वेतनातून 50 टक्के कायम स्वरूपाची कपात करण्याची शिक्षा अपीलामध्ये देण्यात येत आहे". **(Emphasis supplied).**

The afore-quoted operative part of the order shows that the Appellate Authority accepted stand of the applicant that the applicant had played no part in purchases, and what the applicant had done i.e. making payment in cash amounted to an irregularity. So far as this irregularity is concerned, all the bills of purchases were signed and sanctioned by Dr. Anekar, Civil Surgeon.

22. Question of upsetting finding of fact based on evidence, while exercising power of judicial review, would not arise. However, question does arise in this case as to whether the punishment, source of which can be traced to Rule 27 of M.C.S. (Pension) Rules, 1982, could have been imposed without observing conditions precedent incorporated in the said Rule. In the instant case, there is neither quantification of pecuniary loss said to have been caused to the Government on account of any act of the

applicant nor is there a specific finding that the applicant was guilty of grave misconduct or negligence. The aforesaid ruling of the Supreme Court will clearly apply since Rule 9 (1) of Central Services (Pension) Rules, 1972 and Rule 27 (1) of M.C.S. (Pension) Rules, 1982 are in *pari materia*. In this factual background, as laid down in the case of ***B.C. Chaturvedi*** (supra), matter will have to be remanded to the Appellate Authority to reconsider the quantum of punishment and scale it down appropriately so that it co relates with proven facts. While appropriately scaling down the punishment, due weightage deserves to be given to the finding of fact that regarding process of purchases, the applicant was kept in dark and acts held to be proven against him amount to financial irregularity. Hence, the order.

ORDER

The O.A. is allowed in the following terms:-

(i) The impugned order dated 21.7.2016 (Annexure A-1) passed by the Appellate Authority is quashed and set aside and the matter is remanded to the said authority to reconsider quantum of punishment in the light of observations made hereinabove and scale it down appropriately so that it correlates with proven facts.

(ii) The Appellate Authority shall decide the appeal expeditiously.

(iii) No order as to costs.

(M.A.Lovekar)
Member (J)

(Shree Bhagwan)
Vice-Chairman

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